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Cases, Regulations and Statutes

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

BANKRUPTCY

FEDERAL TAX

LIEN AVOIDANCE. The debtor filed for Chapter 11 and the IRS filed a proof of claim for a secured claim supported by a federal tax lien on the debtor’s real property. The debtor sought to avoid the tax lien because the amount of liens against the real property exceeded the value of the property. The property was subject to three other liens with priority over the tax lien and the first lien exceeded the property’s value. The court held that the debtor could avoid the tax lien under Section 506 because the lien was not secured by any property. In re Rodriguez, 2015-1 U.S. Tax Cas. (CCH) ¶ 50,298 (Bankr. D. Md. 2015).

FEDERAL FARM PROGRAMS

MEAT INSPECTION. The FSIS has issued proposed regulations amending its regulations on ante-mortem beef inspection to remove a provision that permits establishments to set apart and hold for treatment veal calves that are unable to rise from a recumbent position and walk because they are tired or cold. Under the proposed rule, non-ambulatory disabled veal calves will improve compliance with the Humane Methods of Slaughter Act of 1978 and the humane slaughter implementing regulations. It will also improve the inspection efficiency by eliminating the time that FSIS inspection program personnel spend re-inspecting non-ambulatory disabled veal calves. FSIS is also proposing to clarify in the regulations that all non-ambulatory disabled cattle must be promptly disposed of after they have been condemned. 80 Fed. Reg. 27269 (May 13, 2015).

ORGANIC FOOD. Based upon a review under the criteria stipulated by section 610 of the Regulatory Flexibility Act, the AMS has determined that the USDA organic regulations meet the stipulated by section 610 of the Regulatory Flexibility Act, the AMS has determined that the USDA organic regulations meet the ORGANIC FOOD. Based upon a review under the criteria stipulated by section 610 of the Regulatory Flexibility Act, the AMS has determined that the USDA organic regulations meet the ORGANIC FOOD. Based upon a review under the criteria stipulated by section 610 of the Regulatory Flexibility Act, the AMS has determined that the USDA organic regulations meet the ORGANIC FOOD. Based upon a review under the criteria stipulated by section 610 of the Regulatory Flexibility Act, the AMS has determined that the USDA organic regulations meet the ORGANIC FOOD. Based upon a review under the criteria stipulated by section 610 of the Regulatory Flexibility Act, the AMS has determined that the USDA organic regulations meet the ORGANIC FOOD. Based upon a review under the criteria stipulated by section 610 of the Regulatory Flexibility Act, the AMS has determined that the USDA organic regulations meet the

FEDERAL ESTATE AND GIFT TAXATION

ALLOCATION OF BASIS FOR DEATHS IN 2010. The IRS has issued proposed regulations that provide guidance regarding the application of the modified carryover basis rules of I.R.C. § 1022. The proposed regulations modify provisions of the Treasury Regulations involving basis rules by including a reference to I.R.C. § 1022 where appropriate. The addition of the references to I.R.C. § 1022 are required because, although I.R.C. § 1022 was applicable only to decedents dying in calendar year 2010, basis determined pursuant to that section will continue to be relevant until all of the property whose basis is determined under that section has been sold or otherwise disposed of. The proposed regulations add reference to I.R.C. § 1022 to a large number of basis regulations, including (1) Prop. Treas. Reg. § 1.48-12(b)(2)(vii)(B) provides that, if a transferee’s basis is determined under section 1022, any qualified rehabilitation expenditures incurred by the decedent under section 48 within the measuring period that are treated as having been incurred by the transferee decrease the transferee’s basis for purposes of the substantial rehabilitation test. (2) Prop. Treas. Reg. §§ 1.179-4(c)(1)(iv), 1.267(d)-1(a)(3), 1.336-1(b)(5)(i)(A) and 1.355-6(d)(1)(i)(A)(2) provide that property acquired from a decedent in a transaction in which the recipient’s basis is determined under section 1022 is not acquired by purchase or exchange for purposes of sections 179, 267, 336, and 355(d). (3) Prop. Treas. Reg. § 1.197-2(h)(5)(i) provides that the anti-churning rules of Treas. Reg. § 1.197-2(h) do not apply to the acquisition of a section 197(f)(9) intangible if the acquiring taxpayer’s basis in the intangible is determined under section 1022. (4) Prop. Treas. Reg. § 1.306-3(e) provides that section 306 stock continues to be classified as section 306 stock if the basis of such stock is determined by reference to the decedent-stockholder’s basis under section 1022. In addition, the revision of the last sentence of the existing regulation clarifies the reference to “the optional valuation date under section 1014” by changing the language to refer expressly to the election to use the alternate valuation date under section 2032. (5) Prop. Treas. Reg. § 1.467-7(c)(2) provides that section 467 recapture does not apply to a disposition on death of the transferor if the basis of the property in the hands of the transferee is determined under section 1022. However, section 467 recapture does apply to property that constitutes a right to receive an item of income in respect of a decedent. Prop. Treas. Reg. § 1.467-7(c)(4) provides that, if the transferee subsequently disposes of the property in a transaction to which Treas. Reg. § 1.467-7(a) applies, the prior understated inclusion is computed by taking into account the amounts attributable to the period of the transferor’s ownership of the property prior to the first disposition. (6) Prop. Treas. Reg. § 1.742-1(a) provides that the basis of a partnership interest acquired from a decedent who died in 2010, and whose executor made a Section 1022 election, is the lower of the adjusted basis of the decedent or fair market value of the interest at the date of decedent’s death. The basis of property acquired from a decedent may be further increased under section 1022(b) and/or 1022(c), but not above the fair market value of the interest on the date of the decedent’s death. (7) Prop. Treas. Reg. § 1.1014-4(a) provides that the basis of
property acquired from a decedent, including basis determined under section 1022, is uniform in the hands of every person having possession or enjoyment of the property at any time, whether obtained under the will or other instrument or under the laws of descent and distribution.

(8) Prop. Treas. Reg. § 1.1014-5(b) provides that, in determining gain or loss from the sale or other disposition of a term interest in property the adjusted basis of which is determined pursuant to section 1022, that part of the adjusted uniform basis assignable under the rules of Sec. 1.1014-5(a) to the interest sold or otherwise disposed of is disregarded to the extent and in the manner provided by section 1001(e).

(9) Prop. Treas. Reg. §§ 1.1245-2(c)(2)(i)(d) and 1.1245-3(a)(3) provide that, if section 1245 property is acquired from a decedent who died in 2010 and whose executor made a Section 1022 election, the amount of the adjustments reflected in the adjusted basis of the property in the hands of the transferor immediately after the transfer is equal to the amount of the adjustments reflected in the adjusted basis of the property in the hands of the transferor immediately before the transfer, minus the amount of any gain taken into account under section 1245(a)(1) by the transferor upon the transfer. Further, even though property is not of a character subject to the allowance for depreciation in the hands of the taxpayer, the property is section 1245 property if the taxpayer’s basis in the property is determined under section 1022 and the property was of a character subject to the allowance for depreciation in the hands of the decedent.

(10) Prop. Treas. Reg. § 1.1245-4(a)(1) provides that no gain is recognized under section 1245(a)(1) upon a transfer of section 1245 property from a decedent whose executor made the Section 1022 election.

(11) Prop. Treas. Reg. § 1.1250-4(c)(5) provides that the holding period under section 1250(e) for the recipient of property acquired from a decedent who died in 2010, and whose executor made a Section 1022 election, includes the period that the property was held by the decedent.

(12) Prop. Treas. Reg. § 1.1254-2(a)(1) provides that no gain is recognized under section 1254(a)(1) upon a transfer of natural resource recapture property from a decedent who died in 2010 and whose executor made a Section 1022 election.

(13) Prop. Treas. Reg. §§ 1.1254-3(b), 1.1254-4(e)(4), and 1.1254-5(c)(2)(iv) provide that, for purposes of determining the amount of section 1254 costs from the disposition of natural resource recapture property, the term “gift” is expanded to include the transfer of property with a basis that is determined under section 1022. REG-107595-11, 80 Fed. Reg. 26873 (May 11, 2015).

LIFE INSURANCE. When the decedent died, there was a life insurance policy on the decedent’s life with the decedent’s former spouse as beneficiary. The decedent’s estate was assessed federal estate taxes based on the life insurance policy and the estate executor sought to recover from the beneficiary, the beneficiary’s share of the taxes under I.R.C. § 2206. The beneficiary objected, claiming that the life insurance policy was not part of the estate because the decedent did not have any incidents of ownership in the policy. The court held that the life insurance policy was included in the gross estate for estate tax purposes because the decedent was the stated owner of the policy and had the power to change the beneficiary. Smoot, III v. Smoot, 2015-1 U.S. Tax Cas. (CCH) ¶ 60,688 (S.D. Ga. 2015).

FEDERAL INCOME TAXATION

CHARITABLE DEDUCTION. The taxpayers, husband and wife, purchased a 74 acre farm and made improvements to the home and buildings. Under local zoning laws, the taxpayers were able to grant a conservation easement on the property and sell the development rights to a third party. The taxpayers’ property had up to 25 development rights which allowed up to 25 residences to be built on the property. The taxpayers found a third party to purchase the development rights and then granted the conservation easement to the county. The taxpayers obtained an appraisal of the property before and after the grant of the conservation easement; however, the appraiser did not know about the easement grant, did not know that the easement grant was a condition for the taxpayers’ sale of the development rights and did not know that the property would not support 25 residences due to water issues. The court held that the appraisal was not a “qualified appraisal” because it failed to contain enough information about the property for the IRS to make a determination as to the qualifications of the easement for a charitable deduction. The court found that the appraisal did not specify the date of the contribution or a complete description of the property donated. In addition, the Form 8283, Noncash Charitable Contributions, did not disclose value of the development rights received because of the contribution. Finally, the appraisal valued only the farm before and after the sale of the development rights and did not give a value to the easement. Costello v. Comm’r, T.C. Memo. 2015-87.

DEPENDENTS. The taxpayer became the guardian of an unrelated minor child in 1991. In 2011, the child was 25 and had a daughter, and both the child and daughter lived with the taxpayer who provided most of their support. The taxpayer filed a return using the head of household status and claimed the adult child and daughter as dependents. Based on the dependency, the taxpayer also claimed the earned income tax credit and child tax credit for the credit’s daughter. The IRS conceded only that the taxpayer was allowed a dependency deduction for the child. The taxpayer argued that the daughter was a qualifying child because she was the child of the adult child of the taxpayer. The taxpayer focused on I.R.C. § 152(c)(2)(ii) which includes foster children in the definition of child. However, the court found that the adult child was not “placed with the taxpayer by . . . order of any court of competent jurisdiction,” as required by I.R.C. § 152(f)(1)(C), because the guardianship terminated when the child turned 18. Therefore, the court held that the adult child’s daughter was not a qualifying child of the taxpayer and the taxpayer could not claim the daughter as a dependent, could not claim the earned income tax credit based on the daughter and could not claim the child tax credit for the daughter. Finally, the court held that the
taxpayer could not file under head of household status because neither the adult child or the daughter were related to the taxpayer by blood or marriage. Cowan v. Comm'r, T.C. Memo. 2015-85.

In 2011 the taxpayer was married and lived with the spouse and two children at one residence until July 31, 2011. On that date the couple separated and the children lived solely with the spouse. The couple divorced in March 2012 and the divorce decree ordered each party to claim one child as a dependent for federal tax purposes in 2013, but was silent as to 2011 and 2012. The taxpayer filed the 2011 tax return using the head of household status, claiming the two children as dependents and claiming the child tax credit, child care credit, and earned income tax credit based on the two children as dependents. Since both children were qualifying children of taxpayer and spouse, the court applied the “tie-breaker” rule of I.R.C. § 152(c)(4)(B) and determined that, because the children lived all of 2011 with the spouse, the spouse was entitled to claim the deduction for them as dependents. Because the children were not qualifying children under the “tie-breaker” rule, the taxpayer was not entitled to file using the head of household status or eligible for the child tax credit based on the two children as dependents. Since both children were qualifying children of taxpayer and spouse, the court applied the “tie-breaker” rule of I.R.C. § 152(c)(4)(B) and determined that, because the children lived all of 2011 with the spouse, the spouse was entitled to claim the deduction for them as dependents. Because the children were not qualifying children under the “tie-breaker” rule, the taxpayer was not entitled to file using the head of household status or eligible for the child tax credit, child care credit, and earned income tax credit. Rolle v. Comm'r, T.C. Memo. 2015-93.

DEPRECIATION. The taxpayer was a parent corporation of an affiliated group which filed a consolidated return. On three returns, the taxpayer did not claim the additional first-year depreciation deduction but failed to attach to each return the election statements required by Treas. Reg. § 1.168(k)-1(e)(3)(ii) and the instructions to Form 4562, Depreciation and Amortization, for elective out of the additional first-year depreciation deduction. The IRS granted an extension of time for the taxpayer to file amended returns with the election statement. Ltr. Rul. 201519026, Jan. 28, 2015.

DISABILITY PAYMENTS. The taxpayer suffered work-related injuries and elected to retire with a disability pension equal to one-half of the taxpayer’s wages. The taxpayer was eligible for regular service retirement and disability retirement. Initially, the taxpayer received the regular service retirement, which was based solely on the taxpayer’s length of service, but the taxpayer later filed for and received disability retirement which was based on a separate calculation but provided that, if the service retirement is greater than the disability retirement, the taxpayer could elect to use the higher amount. Thus, the taxpayer claimed that the disability retirement payments were equal to the original regular service retirement payments and the taxpayer excluded all of the payments from taxable income. The court held that the payments were not excludable to the extent they were determined by the taxpayer’s length of service; therefore, the amount equal to the regular service retirement was taxable, with the remainder excluded from taxable income as disability payments. On appeal the taxpayer argued that the limitation in Treas. Reg. § 1.104-1(b) applies only where an individual qualified for a retirement allowance based on years of service, rather than because of a service-connected disability. Thus, a retiree may exclude the entire allowance pursuant to I.R.C. § 104(a) so long as the taxpayer retired because of a service-connected disability, even if the retirement payments are calculated based on age or years of service. The IRS countered that retirement benefits are taxable in all cases if the payments are determined by age or years of service. The appellate court agreed with the IRS and affirmed the Tax Court ruling. Sowards v. Comm’r, 2015-1 U.S. Tax Cas. (CCH) ¶ 50,299 (9th Cir. 2015), aff’g, 138 T.C. 320 (2012).

DISASTER LOSSES. On April 20, 2015, the President determined that certain areas in Georgia are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of a severe winter storm which began on February 15, 2015. FEMA-4215-DR. On May 1, 2015, the President determined that certain areas in Kentucky are eligible for assistance from the government under the Act as a result of severe storms, tornadoes, flooding and landslides which began on April 2, 2015. FEMA-4217-DR. Accordingly, taxpayers in the areas may deduct the losses on their 2014 federal income tax returns. See I.R.C. § 165(i).

DISCHARGE OF INDEBTEDNESS. The taxpayer had owned a telecommunications company but was hired by another company to run their operations. As an enticement for the employment, the employer loaned the taxpayer $400,000 to be used in the taxpayer’s company. The loan became due if the taxpayer was no longer employed by the employer. The employer hired the taxpayer’s company for several jobs but eventually the taxpayer’s company filed for bankruptcy and the taxpayer’s employment was terminated. Although the loan was immediately due, the employer did not seek repayment. The taxpayer was eventually re-hired and began payments on the loan through garnishment of wages. The IRS assessed discharge of indebtedness income against the taxpayer, arguing that the debt was discharged when the employer failed to seek repayment. The taxpayer argued that the repayment of the loan was clear evidence that the loan was still enforceable and not discharged. The court held that the failure of the employer to seek repayment by itself was not sufficient evidence of discharge of the indebtedness where the taxpayer was making payments greater than the taxes which would be due on the discharged indebtedness. Johnston v. Comm’r, T.C. Memo. 2015-91.

HEALTH INSURANCE. The IRS has published information on calculating the number of employees for purposes of the Affordable Care Act. Most employers have fewer than 50 full-time employees or full-time equivalent employees and are therefore not subject to the Affordable Care Act’s employer shared responsibility provision. If an employer has fewer than 50 full-time employees, including full-time equivalent employees, on average during the prior year, the employer is not an Applicable Large Employer (ALE) for the current calendar year. Therefore, the employer is not subject to the employer shared responsibility provisions or the employer information reporting provisions for the current year. Employers with 50 or fewer employees can purchase health insurance coverage for its employees through the Small Business Health Options Program – better known as the SHOP Marketplace. Calculating the number of employees is especially important for employers that have close to 50 employees or whose workforce fluctuates throughout the year. To determine its workforce size for a year, an employer adds its total number of full-time employees for each month of the
prior calendar year to the total number of full-time equivalent employees for each calendar month of the prior calendar year, and divides that total number by 12. Employers that have fewer than 25 full-time equivalent employees with average annual wages of less than $50,000 may be eligible for the small business health care tax credit if they cover at least 50 percent of their full-time employees’ premium costs and generally, after 2013, if they purchase coverage through the SHOP marketplace. All employers, regardless of size, that provide self-insured health coverage must file an annual information return reporting certain information for individuals they cover. The first returns are due to be filed in 2016 for coverage provided during 2015. For more information, visit “Determining if an Employer is an Applicable Large Employer” on IRS.gov/aca. Health Care Tax Tip 2015-31.

HEALTH SAVINGS ACCOUNTS. For tax years beginning after December 31, 2014, the maximum annual HSA is the indexed statutory amount, without reference to the deductible of the high deductible health plan. For calendar year 2016, the limitation on deductions under I.R.C. § 223(b)(2)(A) for an individual with self-only coverage under a high deductible health plan is $3,350 ($6,750 for family coverage). For calendar year 2016, a “high deductible health plan” is defined under I.R.C. § 223(c)(2)(A) as a health plan with an annual deductible that is not less than $1,300 for self-only coverage or $2,600 for family coverage, and the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed $6,550 for self-only coverage or $13,100 for family coverage. Rev. Proc. 2015-30, I.R.B. 2015-20.

INVESTMENT INCOME. The taxpayers, husband and wife, incurred investment interest expense in tax year 3 and had an investment interest expense carryover from tax year 2. Taxpayers earned net investment income in tax year 3. Taxpayers also earned net capital gain and qualified dividend income in tax year 3. The taxpayers engaged and relied on a return preparer to prepare their tax year 2 and 3 Forms 1040. The taxpayers provided the preparer with all relevant information, including their tax year 1 Form 1040, and tax year 1 investment interest expense carryover. After the tax year 3 tax return was filed, the taxpayers determined that the preparer had not made an election under I.R.C. § 163(d)(4)(B) to include net capital gain income and qualified dividend income in investment income. The preparer informed the taxpayers that the preparer inadvertently omitted the taxpayers’ tax year 1 investment interest expense carryover from the taxpayers’ tax year 2 Form 1040, and again from the taxpayers’ tax year 3 Form 1040, and consequently failed to consider whether the taxpayers should have made the election to include net capital gain income and qualified dividend income in investment income under I.R.C. § 163(d)(4)(B) effective for tax year 3. The preparer admitted that the preparer failed to inform the taxpayers of the available election. The IRS granted the taxpayers an extension of time to file an amended return with a Form 4952 in which the taxpayers could make the election. Ltr. Rul. 201518009, Jan. 23, 2015.

PARTNERSHIPS.

ELECTION TO ADJUST BASIS. The taxpayer was formed as a limited liability company and is classified as a partnership for federal tax purposes. There were two members of taxpayer at the time of formation and in the tax year, one partner purchased a percentage of the other’s interest in the taxpayer. The taxpayer relied on its tax advisor when preparing returns for the tax year, and the advisors did not inform the taxpayer as to the availability of an election under I.R.C. § 754 to adjust the basis of the taxpayer’s assets. Therefore, the taxpayer inadvertently failed to timely file a § 754 election for the tax year. The IRS granted an extension of time to file and amended return with the Section 754 election. Ltr. Rul. 201519023, Jan. 20, 2015.

PENSION PLANS. For plans beginning in May 2015 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 2.59 percent. The 30-year Treasury weighted average is 3.21 percent, and the 90 percent to 105 percent permissible range is 2.89 percent to 3.37 percent. The 24-month average corporate bond segment rates for May 2015, without adjustment by the 25-year average segment rates are: 1.28 percent for the first segment; 4.07 percent for the second segment; and 5.11 percent for the third segment. The 24-month average corporate bond segment rates for May 2015, taking into account the 25-year average segment rates, are: 4.72 percent for the first segment; 6.11 percent for the second segment; and 6.81 percent for the third segment. Notice 2015-39, I.R.B. 2015-22.

RETAIL TAX ON HEAVY HIGHWAY VEHICLES. The taxpayer designed, manufactured, and sold specialty trailers and sought to have a specific trailer ruled exempt from the retail tax on heavy highway vehicles under the farm feed, seed and fertilizer vehicle exemption. The trailer was specifically designed and built to haul and unload various agricultural commodities such as feed, seed, and fertilizer to and on farms and fields. The trailer was an open-top, rectangular box that incorporated several special design features. The trailer was built with alloy aluminum panels and rails which allow the trailer to carry approximately the same volume of commodities as a heavy-duty trailer without exceeding the hauling capacity of the semi-tractor pulling it. In addition, alloy aluminum resists the corrosive properties of feed, seed, and fertilizer. Second, the trailer’s floor features a light-weight floor slab which further reduced the overall weight of the trailer and provided leak prevention to allow the trailer to carry feed, seed, and fertilizer commodities it otherwise could not handle, such as wet distillers grain, modified distillers grain, dry distiller grain, finely ground feeds, flour, agricultural lime, and poultry litter. Third, the trailer was assembled using bolts, rather than with welds, which allows the trailer to flex when it is pulled off road onto secondary roads, fields, and farms. Fourth, the trailer featured sloped side seals that facilitate unloading of bulk materials. In addition, stainless steel mounting plates, rather than aluminum, were added to the bottom rail of the trailer which help prevent corrosion that would result from hauling feed, seed, and fertilizer commodities. Fifth, the trailer uses special axles which allow the trailer to use secondary roadways and to directly access fields. I.R.C. § 4053(2) provides that the tax imposed by I.R.C. § 4051 shall not be imposed on any vehicle body primarily designed (A) to process or prepare seed, feed, or fertilizer for use on farms, (B) to haul feed, seed, or fertilizer on farms, (C) to spread feed, seed, or fertilizer on farms, (D) to load or unload feed, seed, or fertilizer on farms, or (E) for any combination of the foregoing.

Rev. Rul. 69-579, 1969-2 C.B. 200, holds that certain automotive truck bodies equipped with heavy-duty unloading equipment and used primarily for hauling feed, seed, and fertilizer to and on farms, are exempt from the tax imposed by I.R.C. § 4051. The ruling provides that these exempt truck bodies are designed such that the bodies would not be practicable for other non-farm uses.

Rev. Rul. 75-462, 1975-2 C.B. 419, provides that highway bodies that are used for the general hauling of feed, seed, or fertilizer over the highway are subject to the tax imposed by I.R.C. § 4051, unless they have specific features that indicate they are primarily designed to haul feed, seed, or fertilizer to and on farms. Thus, the IRS ruled that the taxpayer’s trailers were exempt from the tax imposed by I.R.C. § 4051 because the several special design features make them primarily suited for hauling and delivering feed, seed and fertilizer and make them impracticable for other uses. Ltr. Rul. 201519028, Jan. 30, 2015.

RETURNS. The IRS has issued a notice updating the list of designated private delivery services (“designated PDSs”) set forth in Notice 2004-83, 2004-2 C.B. 1030, for purposes of the timely mailing treated as timely filing/paying rule of I.R.C. § 7502. The designated delivery services are FedEx First Overnight; FedEx Priority Overnight; FedEx Standard Overnight; FedEx 2 Day; FedEx International Next Flight Out; FedEx International Priority; FedEx International First; FedEx International Economy; UPS Next Day Air Early AM; UPS Next Day Air; UPS Next Day Air Saver; UPS 2nd Day Air; UPS 2nd Day Air A.M.; UPS Worldwide Express Plus; and UPS Worldwide Express. The notice also provides rules for determining the postmark date for these services and provides a new address for submitting documents to the IRS with respect to an application for designation as a designated PDS. These changes are effective May 6, 2015. Notice 2015-38, I.R.B. 2015-21.

UNEMPLOYMENT TAX. In a Chief Counsel Advice letter, the IRS discussed the liability for interest on unpaid federal unemployment taxes (FUTA taxes). I.R.C. § 6601(i) creates an exception to the I.R.C. § 6601(a) underpayment interest for FUTA taxes, which are prescribed by I.R.C. § 3301, where those taxes are “for a calendar quarter or other period within a taxable year required under authority of section 6157.” I.R.C. § 6157 provides for the computation of FUTA taxes on a quarterly basis for the first three quarters of a calendar year, and for payment of those taxes as prescribed by regulation, but does not provide for the fourth quarter (annual) payment. Where the aggregate of quarterly amounts computed per I.R.C. § 6157 but not yet deposited does not exceed $500, no tax payment need be made per I.R.C. § 6157. See Treas. Reg. § 31.6302(a)-(3)(a)(2). Otherwise, the employer must deposit the amount due according to the regulations. See Treas. Reg. § 31.6302(a)-(3)(a)(1). Independent of the deposit requirement imposed by I.R.C. § 6157 and Treas. Reg. § 31.6302(a)-(3)(a)(1), an employer must file an annual return for FUTA taxes, generally on Form 940. See Treas. Reg. 31.6011(a)-(3). The aggregate of FUTA taxes computed for the calendar year per I.R.C. § 3301 but not yet deposited per I.R.C. § 6157 and Treas. Reg. § 31.6011 must be made by January 31 of the year following the year for which the payment is due, regardless of whether it exceeds $500. See Treas. Reg. § 31.6071(a)-(1)(c); Instructions for Form 940, p. 3. If an employer failed to make required payments within a tax year per I.R.C. § 6157, the I.R.C. § 6601(i) exception would apply and no interest would be due on the underpayment. But that taxpayer would still owe the tax imposed by I.R.C. § 3301, and if the taxpayer failed to pay that amount by January 31, then the I.R.C. § 6601(i) exception would not apply and interest would accrue per I.R.C. § 6601(a). CCA 201518014, Jan. 16, 2015.

FARM ESTATE AND BUSINESS PLANNING by Neil E. Harl
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AGRICULTURAL TAX SEMINARS by Neil E. Harl
See the back page for information about these seminars. Here are the cities and dates for the seminars this spring and summer 2015:

May 28-29, 2015 - Plaza Event Center, Longmont, CO
June 16-17, 2015 - Eastland Suites, Bloomington, IL
June 18-19, 2015 - Holiday Inn, Indianapolis, IN
August 24-25, 2015 - Holiday Inn, Council Bluffs, IA
August 27-28, 2015 - Quality Inn, Ames, IA
September 3 & 4, 2015 - Truman State University, Kirksville, MO
September 14 & 15, 2015 - Courtyard Hotel, Moorhead, MN
September 17 & 18, 2015 - Ramkota Hotel, Sioux Falls, SD
September 28 & 29, 2015 - Holiday Inn, Rock Island, IL
October 13 & 14, 2015 - Atrium Hotel, Hutchinson, KS

Each seminar will be structured the same as described on the back cover of this issue. More information will be posted on www.agrilawpress.com and in future issues of the Digest.
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by Neil E. Harl

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See Page 87 above for a list of cities and dates for Spring and Summer 2015

The topics include:

First day

FARM ESTATE AND BUSINESS PLANNING

New Legislation
Succession planning and the importance of fairness
The Liquidity Problem
Property Held in Co-ownership
Federal estate tax treatment of joint tenancy
Severing joint tenancies and resulting basis
Joint tenancy and probate avoidance
Joint tenancy ownership of personal property
Other problems of property ownership

Federal Estate Tax
The gross estate
Special use valuation
Property included in the gross estate
Traps in use of successive life estates
Basis calculations under uniform basis rules
Valuing growing crops
Claiming deductions from the gross estate
Marital and charitable deductions
Taxable estate
The applicable exclusion amount
Unified estate and gift tax rates
Portability and the regulations
Federal estate tax liens
Undervaluations of property

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

Use of the Trust
The General Partnership
Small partnership exception
Eligibility for Section 754 elections
Limited Partnerships
Limited Liability Companies
Developments with passive losses

Second day

Closely Held Corporations
State anti-corporate farming restrictions
Developing the capitalization structure
Tax-free exchanges
Would incorporation trigger a gift because of severance of land held in joint tenancy?
“Section 1244” stock
Status of the corporation as a farmer
The regular method of income taxation
The Subchapter S method of taxation, including the “two-year” rule for trust ownership of stock
Underpayment of wages and salaries
Financing, Estate Planning Aspects and Dissolution of Corporations
Corporate stock as a major estate asset
Valuation discounts
Dissolution and liquidation
Reorganization
Entity Sale
Stock redemption
Social Security
In-kind wages paid to agricultural labor

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
Items purchased for resale
Items raised for sale
Leasing land to family entity
Crop insurance proceeds

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