8-23-2013

Cases, Regulations and Statutes

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The Tax Court cited, in support of the decision, May Department Stores Co. v. Commissioner,\(^1\) which held that a 20-year leasehold was not equivalent to a fee simple interest and Standard Envelope Mfg. Co. v. Commissioner,\(^1\) in which a leasehold of one-year and an option to renew for 24 years was not equivalent to a fee interest. The court pointed out that options to renew are included in determining whether a leasehold is equivalent to a fee simple interest.\(^1\)

The taxpayer also argued that the improvements to the property (which were estimated by the taxpayer to total 85 percent of the value—which the court doubted) should be eligible but the Tax Court held that the improvements were also short-term property interests.\(^1\)

**Other authority on leasehold exchanges involving real property**

An exchange of a leasehold interest in a producing oil lease, extending until exhaustion of the deposit, for a fee simple interest in ranch land was considered as a like-kind exchange in a 1968 ruling.\(^1\) A sale followed by a leaseback involving terms of 30-years or more constituted a like-kind exchange involving real property interests.\(^1\) In a 2001 private letter ruling, an exchange of a leasehold interest (with more than 30-years to run) in a cooperative for a condominium interest was like-kind.\(^1\) Similarly, in a 2008 private letter ruling a taxpayer’s leasehold interest could be like-kind to a replacement leasehold.\(^1\)

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ENDNOTES


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**CASES, REGULATIONS AND STATUTES**

**ANIMALS**

**HORSES.** The plaintiff was injured while horseback riding at the defendant’s horse farm. The defendant raised the defense of assumption of risk and the trial court granted summary judgment to the defendant on that issue. The appellate court looked at three aspects of the defense of assumption of risk. First the court found that the doctrine includes the inherent risks of horseback riding. Second, the risks do not include intentional conduct or unreasonably increased risks. Third the doctrine requires that the plaintiff be aware of the risks. On the first two issues, the court held that the accident occurred within the inherent and reasonable risks of horseback riding. On the third issue, the plaintiff alleged that the defendant had reduced mental capacity to appreciate the risks of horseback riding. The court noted that the evidence showed that the plaintiff was a skilled and experienced horse rider and there was no evidence of the extent of the mental incapacity or to show that the plaintiff was not aware of the risks. The court upheld the trial court grant of summary judgment. Fenty v. Seven Meadow Farms, Inc., 2013 N.Y. App. Div. LEXIS 5102 (Sup. Ct. N.Y. 2013).
FEDERAL TAX

AUTOMATIC STAY. The debtor filed for Chapter 13 in February 2008 and the filed unsecured claims included unpaid taxes for 2002. The debtor received a discharge which included all unsecured claims, although the discharge order contained a catch-all exception to discharge stating, “Notwithstanding the provisions of title 11, United States Code, the debtor is not discharged from any debt made non-dischargeable ... by any other applicable provision of law.” The IRS began post-discharge collection activities for the 2002 taxes and the debtor argued that these collection activities were a violation of Section 362 because the taxes were discharged. The court noted that the Chapter 13 plan provided only for discharge of unsecured claims but contained no language giving notice that nondischargeable claims were also to be discharged. The parties agreed that the 2002 taxes were nondischargeable; therefore, the court held that the Chapter 13 plan and subsequent discharge did not affect the dischargeability of the 2002 tax claim and the collection efforts of the IRS did not violate Sections 362 (automatic stay) or Section 524 (discharge of the 2002 tax claim and the collection efforts of the IRS did not contain any language giving notice that nondischargeable claims were also to be discharged. The parties agreed that the 2002 taxes were nondischargeable; therefore, the court held that the Chapter 13 plan and subsequent discharge did not affect the dischargeability of the 2002 tax claim and the collection efforts of the IRS did not violate Sections 362 (automatic stay) or Section 524 (discharge injunction). In re Moore, 2013-2 U.S. Tax Cas. (CCH) ¶ 50,465 (Bankr. M.D. Ga. 2013).

CONTRACTS

BREACH. The plaintiffs boarded their horses at the defendant’s stables and signed a written boarding contract which required all boarders to comply with the posted safety rules, which included a “no smoking in the barn” rule. The plaintiffs removed their horses without paying the current month’s boarding fees after observing one of the defendant’s employees smoking in the barn. The plaintiffs filed for declaratory judgments that (1) the boarding contracts were illusory and/or unenforceable, (2) the defendant breached the boarding contracts, and (3) the plaintiffs do not owe the defendant under the boarding contract. The defendant counterclaimed for the boarding fees, arguing that the plaintiffs conspired to breach the contracts. The trial court, in a non-jury trial, ruled that the defendant breached the contracts through the actions of the employee. On appeal, the defendant argued that the smoking by the employee was not a condition of the contract or, if a condition of the contract, the smoking was not a material breach of the contract. The appellate court disagreed, noting that the contract contained the provision, “Stable agrees to provide adequate feed and facilities for normal and reasonable care required to maintain the health and well-being of the horse(s). . . . The standard of care applicable to stable is that of ordinary care of a prudent horse owner.” The court upheld the trial court ruling, holding that the evidence demonstrated that the non-smoking rule was intended to apply to all persons in the barn and was an essential part of the safety concerns of the plaintiffs and defendant as expressed in the contract and posted rules. Ramaker v. Abbe, 2013 Texas App. LEXIS 2013 (Texas Ct. App. 2013).

FEDERAL FARM PROGRAMS

CONSERVATION RESERVE PROGRAM. The CCC has adopted as final regulations which make a technical correction to the (CCC) Conservation Reserve Program (CRP) regulations to clarify that land with use restrictions that prohibit the production of agricultural commodities, typically through an easement or other deed restrictions, is not eligible for re-enrollment in CRP. This is not a new policy and would not have affected any program determinations for recent CRP sign ups, had this change been specified in the regulations at the time. 78 Fed. Reg. 48035 (Aug. 7, 2013).


FOOD LABELING. The FDA has adopted as final regulations which define the term “gluten-free” for voluntary use in the labeling of foods to mean that the food bearing the term does not contain an ingredient that is a gluten-containing grain (e.g., spelt wheat); an ingredient that is derived from a gluten-containing grain and that has not been processed to remove gluten (e.g., wheat flour); or an ingredient that is derived from a gluten-containing grain and that has been processed to remove gluten (e.g., wheat starch), if the use of that ingredient results in the presence of 20 parts per million (ppm) or more gluten in the food (i.e., 20 milligrams (mg) or more gluten per kilogram (kg) of food); or inherently does not contain gluten; and that any unavoidable presence of gluten in the food is below 20 ppm gluten. A food that bears the claim “no gluten,” “free of gluten,” or “without gluten” in its labeling and fails to meet the requirements for a “gluten-free” claim will be deemed to be misbranded. In addition, a food whose labeling includes the term “wheat” in the ingredient list or in a separate “Contains wheat” statement as required by a section of the Federal Food, Drug, and Cosmetic Act and also bears the claim “gluten-free” will be deemed to be misbranded unless its labeling also bears additional language clarifying that the wheat has been processed to allow the food to meet FDA requirements for a “gluten-free” claim. 78 Fed. Reg. 47154 (Aug. 5, 2013).

FEDERAL ESTATE AND GIFT TAXATION

LIFE INSURANCE. The taxpayers, husband and wife
established a trust for the benefit of the taxpayers and their children. The trust purchased a life insurance policy on the taxpayers’ lives. On the death of either taxpayer, the trust is to distribute the proceeds to the beneficiaries. The husband created a second trust with the same beneficiaries. The second trust was a perpetual trust and contained a special needs provision for the share established for one daughter who was diagnosed with a disability. The husband represented that the second trust was a grantor trust wholly owned by the husband for federal income tax purposes. The second trust purchased the life insurance policy from the first trust for the fair market value of the policy. The taxpayers were also partners in a partnership which had not elected to be taxed as a corporation. The IRS ruled that the second trust’s purchase of the policy from the first trust constituted a transfer of the life insurance contract for valuable consideration within the meaning of I.R.C. § 101(a)(2). However, to the extent the policy insured the life of the husband, the transfer was a transfer to the insured under I.R.C. § 101(a)(2)(B) because the second trust will own the policy after the purchase and the husband is treated as owning all the assets of the second trust, including the policy. Further, to the extent the policy insures the life of the wife, that portion of the policy which insures the life of wife was transferred to the husband as a partner of the insured under I.R.C. § 101(a)(2)(B) because the husband was a partner in the partnership in which the wife was a partner. Therefore, the transfer was excepted in its entirety by I.R.C. § 101(a)(2)(B) from the application of the transfer for value rule of I.R.C. § 101(a)(2).


REFUND. Upon the death of the decedent, the surviving spouse was named personal representative and hired a CPA to prepare the estate’s federal estate return. The CPA advised the representative that over $600,000 in federal taxes were owed but that only $170,000 was needed to pay the first installment of the federal estate tax due since the estate would elect to pay the estate tax in installments over 10-years (following five years of interest only being paid). The estate filed for an extension of time to file the estate tax return and included a check for $170,000 but did not include a letter designating the payment as a deposit, as provided by Rev. Proc. 2005-18, 2005-1 C.B. 789. The estate eventually filed a return in February 2010, more than three years after the due date under the extension and showing no estate taxes due. An IRS audit resulted in a determination that $25,000 in taxes were owed but the $170,000 payment covered those taxes. The estate filed for a refund of the excess paid but the refund claim was denied because it was filed more than three years after the original extended due date for the return. Because the estate did not file a letter designating the $170,000 as a deposit, the court looked at the intent of the estate in making the payment. The CPA did not file any affidavit of intent so the court looked at the circumstances surrounding the payment and found that the CPA and estate intended the payment to be a partial payment of the $600,000 anticipated taxes. The court held that the excess payment was not refundable. Syring v. United States, 2013-2 U.S. Tax Cas. (CCH) ¶ 50,469 (W.D. Wis. 2013).

TRANSFEREE LIABILITY. The decedent’s will passed property to a trust for the decedent’s children. Two of the children were the trustees. The estate had significant estate tax liability and the estate elected installment payment of the estate tax. The trust and beneficiaries agreed to a distribution of all trust corpus to the beneficiaries and the parties signed an agreement to be liable for any estate tax not paid by the estate. The trust property was mostly stock in one corporation and the corporation went bankrupt before the estate tax was fully paid, resulting in almost no funds for the heirs. The IRS sought to hold the heirs liable for the unpaid estate tax. The court held that the heirs were not liable as beneficiaries because they did not receive property directly from the estate. However, the trustees were personally liable as fiduciaries, under 37 U.S.C. § 3713 and the trustees who were beneficiaries were also liable as were the recipients of the decedent’s life insurance policies and the estate’s personal representatives. On rehearing, the court affirmed. United States v. Johnson, 2013-2 U.S. Tax Cas. (CCH) ¶ 50,469 (W.D. Wis. 2013), amending, 2012-1 U.S. Tax Cas. (CCH) ¶ 60,646 (D. Utah 2012).

FEDERAL INCOME TAXATION

DISASTER LOSSES. On July 2, 2013, the President determined that certain areas in Iowa 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, tornadoes and flooding which began on May 19, 2013. FEMA-4126-DR. On July 10, 2012, the President determined that certain areas in Montana are eligible for assistance from the government under the Act as a result of flooding which began on May 19, 2013. FEMA-4127-DR. On July 12, 2013, the President determined that certain areas in North Dakota are eligible for assistance from the government under the Act as a result of severe storms and flooding which began on May 17, 2013. FEMA-4128-DR. On July 12, 2013, the President determined that certain areas in New York are eligible for assistance from the government under the Act as a result of severe storms and flooding which began on June 28, 2013. FEMA-4129-DR. Accordingly, taxpayers in the areas may deduct the losses on their 2012 federal income tax returns. See I.R.C. § 165(i).

EDUCATION COSTS. The IRS has published information about education tax benefits that can help offset some college costs. American Opportunity Tax Credit. This credit can be up to $2,500 per eligible student. The AOTC is available for the first four years of post secondary education, with 40 percent of the credit refundable. That means that a taxpayer may be able to receive up to $1,000 of the credit as a refund, even if the taxpayer does not owe any taxes. Qualified expenses include tuition and fees, course related books, supplies and equipment. A recent law extended the AOTC through the end of Dec. 2017. Lifetime Learning Credit. With the LLC, taxpayers may be able to claim up to $2,000 for qualified education expenses on the federal tax return. There is no limit on the number of years
taxpayers can claim this credit for an eligible student. Taxpayers can claim only one type of education credit per student on the federal tax return each year. If a taxpayer pays college expenses for more than one student in the same year, the taxpayer can claim credits on a per-student, per-year basis. For example, taxpayers can claim the AOTC for one student and the LLC for the other student. Taxpayers can use the IRS’s Interactive Tax Assistant tool to help determine if the taxpayer is eligible for these credits. The tool is available at IRS.gov. Student loan interest deduction. Other than home mortgage interest, taxpayers generally cannot deduct the interest expenses. However, taxpayers may be able to deduct interest paid on a qualified student loan. The deduction can reduce taxable income by up to $2,500. Taxpayers do not need to itemize deductions to claim it. These education benefits are subject to income limitations and may be reduced or eliminated depending on a taxpayer’s income. For more information, taxpayers can visit the Tax Benefits for Education Information Center at IRS.gov or read Publication 970, Tax Benefits for Education. IRS Summertime Tax Tip 2013-19.

HOBBY LOSSES. The taxpayer had been a professional musician for several years before moving to work as a computer programmer. The taxpayer continued performing and filed a Schedule C for seven years for the music activity, always showing a net loss. For the eighth year, the taxpayer showed a significant profit. The court held that the music activity was engaged in with the intent to make a profit because (1) the taxpayer was an experienced and knowledgeable musician; (2) the taxpayer spent significant amounts of time on the activity, including recording albums and organizing a music festival; (3) the taxpayer had been a successful professional musician before working as a computer programmer; (4) the taxpayer had made changes to the activity, such as moving to a less expensive city and playing more original compositions than music from other composers; (5) the losses occurred during a time when the taxpayer was “retooling” the business; and (6) the losses did not offset significant income from other sources. Gullion v. Comm’r, T.C. Summary Op. 2013-65.

IRA. The taxpayer received a distribution from an IRA by requesting that the custodian of the IRA transfer the funds to a different IRA maintained by a different custodian. The transfer was made but the funds were erroneously deposited into a non-IRA account by the second custodian. The taxpayer did not discover the error until more than 60 days after the transfer. The taxpayer sought a waiver of the 60-day rollover limitation period for the transfer. The IRS granted the waiver because the failure to rollover the funds to a new IRA resulted from errors made by the second IRA custodian. Ltr. Rul. 201331009, May 10, 2013; Ltr. Rul. 201331015, May 10, 2013.

The taxpayer received two distributions. One from a pension plan and one from an IRA. Both distributions had income tax withheld from the distribution. The taxpayer failed to rollover either distribution to another IRA within 60 days. The rollovers did not occur because the taxpayer did not have any funds to contribute to the new IRA. The taxpayer sought to obtain a waiver of the 60-day rollover period for the funds withheld for income tax withholding because that portion of the withheld funds was refunded when the taxpayer filed the income tax return for the year of the distributions. The IRS denied the waiver because the taxpayer voluntarily elected to have the taxes withheld from the distributions. Ltr. Rul. 201331010, May 8, 2013; Ltr. Rul. 201331012, May 8, 2013.

INNOCENT SPOUSE RELIEF. Under Notice 2011-70, 2011-2 C.B. 135, the two-year deadline for requesting innocent spouse relief no longer applies under I.R.C. § 6015(f). In place of the prior two-year deadline, Notice 2011-70 provides that, to be considered for equitable relief, a request must be filed with the IRS within the period of limitation for collection of tax in I.R.C. § 6502 or, for any credit or refund of tax, within the period of limitation in I.R.C. § 6511. Notice 2011-70 explains that the regulations under I.R.C. § 6015 will be revised to reflect the change. The IRS has issued proposed regulations to reflect the changes made by Notice 2011-70. Notice 2011-70 has no effect on the two-year deadline to elect relief under I.R.C. § 6015(b), Treas. Reg. § 1.6015-2, I.R.C. § 6015(c), and Treas. Reg. § 1.6015-3. A similar rule is added to Treas. Reg. § 1.66-4 for claims for equitable relief under I.R.C. § 66(c). I.R.C. § 66(c) provides two avenues for married taxpayers who do not file a joint federal income tax return in a community property state to request relief from the operation of the state community property laws. Under state law, each spouse generally is responsible for the tax on one-half of all the community income for the year. Traditional relief under I.R.C. § 66(c) allows the requesting spouse to avoid liability for tax on community income of which the requesting spouse did not know and had no reason to know. If a requesting spouse does not satisfy the requirements for traditional relief, the Secretary may grant equitable relief. The IRS uses the same procedures for determining eligibility for equitable relief under I.R.C. § 66(c) as it does for equitable relief under I.R.C. § 6015(f). 78 Fed. Reg. 49242 (Aug. 13, 2013).

INSTALLMENT REPORTING. The taxpayer was an S corporation which sold assets to an unrelated party with payments to be made over three years. The taxpayer hired a return preparer to prepare the taxpayer’s federal tax return for the year of the sale but the return preparer failed to make the election to use the installment method of reporting the gain from the sale. The return identified all of the gain as taxable income in the year of the sale. The error was not discovered until the taxpayer’s majority shareholder prepared the individual’s tax return for the year of the sale. The IRS granted an extension of time to file an amended return revoking the election out of the installment reporting of the gain from the sale. Ltr. Rul. 201332009, April 19, 2013.

LIKE-KIND EXCHANGES. The taxpayer leased automobiles and entered into an arrangement with a qualified intermediary and an unrelated exchange accommodation titleholder (EAT), as provided under Rev. Proc. 2000-37, 2000-2 C.B. 308, to provide for like-kind exchanges of the leased automobiles for new automobiles at the termination of each lease. The EAT performed some services for the taxpayer to facilitate the exchanges, such as obtaining repairs and improvements to the vehicles, acquiring a dealer license for state sales tax purposes and a wholesale dealer license of motor vehicles; acting as the procurement entity and
reseller for state sales purposes; acquiring legal title to used vehicles and to new vehicles; registering to do business as a foreign corporation in any and all states where the taxpayer has transactions; and (5) obtaining and maintaining a valid sales tax permit in virtually every state that levies a sales tax. The IRS ruled that the services provided by the EAT did not make the EAT a disqualified person. The IRS noted that the services were similar to those identified in Rev. Proc. 2000-37, Ltr. Rul. 201332010, April 22, 2013.

PASSIVE ACTIVITY LOSSES. The taxpayer lived in Wyoming and owned and operated a landscape service. The taxpayer purchased ranch land 220 miles away in Idaho and operated a rodeo bull breeding operation on the property. The IRS disallowed losses from the operation for two tax years under I.R.C. § 469 as passive activity losses. The taxpayer claimed to meet three material participation tests of Treas. Reg. §§ 1.469-5T(a)(1), (3), (7). The taxpayer provided post-assessment written estimates of the time spent on the activity and testified that the taxpayer “worked on the ranch repairing fences; cross-fencing the land; building corrals, shelters, and solar wells; installing ‘bucking shoots’ for training young bulls to buck; and improving the range land by reseeding, cutting sagebrush, planting wheat crops for feed, and planting a more desirable bud-style grass.” The taxpayer also testified that the taxpayer spent additional time in Wyoming performing research and directing employees as to ranch activities. The taxpayer provided some testimony from neighbors and employees about the time spent on the ranch. However, the court noted that no written contemporaneous records were produced to support the testimony and held that the taxpayer failed to prove that the taxpayer spent more than 500 hours on the breeding activity in any year, spent more time on the activity that the employees, or worked on the activity in a regular or continuous manner. Therefore, the losses from the bull breeding activity were non-deductible passive activity losses. Bartlett v. Comm’r, T.C. Memo. 2013-182.

The taxpayers, husband and wife, owned nine rental properties with losses of $40,000 in one year and $236,000 in the second year. The taxpayers elected to treat all the properties as one activity and claimed that the husband met the requirements of a real estate professional under I.R.C. § 469(c)(7)(B); therefore, the real estate activity was not passive. The husband, however, provided only testimony to support the number of activity hours. The court discounted most of the testimony as unreliable due to inconsistencies and inaccuracies and held that the taxpayers failed to meet the real estate professional requirements. The losses did not qualify for the I.R.C. § 469(i)(3)(F)(iv) $25,000 exception because the taxpayers’ adjusted gross income exceeded $150,000. Williams v. Comm’r, T.C. Summary Op. 2013-63.

PENSION PLANS. The rates below reflect changes implemented by the Moving Ahead for Progress in the 21st Century Act (Pub. L. No. 112-141). For plans beginning in July 2013 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 3.61 percent. The 30-year Treasury weighted average is 3.43 percent, and the 90 percent to 105 percent permissible range is 3.09 percent to 3.60 percent. The 24-month average corporate bond segment rates for August 2013, without adjustment by the 25-year average segment rates are: 1.39 for the first segment; 4.05 for the second segment; and 5.08 for the third segment. The 24-month average corporate bond segment rates for July 2013, taking into account the 25-year average segment rates, are: 4.94 for the first segment; 6.15 for the second segment; and 6.76 for the third segment. Notice 2013-52, I.R.B. 2013-34.

RETURNS. The IRS has published information about filing an amended return. When to amend a return. Taxpayers should file an amended return if they need to correct their filing status, number of dependents, total income, tax deductions or tax credits. The instructions for Form 1040X, Amended U.S. Individual Income Tax Return, list additional reasons to amend a return. When NOT to amend a return. In some cases, taxpayers do not need to amend a tax return. For example, the IRS usually corrects math errors when processing the original return. If the taxpayer did not include a required form or schedule, the IRS will send the taxpayer a request for whatever is missing. Form to use. Taxpayers should use Form 1040X to amend a previously filed Form 1040, 1040A, 1040EZ, 1040NR or 1040NR-EZ. Taxpayers must file an amended tax return on paper. Multiple amended returns. If a taxpayer is filing an amended return for more than one year, the taxpayer should prepare a separate 1040X for each return. Each amended return should be filed with the original return. The IRS will send any additional refund due from the amended return. Taxpayers may cash the refund check if they are expecting a refund from the original return, the IRS Summertime Tax Tip 2013-20.

The IRS has adopted as final regulations relating to the disclosure of return information under I.R.C. § 6103(l)(21), as
enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010. For taxpayers whose income is relevant in determining eligibility for an insurance affordability program, Medicaid, CHIP, or BHP, Section 6103(l)(21) explicitly authorize the disclosure of the following items of return information: taxpayer identity information, filing status, the number of individuals for whom a deduction is allowed under I.R.C. § 151, the taxpayer’s modified adjusted gross income as defined under I.R.C. § 36B, and the taxable year to which any such information relates or, alternatively, that such information is not available. Section 6103(l)(21) also authorizes the disclosure of such other information prescribed by regulation that might indicate whether an individual is eligible for the premium tax credit under I.R.C. § 36B, or cost-sharing reductions under section 1402 of the Affordable Care Act, and the amount thereof. 78 Fed. Reg. 49367 (Aug. 14, 2013).

S CORPORATIONS

COMPENSATION. The taxpayer was an S corporation which was wholly-owned by one shareholder. The S corporation operated a real estate business in which the shareholder was the broker. The taxpayer had an agreement with the shareholder setting annual compensation at $24,000 with increases of $10,000 for each ten sales agents working for the corporation. In the tax year involved, the taxpayer did not list any wages paid to the shareholder and did not withhold or pay any employment taxes. The shareholder received distributions totaling $240,000 in that tax year. The shareholder included in the shareholder’s personal income tax return only the shareholder’s share of the S corporation income and losses on Schedule E. The IRS assessed employment taxes and penalties against the corporation based on reasonable compensation for the shareholder’s services. The court held that the taxpayer’s compensation agreement did not provide a reasonable compensation amount and held that the reasonable compensation established by the IRS’s expert, as adjusted by the court, was subject to employment taxes. Sean McAlary Ltd, Inc., T.C. Summary Op. 2013-62.

SHAREHOLDER CONTRIBUTIONS. The taxpayer was an S corporation solely owned by one shareholder. The shareholder performed most of the activities in the corporation’s glass block business. During the tax years involved, the corporation contributed funds to the business without collateral or other evidence of a loan. The corporation made distributions to the shareholder during the tax years involved but the shareholder included only the corporation’s taxable income as income to the shareholder. The taxpayer argued that the distributions were either dividends or repayment of the loans. The court held that the distributions were not dividends but were compensation for the shareholder’s activities with the business. The court also held that the distributions were not repayment of loans because there were no indicia of a loan such as payment of interest, granting of a security interest, repayment schedule, execution of a promissory note, or reporting of the loans on the federal tax returns. The taxpayer also argued that at least some portion of the distributions was not wages because they exceeded the reasonable wage for the shareholder’s services. The court disagreed in that the taxpayer failed to provide sufficient comparable wages for similar business activity by the shareholder. The court noted that the shareholder worked at least 40 hours per week and performed a wide variety of management and sales duties essential to the success of the business. Glass Blocks Unlimited v. Comm’r, T.C. Memo. 2013-180.

SHAREHOLDER’S SHARE. The taxpayer was a radiation oncologist and a shareholder in three S corporations which operated radiation therapy services businesses. A dispute with one of the other shareholder-physicians of one S corporation resulted in the taxpayer not receiving any wages or other distributions from the corporation during a tax year. The S corporation did issue a Schedule K-1 assigning the taxpayer’s share of the corporation’s business and interest income. The taxpayer did not include the income on Schedule E, arguing that the taxpayer had no interest in the corporation because the other shareholder shut out the taxpayer from the corporation’s management and operation. The court held that a shareholder’s interest in a corporation could not be removed merely by the interference of one shareholder in another shareholder’s rights in operation and management. Therefore, the taxpayer retained the benefits of ownership of the stock and was liable for the taxpayer’s share of corporate income. Kumar v. Comm’r, T.C. Memo. 2013-184.

FARM ESTATE AND BUSINESS PLANNING

by Neil E. Harl

The Agricultural Law Press is honored to publish the revised 17th Edition of Dr. Neil E. Harl’s excellent guide for farmers and ranchers who want to make the most of the state and federal income and estate tax laws to assure the least expensive and most efficient transfer of their estates to their children and heirs. The 17th Edition includes all new income and estate tax developments from the 2012 tax legislation.

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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. 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. Registrants may attend one or both days, with separate pricing for each combination. Your registration fee includes written or electronic (PDF) comprehensive annotated seminar materials and lunch. Online registration is available at www.agrilawpress.com. Here are the dates and cities for the seminars later for summer and fall 2013:

**August 28-29, 2013** - Quality Inn, Ames, IA; **September 9-10, 2013** - Honey Creek Resort, Moravia, IA; **September 16-17, 2013** - Courtyard Marriott, Moorhead, MN; **September 19-20, 2013** - Ramkota Hotel, Sioux Falls, SD; **October 3-4, 2013** - Holiday Inn, Council Bluffs, IA; **October 10-11, 2013** - Holiday Inn, Rock Island, IL; **November 7-8, 2013** - Hilton Garden Inn, Indianapolis, IN; **November 14-15, 2013** - Parke Hotel, Bloomington, IL; **November 18-19, 2013** - Clarion Inn, Mason City, IA; Dec. 16-17, 2013 - Alamosa, CO

The topics include:

**First day**

**FARM INCOME TAX**

New Legislation

Reporting Farm Income

Constructive receipt of income
Deferred payment and installment payment arrangements for grain and livestock sales
Using escrow accounts
Payments from contract production
Development in SE tax for CRP payments
Leasing land to family entity
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
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