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Cases, Regulations and Statutes

Robert P. Achenbach Jr

Iowa State University

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commodity having a price support value equal to the outstanding value of the loan.\(^6\) If insufficient commodity of acceptable quality is transferred, the debtor is still personally liable for any deficiency.\(^7\)

A debtor in bankruptcy may encounter non-recourse treatment where property subject to recourse debt has been abandoned back to the debtor. The bankruptcy process strips off the recourse debt character and the obligation becomes non-recourse.\(^8\)

**Special attention to LLC debt**

Under the regulations, the debt of a limited liability company (an LLC) is generally characterized as non-recourse for purposes of the partnership regulations.\(^9\) That is because no member of the LLC bears the economic risk of loss for the debt, thanks to limited liability. Four exceptions are recognized for purposes of the partnership regulations.\(^10\)

Although it is not completely clear, it appears that the partnership regulations may not apply to the handling of non-recourse debt under I.R.C. § 108 and 1001. This is discussed in more detail in the July 10, 2015, issue of the *Digest*.\(^11\)

However, even more importantly, although it is not completely clear, it appears that the partnership regulations do not apply to the handling of non-recourse debt under I.R.C. § 108 (income from discharge of indebtedness) and § 1001 (determination of the amount of recognition of gain or loss). That was discussed in some detail in the July 10, 2015 issue of the *Digest*.\(^12\)

**ENDNOTES**


6. 7 C.F.R. § 1421.19(a).

7. 7 C.F.R. § 1421.23(d).

8. Ltr. Rul. 8918016, Jan. 31, 1989 (real property was abandoned back to the debtor with the unsecured portion of the mortgage discharged in bankruptcy; the mortgage, however, survived the bankruptcy).


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### CASES, REGULATIONS AND STATUTES

**by Robert P. Achenbach, Jr**

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**ADVERSE POSSESSION**

**OPEN AND NOTORIOUS USE.** The plaintiffs owned farm land bordering the two properties of the defendants. When the plaintiffs purchased their property in 1999, they discovered that the fence on their property was 50 feet inside their property. The undisputed evidence showed that the prior owners of the defendants’ properties had used the disputed strip as pasture land up to the fence line for more than 10 years. The defendants also included the disputed strip in their use of the property after they purchased their properties. The plaintiffs argued that an exception recognized by the court in Murray v. Bousquet, 280 P. 935 (Wash. 1929) applied because the prior owner of the plaintiffs’ property was an absentee owner. The Murray court held that there was no presumption of an owner’s knowledge of adverse possession where the adverse use of an owner’s property was not readily observable and the owner did not reside on the property. The court ruled that the exception did not apply in this case because the disputed strip was not hidden by geographical obstructions such as woods or mountains. The plaintiffs also argued that their payment of taxes on their full property revested their ownership in the disputed property by adverse possession. The court held that payment of taxes is not an element of adverse possession and was insufficient to destroy the title gained by adverse possession by the prior owners of the defendants’ properties prior to the plaintiffs’ purchase of their property. *Judd v. Johns*, 2016 Wash. App. LEXIS 1358 (Wash. Ct. App. 2016).

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**ANIMALS**

**HORSES.** The plaintiff and friend visited the friend’s horse at
the defendant’s stables. The stable defendant’s security personnel required the plaintiff to obtain and wear a security pass before entering the stables. While walking to the friend’s horse’s stall, a horse owned by a defendant bit the plaintiff. The plaintiff sued the stables and the horse owner for damages but the defendants argued that the Florida Equine Activities Act, Fla. Stat. 773.01 et seq., prohibited suit for injuries incurred while attending an equine activity. The issue was whether the plaintiff’s visit to the stable was an “organized event or activity” as required by the statute’s definition of an “equine activity:” “riding, training, assisting in veterinary treatment of, driving, or being a passenger upon an equine, whether mounted or unmounted, visiting or touring or utilizing an equine facility as part of an organized event or activity, or any person assisting a participant or show management.” The plaintiff argued that because the visit was not planned, it could not be an organized activity. The court disagreed. The court focused on the stable’s requirement that any visitor obtain and wear a security pass. Such requirement indicated that a visit to the stables was an organized activity and the stable was immune from the suit for damages incurred during the visit. Germer v. Churchill Downs Mgmt, 2016 Fla. App. LEXIS 10690 (Fla. Ct. App. 2016).

BANKRUPTCY

GENERAL

DIVORCE JUDGMENT. The debtor was divorced and had entered into a divorce agreement providing for distribution of marital property and debts. Although the debtor had liquidated some property and made payments to the former spouse, the debtor filed for Chapter 12 while several obligations remained under the divorce agreement. The former spouse filed a claim in the bankruptcy case for the full amount of the property settlement and the debtor failed to file an answer to the claim, resulting in a default judgment on the claim against the debtor. Under Sections 523(a)(5) and (15), all debts arising out of divorce proceedings are automatically nondischargeable in bankruptcy. The court held that, because the court could not render any meaningful judgment other than that provided by Sections 523(a)(5) and (15), the former spouse did not have standing to make a motion in the debtor’s bankruptcy case; therefore, the default judgment was vacated for lack of jurisdiction. Valdivia v. Hauk, 2016 U.S. Dist. LEXIS 93700 (E.D. Mich. 2016), vac’g, 540 B.R. 621 (Bankr. E.D. Mich. 2015).

CHAPTER 12

PLAN. The Chapter 12 debtor’s plan treated a domestic court obligation to the debtor’s former wife as an allowed secured claim rather than as a domestic support obligation that must be repaid before the plan could be confirmed. In a post-divorce settlement agreement entered into prior to the filing for bankruptcy, the former spouse had agreed to reduce the debt from $106,000 to $88,000 that was payable in full on November 1, 2014. That agreement was a novation that replaced the parties’ original divorce property settlement. The new agreement stripped the debt of its domestic support obligation character and excused the debtor from having to pay it in full as a prerequisite to confirmation. The Chapter 12 plan offered to repay the debt over 20 years with interest, extending an obligation which was currently overdue in full. The court noted that the debtor had been behind in payments under the original divorce agreement and had not made any payments for more than four years. The court first held that the new agreement was no longer a domestic support obligation because the agreement did not include provisions for the death or remarriage of the former spouse or for failure to make support payments. The court held that the plan could not be confirmed because it was not proposed in good faith since (1) the debtor had not made any payments for over four years; (2) the final payments would not be made until more than 14 years after the new agreement’s payment date; and (3) the plan did not provide a rate of interest at least equal to the interest paid for other secured creditors. In re Krier, 2016 Bankr. LEXIS 1872 (Bankr. D. Kan. 2016).

FEDERAL TAX

DISCHARGE. The debtor failed to file an income tax return for 2001 and the IRS filed a notice of deficiency in 2006 based on a substitute return constructed from third party information. After the debtor failed to appeal the deficiency notice, the IRS assessed taxes based on the substitute return later in 2006. In May 2009 the debtor filed the 2001 return, in December 2011 the debtor filed for Chapter 7, and in May 2012 the debtor received a discharge. The Bankruptcy Court had held that the untimely filed return was sufficient to meet the requirements of Section 523(a)(1)(B)(i) because it was a complete and valid, although untimely filed, return. The appellate court reversed, holding that a post-assessment return filed years after the IRS assessed the taxes and began collection activities was not a return which met the requirements of Section 523(a)(1)(B)(i); therefore, the taxes were nondischargeable. The appellate court affirmed. In re Smith, 2016-2 U.S. Tax Cas. (CCH) ¶ 50,341 (9th Cir. 2016), aff’g, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,274 (N.D. Calif. 2014).

FEDERAL FARM PROGRAMS

No Items.

FEDERAL ESTATE AND GIFT TAXATION

GIFTS. The grantor created an irrevocable trust, for the benefit of the grantor and the other beneficiaries. During the grantor’s lifetime, the corporate trustee must distribute such amounts of net income and principal to any of the beneficiaries as directed by a distribution committee and/or the grantor, as follows: (1) At any time, the trustee, pursuant to the direction of a majority of the distribution committee, with the written consent of the grantor, shall distribute to any of the beneficiaries such amounts of the net income or principal of the trust. (2) At any time, the trustee, pursuant to the direction of all distribution committee members, shall distribute
to the beneficiaries such amounts of the net income. (3) At any
time, the trustee, shall distribute to any of the beneficiaries, other
than the grantor, all or any portion of the principal of the trust
directly for the health, education, maintenance, or support of the
beneficiaries as directed by the grantor. The grantor’s exercise of
grantor’s distribution power shall be exercisable in a nonfiduciary
capacity. The distribution committee may direct that distributions
be made equally or unequally and to or for the benefit of any one
or more of the beneficiaries to the exclusion of others. Any net
income not distributed by the trustee will be accumulated and
added to principal. The trust provides that at all times there must
be at least two members of the distribution committee. If at any
time there are fewer than two individuals serving on the distribution
committee, then the distribution committee shall be deemed not to
exist. The grantor shall not serve as a member of the distribution
committee. The distribution committee shall consist of two adults
other than the grantor who are also beneficiaries. The distribution
committee members also act in a nonfiduciary capacity. A vacancy
on the distribution committee must be filled in the following order:
the grantor’s father, the grantor’s son, and the grantor’s daughter.
Upon the grantor’s death, the trust shall terminate and the remaining
balance of the trust shall be distributed to or for the benefit of any
person, other than the grantor’s estate, the grantor’s creditors, or
the creditors of the grantor’s estate, as the grantor may appoint
by will. In default of the exercise of this limited power to appoint
by the grantor, the balance of trust property will be divided into
equal shares and distributed either outright or in trust to or for the
grantor’s named individuals.

The IRS ruled that the contribution of property to the trust was
not a completed gift; any distribution by the committee to the
grantor was a return of property and not a gift; any distribution by
the committee to a beneficiary was not a gift by a member of the
committee; any distribution to a beneficiary was a completed gift
by the grantor; and at the grantor’s death, the grantor’s interest in
the trust was included in the grantor’s estate but not the estate of
any committee member. Ltr. Rul. 201628010, April 11, 2016.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. A farmer does not report the value
of farm produce consumed personally as income, and expenses incurred
by the farmer in producing the food consumed by the family are not deductible for expenses involved in producing
food for personal consumption. Usually, a farm taxpayer omits
deductions for expenses involved in producing food for personal
consumption. The omission of such expenses permits the farmer
to include on the tax return only those expenses connected with
commercial agriculture. Some agricultural colleges determine an
estimated cost that is widely used in adjusting farm expenses for
the value of family consumed farm products. Such estimates are
generally accepted. The taxpayer is usually well advised to accept
the estimate if acceptable to IRS, unless the taxpayer can verify
a higher estimated cost. The estimated deductible costs for use in
adjusting farm expenses to exclude the cost of producing home-
consumed farm produce on 2015 income tax returns as issued
by the Iowa State University Extension Service are as follows:
Pork: $37.00 per 100 lbs. liveweight
Beef: $108.00 per 100 lbs. liveweight
Lamb: $69.00 per 100 lbs. liveweight
Broilers: $1.40 per 4 pound bird
Eggs: $0.58 per dozen
Milk: $12.61 per 100 lbs. or $1.08 per gallon

Plastina, FM 1421, Iowa State University, Nov. 2015.

CASUALTY LOSS. The taxpayer was a shareholder in a
cooperative housing corporation and leased an apartment
in a building owned by the corporation under an entitlement
established by the taxpayer’s ownership of the stock. A retaining
wall owned by the corporation collapsed and the corporation
assessed all shareholders their share of the costs of the collapse.
The taxpayer claimed a casualty deduction for the taxpayer’s
share of the assessment. The Tax Court initially held that the
taxpayer was not entitled to a casualty loss deduction because
the taxpayer did not own the property which was damaged by
the collapse. On appeal, the appellate court reversed, holding
that the taxpayer had a sufficient ownership interest to claim a
casualty deduction. On remand to the Tax Court, the court again
denied the deduction but held that the collapse of the wall was
caused by gradual erosion; therefore, no casualty loss deduction
was allowed. Alphonso v. Comm’r, T.C. Memo. 2016-130,
on rem. from, 708 F.3d 344 (2d Cir. 2013), vac’g and rem’g,

CHARITABLE ORGANIZATIONS. The IRS has issued
proposed regulations relating to the requirement, added by the
Protecting Americans from Tax Hikes Act of 2015, Pub. L.
114-113, div. Q, that organizations must notify the IRS of their
intent to operate under I.R.C. § 501(c)(4). The notification must
be submitted on Form 8976, Notice of Intent to Operate Under
Section 501(c)(4). I.R.C. § 501(c)(4) describes certain civic
leagues or organizations operated exclusively for the promotion
of social welfare and certain local associations of employees.

CORPORATIONS

MERGERS. The IRS has issued a revenue procedure which
provides examples of distributions of stock of a controlled
corporation to the shareholders of the controlling corporation
which will not be challenged by the IRS as lacking substance.
I.R.C. § 355(a)(1) provides that, if certain requirements are met,
a corporation may distribute stock and securities of a controlled
corporation to its shareholders and security holders without
recognition of gain or loss by the shareholders or security
holders. I.R.C. § 355(a)(1)(A) provides that, for a distribution to
qualify for nonrecognition treatment, the distributing corporation
must distribute stock or securities of a corporation (the controlled
corporation) it controls immediately before the distribution. For
this purpose, “control” is defined by cross-reference to I.R.C. §
368(c) as ownership of stock possessing at least 80 percent of
the total combined voting power of all classes of stock entitled
to vote and at least 80 percent of the total number of shares of
each other class of stock of the corporation. Under Rev. Rul.
56-117, 1956-1 C.B. 180 and Rev. Rul. 69-407, 1969-2 C.B. 50, the control requirement of I.R.C. § 355(a)(1)(A) may be satisfied by an acquisition of control that occurs immediately before a distribution for the purpose of qualifying the distribution under § 355. As illustrated in Rev. Rul. 63-260, 1963-2 C.B. 147, an acquisition of control by the distributing corporation is not respected for purposes of I.R.C. § 355(a)(1)(A) if it is transitory or illusory. The acquisition of control must have substance under general federal tax principles. The revenue procedure applies to transactions in which (1) D owns C’s stock not constituting control of C; (2) C issues shares of one or more classes of stock to D and/or to other shareholders of C (the issuance), as a result of which D owns C stock possessing at least 80 percent of the total combined voting power of all classes of C stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of C; (3) D distributes its C stock in a transaction that otherwise qualifies under I.R.C. § 355 (the distribution); and (4) C subsequently engages in a transaction that, actually or in effect, substantially restores (a) C’s shareholders to the relative interests, direct or indirect, they would have held in C (or a successor to C) had the issuance not occurred; and/or (b) the relative voting rights and value of the C classes of stock that were present prior to the issuance (an unwind). The IRS will not assert that a transaction described above lacks substance, and that, therefore, D lacked control of C immediately before the distribution, within the meaning of I.R.C. § 355(a)(1)(A), if the transaction is also described in one of the following safe harbors: No Action Taken Within 24 Months. No action is taken (including the adoption of any plan or policy), at any time prior to 24 months after the distribution, by C’s board of directors, C’s management, or any of C’s controlling shareholders (as defined in Treas. Reg. § 1.355-7(b)(3)) that would (if implemented) actually or effectively result in an unwind. Unanticipated Third Party Transaction. C engages in a transaction with one or more persons (for example, a merger of C with another corporation) that results in an unwind, regardless of whether the transaction takes place more or less than 24 months after the distribution, provided that:- (1) There is no agreement, understanding, arrangement, or substantial negotiations (within the meaning of Treas. Reg. § 1.355-7(b)(1)) or discussions (within the meaning of Treas. Reg. § 1.355-7(h)(6)) concerning the transaction or a similar transaction (applying the principles of Treas. Reg. § 1.355-7(h) (12) and (13), relating to similar acquisitions), at any time during the 24-month period ending on the date of the distribution; and (2) no more than 20 percent of the interest in the other party, in vote or value, is owned by the same persons that own more than 20 percent of the stock of C. Rev. Proc. 2016-40, I.R.B. 2016-31.

The IRS has issued proposed regulations that would amend I.R.C. § 355 to provide additional guidance regarding the device prohibition of I.R.C. § 355(a)(1)(B) and provide a minimum threshold for the assets of one or more active trades or businesses, within the meaning of I.R.C. § 355(a)(1)(C) and (b), of the distributing corporation and each controlled corporation (in each case, within the meaning of I.R.C. § 355(a)(1)(A)). REG-134016-15, 81 Fed. Reg. 46004 (July 15, 2016).

DISASTER PAYMENTS. The Southern California Gas Company was required by the state of California to pay to or on behalf of residents the costs of temporary relocation of the residents because of a natural gas leak in their area. The IRS has announced that residents who received these relocation payments do not have to include them in gross income. However, family and friends who received these payments from or on behalf of the relocated residents are required to include the payments in income unless the payments are otherwise excludible under I.R.C. § 280A (relating to the exclusion for rental income from a taxpayer’s residence for less than 15 days during the taxable year). Ann. 2016-25, I.R.B. 2016-31.

HEALTH INSURANCE. The IRS has published information about the treatment of seasonal employees for purposes of the Affordable Care Act (ACA). For purposes of the ACA, an employer’s size is determined by the number of its employees. Employer benefits, opportunities and requirements are dependent upon the employer’s size and the applicable rules. If an employer has at least 50 full-time employees, including full-time equivalent employees, on average during the prior year, the employer is an ALE for the current calendar year. However, there is an exception for seasonal workers. If an employer has at least 50 full-time employees, including full-time equivalent employees, on average during the prior year, the employer organization is an ALE. Here’s the exception: If an employer workforce exceeds 50 full-time employees for 120 days or fewer during a calendar year, and the employees in excess of 50 during that period were seasonal workers, the employer is not considered an ALE. For this purpose, a seasonal worker is an employee who performs labor or services on a seasonal basis. The terms “seasonal worker” and “seasonal employee” are both used in the employer shared responsibility provisions, but in two different contexts. Only the term “seasonal worker” is relevant for determining whether an employer is an applicable large employer subject to the employer shared responsibility provisions. For information on the difference between a seasonal worker and a seasonal employee under the employer shared responsibility provisions see the IRS.gov Questions and Answers page. Health Care Tax Tip 2016-61.

The IRS has published information about the tax issues that affect taxpayers when they marry. Name change. The names and Social Security numbers on the tax return must match the Social Security Administration records. If a the taxpayer changes a name, report it to the SSA by filing Form SS-5, Application for a Social Security Card. Change tax withholding. A change in marital status means taxpayers must give their employer a new Form W-4, Employee’s Withholding Allowance Certificate. If the the taxpayer and spouse both work, their combined incomes may move them into a higher tax bracket or they may be affected by the Additional Medicare Tax. Use the IRS Withholding Calculator tool at IRS.gov to help you complete a new Form W-4. Changes in circumstances. If a taxpayer or spouse purchased a Health Insurance Marketplace plan and receive advance payments of the premium tax credit in 2016, it is important that the taxpayer report changes in circumstances, such as changes in income or family size, to the Health Insurance Marketplace. Taxpayers should also notify the Marketplace when they move out of the area covered by their current Marketplace plan. Advance credit payments are paid directly to the insurance company on the taxpayer’s behalf to lower the out-of-pocket cost paid for your health insurance.
premiums. Reporting changes now will help the taxpayer get the proper type and amount of financial assistance so the taxpayer can avoid getting too much or too little in advance, which may affect the refund or balance due when the taxpayer files the tax return. Address change. Taxpayers should let the IRS know about any address changes. To do that, send the IRS Form 8822, Change of Address. Taxpayers should also notify their Health Insurance Marketplace if they move out of the area covered by their current health care plan. Tax filing status. If a taxpayer is married as of Dec. 31, that’s your marital status for the whole year for tax purposes. A taxpayer and spouse can choose to file the federal income tax return either jointly or separately each year. Taxpayers may want to figure the tax both ways to find out which status results in the lowest tax. IRS Summertime Tax Tip 2016-08.

HOBBY LOSSES. The taxpayers, husband and wife, owned 176 rural acres, originally purchased to raise cattle; however, no cattle were ever raised on the property. After the taxpayers decided not to raise cattle, they intended to develop the property as a deer hunting preserve. Those plans were also cancelled for liability reasons. The taxpayer did file Schedules F for the tax years involved, claiming income only from a conservation easement granted on a portion of the property which prevented the planting of any crops. The taxpayers then made improvements on the land with the intent to operate a resort on the land. Significant improvements were made but the taxpayers did not market the resort and received only small fees from occasional use of some of the camping sites. The court held that the cattle activity, deer preserve and resort activity were not operated with the intent to make a profit because (1) the activities were not operated in a businesslike manner in that the taxpayer failed to maintain records sufficient to analyze the profit potential of the activities and had no business plan; (2) the taxpayers raised no deer or cattle; (3) the taxpayers had no expertise in operating any of the activities; (4) the taxpayers did not spend much time developing the activities; (5) the taxpayers had not successfully carried on other similar businesses; (6) the activities did not produce any income except from the unrelated conservation easement; (7) the taxpayers received personal enjoyment and recreation from the land improvements; and (8) the losses offset substantial income from other activities. Embroidery Express, LLC v. Comm’r, T.C. Memo. 2016-136.

INNOCENT SPOUSE RELIEF. The taxpayer and former spouse filed joint returns for 2007, 2008 and 2009. The former spouse owned and operated a construction company in which the taxpayer functioned as the bookkeeper for over 20 years with full knowledge of the company finances. The taxpayer presented the annual financial information to the couple’s CPA who prepared the 2007, 2008 and 2009 income tax returns. In 2009, the taxpayer also owned and operated a horse boarding activity on a farm the couple owned. The IRS filed notices of deficiencies for 2007 and 2008 based on underreporting of income from the construction business and 2009 for underreporting of income from the horse boarding business. The couple divorced in 2010 and the taxpayer sought innocent spouse relief from the tax deficiencies, but the IRS denied the relief. The court denied relief under I.R.C. § 6015(b)(1) because the taxpayer had full and actual knowledge of the underreporting of income from both businesses. Similarly, the court denied relief under I.R.C. § 6015(c) because the taxpayer had actual knowledge of the underreporting of income from both businesses. Finally, the court denied relief under the equitable relief procedures of I.R.C. § 6015(f) because (1) the understatement of income for 2009 was attributable to the horse business owned and operated by the taxpayer; (2) for 2007 and 2008, the taxpayer had knowledge of the underreported income from the construction business; (3) for 2007 and 2008 the taxpayer had received benefits from the construction business income by writing checks on the company account to pay for the horse business expenses; and (4) the taxpayer was under no disability when the returns for 2007 and 2008 were signed. Armour v. Comm’r, T.C. Memo. 2016-129.

PARTNERSHIPS

ELECTION TO ADJUST BASIS. The taxpayer was a limited liability company which elected to be taxed as a partnership. A member of the taxpayer died during the tax year but the taxpayer failed to make a timely election under I.R.C. § 754 to adjust the partnership basis in partnership property. The IRS granted an extension of time to file an amended return with the election. Ltr. Rul. 201629002, March 15, 2016.

PENSION PLANS. For plans beginning in July 2016 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 2.45 percent. The 30-year Treasury weighted average is 3.03 percent, and the 90 percent to 105 percent permissible range is 2.72 percent to 3.18 percent. The 24-month average corporate bond segment rates for July 2016, without adjustment by the 25-year average segment rates are: 1.51 percent for the first segment; 3.86 percent for the second segment; and 4.86 percent for the third segment. The 24-month average corporate bond segment rates for July 2016, taking into account the 25-year average segment rates, are: 4.43 percent for the first segment; 5.91 percent for the second segment; and 6.65 percent for the third segment. Notice 2016-46, I.R.B. 2016-31.

SAFE HARBOR INTEREST RATES

August 2016

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</table>


SALE OF RESIDENCE. The taxpayers, husband and wife with one small child, purchased a residence with two bedrooms. The second bedroom was used as a home office and guest bedroom. After the purchase of the residence, the wife became
pregnant and gave birth to a second child. Within two years of buying the residence, the taxpayers sold the first residence and purchased a second, larger residence. The taxpayer sought permission to use the reduced maximum exclusion of gain from the sale and repurchase of the residences. I.R.C. § 121(a) provides that gain from the sale or exchange of property is not included in gross income if, during the 5-year period ending on the date of the sale or exchange, the taxpayer has owned and used the property as the taxpayer’s principal residence for periods aggregating two years or more. I.R.C. § 121(b)(1) provides the general rule for the maximum exclusion of gain. I.R.C. § 121(b)(3) provides that I.R.C. § 121(a) shall not apply to any sale if, during the 2-year period ending on the date of the sale, there was any other sale or exchange by the taxpayer to which subsection (a) applied. I.R.C. § 121(c) provides for a reduced maximum exclusion when a taxpayer fails to satisfy the ownership and use requirements of I.R.C. § 121(a) if the primary reason for the sale is the occurrence of unforeseen circumstances. The reduced maximum exclusion is computed by multiplying the applicable maximum exclusion by a fraction, the numerator of which is the shortest of the following periods: (1) the period of time that the taxpayer owned the property during the 5-year period ending on the date of the sale; (2) the period of time that the taxpayer used the property as the taxpayer’s principal residence during the 5-year period ending on the date of the sale; or (3) the period of time between the date of a prior sale or exchange of property for which the taxpayer excluded gain under I.R.C. § 121 and the date of the current sale. The numerator of the fraction may be expressed in days or months. The denominator of the fraction is 730 days or 24 months (depending on the measure of time used in the numerator). Treas. Reg. § 1.121-3(b) provides that all the facts and circumstances of a sale will determine whether the primary reason for the sale is the occurrence of unforeseen circumstances. Factors that may be relevant in determining the primary reason for a sale include the following: (1) the suitability of the property as the taxpayer’s residence materially changes; (2) the circumstances giving rise to the sale are not reasonably foreseeable when the taxpayer begins using the property as the taxpayer’s principal residence; and (3) the circumstances giving rise to the sale occur during the period of the taxpayer’s ownership and use of the property as the taxpayer’s principal residence. Treas. Reg. § 1.121-3(e)(1) provides that a sale is by reason of unforeseen circumstances if the primary reason for the sale is the occurrence of an event that the taxpayer could not reasonably have anticipated before purchasing and occupying the residence. Treas. Reg. § 1.121-3(e)(3) states that the Commissioner may issue rulings addressed to specific taxpayers identifying events or situations as unforeseen circumstances with regard to those taxpayers. In this case, the IRS ruled that the occurrence of unforeseen circumstances was the primary reason for the sale and that the suitability of the first residence materially changed. Accordingly, the gain on the sale of the first residence, which the taxpayers owned and used as a principal residence for less than two of the preceding five years, may be excluded under the reduced maximum exclusion of gain in I.R.C. § 121(c). Ltr. Rul. 201628002, April 11, 2016.
AGRICULTURAL TAX SEMINARS

by Neil E. Harl

See page 127 above for 2016 cities and dates.

Join us for expert and practical seminars on the essential aspects of agricultural tax law. Gain insight and understanding from one of the country’s foremost authorities on agricultural tax law. The seminars will be held on two days from 8:00 am to 5:00 pm. Registrants may attend one or both days. On the first day, Dr. Harl will speak about farm and ranch estate and business planning. On the second day, Dr. Harl will cover farm and ranch income tax. Your registration fee includes written comprehensive annotated seminar materials for the days attended and lunch. A discount ($25/day) is offered for attendees who elect to receive the manuals in PDF format only (see registration form online for use restrictions on PDF files).

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
Gifts to charity with a retained life estate

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
Corporate-to-LLC conversions

New regulations for LLC and LLP losses
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

Second day

FARM INCOME TAX

New Legislation
Reporting Farm Income
Constructive receipt of income
Deferred payment and installment payment arrangements for grain and livestock sales
Using escrow accounts
Payments from contract production
Items purchased for resale
Items raised for sale
Leasing land to family entity
Crop insurance proceeds
Weather-related livestock sales
Sales of diseased livestock

Reporting federal disaster assistance benefits
Gains and losses from commodity futures, including consequences of exceeding the $5 million limit

Claiming Farm Deductions
Soil and water conservation expenditures
Fertilizer deduction election
Depreciating farm tile lines
Farm lease deductions
Prepaid expenses
Preproductive period expense provisions
Regular depreciation, expense method depreciation, bonus depreciation
Repairs and Form 3115; changing from accrual to cash accounting
Paying rental to a spouse
Paying wages in kind

PPACA issues including scope of 3.8 percent tax

Sale of Property
Income in respect of decedent
Sale of farm residence
Installment sale including related party rules
Private annuity
Self-canceling installment notes
Sale and gift combined.

Like-Kind Exchanges
Requirements for like-kind exchanges
“Reverse Starker” exchanges
What is “like-kind” for realty
Like-kind guidelines for personal property
Partitioning property
Problems in Exchanges of partnership assets

Taxation of Debt
Turnover of property to creditors
Discharge of indebtedness
Taxation in bankruptcy.

Self-employment tax
Meaning of “business”

The seminar registration fees for each of multiple registrations from the same firm and for current subscribers to the Agricultural Law Digest, the Agricultural Law Manual, or Farm Estate and Business Planning are $225 (one day) and $400 (two days). The early-bird registration fees for nonsubscribers are $250 (one day) and $450 (two days). Nonsubscribers may obtain the discounted fees by purchasing any one or more of our publications. See www.agrilawpress.com for online book and newsletter purchasing.

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