Cases, Regulations and Statutes

Robert P. Achenbach Jr
Iowa State University

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The Tax Court, in Estate of Elkins v. Commissioner, approved a 10 percent discount for a lengthy list of art works owned in co-ownership by the decedent, ostensibly because the decedent’s children would likely purchase any fractional interest sold. However, on appeal the Fifth Circuit Court of Appeal allowed a 44.75 percent discount for undivided interests in the works of art involved in that litigation. The appellate court was impressed by the taxpayers’ argument that there is no “recognized” market for fractional interests in art and the art in question had been voluntarily subjected to restraints on partition (and alienation) as well as restraints on possession.

Will Elkins v. Commissioner chart the discount course for art collections going forward?

At this stage, that is difficult to say. The Fifth Circuit Court of Appeals has earned the distinction of being the most “taxpayer friendly” court of appeals in the country. But it will require additional cases before it can be said that the Elkins view will prevail widely.

ENDNOTES

1 2014-2 U.S. Tax Cas. (CCH) ¶ 60,683 (5th Cir. 2014).
3 Stone v. United States, 2007-1 U.S. Tax Cas. (CCH) ¶ 60,540 (N.D. Calif. 2007). See also Stone v. United States, 2007-2 U.S. Tax Cas. (CCH) ¶ 60,545 (N.D. Calif. 2007), aff’d, 2009-1 U.S. Tax Cas. (CCH) ¶ 60,572 (9th Cir. 2009) (five percent discount allowed).
4 See note 1 supra.
5 Id.
6 See note 3 supra.
7 Estate of McMullen v. Comm’r, T.C. Memo. 1988-500 (value of decedent’s undivided one-half interest in trust property not discounted as fractional share where trust property to be sold as entire fee simple interest). See Estate of Clapp v. Comm’r, T.C. Memo. 1983-721; Estate of Pudim v. Comm’r, T.C. Memo. 1982-606.
8 T.C. Memo. 1989-138 (12 ½ percent discount allowed for 50 percent interest in tenancy in common ownership of real property).
9 See, e.g., Estate of Cervin v. Comm’r, T.C. Memo. 1994-550, rev’d on another issue, 111 F.3d 1252 (5th Cir. 1997).
10 E.g., Estate of Brocato v. Comm’r, T.C. Memo. 1999-424.
11 Estate of Busch v. Comm’r, T.C. Memo. 2000-3 (10 percent discount allowed for agricultural property which the court stated was “more than adequate” to cover reasonable costs of partition action; estate had claimed 40 percent – heirs had made it known property would be sold for development).
12 Estate of Baird v. Comm’r, T.C. Memo. 2001-258.
14 Propstra v. United States, 680 F.2d 1248 (9th Cir. 1982).
15 Ltr. Rul. 9336002, May 28, 1993; Ltr. Rul. 9943003, June 7, 1999) (discount for co-ownership of realty should be limited to costs of partitioning; discount is matter of fact).
16 416 F.3d 442 (5th Cir. 2005).
17 Id.
18 See Stone v. United States, 2007-2 U.S. Tax Cas. (CCH) ¶ 60,572 (9th Cir. 2009) (unreported decision), aff’d, 2007-2 U.S. Tax Cas. (CCH) ¶ 60,545 (N.D. Calif. 2007). An earlier District Court opinion in the same case appears at 2007-1 U.S. Tax Cas. (CCH) ¶ 60,540 (N.D. Calif. 2007).
19 T.C. Memo. 1994-211.
21 Id.
22 2014-2 U.S. Tax Cas. (CCH) ¶ 60,683 (5th Cir. 2014).

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

ANIMALS

HORSES. The defendant and plaintiff were friends and the plaintiff visited the defendant’s farm to ride horses with the plaintiff’s granddaughter. As the plaintiff rode away from the farm, the saddle became loose and slid off of the horse, causing the plaintiff to fall off and become injured. The plaintiff filed a suit in negligence, alleging that the defendant was negligent in failing to tighten the saddle cinch and to provide a cinch hobble before the plaintiff rode away from the farm. The defendant filed for summary judgment on the basis that the Georgia Injuries from Equine or Llama Activities Act, Ga. Code § 4-12-1 et seq., gave the defendant civil immunity from negligence suits. The trial court granted the summary judgment. On appeal, the plaintiff argued that two exceptions in the statute applied to allow the suit. The plaintiff pointed to Ga. Code § 4-12-3(b)(1)(A) which allows liability where an “equine activity sponsor, equine professional, … or person … [p]rovided the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such equipment or tack was faulty to the extent that it did cause the injury.” The plaintiff argued that the failure to properly tighten the saddle cinch and provide
a cinch hobble amounted to “faulty tack.” The appellate court disagreed, holding that the evidence demonstrated that the saddle and cinch were in good working condition and that the failure to re-tighten the cinch did not mean the equipment was faulty. The plaintiff also argued that Ga. Code § 4-12-3(b)(3) provides an exception where an “equine activity sponsor, equine professional, … or person … [c]ommits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury.” The court held that the exception did not apply here because there was no evidence that the defendant committed any intentional act or acted with wanton or reckless disregard of the consequences. Thus, the appellate court upheld the grant of summary judgment for the defendant. Holcomb v. Long, 2014 Ga. App. LEXIS 726 (Ga. Ct. App. 2014).

**BANKRUPTCY**

**GENERAL**

**EXEMPTIONS.**

EARNED INCOME TAX CREDIT. The Chapter 7 debtor claimed an exemption under Kan. Stat. § 60-2315 for state and federal earned income tax credits. The trustee challenged the exemption using the trustee’s avoidance powers under Section 544. The trustee argued that the exemption was unconstitutional because it applied only to debtors in bankruptcy. The court held that the trustee’s avoidance powers were available only as to estate property and that exempt property was removed from the bankruptcy estate; therefore, the exempt property was not subject to recovery by the trustee. On further appeal, the appellate court affirmed. In re Murray, 2014-2 U.S. Tax Cas. (CCH) ¶ 50,508 (10th Cir. 2014), aff’g, 2014-2 U.S. Tax Cas. (CCH) ¶ 50,200 (Bankr. 10th Cir. 2014), aff’g, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,309 (D. Kan. 2013).

**CHAPTER 12**

**DISMISSAL.** The debtor was president of a corporation which was the defendant in a lawsuit by the state of Florida for violation of state law in modifying a dam on the corporation’s property without the required permits. The state court action resulted in two judgment liens against the corporation’s real property. The debtor had the real property transferred from the corporation to the debtor for $1 and the debtor filed for bankruptcy. The Bankruptcy Court dismissed the case because the debtor could not submit a confirmable plan and the debtor filed the bankruptcy case only as a means to re-litigate the state court case. The District Court affirmed. On further appeal the appellate court held that the case was properly dismissed because the debtor failed to address any of the issues involving dismissal and merely attempted to re-litigate the state case. In re Hill, 2014 U.S. App. LEXIS 21812 (11th Cir. 2014).

**PLAN.** The debtor was a limited liability company which operated a farm and filed for Chapter 12. The debtor’s plan provided for payment of a bank’s secured claim based on the value of real and personal property collateral. The bank objected to the plan because the secured portion of its claim was reduced inasmuch as the debtor undervalued the real property collateral. Both parties submitted expert appraisals but the court held that the bank’s expert provided the more accurate valuation. Thus, the court held that the debtor’s plan could not be confirmed because it improperly decreased the secured portion of the bank’s claim. In addition, the court allowed the claim to be increased by post-petition costs as allowed by the loan agreement. The court also held the plan to be unconfirmable because the payment schedule did not include any interest during the first three years and, instead, added the accrued interest to the principal of the claim. In addition, the original loan was for one year and the plan payments were for four years, an unacceptable increase in the term. Finally, the court held that the plan was not feasible given debtor’s lack of equity and the debtor’s historical lack of profits to support the plan payments. In re Tucker Brothers, LLC, 2014 Bankr. LEXIS 4725 (Bankr. D. Kan. 2014).

**FEDERAL TAX**

**AUTOMATIC STAY.** In March 2014, the IRS filed a notice of deficiency for 2010 taxes. The debtor filed an appeal with the Tax Court on June 6, 2014 at 1:48 p.m. and filed for Chapter 7 bankruptcy on June 6, 2014 at 5:11 p.m. The debtor’s bankruptcy case was closed on September 17, 2014. The Tax Court held that the pre-bankruptcy filing of the Tax Court petition did not violate the automatic stay; however, the Tax Court proceedings were stayed until the bankruptcy case was closed. Thus, the court held that the case could continue after expiration of the stay. Perry v. Comm’r, T.C. Memo. 2014-231.

**FEDERAL FARM PROGRAMS**

**No Items**

**FEDERAL ESTATE AND GIFT TAXATION**

**INFLATION-ADJUSTED ITEMS.** The IRS has announced many of the inflation-adjusted deductions, credits and other limits for 2015 for estate and gift tax purposes. For an estate of any decedent dying during calendar year 2015, the basic exclusion amount is $5,430,000 for determining the amount of the unified credit against estate tax under I.R.C. § 2010. For an estate of a decedent dying in calendar year 2015, if the executor elects to use the special use valuation method under I.R.C. § 2032A for qualified real property, the aggregate decrease in the value of qualified real property resulting from electing to use I.R.C. § 2032A for purposes of the estate tax cannot exceed $1,100,000. For calendar year 2015, the first $147,000 of gifts to a spouse who is not a citizen of the United States (other than gifts of future interests in property) are not included in the total amount of taxable gifts under I.R.C. §§ 2503 and 2523(i)(2) made during that year. For an estate of a decedent...
dying in calendar year 2015, the dollar amount used to determine
the “2-percent portion” (for purposes of calculating interest under
I.R.C. § 6601(j)) of the estate tax extended as provided in I.R.C.
§ 6166 is $1,470,000. The 2015 tax rates for estates and trusts:

<table>
<thead>
<tr>
<th>If Taxable Income Is</th>
<th>The Tax Is</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $2,500</td>
<td>$0</td>
</tr>
<tr>
<td>Over $2,500 but not over $5,900</td>
<td>15% of the taxable income</td>
</tr>
<tr>
<td>Over $5,900 but not over $9,050</td>
<td>$375 plus 25% of the excess over $2,500</td>
</tr>
<tr>
<td>Over $9,050 but not over $12,300</td>
<td>$1,225 plus 28% of the excess over $5,900</td>
</tr>
<tr>
<td>Over $12,300</td>
<td>$2,107 plus 33% of the excess over $9,050</td>
</tr>
<tr>
<td>$375 plus 25% of the excess over $2,500</td>
<td></td>
</tr>
</tbody>
</table>


POWER OF APPOINTMENT. The taxpayer was the beneficiary of a trust created under the decedent’s last will. The will provided that during the taxpayer’s life, the trustees are to make discretionary payments of the net income and principal to or for the benefit of the taxpayer and the taxpayer’s issue. The will also provided that upon the death of the taxpayer, the trustees are to pay over the principal, as then constituted, and any accumulated or undistributed income, to the decedent’s issue as the taxpayer shall validly appoint in the taxpayer’s last will. Any balance of the trust remaining and not effectively appointed by the taxpayer in the taxpayer’s last will is disposed of pursuant to the decedent’s last will. The IRS ruled that (1) the testamentary power of appointment over the principal and accumulated or undistributed income of the trust does not constitute a general power of appointment within the meaning of I.R.C. § 2041(b) (1) and (2) the existence, exercise, failure to fully exercise, or partial or complete release of the taxpayer’s power to appoint the principal and accumulated or undistributed income of the trust will not cause the value of the property in the trust to be included in the taxpayer’s gross estate under I.R.C. § 2041(a). The principal controversy was over the power of appointment and whether it was a general power of appointment (which it was not) where the power could be exercised in favor of the settlor’s issue. Ltr. Rul. 201446001, July 14, 2014.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayers, husband and wife, filed joint returns. The husband owned a company taxed as an S corporation and worked as an employee of the company full time. The husband purchased a 79 acre property and constructed a warehouse on the property which was to be used to store beer hops grown on the property for sale to breweries. During the tax years involved, the husband planted seeds but did not harvest the crop. The only other activity was the contacting of breweries to determine their interest in purchasing hops. The husband claimed to work 10-15 hours per week on the hops activity. In 2009, the taxpayer sold 1.9 acres of the property to an unrelated party. The taxpayers filed Schedule E to report their share of the S corporation tax items and Schedule C for the hops activity. The court upheld the IRS disallowance of deductions for the hops activity because the activity was not operated with sufficient continuity and regularity to be a business. The court upheld the IRS allowance of deductions of some of the expenses as personal expenses on Schedule A as miscellaneous deductions. The S corporation claimed deductions for bad debts. The evidence showed that the bad debts were actually work performed by the company for which it was not paid. The court held that the bad debt deductions were properly disallowed. The S corporation also claimed deductions for health insurance benefits paid for the husband. The court held that, because the husband owned more than 2 percent of the corporation, the benefits were deductible by the corporation and included in the husband’s taxable income. The corporation also claimed deductions for expenses for three vehicles used in the business. However, the corporation did not have any written records to substantiate the business use of the vehicles; therefore, the court denied the deductions. Powell v. Comm’r, T.C. Memo. 2014-235.

CHARITABLE DEDUCTIONS. The IRS has published information about charitable deductions. Qualified charities. Taxpayers can only deduct gifts to qualified charities. Taxpayers can use the IRS Select Check tool, at www.irs.gov, to see if a group is qualified. Taxpayers can deduct donations given to churches, synagogues, temples, mosques and government agencies, even if Select Check does not list them in its database. Monetary donations. Gifts of money include those made in cash or by check, electronic funds transfer, credit card and payroll deduction. Taxpayers must have a bank record or a written statement from the charity to deduct any gift of money on the tax return. This is true regardless of the amount of the gift. The statement must show the name of the charity and the date and amount of the contribution. Bank records include canceled checks, or bank, credit union and credit card statements. If a taxpayer gives by payroll deductions, the taxpayer should retain a pay stub, a Form W-2 wage statement or other document from the employer. It must show the total amount withheld for charity, along with the pledge card showing the name of the charity. Household goods. Household items include furniture, furnishings, electronics, appliances and linens. If a taxpayer donates clothing and household items to charity the items generally must be in at least good used condition to claim a tax deduction. If a taxpayer claims a deduction of over $500 for an item, it does not have to meet this standard if the taxpayer includes a qualified appraisal of the item with the tax return. Records required. Taxpayers must get an acknowledgment from a charity for each deductible donation (either money or property) of $250 or more. Additional rules apply to the statement for gifts of that amount. This statement is in addition to the records required for deducting cash gifts. However, one statement with all of the required information may meet both requirements. Year-end gifts. Taxpayers can deduct contributions in the year they make them. If a taxpayer charges a gift to a credit card before the end of the year, the contribution will count for a 2014 deduction. This is true even if the taxpayer does not pay the credit card bill until 2015. Also, a contribution by check will count for 2014 as long as it is mailed in 2014. Special rules. Special rules apply for an allowable deduction if a taxpayer give a car, boat or airplane to charity. For more information see Form 1098-C,
Contributions of Motor Vehicles, Boats, and Airplanes.

CORPORATIONS.

REORGANIZATIONS. The IRS has adopted as final regulations regarding the determination of the basis of stock or securities in a reorganization where no stock or securities of the issuing corporation are issued and distributed in the transaction. The regulations clarify that, in certain reorganizations where no stock or securities of the issuing corporation are issued and distributed in the transaction, the ability to designate the shares of stock of the issuing corporation to which the basis, if any, of the stock or securities surrendered will attach applies only to a shareholder that owns actual shares in the issuing corporation. 79 Fed. Reg. 67059 (Nov. 12, 2014).

TRANSFERS OF ASSETS. The IRS has adopted as final amendments to regulations under I.R.C. § 312 to clarify Treas. Reg. § 1.312-11 regarding the allocation of earnings and profits in nonrecognition transfers of property from one corporation to another. The I.R.C. § 312 regulations provide that, in a transfer described in I.R.C. § 381(a), the acquiring corporation, as defined in Treas. Reg. § 1.381(a)-1(b)(2), would succeed to the earnings and profits of the distributor or transferring corporation. For example, in a reorganization under I.R.C. § 368(a)(1) by reason of I.R.C. § 368(a)(2)(C), if the transferee corporation that directly acquires a corporation’s assets transferred some, but not all, of the acquired assets to a controlled subsidiary, the transferee corporation (the acquiring corporation under Treas. Reg. § 1.381(a)-1(b)(2)) would succeed to the transferor corporation’s earnings and profits. However, if the transferee corporation instead transferred all of the acquired assets to a controlled subsidiary, then the controlled subsidiary (the acquiring corporation under Treas. Reg. § 1.381(a)-1(b)(2)) would succeed to the transferor corporation’s earnings and profits. 79 Fed. Reg. 66616 (Nov. 10, 2014).

EMPLOYEE BENEFITS. The employer provided plastic smartcards or debit cards which could be used to purchase transportation on public transportation (unspecified in the ruling). The IRS ruled that the amounts on the cards were excludible from the employees’ wages as a qualified transportation fringe benefit if the employer has a means of verifying the use of the cards only for transportation or the cards can only be used to purchase transportation. If the cards can be used for non-transportation purposes and their use cannot be verified, the value of the cards is wages to the employees. Rev. Rul. 2006-57, 2006-2 C.B. 911. The IRS has issued an update to Rev. Rul. 2006-57 on the use of smartcards, debit or credit cards, or other electronic media to provide qualified transportation fringe benefits to employees. The revenue ruling provides guidance on the use by employees of debit cards for paying mandatory shipping fees on transit passes. The revenue ruling also provides that after December 31, 2015, employers may no longer provide qualified transit fringe benefits under a bona fide cash reimbursement arrangement in cases in which a terminal-restricted debit card is the only readily available transit pass in the employer’s geographic area. Rev. Rul. 2014-32, I.R.B. 2014-50.


The IRS has issued a revenue procedure which provides indexing adjustments for certain provisions under I.R.C. §§ 36B and 5000A. The procedure updates the Applicable Percentage Table in I.R.C. § 36B(b)(3)(A)(i) to provide the Applicable Percentage Table for 2016. This table is used to calculate an individual’s premium tax credit. The revenue procedure also updates the required contribution percentage in I.R.C. § 36B(c)(2)(C)(i)(II) for plan years beginning after calendar year 2015. This percentage is used to determine whether an individual is eligible for affordable employer-sponsored minimum essential coverage under I.R.C. § 36B. The revenue procedure uses the methodology described in Section 4 of Rev. Proc. 2014-37, 2014-2 C.B. 363, to index the Applicable Percentage Table and the I.R.C. § 36B required contribution percentage for the 2016 year. Rev. Proc. 2014-37 provides indexing adjustments for these amounts for the 2015 year. The revenue procedure cross-references the required contribution percentage under I.R.C. § 5000A(e)(1)(A) for plan years beginning after calendar year 2015, as determined under guidance issued by the Department of Health and Human Services. This percentage is used to determine whether an individual is eligible for an exemption from the individual shared responsibility payment because of a lack of affordable minimum essential coverage. For taxable years beginning in 2016, the Applicable Percentage Table for purposes of I.R.C. § 36B(b)(3) (A)(i) and Treas. Reg. § 1.36B-3T(g) is:

<table>
<thead>
<tr>
<th>Household income percentage of Federal poverty line</th>
<th>Initial percentage</th>
<th>Final percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 133%</td>
<td>2.03%</td>
<td>2.03%</td>
</tr>
<tr>
<td>At least 133% but less than 150%</td>
<td>3.05%</td>
<td>4.07%</td>
</tr>
<tr>
<td>At least 150% but less than 200%</td>
<td>4.07%</td>
<td>6.41%</td>
</tr>
<tr>
<td>At least 200% but less than 250%</td>
<td>6.41%</td>
<td>8.18%</td>
</tr>
<tr>
<td>At least 250% but less than 300%</td>
<td>8.18%</td>
<td>9.66%</td>
</tr>
<tr>
<td>At least 300% but not more than 400%</td>
<td>9.66%</td>
<td>9.66%</td>
</tr>
</tbody>
</table>


HOBBY LOSSES. The taxpayers, husband and wife, owned a successful and profitable concrete business. The taxpayers also participated in a racehorse breeding, training and racing activity for over 29 years. Initially, the taxpayers purchased all horses with their trainer with each owning one-half of each horse. Although the taxpayers and trainer actively raced, purchased and sold horses, in most of the 29 years, the activity resulted in tax losses. The IRS disallowed the losses in the last two years under the hobby loss rules. The court held that the taxpayer engaged in the activity with the intent to make a profit because (1) the taxpayers conducted the activity in a businesslike manner in the keeping of accurate records, altering their business operations to seek profits and disposing of unprofitable horses; (2) the taxpayers used a professional trainer and other experts in decisions as to horse purchases and sale; (3) the taxpayer spent a significant amount of time on the activity, either themselves or through trainers and staff; (4) the taxpayers expected returns from appreciation in the value of the horses; (5) much of the losses were due to injuries and other unexpected events; and (6) the activity had occasional

**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 IRAs in 2008 and made two rollover repayments back to the IRAs in 2008. 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. *Bobrow v. Comm'r*, T.C. Memo. 2014-21. Earlier in 2014, the IRS announced that it will follow the holding in *Bobrow* and apply the one rollover per year on an aggregate basis instead of an IRA-by-IRA basis. The IRS acknowledged that the change in the rule will cause administrative difficulties for IRA trustees; therefore, the new rule will apply only after January 1, 2015. *Ann. 2014-15, I.R.B. 2014-16.* The IRS has announced further guidance for implementation of the *Bobrow* rule. An individual receiving an IRA distribution on or after January 1, 2015, cannot roll over any portion of the distribution into an IRA if the individual has received a distribution from any IRA in the preceding one-year period that was rolled over into an IRA. However, as a transition rule for distributions in 2015, a distribution occurring in 2014 that was rolled over is disregarded for purposes of determining whether a 2015 distribution can be rolled over under I.R.C. § 408(d)(3)(A)(i), provided that the 2015 distribution is from a different IRA that neither made nor received the 2014 distribution. In other words, the *Bobrow* aggregation rule, which takes into account all distributions and rollovers among an individual’s IRAs, will apply to distributions from different IRAs only if each of the distributions occurs after 2014. Under transition relief, a rollover distribution from 2014 to 2015 is not a 2015 rollover. A rollover from a traditional IRA to a Roth IRA (a “conversion”) is not subject to the one-rollover-per-year limitation, and such a rollover is disregarded in applying the one-rollover-per-year limitation to other rollovers. However, a rollover between an individual’s Roth IRAs would preclude a separate rollover within the 1-year period between the individual’s traditional IRAs, and vice versa. Similar rules apply to a simplified employee pension described in I.R.C. § 408(k) and a SIMPLE IRA described in I.R.C. § 408(p). The one-rollover-per-year limitation also does not apply to a rollover to or from a qualified plan (and such a rollover is disregarded in applying the one-rollover-per-year limitation to other rollovers), nor does it apply to trustee-to-trustee transfers. IRA trustees are encouraged to offer IRA owners requesting a distribution for rollover the option of a trustee-to-trustee transfer from one IRA to another IRA. IRA trustees can accomplish a trustee-to-trustee transfer by transferring amounts directly from one IRA to another or by providing the IRA owner with a check made payable to the receiving IRA trustee. *Ann. 2014-32, I.R.B. 2014-48.*

**INFLATION-ADJUSTED ITEMS.** The IRS has announced many of the inflation-adjusted 2015 tax rate tables for individuals. The announcement includes the 2015 standard deduction of $12,600 for married filing jointly; $9,250 for heads of households; $6,300 for unmarried individuals; and $6,300 for married individuals filing separately. For taxable years beginning in 2015, the personal exemption amount is $4,000. The personal exemption phaseout figures:

<table>
<thead>
<tr>
<th>Filing Status</th>
<th>AGI Beginning of Phaseout</th>
<th>AGI Completed Phaseout</th>
</tr>
</thead>
<tbody>
<tr>
<td>Married Filing Joint Returns and Surviving Spouses</td>
<td>$309,900</td>
<td>$432,400</td>
</tr>
<tr>
<td>Heads of Households</td>
<td>$284,050</td>
<td>$406,550</td>
</tr>
<tr>
<td>Unmarried Individuals</td>
<td>$258,250</td>
<td>$380,750</td>
</tr>
<tr>
<td>Married Individuals Filing Separate Returns</td>
<td>$154,950</td>
<td>$216,200</td>
</tr>
</tbody>
</table>


**PARSONAGE ALLOWANCE DEDUCTION.** The District Court for the Western District of Wisconsin had ruled that the I.R.C. § 107(2) exclusion from taxable income of the parsonage allowance was unconstitutional as a violation of the Establishment Clause of the First Amendment to the U.S. Constitution. On appeal to the Seventh Circuit Court of Appeals, the court held that the plaintiffs lacked standing to bring the case and remanded the case for dismissal. The court held that the plaintiffs, employees of a non-religious organization, did not suffer any injury under the statute because they were not denied any deduction for a parsonage allowance. *Freedom From Religion Foundation, Inc. v. Lew*, 2014-2 U.S. Tax Cas. (CCH) ¶ 50,505 (7th Cir. 2014), vac'g and rem'g, 2013-2 U.S. Tax Cas. (CCH) ¶ 50,600 (W.D. Wis. 2013).

**PASSIVE ACTIVITY LOSSES.** The taxpayers, husband and wife, owned a vacation condominium. The taxpayers used the condominium for 81 days in 2008, 59 days in 2009, and 45 days in 2010. The husband’s brother rented the condominium in 2008 and 2010. The taxpayers also rented the condominium to vacationers through a rental management company. The average rental period of the condominium was approximately 10 days in 2008, 8 days in 2009, and 7 days in 2010. The husband made several trips to the condominium to make repairs, purchase furniture and perform maintenance. The taxpayers maintained log books detailing the personal and business use of the condominium and the days spent performing work on the condominium. The taxpayers claimed losses from the condominium for all three years. The taxpayers used the condominium for 14 days in each of 2008 and 2010 and the issue was whether the brother’s rental of the condominium was included in the taxpayers’ use. Under I.R.C. § 280A(d)(1), a dwelling unit is a residence if the taxpayer uses the dwelling for personal purposes for a number of days which exceeds the greater of 14 days or 10 percent of the number of days during the year for which the unit is rented at a fair rental value. Under I.R.C. § 280A(a) no deduction is allowed for costs associated with a personal residence. The court held that the brother’s use of the condominium was attributable to the taxpayers because the taxpayers failed to prove that the brother paid full market rental value for the use of the condominium. In addition, the court added several days as personal use days where the husband had more personal use of the condominium than time spent working on it. Therefore, for 2008 and 2010, the losses were not allowed under I.R.C. § 280A. For 2009, the taxpayers admitted that the taxpayer’s personal use exceeded the amount allowed by I.R.C. § 280A but they raised an issue with the allocation of personal and business use for purposes of the limitations in the statute. The court allocated some of the maintenance work days to personal use where the husband spent more time vacationing than working.
PENSION PLANS. For purposes beginning in November 2014 for the purposes of determining the full amount of wages subject to FUTA. Employers may receive a FUTA credit of 5.4 percent for payment of state unemployment insurance tax. As a result of the full credit, the net FUTA tax rate is 0.6 percent. States may take loans from the Federal Unemployment Trust Fund to provide unemployment benefits to their residents. If a state has outstanding loan balances on January 1 for two consecutive years, and does not repay the full amount of its loans by November 10 of the second year, the FUTA credit rate for employers in that state will be reduced until the loan is repaid to the Federal Unemployment Trust Fund. The FUTA credit reduction is 0.3 percent for the first year the state is a credit reduction state and an additional 0.3 percent for each year thereafter that the state has not repaid its loans. Additional offset credit reductions may apply to a state beginning with the third and fifth years if a loan balance is still outstanding and certain criteria are not met, the DOL explained. For 2014, the DOL reported that California, Connecticut, Indiana, Kentucky, New York, North Carolina, Ohio and the U.S. Virgin Islands face a FUTA credit reduction. The other forty-three states face no FUTA credit reduction for 2014. CCH Federal Tax Day - Current, M.2, “DOL Announces FUTA Credit Reductions for 2014,” (Nov. 20, 2014).

SAFE HARBOR INTEREST RATES

<table>
<thead>
<tr>
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<th>Annual</th>
<th>Semi-annual</th>
<th>Quarterly</th>
<th>Monthly</th>
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NEGLIGENCE

THIRD PARTY LIABILITY. The plaintiff’s decedent died as a result of a listeria-related illness following the consumption of a cantaloupe produced by the defendant farmer. The farmer had contracted with another defendant (auditor) to conduct a food safety audit on the farmer’s land. The plaintiff alleged that the auditor was negligent in performing the audit, causing the cantaloupe with listeria contamination to be sold to and consumed by the decedent. The auditor moved to dismiss the claims against it because the auditor had no duty to the decedent for its auditor activities. The court held that Missouri followed the Restatement (Second) of Torts, Section 324A which states: “One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if (a) his failure to exercise reasonable care increases the risk of such harm, or (b) he has undertaken to perform a duty owed by the other to the third person, or (c) the harm is suffered because of reliance of the other or the third person upon the undertaking.” The court noted that the purpose of audits of produce farms was to ensure that the produce was fit for human consumption; thus, the auditor knew that the auditor’s activities were engaged in order to protect consumers of the produce. The court held that the motion to dismiss was denied because the plaintiff’s decedent was an intended beneficiary of the auditor contract between the defendants and the plaintiff alleged sufficient facts to demonstrate, if proved, the auditor’s negligent performance which allowed contaminated produce to be sold to and consumed by the decedent. Schwarz v. Frontera Produce Ltd., 2014 U.S. Dist. LEXIS 157676 (W.D. Mo. 2014); Riffe v. Frontera Produce Ltd., 2014 U.S. Dist. LEXIS 157675 (W.D. Mo. 2014); West v. Frontera Produce Ltd., 2014 U.S. Dist. LEXIS 157580 (W.D. Mo. 2014).
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