Cases, Regulations and Statutes

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The Internal Revenue Code language. As noted above, the statutory language states as follows in I.R.C. § 6231(a)(1)(B) –

“Exception for Small Partnerships—

“(i) In general.—The term “partnership” shall not include any partnership having 10 or fewer partners each of whom is an individual (other than a nonresident alien) a C corporation or an estate of a deceased partner. For purposes of the preceding sentence, a husband and wife (and their estates) shall be treated as 1 partner.

“(ii) Election to have subchapter apply.—A partnership (within the meaning of subparagraph (A)) may for any taxable year elect to have clause (i) not apply. Such election shall for such taxable year and all subsequent taxable years unless revoked with the consent of the Secretary.”

Anyone who can read the English language should be able to master that clearly stated subsection.

Article in Tax Notes. In the August 15, 2016 issue of Tax Notes, a highly respected tax publication, the article noted the compelling evidence that tax counsel, taxpayers, the Internal Revenue Service and about everyone except for the staff of the Joint Committee on Taxation knew about the concept and were somehow involved in making use of the concept. As stated in the article, “[F]inally, it became clear that the resistance (on the part of JCT) was based not so much on continuing ignorance as on some deep-seated antagonism toward a concept that collided somehow involved in making use of the concept. As stated in the article, “[F]inally, it became clear that the resistance (on the part of JCT) was based not so much on continuing ignorance as on some deep-seated antagonism toward a concept that collided with what the committee [JCT] had been peddling for years.”

The Internal Revenue Service had demonstrated its awareness of the concept by publishing the January 2016 edition of IRS Publication 541, Partnerships, at Page 13, which details the opportunities to make use of the “small partnership” exception and by reproducing Revenue Procedure 84-35 in the Internal Revenue Manual for use by IRS agents nationwide. Also, more than 20 court cases have been litigated dealing with various aspects of the “small partnership,” mainly who would be eligible to use the concept.

To sum up

It would be a shame to lose the most important example of tax simplification in the past 50 years, which does not reduce revenue for the United States Treasury, just to placate a small group of tax practitioners who worry about their bottom line. It is well known that, with the “small partnership” exception, most taxpayers can file their own federal tax return (Form 1040) with the income, losses and credits passed through to the appropriate schedule of Form 1040 with no Form 1065 needing to be filed, thus escaping the penalties often levied on Form 1065 filers for incomplete or incorrect entries on the form.

It recalls the adage that professionals should focus on what is in their client’s best interests, not on what is in the professional’s best interests.

To save the “small partnership” exception, as is eminently justified, it is imperative that every member of Congress become familiar with the concept and that the importance of the provision to most small farmers and ranchers as well as others running small businesses become more widely (and favorably) known. It is not limited to farm and ranch taxpayers.

ENDNOTES

1 The statute is nine lines in the Internal Revenue Code and is located in I.R.C. § 6231(a)(1)(B).


4 A 1997 amendment allowed C corporations to be eligible members.


6 1984-1 C.B. 509.

7 IRM 20.1.2.3.1.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

HORSES. The plaintiff was injured when the plaintiff’s vehicle struck a horse owned by one of the defendants. The horse had escaped from a farm owned by the other defendants. The plaintiff sued in common-law negligence and strict liability and the horse owner sought and obtained summary judgment in the trial court. The evidence demonstrated that the horse was under the control and care of the stable owners at the time of the accident and the horse owner had last visited the farm four days before the accident. On appeal, the appellate court stated that negligence required some action by the defendant that resulted in the horse being on the highway. Because the horse was under the exclusive control of the farm owners, no negligence could be attributed to the horse owner defendant. In addition, the doctrine of res ipsa liquitur did not apply because the farm owners had exclusive control over the horse at the time of the accident. The court also upheld the grant of summary judgment on the claim of strict liability because there was no evidence that the horse owner had any knowledge of the horse’s propensity to escape or otherwise be vicious. The court noted that there was no evidence of prior escapes or that the horse had ever attempted to break out of its stall. O’Hara v. Holiday Farm, 2017 N.Y. App. Div. LEXIS 767 (N.Y. App. Div. 2017).
ORGANIC FOOD. The AMS has announced that, under the memorandum of January 20, 2017, to the heads of executive departments and agencies from the Assistant to the President and Chief of Staff entitled “Regulatory Freeze Pending Review,” the effective date for the following interim regulations have been extended to May 19, 2017. The AMS has adopted as final regulations which amend the organic livestock and poultry production regulations by adding new provisions for livestock handling and transport for slaughter and avian living conditions, and expanding and clarifying existing requirements covering livestock health care practices and mammalian living conditions. Specifically, the regulations: (1) clarify how producers and handlers must treat livestock and poultry to ensure their health and wellbeing; (2) clarify when and how certain physical alterations may be performed on organic livestock and poultry in order to minimize stress; (3) set maximum indoor and outdoor stocking density for avian species, which would vary depending on the type of production and stage of life; (4) define outdoor access to exclude the use of structures with solid roofing for outdoor access and require livestock and poultry to have contact with soil; (5) add new requirements for transporting livestock and poultry to sale or slaughter; and (6) clarify the application of FSIS requirements regarding the handling of livestock and poultry in connection with slaughter to certified organic livestock and poultry establishments and provide for the enforcement of USDA organic regulations based on FSIS inspection findings. 82 Fed. Reg. 9967 (Feb. 9, 2017).

PACKERS AND STOCKYARDS ACT. The GIPSA has announced that, under the memorandum of January 20, 2017, to the heads of executive departments and agencies from the Assistant to the President and Chief of Staff entitled “Regulatory Freeze Pending Review,” the comment period and effective date for the following interim regulations have been extended to April 22, 2017. The GIPSA has issued interim final regulations amending the regulations issued under the Packers and Stockyards Act, 1921, as amended and supplemented (P&S Act). The new regulations add a paragraph addressing the scope of sections 202(a) and (b) of the P&S Act. This rule clarifies that conduct or action may violate sections 202(a) and (b) of the P&S Act without adversely affecting, or having a likelihood of adversely affecting, competition. The new rule reiterates USDA’s longstanding interpretation that not all violations of the P&S Act require a showing of harm or likely harm to competition. The regulations would specifically provide that the scope of section 202(a) and (b) encompasses conduct or action that, depending on their nature and the circumstances, can be found to violate the P&S Act without a finding of harm or likely harm to competition. 82 Fed. Reg. 9489 (Feb. 7, 2017).

The GIPSA has announced that, under the memorandum of January 20, 2017, to the heads of executive departments and agencies from the Assistant to the President and Chief of Staff entitled “Regulatory Freeze Pending Review,” the comment period for the following interim regulations has been extended by 30 days. The GIPSA has issued proposed regulations which amend the regulations issued under the Packers and Stockyards Act, 1921, as amended and supplemented (P&S Act). The proposed amendments would identify criteria that the Secretary may consider when determining whether a poultry dealer’s use of a poultry grower ranking system for ranking poultry growers for settlement purposes is unfair, unjustly discriminatory, or deceptive or gives an undue or unreasonable preference, advantage, prejudice, or disadvantage. The proposed amendments would also clarify that absent demonstration of a legitimate business justification, failing to use a poultry grower ranking system in a fair manner after applying the identified criteria is unfair, unjustly discriminatory, or deceptive and a violation of section 202(a) of the P&S Act regardless of whether it harms or is likely to harm competition. 82 Fed. Reg. 9533 (Feb. 7, 2017).

FEDERAL ESTATE AND GIFT TAXATION

PORTABILITY. The decedent died, survived by a spouse, on a date after the effective date of the amendment of I.R.C. § 2010(c), which provides for portability of a “deceased spousal unused exclusion” (DSUE) amount to a surviving spouse. The decedent’s estate did not file a timely Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The estate represented that the value of the decedent’s gross estate was less than the basic exclusion amount in the year of the decedent’s death including any taxable gifts made by the decedent. The IRS granted the estate an extension of time to file Form 706 with the election. Ltr. Rul. 201704004, Oct. 13, 2016; Ltr. Rul. 201704006, Oct. 17, 2016; Ltr. Rul. 201704008, Oct. 17, 2016; Ltr. Rul. 201704009, Oct. 17, 2016; Ltr. Rul. 201704010, Sept. 26, 2016; Ltr. Rul. 201704011, Oct. 5, 2016 Ltr. Rul. 201704012, Oct. 3, 2016.

FEDERAL INCOME TAXATION

C CORPORATIONS.

RETURNS. The IRS has announced: “A new revision of the Instructions for Form 7004, updated in the last few days at IRS.gov/LatestForms, correctly reflects that calendar year C corporations are eligible for an automatic 6-month extension of time to file their income tax returns. Although Internal Revenue Code section 6081(b) provides a 5-month automatic extension period for calendar year C Corporations, the IRS is granting a 6-month automatic extension under section 6081(a) instead. This change is reflected in the new revision of the Instructions for Form 7004. The IRS wants to reassure the tax professional community that the information is correct in the Form 7004 instructions regarding the
The limits may reduce or eliminate a taxpayer’s credit depending on their filing status and income. *Additional Child Tax Credit.* If a taxpayer qualifies and gets less than the full child tax credit, the taxpayer could receive a refund, even if they owe no tax, with the additional child tax credit. Because of a new tax-law change, the IRS cannot issue refunds before Feb. 15 for tax returns that claim the EITC or the ACTC. This applies to the entire refund, even the portion not associated with these credits. The IRS will begin to release EITC/ACTC refunds starting Feb. 15. However, the IRS expects these refunds to be available in bank accounts or debit cards at the earliest, during the week of Feb. 27. This will happen as long as there are no processing issues with the tax return and the taxpayer chose direct deposit. Read more about refund timing for early EITC/ACTC filers. *Schedule 8812.* If a taxpayer qualifies to claim the child tax credit, they need to check to see if they must complete and attach Schedule 8812, *Child Tax Credit,* with their tax return. Taxpayers can visit IRS.gov to view, download or print IRS tax forms anytime. *IRS Tax Tip 2017-11.*

**DEPENDANTS.** The taxpayer lived with an adult son, his wife and their two children for all of 2012. The taxpayer provided all of the financial support of the household. The taxpayer claimed the two grandchildren as dependents after the son said that he was not going to claim them as dependents or even file a return. The IRS denied the dependency exemptions because the son, contrary to his statements to the taxpayer, did file a return listing the children as dependents. The son then executed an amended return deleting the children as dependents and did not properly file the amended return but only sent the file to the IRS counsel in this case. The IRS argued that the children were not qualifying children as to the taxpayer. I.R.C. § 152 defines qualified child as (1) bearing a certain relationship to the taxpayer, including child or grandchild; (2) sharing a home with the taxpayer for more than one-half of the tax year; (3) being less than 19 years old; (4) providing not more than one-half of financial support for the tax year and not filing a joint return. However, if the child is a qualifying child of a parent, the child is considered the qualifying child of the parents first over a grandparent unless the parent does not claim the child as a dependent on a tax return. See I.R.C. § 152(c)(4). The taxpayer argued that the amended return that deleted the claim for the dependents was sufficient to allow the taxpayer to claim the children as dependents. The court held that the children’s amended return was not properly filed; therefore, the children did not release their claim of the grandchildren as dependents. The court held that the taxpayer was not entitled to claim the grandchildren as dependents. *Smyth v. Comm’r,* T.C. Memo. 2017-29.

**DISASTER LOSSES.** On January 25, 2016, the President determined that certain areas in Georgia were eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms and tornadoes which began on January 2, 2017. *FEMA-4294-DR.* On January 25, 2016, the President determined that certain areas in Mississippi were eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding which began on January 20, 2017. *FEMA-4295-DR.* On January 26, 2016, the
President determined that certain areas in Georgia were eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding which began on January 21, 2017. **FEMA-4296-DR.** Accordingly, taxpayers in the areas may deduct the losses on their 2017 or 2016 federal income tax returns. See I.R.C. § 165(i).

On January 25, 2016, the President determined that certain areas in Oregon are eligible for assistance from the government under the Act as a result of a severe winter storm and flooding which began on December 14, 2016. **FEMA-4296-DR.** Accordingly, taxpayers in the areas may deduct the losses on their 2016 or 2015 federal income tax returns. See I.R.C. § 165(i).

**FUEL TAX SCAMS.** The IRS warns that taxpayers should watch for improper claims for business credits, which is on the “Dirty Dozen” list of tax scams for the 2017 filing season. **Fuel Tax Credit Scams.** Fraud involving the fuel tax credit is considered a frivolous tax claim and can result in a penalty of $5,000. Furthermore, illegal scams can lead to significant penalties and interest and possible criminal prosecution. The fuel tax credit is generally limited to off-highway business use or use in farming. Consequently, the credit is not available to most taxpayers. Still, the IRS routinely finds unsavory preparers who have enticed sizable groups of taxpayers to erroneously claim the credit to inflate their refunds. The federal government taxes gasoline, diesel fuel, kerosene, alternative fuels and certain other types of fuel. Certain commercial uses of these fuels are nontaxable. Individuals and businesses that purchase fuel for one of those purposes can claim a tax credit by filing Form 4136, **Credit for Federal Tax Paid on Fuels.** The tax is on fuels used to power vehicles and equipment on roads and highways. Taxes paid for fuel to power vehicles and equipment used off-road may qualify for the tax credit and may include farm equipment, certain boats, trains and airplanes. Improper claims for the fuel tax credit generally come in two forms. An individual or business may make an erroneous claim on their otherwise legitimate tax return. Or an identity thief may claim the credit in a broader fraudulent scheme. **IR-2017-27.**

**INNOCENT SPOUSE RELIEF.** The taxpayer was still married at the time of this case. The taxpayer’s spouse, in 2008, made an early withdrawal from a retirement account which was used to buy a residence that was titled solely in the spouse’s name. The couple were assessed unpaid taxes on the early withdrawal which remained unpaid at time of trial. The couple lived in the house for several years and rented their original residence to the taxpayer’s parents. The parents moved out and the spouse filed for individual Chapter 7 bankruptcy in which the unpaid taxes were discharged as to the spouse alone. The residence was not sold or distributed in the bankruptcy case. The taxpayer filed Form 8857, **Request for Innocent Spouse Relief,** which listed the taxpayer’s income as $1,753 per month and expenses as $2,240 per month. The taxpayer also had non-tax debts and state tax debts. At the time of trial the taxpayer was unemployed and dependent upon family and friends for support. The court looked only at equitable innocent spouse relief because the taxpayer was still married. The court looked at only two factors for granting relief: (1) the economic hardship of paying the taxes and (2) the benefit received by the taxpayer from the unpaid taxes. The court found that the taxpayer was in dire financial straits from lack of employment or assets, since the residence purchased with the retirement funds was owned solely by the spouse. The court also found that the taxpayer received no benefit from the retirement funds and did not have a lavish lifestyle as a result of the unpaid taxes. Therefore, the court granted the taxpayer equitable innocent spouse relief under **Rev. Proc. 2013-34, 2013-2 C.B. 397. Hudson v. Comm’r,** **T.C. Summary Op. 2017-7.**

**IRA.** The taxpayer and spouse made several withdrawals from their IRAs after the taxpayer lost employment. The taxpayers reported only the amounts listed on Forms 1099-R that they received, although they knew they had received additional amounts. The taxpayers were under age 59 1/2 at the time of the distributions. The taxpayers admitted the unreported distributions but asked the court to forgive the additional taxes owed due to over 30 years of proper reporting of income and their economic hardship. The court held that all of the distributions were taxable, including the 10 percent addition to tax for early withdrawals, because there were no exceptions for economic hardship or past behavior in reporting taxable income. **Cheves v. Comm’r,** **T.C. Memo. 2017-22.**

**LEGAL EXPENSES.** The taxpayer was employed by a bank during the first eight months of 2010 until terminated for breach of fiduciary duty. The bank filed suit to recover a bonus paid to the taxpayer during 2010. The taxpayer counterclaimed for damages from employment discrimination. The parties settled in 2011 with both sides agreeing to drop all claims. The taxpayer and spouse co-owned an accounting and consulting business but reported the income and loss on Schedule E and not on Schedule C. In 2010 and 2011, the taxpayer reported losses resulting from claiming legal fees as expenses on Form 1040. The IRS argued that the legal fees were reportable as miscellaneous itemized deductions, subject to the limitation under I.R.C. § 67(a). The taxpayers argued that the legal fees were deductible (1) under I.R.C. § 62(a)(20) as incurred in an action for unlawful discrimination or (2) under I.R.C. §§ 62(a)(1) and 162 as ordinary and necessary business expenses. I.R.C. § 62(a)(20) provides that the section “shall not apply to any deduction in excess of the amount includible in the taxpayer’s gross income for the taxable year on account of a judgment or settlement . . . resulting from such claim.” The taxpayers argued that the legal fees were allowed under this section because the employment discrimination action allowed the taxpayer to retain the bonus, which was taxable income and exceeded the legal fees. The court disagreed, holding that I.R.C. § 62(a)(20) did not apply because the lawsuit itself did not produce any additional settlement payment to the taxpayer which was taxable income; therefore, the legal fees were not deductible. On the second argument, the court stated that the deductibility of legal fees under I.R.C. § 162 depends on the origin and character of the claim for which the legal fees were incurred and whether that claim bears a sufficient nexus to the taxpayer’s business or income-producing activities. The taxpayer argued that, although the employment discrimination claim was not directly related to the consulting business, the claim involved the professional reputation of the taxpayer which would affect the consulting business. The court
disagreed, holding that the employment discrimination lawsuit originated from the taxpayer’s employment with the bank and did not affect the consulting business. The court noted that the taxpayer’s involvement with the consulting business was not clearly and fully described by the taxpayer in this case. Thus, the legal fees were not deductible as business expenses and were deductible only as itemized miscellaneous deductions subject to the 2 percent limitation of I.R.C. § 67. Sas v. Comm’r, T.C. Summary Op. 2017-2.

MEDICAL EXPENSES. The taxpayer was a homosexual male married to another male. The taxpayer paid the medical expenses of a surrogate to carry to term an embryo created through in vitro fertilization. The taxpayer claimed the expenses as a medical deduction. The court held that medical expenses paid for another individual who was not the taxpayer’s spouse or dependent were not eligible for the medical deduction. Morrissey v. United States, 2017-1 U.S. Tax Cas. (CCH) ¶ 50,140 (M.D. Fla. 2016).

PASSIVE ACTIVITY LOSSES. The taxpayer was self-employed as an insurance agent who owned several rental real estate properties in two states. The properties were enrolled in governmental subsidized housing programs and the taxpayer spent a substantial amount of time meeting the requirements of the program, including travel to the properties. The taxpayer maintained contemporaneous logs of the time and activity spent on the rental properties. The taxpayer claimed the exemption under I.R.C. § 469(c)(7)(A) as a real estate professional to treatment of the losses from the rental activity as passive losses. Although the taxpayer provided some evidence of the hours spent on the insurance business activity, most of the evidence was made by personal testimony. The court noted that the written records of the time spent on the insurance activity included only the hours for which the taxpayer was compensated; thus, the taxpayer failed to substantiate all the hours spent on the insurance activity. The court held that, because the taxpayer failed to establish how many hours the taxpayer spent performing insurance services, the taxpayer failed to establish that the taxpayer spent more time on the taxpayer’s rental real estate activity during the years in issue than the taxpayer did for the insurance business. Therefore, the taxpayer had not shown that the taxpayer was eligible for the I.R.C. § 469(c)(7)(A) exception to the passive activity rules. Jones v. Comm’r, T.C. Summary Op. 2017-6.

PARTNERSHIPS

ELECTION TO ADJUST PARTNERSHIP BASIS. The taxpayer was an LLC which elected to be taxed as a partnership. The taxpayer intended to file an election in one tax year to adjust the basis of the partnership assets but inadvertently failed to do so on its return. The taxpayer filed tax returns in subsequent tax years consistent with the election. The IRS granted the taxpayer an extension of time to file an amended return with the election. Ltr. Rul. 201705008, Oct. 6, 2016.

PARTNER’S BASIS. The taxpayer was a podiatrist and was a member of a professional LLC with six members which had not elected to be taxed as a corporation. The taxpayer claimed pass-through losses from the LLC which were disallowed for lack of a basis in the taxpayer’s partnership interest. The taxpayer provided only personal testimony as to any adjustments to the taxpayer’s basis in the taxpayer’s interest in the partnership, any distributions from or loans made to the partnership, and the taxpayer’s distributive share of partnership items. Therefore, the court held that the pass-through losses were properly disallowed by the IRS. Namen v. Comm’r, T.C. Memo. 2017-24.

PENSION PLANS. For plans beginning in February 2017 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 3.11 percent. The 30-year Treasury weighted average is 3.02 percent, and the 90 percent to 105 percent permissible range is 2.61 percent to 3.05 percent. The 24-month average corporate bond segment rates for February 2017, without adjustment by the 25-year average segment rates are: 1.60 percent for the first segment; 3.79 percent for the second segment; and 4.74 percent for the third segment. The 24-month average corporate bond segment rates for February 2017, taking into account the 25-year average segment rates, are: 4.16 percent for the first segment; 5.72 percent for the second segment; and 6.48 percent for the third segment. Notice 2017-18, I.R.B. 2017-9.

RESEARCH CREDIT SCAMS. The research credit is an important feature in the tax code to encourage research and experimentation by the private sector. The IRS continues to see significant misuse of the research credit. Improper claims for this credit generally involve a failure to participate in or substantiate qualified research activities and/or a failure to satisfy the requirements related to qualified research expenses. To qualify for the credit, a taxpayer’s research activities must, among other things, involve a process of experimentation using science that is intended to improve a product or process the taxpayer holds for sale or lease. However, there are certain activities, including research after commercial production, adaptation of an existing business product or process, foreign research and research that is funded by the customer that are specifically excluded from the credit. Qualified activities also do not include activities where there is no uncertainty about the taxpayer’s method or capability to achieve a desired result. The IRS often sees expenses from non-qualified activities included in claims for the research credit. In addition, qualified research expenses include only in-house research expenses and contract research. Qualified research expenses do not include expenses without a proven nexus between the claimed expenses and the qualified research activity. I.R.C. § 41 provides a credit for increasing research activities, commonly known as the “research credit.” Congress enacted the research credit in 1981 to provide an incentive for American industry to invest in research and experimentation. Since its enactment, the research credit has been extended 16 times, until it became permanent in December 2015 for amounts paid after December 31, 2014. Taxpayers who qualify for the credit may claim up to 20 percent of qualified expenses above a base amount by completing and attaching Form 6765, Credit for Increasing Research Activities, to their tax return. For tax years beginning in 2016, eligible small businesses may use the research credit to offset the alternative minimum tax. Also for tax years beginning in 2016, qualified small businesses may elect to use a portion of the research credit as a payroll tax credit against the employer’s portion of the Social Security tax. Qualified small
businesses make this election on Form 6765 and must complete and attach Form 8974, Qualified Small Business Payroll Tax Credit for Increasing Research Activities, to their Form 941, Employer’s Quarterly Federal Tax Return. To claim a research credit, taxpayers must evaluate and document their research activities over a period of time to establish the amount of qualified research expenses paid for each qualified research activity. While taxpayers may estimate some research expenses, taxpayers must have a factual basis for the assumptions used to create the estimates. Unsupported claims for the research credit may subject taxpayers to penalties. Taxpayers should carefully review reports or studies prepared by third parties to ensure they accurately reflect the taxpayer’s activities. Third parties who are involved in the preparation of improper claims or research credit studies also may be subject to penalties. IR-2017-27.

RETURNS. The IRS has published information about choosing the correct filing status for individual taxpayers. Taxpayers should keep in mind that their marital status on Dec. 31 is their status for the whole year. Sometimes more than one filing status may apply to taxpayers. When that happens, taxpayers should choose the one that allows them to pay the least amount of tax. Single. Normally this status is for taxpayers who are not married, or who are divorced or legally separated under state law. Married Filing Jointly. If taxpayers are married, they can file a joint tax return. A married couple can choose to file two separate tax returns. This may benefit them if it results in less tax owed than if they file a joint tax return. Taxpayers may want to prepare their taxes both ways before they choose. They can also use this status if each wants to be responsible only for their own tax. Head of Household. In most cases, this status applies to a taxpayer who is not married, but there are some special rules. For example, the taxpayer must have paid more than half the cost of keeping up a home for themselves and a qualifying person. Qualifying Widow(er) with Dependent Child. This status may apply to a taxpayer if their spouse died during 2014 or 2015 and they have a dependent child. Other conditions also apply. The “Filing” tab on IRS.gov can help with many taxpayers’ federal income tax filing needs. The Interactive Tax Assistant tool can help taxpayers choose the right filing status. More on this topic is in Publication 501, Exemptions, Standard Deduction and Filing Information. IRS Tax Tip 2017-07.

TAX SCAMS. The Internal Revenue Service, state tax agencies and the tax industry have issued an urgent alert to all employers that the Form W-2 email phishing scam has evolved beyond the corporate world and is spreading to other sectors, including school districts, tribal organizations and nonprofits. Here’s how the scam works: Cybercriminals use various spoofing techniques to disguise an email to make it appear as if it is from an organization executive. The email is sent to an employee in the payroll or human resources departments, requesting a list of all employees and their Forms W-2. This scam is sometimes referred to as business email compromise (BEC) or business email spoofing (BES). The W-2 scam, which first appeared last year, is circulating earlier in the tax season and to a broader cross-section of organizations, including school districts, tribal casinos, chain restaurants, temporary staffing agencies, healthcare and shipping and freight. In the latest twist, the cybercriminal follows up with an “executive” email to the payroll or comptroller and asks that a wire transfer also be made to a certain account. Although not tax related, the wire transfer scam is being coupled with the W-2 scam email, and some companies have lost both employees’ W-2s and thousands of dollars due to wire transfers. The IRS, states and tax industry urge all employers to share information with their payroll, finance and human resources employees about this W-2 and wire transfer scam. Employers should consider creating an internal policy, if one is lacking, on the distribution of employee W-2 information and conducting wire transfers. IR-2017-20.

TAX SHELTERS. The IRS has issued a non-acquiescence of the following case. The taxpayer operated two cattle and horse ranches owned by a limited partnership. The taxpayer held a super-majority interest in the partnership through a wholly-owned S corporation. The IRS argued that the use of the S corporation to own the interest in the ranch partnership made the partnership a tax shelter, required to use accrual reporting, even though the taxpayer actively participated in the operation of the partnership business for over five years and the participation was attributed to the ownership interest. The IRS argued that the active participation exception applied only where the individual taxpayer owned the interest in the limited partnership in the individual's name and not through a pass-through entity. The court rejected this requirement as not specifically required in the statute which merely mentions “any interest” in the partnership. The court noted that the use of the S corporation did not change the taxation of the taxpayer’s income from the operation in that the income passed through the S corporation to the taxpayer. Thus, the court held that the partnership was not a tax shelter required by I.R.C. § 464 to use the accrual method of reporting income. The decision is designated as not for publication. Burnett Ranches, Ltd. v. United States, 753 F.3d 143 (5th Cir. 2014). AOD 2017-1, I.R.B. 2017-____.

NEGLIGENCE. The plaintiff owned a brood mare which was brought to the defendant veterinarian for rectal palpitation to determine if the mare was pregnant. During the examination, the horse suffered a rectal tear which eventually led to the horse’s death. The plaintiff sued for damages based on the defendant’s negligence in causing the injury and failing to treat it. The trial court granted summary judgment for the defendant and the defendant appealed. The defendant had produced expert witness testimony supporting the defendant’s treatment of the horse, noting that a rectal tear was difficult to diagnose without bleeding and that no bleeding had occurred during the examination. The plaintiff also produce an expert who testified that the tear itself was evidence that the defendant mishandled the examination. The appellate court reversed the grant of summary judgment, holding that there existed sufficient issues of fact to be determined by the fact finder at trial. The court noted that the experts both provided contradictory observations of the evidence and not merely conclusions as to the negligence of the defendant. The appellate court noted that there were also issues for the fact finder to be determined based on the credibility of witnesses. Williams v. Midland Acres, Inc., 2017 Ohio App. LEXIS 325 (Ohio Ct. App. 2017).
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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.

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