

ENDNOTES

CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr

BANKRUPTCY
No items.

FEDERAL FARM PROGRAMS
No items.

FEDERAL ESTATE AND GIFT TAXATION

EXECUTOR. In a short Chief Counsel Advice letter, the IRS stated: “The plain language of the statute limits the statutory executor to the estate tax regime (Chapter 11). [I.R.C. §] 2203 does not provide any authority in the income tax regime (Chapter 1) or in the gift tax regime (Chapter 12) or in the GSTT regime (Chapter 13). The statutory executor has full authority to act in the estate tax realm, including the authority to execute Form 890 to waive restrictions on assessment of the estate tax. But [I.R.C. §] 2203 does not extend the statutory executor concept beyond the estate tax in Chapter 11, nor does it provide any authority to execute Form 870 to waive restrictions for assessment of income tax or to execute Form 890 to waive restrictions on assessment of gift tax or GSTT.” CCA 201405016, Dec. 5, 2013.

In a short Chief Counsel Advice letter, the IRS stated: “My initial thought—and let’s take this with a grain of salt at this point—is that when there is no longer an appointed executor, under 2203 each person in actual or constructive possession of any property of the decedent, which I believe would include everything on an F[orm] 8939, is then considered an executor. It may be that you would have to deal with and notify each recipient individually.” CCA 201406010, June 7, 2013.

PORTABILITY. The decedent died, survived by a spouse, on a date after the effective date of the amendment of I.R.C. § 2010(c), which provides for portability of a “deceased spousal unused exclusion” (DSUE) amount to a surviving spouse. To obtain the benefit of portability of the decedent’s DSUE amount to the spouse, the decedent’s estate was required to file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, on or before the date that is 9 months after the decedent’s date of death or the last day of the period covered by an extension. The decedent’s estate did not file a Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The spouse, as executrix of the decedent’s estate, represented that the value of the decedent’s gross estate is less than the basic exclusion amount in the year of the decedent’s death and that during the decedent’s lifetime, the decedent made no taxable gifts. The spouse requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to elect portability of the decedent’s DSUE amount pursuant to I.R.C. § 2010(c)(5) (A). The IRS granted the estate an extension of time to file Form 706 with the election. Ltr. Rul. 201406004, Oct. 25, 2013.

FEDERAL INCOME TAXATION

ALTERNATE MINIMUM TAX. The IRS has published information about the alternative minimum tax for 2013. 1. Taxpayers may have to pay the tax if their taxable income, plus certain adjustments, is more than the AMT exemption amount for their filing status. The 2013 AMT exemption amounts for each filing status are:
• Single and Head of Household = $51,900
• Married Filing Joint and Qualifying Widow(er) = $80,800
• Married Filing Separate = $40,400
The rules for AMT are more complex than the rules for regular income tax. For taxpayers filing a paper return, they can use the AMT Assistant tool on IRS.gov to find out if they may need to pay the tax. If a taxpayer owes AMT, the taxpayer usually must file Form 6251, Alternative Minimum Tax – Individuals. Some taxpayers who owe AMT can file Form 1040A and use the AMT Worksheet in the instructions. IRS Tax Tip 2014-10.

BUSINESS EXPENSES. The taxpayer owned and operated
CHARITABLE DEDUCTIONS. The taxpayer owned two apartment buildings which had received Housing and Urban Development loans. The loans were paid off and the buildings removed from HUD program after years of neglect which made the apartments nearly uninhabitable. When the HUD qualifications were lost, the taxpayer donated the buildings to a charitable organization and claimed a deduction for the value of the buildings. The taxpayer reported the charitable contribution of the buildings on Form 8283, Noncash Charitable Contributions. On the Form 8283 the taxpayer described the properties as in “Good Condition” with an appraised fair market value of $499,000 with a basis of $1,200,000. The Form 8283 did not include an appraiser’s name, address, or identifying number, nor did it include an appraiser declaration. Form 8283 also did not include the donee’s signature, its taxpayer identification number, or its statement regarding whether the donor had received any consideration for the contribution. The taxpayer presented two appraisals, one done for qualifying for the HUD loan and one done more than five months before the contribution. The court quickly dismissed the HUD appraisal because it was not performed for income tax purposes and did not contain the information required for Form 8283. The court also dismissed the second appraisal because the appraisal was not contemporaneous with the contribution and was based upon a hypothetical condition of the apartments after the apartments were remodeled, which had not occurred prior to the contribution. Alli v. Comm’r, T.C. Memo. 2014-15.

COURT AWARDS AND SETTLEMENTS. The taxpayer was injured while working as a waitress. The taxpayer received treatment and workers’ compensation but her employment was terminated after the taxpayer failed several functional capacity exams (FCE). The taxpayer filed a lawsuit against the employer for violation of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990 but did not allege that the violations caused any physical injury or illness. The parties settled for a cash award allocated to lost wages and for incidental emotional distress. The court held that the settlement proceeds were includible in taxable income because they were not received in compensation for physical illness or injury. Green v. Comm’r, T.C. Memo. 2014-23.

DEPRECIATION. During a taxable year, the taxpayer placed in service zip type partitions in buildings owned and the leased by the taxpayer in the taxpayer’s business activity as a wholesale, retail, and leasing distributor of lighting and construction related products with associated administrative activities and professional engineering services. The IRS ruled that asset class 57.0 included these business activities; therefore, the zip type partitions in the owned and leased properties are includible in asset class 57.0. The IRS noted that the taxpayer represented that the partitions were not inherently permanent structures and that the partitions could be easily removed, stored, re-used, and sold in the same condition. Ltr. Rul. 201404001, Aug. 23, 2013.

DISASTER LOSSES. On December 20, 2013, the President determined that certain areas in Texas 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 October 30, 2013. Accordingly, taxpayers in the areas may deduct the losses on their 2012 federal income tax returns. See I.R.C. § 165(i). FEMA-4159-DR. On January 6, 2014, the President determined that certain areas in Arkansas are eligible for assistance from the government under the Act as a result of a severe winter storm which began on December 5, 2013. FEMA-4160-DR. Accordingly, taxpayers in the areas may deduct the losses on their 2012 or 2013 federal income tax returns. See I.R.C. § 165(i).

DISCHARGE OF INDEBTEDNESS. The IRS has issued a revenue procedure providing a safe harbor under which the IRS will treat indebtedness that is secured by 100 percent of the ownership interest in a disregarded entity holding real property as indebtedness that is secured by real property for purposes of I.R.C. § 108(c)(3)(A). The requirements for application of the safe harbor are met if: (1) The taxpayer or a wholly owned disregarded entity of the taxpayer incurs indebtedness. (2) The borrower directly or indirectly owns 100 percent of the ownership interest in a separate disregarded entity owning real property. The borrower is not the same entity as the separate disregarded entity property owner. (3) The borrower pledges to the lender a first priority security interest in the borrower’s ownership interest in the separate disregarded entity. Any further encumbrance on the pledged ownership interest must be subordinate to the lender’s security interest in the separate disregarded entity. (4) At least 90 percent of the fair market value of the total assets (immediately before the discharge) directly owned by the separate disregarded entity must be real property used in a trade or business and any other assets held by the separate disregarded entity must be incidental to the separate disregarded entity’s acquisition, ownership, and operation of the real property. (5) Upon default and foreclosure on the indebtedness, the lender will replace the borrower as the sole member of the separate disregarded entity. If the safe harbor requirements are not met, the taxpayer may still argue that, under all facts and circumstances, the debt meets the “secured by” requirements of I.R.C. § 108(c)(3)(A). Rev. Proc. 2014-20, I.R.B. 2014-9.

EARNED INCOME TAX CREDIT. The IRS has published information about the earned income tax credit. Review eligibility. If a taxpayer worked and earned under $51,567, the taxpayer may be eligible for EITC. If a taxpayer’s financial or family situation has changed, the taxpayer should review the EITC eligibility rules.
A taxpayer might qualify for EITC this year even if the taxpayer did not file for it in the past. Workers who qualify for EITC must file a federal income tax return and specifically claim the credit to get it, even if they do not have a requirement to file a return. **Know the rules.** Before claiming EITC, taxpayers need to understand the rules to be sure they qualify. There are several factors to consider: (1) the taxpayer’s filing status cannot be Married Filing Separately; (2) the taxpayer must have a valid social security number for the taxpayer, spouse if married, and any qualifying child listed on the tax return; (3) the taxpayer must have earned income which includes earnings such as wages, self-employment and farm income; (4) the taxpayer may be married or single, with or without children, to qualify but if the taxpayer does not have children, the taxpayer must also meet age, residency and dependency rules; (5) if the taxpayer is a member of the U.S. Armed Forces serving in a combat zone, special rules apply. **Lower the tax or get a refund.** The EITC reduces a taxpayer’s federal tax and could result in a refund. If a taxpayer qualifies for the credit, the credit could be worth up to $6,044. **IRS Special Tax Tip 2014-4.**

**IRA.** The taxpayers, husband and wife, owned three IRAs, two owned by the husband and one owned by the wife. The husband received one distribution from each of his IRA in 2008 and made two rollover repayments back to the IRAs in 2008. The wife also received a distribution from her IRA in 2008 and a rollover repayment back to the IRA in 2008 but the repayment was made 61 days after the distribution. The court held that the husband’s second rollover repayment was barred from non-taxable rollover treatment by the limitation of I.R.C. § 408(d)(3)(B) which limited non-taxable rollovers to one per year. The wife argued that her rollover repayment complied with the 60-day rollover requirement because she placed the order with her bank to transfer the funds less than 60 days after the distribution. The court found that the wife failed to demonstrate that the delay was caused by the bank or any other event beyond the reasonable control of the taxpayer. **Bobrow v. Comm’r,** T.C. Memo. 2014-21.

**IN Voluntary Conversion.** The taxpayer owned an apartment building and lived in one small apartment. The local school district acquired the property through eminent domain. The taxpayer did not obtain replacement property. The IRS assessed taxes on the proceeds of the transfer of the building to the school district. The taxpayer argued that the taxpayer’s basis in the building was higher than that allowed by the IRS. The court held that the taxpayer failed to provide sufficient proof of any additional amounts spent on improvements in the building more than those allowed by the IRS. Because no replacement property was identified or obtained, the court held that the entire amount of the proceeds over the allowed basis was taxable gain. The court also held that the taxpayer was entitled to an exclusion under I.R.C. § 121 for only the allocable portion of the building used by the taxpayer as a residence. **Curtis v. Comm’r,** T.C. Memo. 2014-19.

**Life Insurance.** The taxpayer had owned a whole life insurance policy on the taxpayer’s life. The policy allowed loans and the taxpayer borrowed against the policy, accruing interest over the life of the policy. When the policy terminated, the insurance company offset the policy proceeds against the outstanding loan amount, including the accrued interest. Although the taxpayer agreed that the taxable income from the termination of the policy included the amount used to pay the outstanding loan amount, the taxpayer argued that the taxable income did not include the interest charged. The court held that a distribution from the termination of a life insurance policy is taxable income to the extent the distribution exceeds the premiums paid. The fact that some of the distribution proceeds were paid on the policy loan principal or interest did not affect the taxpayer’s liability for tax on the distribution proceeds. **Black v. Comm’r,** T.C. Memo. 2014-27.

**NAME CHANGES.** The IRS has published information about the steps that need to be taken when a taxpayer or dependent changes their name during a tax year. This is important because the name on a taxpayer’s tax return must match SSA records. If they do not match, the taxpayer is likely to get a letter from the IRS about the mismatch. If the taxpayer expects a refund, the mismatch may delay when the taxpayer will receive the refund. Taxpayers should contact SSA if: the taxpayer got married or divorced and the taxpayer changed the taxpayer’s name or a dependent the taxpayer claims had a name change. For example, this would apply if the taxpayer adopted a child and that child’s last name changed. Taxpayers with name changes should file Form SS-5, **Application for a Social Security Card,** with the SSA to let them know about a name change. Taxpayers can get the form on SSA.gov by calling 800-772-1213 or at an SSA office. **IRS Tax Tip 2014-08.**

**NonTaxable Income.** The IRS has published information on nontaxable income. Some types of income are not taxable except under certain conditions, including: (1) Life insurance proceeds paid to the taxpayer are usually not taxable, but if the taxpayer redeems a life insurance policy for cash, any amount that is more than the cost of the policy is taxable. (2) Income from a qualified scholarship is normally not taxable. This means that amounts the taxpayer uses for certain costs, such as tuition and required books, are not taxable. However, amounts the taxpayer uses for room and board are taxable. (3) If the taxpayer received a state or local income tax refund, the amount may be taxable. The taxpayer should have received a 2013 Form 1099-G from the agency that made the payment. If the taxpayer does not receive Form 1099-G by mail, the agency may have provided the form electronically. Taxpayers should contact the scholarship agency to find out how to get the form. Taxpayers should report any taxable refund, even if they did not receive Form 1099-G. (4) Additional types of income that are usually not taxable: gifts and inheritances; child support payments; welfare benefits; damage awards for physical injury or sickness; cash rebates from a dealer or manufacturer for an item the taxpayer buys; and reimbursements for qualified adoption expenses. For more on this topic see Publication 525, **Taxable and Nontaxable Income.** **IRS Tax Tip 2014-12.**

**PARTNERSHIP.**

**PARTNERSHIP LIABILITIES.** The IRS has issued proposed regulations under I.R.C. § 707 relating to disguised sales of property to or by a partnership and under I.R.C. § 752 relating

PENSION PLANS. For plans beginning in February 2014 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 3.77 percent. The 30-year Treasury weighted average bond segment rates for February 2014, without adjustment by the 25-year average segment rates are: 1.22 for the first segment; 4.06 for the second segment; and 5.09 for the third segment. The 24-month average corporate bond segment rates for February 2014, without adjustment by the 25-year average segment rates are: 1.22 for the first segment; 4.06 for the second segment; and 5.09 for the third segment. The 24-month average corporate bond segment rates for January 2014, taking into account the 25-year average segment rates, are: 4.43 for the first segment; 5.62 for the second segment; and 6.22 for the third segment. Notice 2014-13, I.R.B. 2014-__.

REGISTERED TAX RETURN PREPARERS. 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. On appeal the appellate court affirmed, holding that the IRS’s authority to “regulate the practice of representatives of persons before the Department of the Treasury” does not encompass authority to regulate tax-return preparers under 31 U.S.C. § 330(a)(1). Loving v. I.R.S., 2014 U.S. App. LEXIS 2512 (D.C. Cir. 2014), aff’g, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,156 (D.D.C. 2013).

TRAVEL EXPENSES. The taxpayer lived in Florida when the taxpayer accepted a job in 2009 with a company in Missouri to manage the development of an automated interactive system to track the employer’s customers’ credit card payments. The taxpayer received an annual salary but the project was to be completed by the end of the year. The taxpayer drove to Missouri and rented an apartment. The taxpayer did not receive any reimbursements from the employer for costs associated with the employment. The employer terminated the taxpayer’s employment early in November 2009 and the taxpayer drove back to Florida. The taxpayer claimed deductions for unreimbursed employment expenses, including travel, meals, incidental expenses and lodging. The court held that the taxpayer’s tax home was Florida and the employment in Missouri was temporary because the employment project was limited in time, the taxpayer did not obtain a permanent residence and the employment was terminated early. The court upheld the IRS disallowance of the mileage expenses because the taxpayer did not keep a mileage log with sufficient substantiation of the business purpose of all uses of the vehicle; however, because the drive from Florida to Missouri and back was proven, the taxpayer was allowed a deduction for those trips. The court held that the taxpayer was entitled to use a per diem method of calculating the meals and lodging expenses but reduced the total number of days spent in Missouri to exclude personal days spent in Florida visiting family. The meals expense deductions were further reduced by the 50 percent limitation of I.R.C. § 274(n). The deductions for the lodging expenses were reduced by the amount not proven by receipts and the lease agreement. Snellman v. Comm’r, T.C. Summary Op. 2014-10.

TRUSTS. The taxpayer and an unrelated party had obtained an option to purchase forest land and formed a partnership to manage the property. The taxpayer and partner exercised the option but the property was transferred directly to the trustee of an irrevocable trust for the benefit of the taxpayer’s and partner’s children. The IRS informed the partner that the IRS considered the trust a sham and instructed the partner to include the trust income on the partnership return. The IRS also assessed taxes on the taxpayer’s share of the partnership income. The court used the four factor test of Markosian v. Commissioner, 73 T.C. 1235 (1980) to determine whether the trust was a sham: (1) whether the taxpayer’s relationship to the transferred property differed materially before and after the trust’s creation; (2) whether the trust had an independent trustee; (3) whether an economic interest passed to other trust beneficiaries; and (4) whether the taxpayer respected restrictions imposed on the trust’s operation as set forth in the trust documents or by the law of trusts. The court held that the trust was not a sham because (1) the taxpayer and partner did not own the property before it was acquired by the trust, they only owned an option to purchase the property; (2) the trust had an independent trustee, because the IRS failed to provide any evidence to the contrary; (3) the beneficiaries received an economic interest in the trust which was not disregarded by the taxpayer; and (4) there was no credible evidence that the taxpayer disregarded the restrictions of the trust agreement. Close v. Comm’r, T.C. Memo. 2014-25.

ASSISTANT EDITOR NEEDED

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The Land Grant University Tax Education Foundation, Inc. announces an annual competition with the purpose of identifying outstanding young scholars with aptitude and interest in federal income taxation education. The top three winners will receive a cash prize as follows: First Prize $1,500; Second Prize $1,000; and Third Prize $500. For more information, e-mail robert@taxworkbook.com, visit www.taxworkbook.com or call Robert Achenbach at 360-200-5458.
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Soft cover, 8.25 x 5.5 inches, 467 pages Published May 2013

Send to: Agricultural Law Press, 127 Young Rd., Kelso, WA 98626