Cases, Regulations and Statutes

Robert P. Achenbach Jr

Iowa State University

Follow this and additional works at: http://lib.dr.iastate.edu/aglawdigest

Part of the Agricultural and Resource Economics Commons, Agricultural Economics Commons, Agriculture Law Commons, and the Public Economics Commons

Recommended Citation

Available at: http://lib.dr.iastate.edu/aglawdigest/vol26/iss22/2

This Article is brought to you for free and open access by the Journals at Iowa State University Digital Repository. It has been accepted for inclusion in Agricultural Law Digest by an authorized editor of Iowa State University Digital Repository. For more information, please contact digirep@iastate.edu.
The statute governing the penalties for failing to file a timely partnership return and pay the tax\[^{10}\] does not state whether that authority applies to “small partnerships” but Rev. Proc. 84-35\[^{12}\] states that such small partnerships “... will be considered to have met the reasonable cause test and will not be subject to the penalty imposed by section 6698 for the failure to file a complete or timely partnership return provided that the partnership, or any of the partners, establishes... that all partners have fully reported their shares of the income, deductions, and credits of the partnership on their timely filed income tax return.”\[^{13}\] That Revenue Procedure has been published verbatim in the Internal Revenue Manual.\[^{14}\]

In the South Dakota case, Battle Flat, LLC v. United States,\[^{15}\] the LLC argued, unsuccessfully, that the court should not enforce Rev. Proc. 84-35\[^{16}\] because revenue procedures do not have the force of law and are not entitled to deference under a U.S. Supreme Court case, Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.\[^{17}\] Also, the Battle Flat’s LLC argued, also unsuccessfully, that the “reasonable cause” exception should be satisfied “... so long as the partners in a “small partnership” file their personal income tax returns at some unspecified future date.”\[^{18}\] The court pointed out that IRS had been rather lenient by choosing not to enforce the late penalty provision against Battle Flat for the 2006 tax year because of Battle Flat’s prior history of compliance.

The essential message in the case

The holding in Battle Flat, LLC v. United States\[^{19}\] should neither come as a surprise nor should it be interpreted as discouraging use of the “small partnership,” one of the greatest opportunities to simplify income tax filing in decades. A fair reading of Rev. Proc. 84-35\[^{20}\] should have provided convincing evidence that the “small partnership” involved in the litigation was not in compliance with the rules and should not prevail in an argument that the members of the entity could decide when their taxes were to be paid.

ENDNOTES


5. CCA 201530019, June 17, 2015.


8. The case before the court and the regulations under I.R.C. § 6231(a)(1)(B). Treas. Reg. § 301.6231(a)(7)-2(b)(1), makes it clear that LLCs are eligible for the “small partnership” exception unless, perhaps, the LLC had elected to be taxed as an association.

9. Id.

10. Id.


14. IRM 20.1.2.3.3.1.


19. Id.

the continued use of consent as a basis of a surcharge, subject to proof of the reasonable and necessary costs incurred by the estate. The court held that the banks had consented to the surcharge in that both banks played a significant part in preserving, liquidating and recovering the collateral through seeking the appointment of the trust and supporting the trustee’s efforts. The court also noted that both banks were aware that the estate assets were insufficient to fully pay the loans and that some value would be lost due to the banks’ refusal to allow cash collateral to be used in the dairy operations. Thus, the court held that the banks consented to the expenses incurred by the trustee in recovering, preserving and liquidating the assets securing the banks’ loans and Section 506(c) allowed the trustee to surcharge the banks’ collateral to cover those expenses. In re Tollenaar Holsteins, 2015 Bankr. LEXIS 3446 (Bankr. E.D. Calif. 2015).

FEDERAL FARM PROGRAMS

AGRICULTURE PRIORITIES AND ALLOCATIONS SYSTEM. The FSA has adopted as final regulations implementing the Agriculture Priorities and Allocations System (APAS). To avoid civilian hardship during national defense emergencies, it may be necessary to regulate the production, processing, storage, and wholesale distribution of food. Through the APAS rule, the USDA will respond to requests to place priority ratings on contracts or orders (establishing priority on which contracts or orders are filled first) for agriculture commodities up through the wholesale levels, including agriculture production equipment, and allocate resources, as specified in the Defense Production Act (DPA) of 1950, as amended, if the necessity arises. FSA is implementing this rule as a way to redirect the agricultural commodities and resources to areas of hardship or potential hardship due to national emergencies. In most cases, there is likely to be no economic impact in filling priority orders because it would generally just be changing the timing in which orders are completed. 80 Fed. Reg. 63890 (Oct. 22, 2015).

FOOD SAFETY. The plaintiffs were tomato producers whose markets for tomatoes were adversely affected by FDA announcements that a salmonella outbreak may be linked to fresh tomatoes. The announcements did not prohibit any sales of tomatoes nor did they quarantine any tomatoes produced by the plaintiffs. However, the sales of fresh tomatoes dramatically decreased during the announcements until the FDA announced that there was no link between any fresh tomatoes and the salmonella outbreak. The plaintiffs filed suit for compensation, alleging that the announcements of a possible link with salmonella resulted in economic impact in filling priority orders because it would generally just be changing the timing in which orders are completed. 80 Fed. Reg. 63890 (Oct. 22, 2015).

For an estate of a decedent dying in calendar year 2016, 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 $1,480,000. Rev. Proc. 2015-53, I.R.B. 2015-44.

INSTALMENT PAYMENT OF ESTATE TAX. For an estate of a decedent dying in calendar year 2016, 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 $1,480,000. Rev. Proc. 2015-53, I.R.B. 2015-44.

PENALTIES. The estate’s decedent died in December 2009 and the decedent’s three heirs were executors of the estate. The heirs contacted the decedent’s lawyer about handling the estate administration but told the lawyer that they assumed that the decedent’s accountant would file the tax returns. The lawyer did suggest that the estate taxes take “as short as a few months or (if an estate tax return is required) as long as [two] years” to complete. In November 2010, the heirs contacted the lawyer about preparing the estate tax return. The lawyer assumed that extensions were obtained by the accountant, but no extensions were filed. The lawyer completed and filed the estate tax return in March 2011 after the due date for the return. The IRS assessed late filing and

FEDERAL ESTATE AND GIFT TAXATION

APPLICABLE EXCLUSION AMOUNT. Estates of decedents who die during 2016 have a basic exclusion amount of $5,450,000, up from a total of $5,430,000 for estates of decedents who died in 2015. Rev. Proc. 2015-53, I.R.B. 2015-44.

GENERATION SKIPPING TRANSFERS. A testamentary trust became irrevocable upon the grantor’s death prior to September 25, 1985. The trust’s beneficiary was the grantor’s son and four children of the son. The trustee had absolute discretion to make distributions of trust income principal to any beneficiary. The trustee petitioned a local court to split the trust into four trusts, each with the son and one child as beneficiaries under the same terms as the original trust. The IRS ruled that the division of the trust into four trusts did not subject the trusts to GSTT. Ltr. Rul. 201543006, June 24, 2015.

GIFTS. For calendar year 2016, the first $14,000 of gifts to any person (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 calendar year 2016, the first $148,000 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. Rev. Proc. 2015-53, I.R.B. 2015-44.

The court held that the announcements of a possible link with salmonella resulted in financial impact in filling priority orders because it would generally just be changing the timing in which orders are completed.
late payment penalties against the estate. The estate argued that it had reasonably relied on the lawyer’s statement that they had two years to file the estate tax return; therefore, the reliance on the lawyer’s advice constituted “reasonable cause” under I.R.C. § 6651(a) to avoid the late filing and late payment penalties. The court held that the lawyer’s comments on the time to file an estate tax return were not specific legal advice as to the time limits for filing an estate tax return; therefore, the estate did not reasonably rely on any legal advice as to the timely filing and payment of the estate taxes. The court noted that the estate failed to seek specific advice as to the filing and payment deadlines when the heirs met with the lawyer at a later date. The court held that the late filing and late payment penalties were properly assessed. West v. Comm’r, 2015-2 U.S. Tax Cas. (CCH) ¶ 60,691 (E.D. Va. 2015).

SPECIAL USE VALUATION. For an estate of a decedent dying in calendar year 2016, 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 § 2032A for purposes of the estate tax cannot exceed $1,110,000. Rev. Proc. 2015-53, I.R.B. 2015-44.

FEDERAL INCOME TAXATION

CHARITABLE ORGANIZATIONS. The taxpayer was an I.R.C. § 501(c)(3) charitable organization. The IRS sent the taxpayer a first revocation letter which gave two reasons for terminating the exempt status of the organization: (1) The taxpayer was not operated exclusively for exempt purposes within the meaning of I.R.C. § 501(c)(3) and Treas. Reg. § 1.501(c)(3)-1(d); the taxpayer did not engage primarily in activities that accomplish one of the exempt purposes in Section 501(c)(3); and more than an insubstantial part of the taxpayer’s activities was in furtherance of an nonexempt purpose. (2) The taxpayer was not operated primarily for a public purpose as is required by I.R.C. § 501(c)(3) and Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) and operated for the benefit of private interests. The IRS noted that the taxpayer does not solicit funds from the general public; does not have any brochures or pamphlets explaining its operations; does not have employees; does not have volunteers; does not have a website; does not have a conflict of interest policy; does not have a document retention and destruction policy; does not have an annual report; does not have audited financial statements; does not have any internal control reports; and two of the taxpayer’s three board members have business relationships with the other board members. Ltr. Rul. 201543019, July 29, 2015.

The taxpayer was an I.R.C. § 501(c)(3) charitable organization. The IRS sent the taxpayer a revocation letter and examination report which terminated the exempt status of the organization. The taxpayer appealed the revocation and a settlement was reached under which the taxpayer agreed to not challenge the termination of exempt status and to pay taxes owed for past years. The taxpayer was allowed to re-apply for the exemption but the IRS rejected the exempt status and issued a new revocation letter. The taxpayer sought to prohibit the IRS from making the first revocation letter public, although the letter was heavily redacted under agreement with the taxpayer. The court held that the first revocation letter was a written determination and, under I.R.C. § 6110(a), was required to be available for public inspection, subject only to the deletions required by I.R.C. § 6110(c). Anonymous v. Comm’r, 145 T.C. No. 10 (Oct. 26, 2015).

DEDUCTIONS. The taxpayer husband was employed and the taxpayer wife owned and operated a business. Both taxpayers owned rental properties. The taxpayers refused to cooperate with an IRS audit and provided few records to substantiate their rental property deductions and business expenses deductions. During the audit, the taxpayers told the agent that the records were on their computer but did not provide the agent with any digital or printed copies of the records. Although the IRS allowed some of the deductions, most were disallowed for lack of substantiation. The taxpayers argued that the agent had access to their records but did not view them on their computer. The court held that the rental and business deductions were properly disallowed for lack of substantiation. The court found that the testimony given by the taxpayers was inconsistent with their original tax returns and failed to overcome the substantiation requirements for deductions. Lawson v. Comm’r, T.C. Memo. 2015-211.

DISASTER LOSSES. On October 15, 2015, the President determined that certain areas in Washington 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 windstorm which began on August 29, 2015. FEMA-4242-DR. On October 20, 2015, the President determined that certain areas in Washington are eligible for assistance from the government under the Act as a result of wildfires and mudslides which began on September 10, 2015. FEMA-4243-DR. Accordingly, taxpayers in the areas may deduct the losses on their 2014 or 2015 federal income tax returns. See I.R.C. § 165(i).

FILING STATUS. The IRS has issued proposed regulations that reflect the holdings of Obergefell v. Hodges, 576 U.S. __, 135 S. Ct. 2584 (2015), Windsor v. United States, 570 U.S. __, 133 S. Ct. 2675 (2013), and Rev. Rul. 2013-17, 2013-2 C.B. 201), and that define terms in the Internal Revenue Code describing the marital status of taxpayers. The proposed regulations primarily affect married couples, employers, sponsors and administrators of employee benefit plans, and executors. The proposed regulations provide that a marriage of two individuals will be recognized for federal tax purposes if that marriage would be recognized by any state, possession, or territory of the United States. Under this rule, whether a marriage conducted in a foreign jurisdiction will be recognized for federal tax purposes depends on whether that marriage would be recognized in at least one state, possession, or territory of the United States. This comports with the general principles of comity where countries recognize actions taken in foreign jurisdictions, but only to the extent those actions do not violate their own laws. Further, no provision of the Code indicates that Congress intended to recognize as marriages civil unions, registered domestic
partnerships, or similar relationships. Accordingly, the IRS will not treat civil unions, registered domestic partnerships, or other similar relationships as marriages for federal tax purposes. 80 Fed. Reg. 64378 (Oct. 23, 2015).

INCOME. The taxpayer husband was employed and the taxpayer wife owned and operated a business. Both taxpayers owned rental properties. The taxpayers refused to cooperate with an IRS audit and the auditing agent was forced to obtain the taxpayers’ bank records by subpoena. Using bank deposit analysis (BDA), the agent determined that the taxpayers had underreported their income for 2011 and 2012. The taxpayers challenged the accuracy of the BDA report and the court did modify several determinations in the report; however, the court refused to completely disregard the BDA report because the taxpayers had failed to assist the agent in identifying any items in the bank records. Lawson v. Comm’r, T.C. Memo. 2015-211.

IRA. During 2008, the taxpayer, a lawyer, was employed with a law firm which provided a qualified retirement plan in which the taxpayer participated. In 2008, the taxpayer also made contributions of $6,000 to an IRA. The taxpayer was over 50 years old and the $6,000 was the maximum contribution allowed. In 2009, the taxpayer was self-employed and the taxpayer made $6,000 in contributions to the IRA designated for 2009. In 2010, the taxpayer made $800 in contributions to the IRA designated for 2010. The IRS disallowed a deduction for the 2009 contribution of $6,000 to the IRA because the taxpayer was a participant in a qualified retirement plan. The taxpayer sought to carry forward the 2008 excess $6,000 contribution to 2009 and carry forward the 2009 excess $6,000 contribution to 2010. Under I.R.C. § 4973(b) an “excess contribution” is determined as if the allowable contribution limit is $6,000 (for taxpayers over 50). The court held that, because the taxpayer contributed $6,000 to the IRA in 2008, no “excess contribution” was made in 2008; therefore, there was no excess contribution to carry forward to 2009 and no further excess existed in 2009 to carry forward to 2010. The court also found no authority for the ability of a taxpayer to carry forward excess contributions as a deduction in later tax years. Dunn v. Comm’r, T.C. Memo. 2015-208.

The IRS has published information reminding taxpayers born before July 1, 1945, that they generally must receive payments from their individual retirement arrangements (IRAs) and workplace retirement plans by Dec. 31. Known as required minimum distributions (RMDs), these payments normally must be made by the end of 2015. But a special rule allows first-year recipients of these payments, those who reached age 70½ during 2015, to wait until as late as April 1, 2016 to receive their first RMDs. This means that those born after June 30, 1944 and before July 1, 1945 are eligible for this special rule. Though payments made to these taxpayers in early 2016 can be counted toward their 2015 RMD, they are still taxable in 2016. The required distribution rules apply to owners of traditional, Simplified Employee Pension (SEP) and Savings Incentive Match Plans for Employees (SIMPLE) IRAs, but not Roth IRAs while the original owner is alive. They also apply to participants in various workplace retirement plans, including 401(k), 403(b) and 457(b) plans. An IRA trustee must either report the amount of the RMD to the IRA owner or offer to calculate it for the owner. Often, the trustee shows the RMD amount on Form 5498 in Box 12b. For a 2015 RMD, this amount is on the 2014 Form 5498 normally issued to the owner during January 2015. The special April 1 deadline only applies to the RMD for the first year. For all subsequent years, the RMD must be made by Dec. 31. So, for example, a taxpayer who turned 70½ in 2014 (born after June 30, 1943 and before July 1, 1944) and received the first RMD (for 2014) on April 1, 2015 must still receive a second RMD (for 2015) by Dec. 31, 2015. The RMD for 2015 is based on the taxpayer’s life expectancy on Dec. 31, 2015, and their account balance on Dec. 31, 2014. The trustee reports the year-end account value to the IRA owner on Form 5498 in Box 5. Use the online worksheets on IRS.gov or find worksheets and life expectancy tables to make this computation in the Appendices to Publication 590-B, Distributions from Individual Retirement Arrangements (IRAs). For most taxpayers, the RMD is based on Table III (Uniform Lifetime Table) in IRS Publication 590-B. So for a taxpayer who turned 72 in 2015, the required distribution would be based on a life expectancy of 25.6 years. A separate table, Table II, applies to a taxpayer whose spouse is more than 10 years younger and is the taxpayer’s only beneficiary. Though the RMD rules are mandatory for all owners of traditional, SEP and SIMPLE IRAs and participants in workplace retirement plans, some people in workplace plans can wait longer to receive their RMDs. Usually, employees who are still working can, if their plan allows, wait until April 1 of the year after they retire to start receiving these distributions. See “Tax on Excess Accumulations” in Publication 575. Employees of public schools and certain tax-exempt organizations with 403(b) plan accruals before 1987 should check with their employer, plan administrator or provider to see how to treat these accruals. IR-2015-122.

INFLATION ADJUSTMENTS. The IRS has announced the 2016 annual inflation adjustments for more than 50 tax provisions, including the tax rate schedules, and other tax changes, including the following dollar amounts: (1) For tax year 2016, the 39.6 percent tax rate affects single taxpayers whose income exceeds $415,050 ($466,950 for married taxpayers filing jointly), up from $413,200 and $464,850, respectively. (2) The standard deduction for heads of household rises to $9,300 for tax year 2016. The other standard deduction amounts for 2016 remain as they were for 2015: $6,300 for singles and married persons filing separate returns and $12,600 for married couples filing jointly. (3) The limitation for itemized deductions to be claimed on tax year 2016 returns of individuals begins with incomes of $259,400 or more ($311,300 for married couples filing jointly). (4) The personal exemption for tax year 2016 rises $50 to $4,050. However, the exemption is subject to a phase-out that begins with adjusted gross incomes of $259,400 ($311,300 for married couples filing jointly). (5) The Alternative Minimum Tax exemption amount for tax year 2016 is $53,900 and begins to phase out at $119,700 ($83,800, for married couples filing jointly) for whom the exemption begins to phase out at $159,700. For tax year 2016, the 28 percent tax rate applies to taxpayers with taxable incomes above $186,300 ($93,150 for married individuals filing separately). (6) The tax year 2016 maximum Earned Income Credit amount is $6,269 for taxpayers filing jointly who have three
or more qualifying children. (7) For tax year 2016, the monthly limitation for the qualified transportation fringe benefit remains at $130 for transportation, but rises to $255 for qualified parking. (8) For tax year 2016 participants who have self-only coverage in a Medical Savings Account, the plan must have an annual deductible that is not less than $2,250, but not more than $3,350. For self-only coverage the maximum out of pocket expense amount remains at $4,450. For tax year 2016 participants with family coverage, the floor for the annual deductible remains as it was in 2015, $4,450; however, the deductible cannot be more than $6,700. For family coverage, the out of pocket expense limit remains at $8,150 for tax year 2016. (9) For tax year 2016, the adjusted gross income amount used by joint filers to determine the reduction in the Lifetime Learning Credit is $111,000. (10) For tax year 2016, the foreign earned income exclusion is $101,300. Rev. Proc. 2015-53, I.R.B. 2015-44.

INNOCENT SPOUSE RELIEF. The IRS had filed for judgment on assessments of taxes owed by the taxpayers, husband and wife. The wife raised the defense of innocent spouse relief. However, the wife had not filed for such relief with the IRS prior to the current litigation. The court held that I.R.C. § 6015 required a taxpayer to first file an innocent spouse relief request with the IRS for a determination before the issue could be appealed to a court. Because the taxpayer wife had not filed a request with the IRS, the court lacked jurisdiction to rule as whether the wife was entitled to such relief from the taxes assessed. United States v. Stein, 2015-2 U.S. Tax Cas. (CCH) ¶ 50,521 (W.D. Ky. 2015).

MEDICAL MARIJUANA. The taxpayer was a family owned corporation which owned and operated a medical marijuana store which was legal under California law. Marijuana could be purchased only with a written recommendation from a physician. The taxpayer claimed various deductions based on expenses incurred in the business but the deductions were disallowed by the IRS under I.R.C. § 280E. The Tax Court cited its decision in Olive v. Comm’r, 2015-2 U.S. Tax Cas. (CCH) ¶ 50,377 (9th Cir. 2015), aff’d, 139 T.C. 19 (2014) (summarized in 2 Agric. L. Dig. 117 (2015)) in holding that I.R.C. § 280E prohibited the deductions for expenses incurred in a business which sold marijuana. Canna Care, Inc. v. Comm’r, T.C. Memo. 2015-206.

PRACTICE BEFORE IRS. Effective for tax returns and claims for refunds prepared and signed after Dec. 31, 2015, the limited right to represent clients before the IRS held by non-credentialed preparers will be accorded to only those preparers participating in the IRS Annual Filing Season Program, a voluntary continuing education program. The changes in the limited representation rules have no impact on returns prepared and signed by non-credentialed preparers on or before Dec. 31, 2015. Non-credentialed tax return preparers who participate in the Annual Filing Season Program will continue to have limited rights to represent clients. This enables them to represent taxpayers whose returns they prepared and signed, but only before revenue agents, customer service representatives, and similar IRS employees, including the Taxpayer Advocate Service. The tax return preparer must participate in the Annual Filing Season Program for both the year of return preparation and the year of representation to represent their client. See also Rev. Proc. 2014-42, 2014-2 C.B. 193. IR-2015-123.

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 several interests in the taxpayer which were bought and sold in the tax year. 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. 201543002, July 22, 2015.

INTEREST IN PARTNERSHIP. The taxpayer was a member of a limited liability company which elected to be taxed as a partnership. In 2002 the taxpayer agreed to relinquish the taxpayer’s interest in the LLC in exchange for a portion of the proceeds of an account sale. The taxpayer received payments from the sale in 2003 and 2004 but the taxpayer did not include the capital gains realized from the sale in income. The court held that, because the payments were made as part of the liquidation of the taxpayer’s interest in the partnership, the taxpayer remained a partner until the final payment was made in 2004. Thus, the taxpayer was liable for the taxpayer’s share of partnership income in 2003 and 2004. The appellate court affirmed in a decision designated as not for publication. Brennan v. Comm’r, 2015-2 U.S. Tax Cas. (CCH) ¶ 50,529 (9th Cir. 2015), aff’d, T.C. Memo. 2012-209.

PENALTIES. For tax years beginning in 2016, the dollar amount used to determine amount of the penalty under I.R.C. § 6698(b)(1) for failure to file a tax return is $195. Rev. Proc. 2015-53, I.R.B. 2015-44.

TAX MATTERS PARTNER. In a Chief Counsel Advice letter, the IRS stated: “According to the facts, all general partners of the partnerships at issue are entities and all such entities have dissolved. Also under the facts, the Service is required to determine the TMP under Treas. Reg. § 301.6231(a)(7)-1(m) as either the partnerships did not properly designate a TMP (by not designating a general partner as TMP) or properly designated a TMP, but such designation terminated under Treas. Reg. § 301.6231(a)(7)-1(l)(1) due to the liquidation or dissolution of the then designated TMP. Treas. Reg. § 301.6231(a)(7)-1(l)(1)(iii). However, under Treas. Reg. § 301(a)(7)-1(o), it is impracticable to apply the rule under Treas. Reg. § 301.6231(a)(7)-1(m)(2) since all general partners are deemed to have no profits interest because of liquidation or dissolution. Treas. Reg. § 301.6231(a)(7)-1(o)(2). Treas. Reg. § 301.6231(a)(7)-1(p)(2) states that if it is impracticable under Treas. Reg. § 301.6231(a)(7)-1(o)(2), the Commissioner will select a partner (including a general or limited partner) as the TMP in accordance with Treas. Reg. § 301.6231(a)(7)-1(q). The Commissioner then needs to notify, within 30 days of the selection, the partner selected, the partnership, and all notice partners of the selection of the TMP, effective as of the date specified in the notice. Treas. Reg. § 301.6231(a)(7)-1(p)(2). Treas. Reg. § 301.6231(a)(7)-1(q)(1) states that if the Commissioner will only select a partner as the TMP if the partner was a partner in the partnership at the close of the taxable year
under examination. Treas. Reg. § 301.6231(a)(7)-1(q)(2) provides
criteria the Commissioner may follow in selecting a partner as the
TMP. Under such criteria, it is recommended the Service obtain
the views of any partners with regard to who the Commissioner
is considering to select as TMP, but obtaining such views are not
required.” CCA 201543018, Sept. 4, 2015.

PENSION PLANS. The IRS has announced the cost of living
adjustments affecting dollar limitations for pension plans and other
retirement-related items for tax year 2016. In general, the pension
plan limitations will not change for 2016 because the increase in
the cost-of-living index did not meet the statutory thresholds
that trigger their adjustment. However, other limitations will change
because the increase in the index did meet the statutory thresholds.
The highlights of limitations that changed from 2015 to 2016
include the following: (1) For an IRA contributor who is not covered
by a workplace retirement plan and is married to someone who
is covered, the deduction is phased out if the couple’s income is
between $184,000 and $194,000, up from $183,000 and $193,000
in 2015. (2) The AGI phase-out range for taxpayers making
contributions to a Roth IRA is $184,000 to $194,000 for married
couples filing jointly, up from $183,000 to $193,000. For singles
and heads of household, the income phase-out range is $117,000
to $132,000, up from $116,000 to $131,000 in 2015. (3) The AGI
limit for the saver’s credit (also known as the retirement savings
contribution credit) for low- and moderate-income workers is
$61,500 for married couples filing jointly, up from $61,000; $46,125
for heads of household; and $30,750 for married individuals
filing separately and for singles. The highlights of limitations that
remain unchanged from 2015 include the following: (1) The
elective deferral (contribution) limit for employees who participate
in 401(k), 403(b), most 457 plans, and the federal government’s
Thrift Savings Plan remains unchanged at $18,000. (2) The catch-up
contribution limit for employees aged 50 and over who participate
in 401(k), 403(b), most 457 plans, and the federal government’s
Thrift Savings Plan remains unchanged at $6,000. (3) The limit
on annual contributions to an Individual Retirement Arrangement
(IRA) remains unchanged at $5,500. The additional catch-up
contribution limit for individuals aged 50 and over is not subject
to an annual cost-of-living adjustment and remains $1,000. (4) The
contribution for taxpayers making contributions to a traditional IRA
is phased out for those who have modified adjusted gross incomes
(AGI) within a certain range. For singles and heads of household
who are covered by a workplace retirement plan, the income phase-
out range remains unchanged at $61,000 to $71,000. For married
couples filing jointly, in which the spouse who makes the IRA
contribution is covered by a workplace retirement plan, the income
phase-out range remains unchanged at $98,000 to $118,000. For
a married individual filing a separate return who is covered by a
workplace retirement plan, the phase-out range is not subject to an
annual cost-of-living adjustment and remains $0 to $10,000. (5) The
AGI phase-out range for a married individual filing a separate
return who makes contributions to a Roth IRA is not subject to an
annual cost-of-living adjustment and remains $0 to $10,000.
(6) Effective January 1, 2016, the limitation on the annual benefit
under a defined benefit plan under Section 415(b)(1)(A) remains
unchanged at $210,000. For a participant who separated from
service before January 1, 2016, the limitation for defined benefit
plans under Section 415(b)(1)(B) is computed by multiplying the
participant’s compensation limitation, as adjusted through 2015,
by 1.0011. (7) The limitation for defined contribution plans under
Section 415(c)(1)(A) remains unchanged in 2016 at $53,000. IR-
2015-118.

SAFE HARBOR INTEREST RATES
November 2015

<table>
<thead>
<tr>
<th>Rate Type</th>
<th>Annual</th>
<th>Semi-annual</th>
<th>Quarterly</th>
<th>Monthly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Short-term</td>
<td>0.49</td>
<td>0.49</td>
<td>0.49</td>
<td>0.49</td>
</tr>
<tr>
<td>Mid-term</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AFR</td>
<td>1.59</td>
<td>1.58</td>
<td>1.58</td>
<td>1.57</td>
</tr>
<tr>
<td>Long-term</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AFR</td>
<td>2.57</td>
<td>2.55</td>
<td>2.54</td>
<td>2.54</td>
</tr>
<tr>
<td></td>
<td>2.83</td>
<td>2.81</td>
<td>2.80</td>
<td>2.79</td>
</tr>
<tr>
<td></td>
<td>3.08</td>
<td>3.06</td>
<td>3.05</td>
<td>3.04</td>
</tr>
</tbody>
</table>


TAX RETURN PREPARERS. The IRS has issued proposed
regulations which sets, effective Nov. 1, 2015, the annual fee for
2016 PTINs which will change from $50 to $33 for both new
applications and renewals. A $17 fee will be charged by a third-
party vendor for new and renewal applications. The IRS will collect
the $33 as a user fee to support program costs and a third-party
vendor will receive $17 to operate the online system and provide
customer support. In preparation for the fee change, PTIN open
season, which normally begins in mid-October, will begin in early
November. PTIN open season is when the IRS begins accepting
renewals and new registrations for the upcoming year. 80 Fed.

RES IPSA LOQUITUR. The plaintiffs were neighbors of
the defendants whose wheat fields were damaged by a fire started in
the defendants’ wheat field during harvesting. The fire apparently
started from a spark from a tractor used to haul the grain cart. The
plaintiffs originally filed a claim for negligent failure to properly
maintain the tractor but switched to a claim in res ipsa loquitur
negligence. The court stated that there are three elements that must
be met for res ipsa loquitur to apply: (1) the occurrence must be one
which would not, in the ordinary course of things, happen in the
absence of negligence; (2) the instrumentality which produces the
occurrence must be under the exclusive control and management
of the alleged wrongdoer; and (3) there must be an absence
of negligence; therefore, the court held that, in Nebraska, as a general rule, the mere occurrence of a fire, with
resultant damage, does not raise a presumption of negligence, unless
the circumstances under which a fire occurs justify the application
of res ipsa loquitur. The court found that a fire can occur during
the harvest of a wheat field without negligence; therefore, the court
held that the first element of the res ipa loquitur doctrine was not
proven in this case and summary judgment was properly granted
The Agricultural Law Press is honored to publish the completely revised and updated 18th 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. This book contains detailed advice on assuring worry-free retirement years, using wills, trusts, insurance and outside investments as estate planning tools, ways to save on estate settlement costs, and an approach to setting up a plan that will eliminate arguments and friction in the family. Federal estate taxation has undergone great changes in recent years and this book sorts out these changes for you in a concise manner. Farm Estate and Business Planning also includes discussion of employment taxes, formation and advantages of use of business entities, federal farm payments, state laws on corporate ownership of farm land, federal gift tax law, annuities, installment obligations, charitable deductions, all with an eye to the least expensive and most efficient transfer of the farm to heirs.

Written with minimum legal jargon and numerous examples, this book is suitable for all levels of people associated with farms and ranches, from farm and ranch families to lenders and farm managers. Some lawyers and accountants circulate the book to clients as an early step in the planning process. We invite you to begin your farm and ranch estate and business planning with this book and help save your hard-earned assets for your children.

The book is also available in digital PDF format for $25; see www.agrilawpress.com for ordering information.