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Cases, Regulations and Statutes

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CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

FEDERAL TAX

SETOFF. The debtor and a previous spouse had become obligated to the USDA on a home mortgage guaranteed loan which was foreclosed. When the couple divorced, the divorce decree made the obligation solely the former spouse's. The debtor filed for Chapter 7 on April 7, 2012 and filed the 2011 income tax return on April 11, 2012, claiming a refund consisting of overpaid taxes, earned income credit and additional child tax credit. The debtor claimed the credit amounts as exempt under state law. However, the IRS did not pay the refund but turned it over to the USDA to which the debtor and former spouse owed the guaranteed loan obligation. Neither the IRS nor the USDA obtained relief from the automatic stay prior to the setoff. The court held that the setoff was proper because all three elements of Section 553 were met. The court also held that the setoff could include exempt property. *In re Newberry*, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,198 (Bankr. S.D. Ill. 2013).

FEDERAL FARM PROGRAMS

FARM LOANS. The FSA has issued an interim rule amending the regulations that specify interest rates on guaranteed farm loans. This rule will tie the maximum interest rate that may be charged on FSA guaranteed farm loans to nationally published indices, specifically the 3-month London Interbank Offered Rate (LIBOR) or the 5-year U.S. Treasury note rate, unless the lender uses a formal written risk-based pricing practice for loans, in which case the rate must be at least one risk tier lower than the borrower would receive without the guarantee. **78 Fed. Reg. 13999 (March 4, 2013).**

ORGANIC FOOD. The National Organic Program has announced the availability of three final guidance documents and one instruction document intended for use by certifying agents and certified operations. The final guidance and instruction documents are: "The Use of Kelp in Organic Livestock Feed (NOP 5027); Responding to Results from Pesticide Residue Testing (NOP 2613)"; "Seeds, Annual Seedlings, and Planting Stock in Organic Crop Production (NOP 5029);" and "Evaluating Allowed Ingredients and Sources of Vitamins and Minerals for Organic Livestock Feed (NOP 5030)." **78 Fed. Reg. 13776 (March 1, 2013).**

FEDERAL ESTATE AND GIFT TAXATION

ALLOCATION OF BASIS FOR DEATHS IN 2010. The decedent died in 2010 and the executor retained a tax professional to advise on estate tax matters including the necessity to file a Form 9939, *Allocation of Increase in Basis for Property Acquired from a Decedent*. The accountant prepared the Form 9939 but failed to file the form before January 17, 2012. The estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to file the Form 9939 to make the I.R.C. § 1022 election and to allocate basis provided by I.R.C. § 1022 to eligible property transferred as a result of the decedent's death. *Notice 2011-66, 2011-2 C.B. 184 section I.D.1*, provides that the IRS will not grant extensions of time to file a Form 9939 and will not accept a Form 9939 filed after the due date except in four limited circumstances provided in section I.D.2: "Fourth, an executor may apply for relief under § 301.9100-3 in the form of an extension of the time in which to file the Form 9939 (thus, making the Section 1022 election and the allocation of basis increase), which relief may be granted if the requirements of § 301.9100-3 are satisfied. The IRS granted an extension of time to file the election. **Ltr. Rul. 201309002, Nov. 5, 2012; 201308015, Oct. 31, 2012.**

TRUSTS. The settlor had created two trusts which were identical. Both trusts provided for charitable organizations as current beneficiaries and gave complete discretion for any distributions to the trustee. The settlor's two children would become additional discretionary beneficiaries on the settlor's death. The trustee obtained a court modification of the trust to include the children as current discretionary beneficiaries. The IRS ruled that the modification did not cause the trust to recognize any gain or loss from the change. **Ltr. Rul. 201308016, Nov. 19, 2012.**

FEDERAL INCOME TAXATION

BARTERING. The IRS has published information on tax consequences of bartering. A barter exchange is an organized marketplace where members barter products or services. Some exchanges operate out of an office and others over the internet. All barter exchanges are required to issue Form 1099-B, *Proceeds from Broker and Barter Exchange Transactions*, annually. The exchange must give a copy of the form to its members and file a copy with the IRS. Barter and trade dollars are the same as real dollars for tax reporting purposes. If a taxpayer barter, the taxpayer must report on the tax return the fair market value of the products or services received. Bartering is taxable in the year it occurs. The tax rules

may vary based on the type of bartering that takes place. Barterers may owe income taxes, self-employment taxes, employment taxes or excise taxes on their bartering income. How a taxpayer reports bartering varies depending on which form of bartering takes place. Generally, if the taxpayer is in a trade or business, the taxpayer reports bartering income on Form 1040, Schedule C, *Profit or Loss from Business*, or presumably, Schedule F for farm and ranch taxpayers. Taxpayers may be able to deduct certain costs incurred to perform the bartering. **IRS Tax Tip 2013-29.**

DEPRECIATION. The IRS has issued tables detailing the (1) limitations on depreciation deductions for owners of passenger automobiles (and for trucks and vans) first placed in service during calendar year 2013 and (2) the amounts to be included in income by lessees of passenger automobiles first leased during calendar year 2013.

For passenger automobiles placed in service in 2013 the depreciation limitations are as follows, if additional (bonus) depreciation is claimed:

<u>Tax Year</u>	<u>Amount</u>
1st tax year.....	\$11,160
2d tax year.....	5,100
3d tax year.....	3,050
Each succeeding year.....	1,875

For trucks and vans placed in service in 2013 the depreciation limitations are as follows, if additional (bonus) depreciation is claimed:

<u>Tax Year</u>	<u>Amount</u>
1st tax year.....	\$11,360
2d tax year.....	5,400
3d tax year.....	3,250
Each succeeding year.....	1,975

For passenger automobiles placed in service in 2013 the depreciation limitations are as follows, if additional (bonus) depreciation is **not** claimed:

<u>Tax Year</u>	<u>Amount</u>
1st tax year.....	\$3,160
2d tax year.....	5,100
3d tax year.....	3,050
Each succeeding year.....	1,875

For trucks and vans placed in service in 2013 the depreciation limitations are as follows, if additional (bonus) depreciation is **not** claimed:

<u>Tax Year</u>	<u>Amount</u>
1st tax year.....	\$3,360
2d tax year.....	5,400
3d tax year.....	3,250
Each succeeding year.....	1,975

For leased passenger automobiles, I.R.C. § 280F(c) requires a reduction in the deduction allowed to the lessee of the passenger automobile. The reduction must be substantially equivalent to the limitations on the depreciation deductions imposed on owners of passenger automobiles. Under Treas. Reg. § 1.280F-7(a), this reduction requires a lessee to include in gross income an inclusion amount determined by applying a formula to the amount obtained from tables included in the revenue procedure. Each table shows inclusion amounts for a range of fair market values for each taxable year after the passenger automobile is first leased. Under prior law, I.R.C. § 280F(a)(1)(C), which directed the use of higher depreciation deduction limits for certain electric automobiles, was

applicable only to property placed in service after December 31, 2001 and before January 1, 2007. Accordingly, separate tables are no longer provided for electric automobiles, and taxpayers should use the applicable table provided in this revenue procedure. **Rev. Proc. 2013-21, I.R.B. 2013-12.**

DISASTER LOSSES. The IRS has announced the postponement, until October 15, 2013, of the deadline to make an election under I.R.C. § 165(i) to deduct in the preceding taxable year losses attributable to Hurricane Sandy sustained in a federally declared disaster area in Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, or West Virginia. **Notice 2013-21, I.R.B. 2013-15.**

On February 13, 2013, the President determined that certain areas in Mississippi are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms and flooding which began on February 10, 2013. **FEMA-4101-DR.** On February 22, 2013, the President determined that certain areas in Louisiana are eligible for assistance from the government under the Act as a result of severe storms and flooding which began on January 8, 2013. **FEMA-4102-DR.** Accordingly, taxpayers in the areas may deduct the losses on their 2012 federal income tax returns. See I.R.C. § 165(i).

EMPLOYMENT TAXES. The IRS has expanded its Voluntary Classification Settlement Program (VCSP) paving the way for more taxpayers to take advantage of this low-cost option for achieving certainty under the law by reclassifying their workers as employees for future tax periods. The IRS is modifying several eligibility requirements thus making it possible for many more interested employers, especially larger ones, to apply for this program. VCSP provides partial relief from federal payroll taxes for eligible employers who were treating their workers or a class or group of workers as independent contractors or other nonemployees and now want to treat them as employees. Businesses, tax-exempt organizations and government entities may qualify. Under the revamped program, employers under IRS audit, other than an employment tax audit, can qualify for the VCSP. Furthermore, employers accepted into the program will no longer be subject to a special six-year statute of limitations, rather than the usual three years that normally applies to payroll taxes. These and other permanent modifications to the program are described in *Announcement 2012-45, 2012-2 C.B. 724* and in questions and answers, posted on IRS.gov. Normally, employers are barred from the VCSP if they failed to file required Forms 1099 with respect to workers they are seeking to reclassify for the past three years. However, for the next few months, until June 30, 2013, the IRS is waiving this eligibility requirement. Details on this temporary change are in *Announcement 2012-46, 2012-2 C.B. 725*. To be eligible for the VCSP, an employer must currently be treating the workers as nonemployees; consistently have treated the workers in the past as nonemployees, including having filed any required Forms 1099; and not currently be under audit on payroll tax

issues by the IRS. In addition, the employer cannot currently be under audit by the Department of Labor or a state agency concerning the classification of these workers or contesting the classification of the workers in court. Interested employers can apply for the program by filing Form 8952, *Application for Voluntary Classification Settlement Program*, at least 60 days before they want to begin treating the workers as employees. Employers accepted into the program will generally pay an amount effectively equaling just over one percent of the wages paid to the reclassified workers for the past year. No interest or penalties will be due, and the employers will not be audited on payroll taxes related to these workers for prior years. Employers applying for the temporary relief program available for those who failed to file Forms 1099 will pay a slightly higher amount, plus some penalties, and will need to file any unfilled Forms 1099 for the workers they are seeking to reclassify. **IR-2013-23.**

The IRS has simplified the rules for filing employment tax returns to report social security, Medicare, and withheld federal income taxes. If a taxpayer has been filing Form 941, *Employer's QUARTERLY Federal Tax Return*, and believes the employment taxes for the calendar year will be \$1,000 or less and would like to file Form 944, *Employers ANNUAL Federal Tax Return*, instead of Form 941, the taxpayer must contact the IRS to request to file Form 944 rather than Form 941. The taxpayer may make the request by calling the IRS at 1-800-829-4933 by April 1 of the current year, or by sending a written request, postmarked by March 15 of the current year, to: Department of Treasury, Internal Revenue Service, Ogden, UT 84201-0038 or Department of the Treasury, Internal Revenue Service, Cincinnati, OH 45999-0038. Select the appropriate addresses based on the state the taxpayer is in. See "Without a payment" under the "Where Should You File" section of the Instructions for Form 944. If the taxpayer does not receive written notice from the IRS to file Form 944, the taxpayer must file Forms 941 for the current calendar year. **2013ARD 047-3 March 7, 2013.**

ESTIMATED TAXES. The IRS has adopted as final regulations under I.R.C. § 6654 relating to reduced estimated income tax payments for qualified individuals with small business income for any taxable year beginning in 2009. The regulations implement changes to Section 6654 made by the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 336 (2009). Owners of qualifying small businesses are eligible for reduced estimated tax payments for 2009 (substituting 90 percent for 100 percent) if the owner's adjusted gross income is less than \$500,000 and more than 50 percent of the gross income was from a small business. *Act § 1212, amending I.R.C. § 6654(d)(1)(D)*. Income from a small business is defined in general terms in Section 6654(d)(1)(D)(iii) as income from a trade or business the average number of employees of which was less than 500 for calendar year 2008. The regulations provide guidance for qualified individuals with small business income to certify that they satisfy the statutory gross income requirement for purposes of the reduction in their required 2009 estimated income tax payments. **78 Fed. Reg. 13221 (Feb. 27, 2013).**

FIRST TIME HOMEBUYER CREDIT. The IRS has announced that it no longer mails reminder letters to taxpayers

who have to repay the first time homebuyer credit. To help taxpayers who must repay the credit, the IRS website has a user-friendly look-up tool. If a taxpayer bought a home in 2008 and claimed the first time homebuyer credit, the credit is similar to a no-interest loan. The taxpayer normally must repay the credit in 15 equal annual installments. Taxpayers should have started to repay the credit with their 2010 tax returns. Taxpayers are usually not required to pay back the credit for a main home they bought after 2008. However, taxpayers may have to repay the entire credit if they sold the home or stopped using it as their main home within 36 months from the date of purchase. This rule also applies to homes bought in 2008. Taxpayers can find the first time homebuyer credit lookup tool at IRS.gov under the "Tools" menu. Taxpayers will need their Social Security number, date of birth and complete address to use the tool. If a taxpayer claimed the credit on a joint return, each spouse should use the tool to get their share of the account information, because the law treats each spouse as having claimed half of the credit for repayment purposes. The tool provides important account information to help the taxpayer report the repayment on the tax return. It shows the original amount of the credit, annual repayment amounts, total amount paid and the remaining balance. Taxpayers can print their account page to share with their tax preparer and to keep for their records. To repay the first time homebuyer credit, add the amount to be repaid to any other tax owed on the federal tax return. This could result in additional tax owed or a reduced refund. Taxpayers report the repayment on line 59b on Form 1040, *U.S. Individual Income Tax Return*. If a taxpayer is repaying the credit because the home stopped being the main home, you must attach Form 5405, *Repayment of the First-Time Homebuyer Credit*, to the tax return. **IRS Tax Tip 2013-23.**

HOBBY LOSSES. The taxpayers, husband and wife, purchased a vacation home and claimed business loss deductions from the property. The property was offered for rent but the rental income never exceeded the expenses. The court held that the deductions were properly disallowed by the IRS because the property was not operated with an intent to make a profit. The court pointed to evidence that the house was purchased primarily as a vacation home for the taxpayers and that the renting of the home was to produce some income to offset the purchase price of the home. ***In re Shaw*, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,199 (Bankr. D. Mass. 2013).**

HOME OFFICE. The taxpayer was employed as an independent contractor pastor of a church. The church provided the taxpayer with a housing allowance and the taxpayer rented a house. The taxpayer performed services for the church at the church office but also provided non-church clerical services from an office in the house. The amount of time spent in the home office exceeded the time spent on church business elsewhere. The taxpayer claimed the home office deduction for the use of the room in the house. The court held that the taxpayer was entitled to deductions for expenses related to the home office. ***Bernstine v. Comm'r*, T.C. Summary Op. 2013-19.**

MEDICAL EXPENSES. The IRS has published information about deductible medical or dental expenses in 2012 for costs not

covered by insurance. *Taxpayers must itemize.* Taxpayers can only claim medical and dental expenses for costs not covered by insurance if they itemize deductions on their tax returns. Taxpayers cannot claim medical and dental expenses if they take the standard deduction. *Deduction is limited.* Taxpayers can deduct medical and dental expenses that are more than 7.5 percent of their adjusted gross income. *Expenses paid in 2012.* Taxpayers can include medical and dental costs that they paid in 2012, even if they received the services in a previous year. Keep good records to show the amount that was paid. *Qualifying expenses.* Taxpayers may include most medical or dental costs that they paid for themselves, their spouse and their dependents. Some exceptions and special rules apply. *Costs to include.* Taxpayers can normally claim the costs of diagnosing, treating, easing or preventing disease. The costs of prescription drugs and insulin qualify. The cost of medical, dental and some long-term care insurance also qualify. *Travel is included.* Taxpayers may be able to claim the cost of travel to obtain medical care. That includes the cost of public transportation or an ambulance as well as tolls and parking fees. If a taxpayer uses a car for medical travel, the taxpayer can deduct the actual costs, including gas and oil. Instead of deducting the actual costs, a taxpayer can deduct the standard mileage rate for medical travel, which is 23 cents per mile for 2012. *No double benefit.* Funds from Health Savings Accounts or Flexible Spending Arrangements used to pay for medical or dental costs are usually tax-free. Therefore, taxpayers cannot deduct expenses paid with funds from those plans. **IRS Tax Tip 2013-25.**

PARTNERSHIPS

PARTNER'S BASIS. The taxpayer owned a limited liability company which was a disregarded entity for tax purposes. The LLC also owned another LLC which obtained a loan. The taxpayer was initially only a guarantor of the loan but changed that status later to a co-borrower. The taxpayer did not waive all rights of subrogation and reimbursement against the LLC or the rights of contribution from the co-guarantors in the event that the taxpayer was called upon to repay the loan made to the LLC under the commercial guaranty. In a Chief Counsel Advice letter, the IRS stated that the two tests for determining whether a taxpayer is at risk for borrowed amounts were: (1) the taxpayer must be personally liable for the debt, and (2) the taxpayer is not otherwise protected from loss through nonrecourse financing, guarantees, stop loss agreements, or other similar arrangements. In this case, the first test was met because the taxpayer would be the person ultimately liable on the debt. The second test was also met because, based on the economic realities at the end of the tax year, the taxpayer would not be repaid from any other person or entity if the taxpayer became liable for the debt. **CCA 201308028, Nov. 14, 2012.**

QUARTERLY INTEREST RATE. The IRS has announced that, for the period April 1, 2013 through June 30, 2013, the interest rate paid on tax overpayments remains at 3 percent (2 percent in the case of a corporation) and for underpayments remains at 3 percent. The interest rate for underpayments by large corporations remains at 5 percent. The overpayment rate for the portion of a corporate overpayment exceeding \$10,000 remains at 0.5 percent. **Rev. Rul. 2013-6, I.R.B. 2013-13.**

REGISTERED TAX RETURN PREPARERS. The IRS has filed an appeal of the following case. The plaintiffs were three paid tax return preparers who were required to register with the IRS and comply with new testing and continuing education requirements in order to continue to prepare income tax returns for the public for money. The plaintiffs argued that the new tax return preparer regulations were beyond the authority of the IRS and the plaintiff sought an injunction of enforcement of the regulations. The central issue was whether non-CPA, non-lawyer, tax return preparers "practiced" before the IRS when they filled out tax returns for the public for pay. The court granted the injunction, holding that the authorizing statute, 31 U.S.C. § 330, did not include tax return preparers. **Loving v. I.R.S., 2013-1 U.S. Tax Cas. (CCH) ¶ 50,156 (D. D.C. 2013).**

RETURNS. The IRS has published information about several different ways to get tax return information or a copy of a tax return for prior years. *Tax Return Transcript.* This shows most line items from a tax return as originally filed, along with any forms and schedules from the return. This transcript does not reflect any changes made to the return after it was filed. Tax return transcripts are free. After the IRS has processed a return, transcripts are available for the current tax year and the past three tax years. *Tax Account Transcript.* This shows any adjustments made by the taxpayer or the IRS after filing the return. This transcript shows basic data, like marital status, type of return filed, adjusted gross income and taxable income. Tax account transcripts are free, and are available after the IRS has processed the return for the current tax year and the past three tax years. *Order a Transcript.* Taxpayers can request both transcript types online, by phone or by mail. To place an order online, go to IRS.gov and use the "Order a Transcript" tool. Order a transcript by phone at 800-908-9946. A recorded message will guide the taxpayer through the process. A taxpayer can also request a tax return transcript by mail by completing Form 4506T-EZ. Use Form 4506T to mail a request for the taxpayer's tax account transcript. Taxpayers can get both forms online at IRS.gov. *Tax Return Copies.* Actual copies of a taxpayer's tax returns are generally available for the current tax year and as far back as six years. The fee for each copy ordered is \$57. To request a copy of the taxpayer's tax return, complete Form 4506, available on IRS.gov. Mail the request to the IRS office listed on the form for the taxpayer's area. *Delivery Times.* The turnaround time for online and phone orders is typically 5 to 10 days from the time the IRS receives the request. Allow 30 calendar days for delivery of a tax account transcript if the taxpayer orders by mail using Form 4506T-EZ or Form 4506T, and allow 60 days when ordering actual copies of a tax return by mail. *More Information.* The IRS website can help taxpayers decide which form they need. **IRS Tax Tip 2013-20.**

The IRS has published five tips for a taxpayer whose name has changed. They also apply if a taxpayer's dependent's name has changed. If the taxpayer has married and the taxpayer is using the new spouse's last name or the taxpayer has hyphenated a last name, notify the SSA. That way, the IRS computers can match the taxpayer's new name with the taxpayer's Social Security number. If the taxpayer was divorced and is now using the taxpayer's former last name, notify the SSA of the name change.

Notifying the SSA about a name change is done by filing Form SS-5, *Application for a Social Security Card*, at a local SSA office or by mail with proof of the legal name change. Taxpayers can get Form SS-5 on the SSA's website at www.ssa.gov, by calling 800-772-1213 or at local SSA offices. The new card will have the same number as the taxpayer's former card but will show the new name. If the taxpayer adopted the new spouse's children and their names changed, the taxpayer will need to update their names with SSA too. For adopted children without SSNs, the parents can apply for an Adoption Taxpayer Identification Number by filing Form W-7A, *Application for Taxpayer Identification Number for Pending U.S. Adoptions*, with the IRS. The ATIN is a temporary number used in place of an SSN on the tax return. Form W-7A is available on the IRS.gov website or by calling 800-TAX-FORM (800-829-3676). **IRS Tax Tip 2013-21.**

The IRS has announced that it has finished updating its tax-processing systems allowing all remaining individual and business taxpayers to file their 2012 federal income tax returns. **IR-2013-25.**

S CORPORATIONS

SECOND CLASS OF STOCK. The taxpayer corporation entered into a shareholder buy-sell agreement to govern the sale of any shares of stock. The agreement contained a provision that, if a shareholder sold stock, the shareholder would still be able to recover the original shareholder's share of a potential legal settlement. The taxpayer also adopted a bonus plan for employees which would be funded only from the recovery of the same potential legal settlement. The IRS ruled that neither the buy-sell agreement nor bonus plan created a second class of stock which would cause termination of the taxpayer's S corporation status. **Ltr. Rul. 201309003, Oct. 11, 2012.**

SOCIAL SECURITY BENEFITS. The IRS has published information on determining whether social security benefits are taxable. Add one-half of the Social Security benefits the taxpayer received to all other income, including tax-exempt interest. Tax-exempt interest includes interest from state and municipal bonds. Next, compare this total to the "base amount" for the taxpayer's filing status. If the total is more than the base amount, then some of your benefits may be taxable. The three 2012 base amounts are: \$25,000 for single, head of household, qualifying widow or widower with a dependent child or married individuals filing separately who did not live with their spouse at any time during the year; \$32,000 for married couples filing jointly; and \$0 for married persons filing separately who lived together at any time during the year. If the taxpayer uses IRS e-file to prepare and file a tax return, the tax software will figure the taxable benefits. If the taxpayer files a paper return, the taxpayer can use the Interactive Tax Assistant tool on the IRS website to check if benefits are taxable. There also is a worksheet in the instructions for Form 1040 or 1040A that taxpayers can use to figure taxable benefits. **IRS Tax Tip 2013-24.**

THEFT LOSSES. The taxpayers, husband and wife, contracted with a builder to remodel a significant portion of their home. The contractor demanded early payments for the construction and the taxpayers made pre-payments of \$400,000. The contractor died and the taxpayers discovered that the contractor was in financial difficulties. The home also suffered damage from the contractor's failure to protect the portions of the home exposed by the

construction. The taxpayers sought recovery from the contractor's insurance company but the policy did not cover the damage. The taxpayer sought recovery from the construction company but the company was dissolved by state order. The taxpayer claimed a theft loss deduction for the amount paid to the contractor which was not used on the construction. The IRS disallowed the deduction because no theft occurred under state law and the loss incurred in a different tax year. The court held that a theft did occur under Illinois law which made it a crime to commit home repair fraud. The court also held that the taxpayers claimed the loss in the proper tax year because, until that year, the taxpayers had not exhausted the possible recovery of the damages from the insurance policy and the construction company. **Urtis v. Comm'r, T.C. Memo. 2013-66.**

UNEMPLOYMENT BENEFITS. The IRS has published information on taxation of unemployment benefits. Taxpayers must include all unemployment compensation received in total income for the year. Taxpayers should receive a Form 1099-G, *Certain Government Payments* which will show the amount paid and the amount of any federal income taxes withheld from the payments. Unemployment benefits include: benefits paid by a state or the District of Columbia from the Federal Unemployment Trust Fund; railroad unemployment compensation benefits; disability payments from a government program paid as a substitute for unemployment compensation; trade readjustment allowances under the Trade Act of 1974; and unemployment assistance under the Disaster Relief and Emergency Assistance Act. Taxpayers must include benefits in income from regular union dues paid as an unemployed member of a union. However, other rules apply if the taxpayer contributes to a special union fund and the contributions are not deductible. If this applies to the taxpayer, the taxpayer should include in income only the amount received from the fund that is more than the contributions. Taxpayers can choose to have federal income tax withheld from their unemployment benefits. Taxpayers make this choice using Form W-4V, *Voluntary Withholding Request*. If a taxpayer completes the form and gives it to the paying office, they will withhold tax at 10 percent of the payments. If the taxpayer chooses not to have tax withheld, the taxpayer may have to make estimated tax payments throughout the year. For more information on unemployment benefits see IRS Publications 17, *Your Federal Income Tax*, or IRS Publication 525, *Taxable and Nontaxable Income*. **IRS Tax Tips 2013-26.**

WORK OPPORTUNITY CREDIT. The IRS has issued a notice which provides guidance on § 309 of the American Taxpayer Relief Act of 2012, *Pub. L. No. 112-240*, and transition relief for employers claiming the Work Opportunity Tax Credit (the WOTC) under I.R.C. §§ 51 and 3111(e), as extended by the Act. Section 309 of the Act amended I.R.C. § 51 to extend the WOTC through December 31, 2013, for taxable employers and for qualified tax-exempt organizations. The notice provides employers that hire members of targeted groups additional time beyond the 28-day deadline in I.R.C. § 51(d)(13) for submitting Form 8850, *Pre-screening Notice and Certification Request for the Work Opportunity Credit*, to designated local agencies. **Notice 2013-14, I.R.B. 2013-13.**



AGRICULTURAL TAX SEMINARS

by Neil E. Harl

Join us for expert and practical seminars on the essential aspects of agricultural tax law. Gain insight and understanding from one of the country's foremost authorities on agricultural tax law.

The seminars will be held on two days from 8:00 am to 5:00 pm. Registrants may attend one or both days, with separate pricing for each combination. On the first day, Dr. Harl will speak about farm and ranch income tax. On the second day, Dr. Harl will cover farm and ranch estate and business planning. Your registration fee includes written comprehensive annotated seminar materials for the days attended and lunch. **Online registration is available at www.agrilawpress.com.**

Three locations and dates to choose from this spring (see page 42 above for the rest of the 2013 schedule):

April 29-30, 2013, Osage Beach, MO Tan-Tar-A Resort, 494 TanTarA Dr., Osage Beach, MO 65065

May 6-7, 2013, Grand Island, NE Quality Inn & Conference Center, 7838 S. Highway 281, Grand Island, NE

May 30-31, 2013, Greeley, CO Clarion Inn & Conference Center, 701 8th St., Greeley, CO

The topics include:

First day

FARM INCOME TAX

New Legislation

Reporting Farm Income

- Leasing land to family entity
- Constructive receipt of income
- Deferred payment and installment payment arrangements for grain and livestock sales
- Using escrow accounts
- Payments from contract production
- Items purchased for resale
- Items raised for sale
- Crop insurance proceeds
- Weather-related livestock sales
- Sales of diseased livestock
- Reporting federal disaster assistance benefits
- Gains and losses from commodity futures, including consequences of exceeding the \$5 million limit

Claiming Farm Deductions

- Soil and water conservation expenditures
- Fertilizer deduction election
- Depreciating farm tile lines
- Farm lease deductions
- Prepaid expenses
- Preproductive period expense provisions
- Regular depreciation, expense method depreciation, bonus depreciation
- Paying rental to a spouse
- Paying wages in kind
- Section 105 plans

Sale of Property

- Income in respect of decedent
- Sale of farm residence
- Installment sale including related party rules
- Private annuity
- Self-canceling installment notes

Sale and gift combined.

Like-Kind Exchanges

- Requirements for like-kind exchanges
- "Reverse Starker" exchanges
- What is "like-kind" for realty
- Like-kind guidelines for personal property
- Partitioning property
- Exchanging partnership assets

Taxation of Debt

- Turnover of property to creditors
- Discharge of indebtedness
- Taxation in bankruptcy.

Second day

FARM ESTATE AND BUSINESS PLANNING

New Legislation

Succession planning and the importance of fairness

The Liquidity Problem

Property Held in Co-ownership

- Federal estate tax treatment of joint tenancy
- Severing joint tenancies and resulting basis
- Joint tenancy and probate avoidance
- Joint tenancy ownership of personal property
- Other problems of property ownership

Federal Estate Tax

- The gross estate
- Special Use Valuation
- Family-owned business deduction recapture
- Property included in the gross estate
- Traps in use of successive life estates
- Basis calculations under uniform basis rules
- Valuing growing crops
- Claiming deductions from the gross estate
- Marital and charitable deductions
- Taxable estate
- The applicable exclusion amount

- Unified estate and gift tax rates
- Portability and the new regulations
- Federal estate tax liens
- Undervaluations of property

Gifts

- Reunification of gift tax and estate tax
- Gifts of property when debt exceeds basis

Use of the Trust

The General Partnership

- Small partnership exception
- Eligibility for Section 754 elections

Limited Partnerships

Limited Liability Companies

- Developments with passive losses
- Corporate-to-LLC conversions
- New regulations for LLC and LLP losses

Closely Held Corporations

- State anti-corporate farming restrictions
- Developing the capitalization structure
- Tax-free exchanges
- Would incorporation trigger a gift because of severance of land held in joint tenancy?
- "Section 1244" stock

Status of the Corporation as a Farmer

- The regular method of income taxation
- The Subchapter S method of taxation, including the "two-year" rule for trust ownership of stock

Underpayment of wages and salaries

Financing, Estate Planning Aspects and

Dissolution of Corporations

- Corporate stock as a major estate asset
- Valuation discounts
- Dissolution and liquidation
- Reorganization

Social Security

- In-kind wages paid to agricultural labor

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