3-3-2017

Cases, Regulations and Statutes

Robert P. Achenbach Jr.
Iowa State University

Follow this and additional works at: https://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: https://lib.dr.iastate.edu/aglawdigest/vol28/iss5/2

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.
This is not the first time Congress has considered repealing the federal estate tax and in each of those actions, from 1976 to the present, the repeal was paired with legislation to reduce or eliminate new basis at death for eligible assets. Unlike repeal of the federal estate tax (which would have a beneficial impact on only those with large estates), repeal of the “new basis at death” would affect every decedent holding assets that have appreciated in value. The elimination of “new basis at death” was targeted as a way to help to pay for repeal of the federal estate tax. However, it would have a draconian effect on small estates (which do not pay federal estate tax) but virtually all estates hold assets that have appreciated in value. Thus, those taxpayers ending up in the small estate category, currently too small to be subject to federal estate tax, would be major losers as a group as virtually every estate benefits from the new basis at death which has been highly beneficial for small and medium sized estates.

As an example of the “new basis at death,” assume a farm couple purchased a 320 acre farm in 1950 for $100,000. At their deaths in 2017, the half-section is valued at $2,560,000. The gain on the 320 acres figured with a fair market value of $8,000 per acre or $2,560,000, would be $2,460,000. Applying the rules long available which allow a new income tax basis at death equal to the date of death value, the gain of the $2,460,000 would be wiped off the books. To the extent that the new basis at death is eliminated to pay for repeal of the federal estate tax, the income tax basis of the farm in question would remain at $100,000 for all time (until there was a sale or taxable exchange).

The loss of the new income tax basis at death would constitute a devastating blow to those holding farm land in particular in light of the appreciation in value in recent years.

Even more importantly, the low income tax basis that would remain, presumably for all time, would discourage taxable transactions which would have a highly negative effect on economic activity.

ENDNOTES

4 See Harl, Agricultural Law (15 volumes) (Matthew Bender 2016); Harl, Farm Income Tax Manual (two volumes) (Matthew Bender 2016); and the lead article in Agricultural Law Digest for 380 issues of that publication that runs every two weeks.

5 I.R.C. § 1014(a).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

CHAPTER 12

AUTOMATIC STAY. The Chapter 12 debtor was an LLC wholly-owned by an individual debtor who had filed for Chapter 13. The other individual had not filed for bankruptcy and was the domestic partner of the individual debtor. The LLC was originally owned by the non-debtor individual and purchased on contract a farm from a creditor in the Chapter 12 case. However, the entire interest in the LLC was transferred to the Chapter 13 debtor who transferred title in the farm to herself, apparently without the knowledge of the other individual. The LLC debtor defaulted on payments to the creditor who sought relief from the automatic stay to begin foreclosure proceedings against the LLC. The amount owed on the contract exceeded the fair market value of the farm. However, the LLC and non-debtor individual had filed an action in the Chapter 12 case to avoid the transfer of the farm to the Chapter 13 debtor as fraudulent. The court found that the two individuals and LLC were related parties and refused to treat their interrelated bankruptcy actions as separate and bona fide. The court held that the farm was titled in the name of the Chapter 13 debtor; therefore, the property was not part of the LLC bankruptcy estate and granted relief from the automatic stay for foreclosure proceedings by the creditor. In re Mountain Farms, LLC, 2017 Bankr. LEXIS 424 (Bankr. N.D. Ala. 2017).

DISMISSAL. The debtors were a family-owned LLC and one of the members of that family. The debtors operated a dairy farm. Both debtors filed for Chapter 12 and the cases were jointly

Note on “small partnership: exception
by Neil E. Harl

It has come to our attention that an article has been published elsewhere (in a blog publication by Roger McEowen) relating to the “small partnership” exception. We disagree completely with the article which ignores the broad statutory basis for the “small partnership” which was enacted in 1982, 35 years ago. Quite frankly, the article is a good example of “sloppy scholarship” at its worst. The concept of the “small partnership” is based on I.R.C. § 6231(a)(1)(B)(i) which states - “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.” (Emphasis added) Thus, a “small partnership” is not a partnership and the three pages of irrelevant language in the cited article needlessly confuse the reader. I was involved in the issues that led to the enactment of the above language in 1982. See Harl, “The “Small Partnership” Exception: The Best Tax Simplification in a Half Century Is In Jeopardy,” 28 Agric. L. Dig. 25 (2017).
administered. In negotiations with creditors, the debtors reached a stipulated agreement as to plan payments, farm operation and remedies in the case of any defaults by the debtors. The stipulation terms were made part of the Chapter 12 plan. The death of one of the parents resulted in defaults of the stipulation terms from failure to make timely plan payments, failure to file monthly reports, failure to report and turn over the proceeds of the sale of collateral cows, failure to report two loans obtained during the plan period, and failure to meet other stipulation requirements. A provision in the stipulation provided that dismissal of the case if any of the stipulation terms were breached by the debtors. The creditors sought dismissal of the case after the debtors sought modification of the plan to correct the arrearages which had built up during the plan period. The court held that the defaults of the stipulation terms gave rise to the remedies provided in the stipulation which were sufficient to grant dismissal of the cases. In addition, the court held that the stipulation was an essential foundation of the Chapter 12 plan and the defaults of the stipulation also caused defaults of the Chapter 12 and provided another cause for dismissal of the cases. The court also looked at the issue of whether it was equitable to dismiss the cases, given the priority of Chapter 12 to preserve working farms and farm families. The court noted that the creditors in this case made extensive efforts to work with the debtors to create a workable plan so that the debtors could continue farming. The court held that the efforts of the creditors weighed the equities in the creditors’ favor and held that the Chapter 12 cases would be dismissed. In re Milky Way Organic Farm, LLC, 2017 Bankr. LEXIS 417 (Bankr. D. Vt. 2017).

FEDERAL FARM PROGRAMS

NO ITEMS.

FEDERAL ESTATE AND GIFT TAXATION

GIFT. The taxpayer was divorced and the parties negotiated a proposed property settlement which provided for the establishment of a trust for the benefit of the ex-spouse. The trust would be initially funded with half of the taxpayer’s shares in a company. The ex-spouse would receive all of the net income of the trust annually. The trustee had the discretion to make distributions of principal to the ex-spouse, but was prohibited from distributing the company shares to the ex-spouse or from selling the company shares in order to make such principal distributions. In addition, when the trust holds assets other than the company stock, the ex-spouse would have the right to withdraw the greater of a fixed amount or a percent of the principal for the trust each year. The trust did not grant the ex-spouse any powers to appoint trust property either during life or upon death.

In exchange, the ex-spouse would relinquish all marital rights and property claims that the ex-spouse might have acquired while married to the taxpayer. Upon the ex-spouse’s death, the remaining trust principal would revert to the taxpayer or the taxpayer’s estate if the taxpayer predeceases the ex-spouse. The proposed settlement agreement did not become final or binding upon the taxpayer and the ex-spouse until the receipt of a favorable private letter ruling from the IRS. The agreement would be approved by the divorce court and made part of the divorce decree. The taxpayer requested four rulings: (1) the taxpayer would not recognize any taxable gain or loss from the funding of the trust; (2) the funding of the trust was not subject to gift tax; (3) I.R.C. § 2702(a) will not apply for purposes of determining whether the taxpayer’s transfer to the ex-spouse of the income interest in the trust was a gift or for purposes of determining the value of such transfer; and (4) the fair market value of the trust property on the taxpayer’s date of death (or the alternate valuation date, as the case may be), reduced by the fair market value of the ex-spouse’s outstanding income interest would be includible in the taxpayer’s gross estate upon death under I.R.C. §§ 2036(a)(1) and 2036(a)(2). Ruling 1: I.R.C. § 1041(a) provides that no gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of) (1) a spouse, or (2) a former spouse, but only if the transfer is incident to a divorce. I.R.C. § 1041(c) provides that for purposes of I.R.C. § 1041(a)(2), a transfer of property is incident to the divorce if the transfer occurs (1) within one year after the date on which the marriage ceases, or (2) is related to the cessation of the marriage. Temp. Treas. Reg. § 1.1041-1T(b), Q&A-7 provides that a transfer of property is related to the cessation of the marriage if the transfer is pursuant to a divorce or separation instrument and the transfer occurs not more than six years after the date on which the marriage ceases. Thus, the IRS ruled that taxpayer would not recognize any gain or loss from the transfers of the stock as required by the divorce decree, so long as the transfers occur within six years of the divorce. Ruling 2: I.R.C. § 2516 provides that where a husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within the three-year period beginning on the date one year before the agreement is entered into (whether or not the agreement is approved by the divorce decree), any transfers of property or interests in property made pursuant to the agreement (1) to either spouse in settlement of his or her marital or property rights, or (2) to provide a reasonable allowance for the support of issue of the marriage during minority, shall be deemed to be transfers made for a full and adequate consideration in money or money’s worth. Thus, the IRS ruled that the transfer of stock to the trust would not be a taxable gift. Ruling 3: Treas. Reg. § 25.2702-1(c)(7) provides that I.R.C. § 2702 does not apply to a transfer in trust if the transfer of an interest to a spouse is deemed to be for full and adequate consideration by reason of I.R.C. § 2516 (relating to certain property settlements) and the remaining interests in the trust are retained by the other spouse. The IRS ruled that I.R.C. § 2702 did not apply to the transfer of stock to the trust pursuant to the divorce decree. Ruling 4: Under I.R.C. § 2036(a)(1), the value of property that a decedent has transferred into trust will be includible in that decedent’s estate if the decedent has retained the possession or enjoyment of, or the right to the income from, the property for any period not ascertainable without reference to his death. In this case, the taxpayer retained the right to the
trust property if the taxpayer survives the ex-spouse. Therefore, if the taxpayer survives the ex-spouse, I.R.C. § 2036(a)(1) will apply to require inclusion of the trust property in the taxpayer’s gross estate. Under I.R.C. § 2036(a)(2), the value of property that a decedent has transferred into trust will be includible in that decedent’s gross estate where the decedent has retained the right, alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or income therefrom. In this case, the taxpayer retained the prescribed power over the trust property for life. Therefore, if the taxpayer predeceases the ex-spouse, I.R.C. § 2036(a)(2) will apply to require inclusion of the trust property in the taxpayer’s gross estate. Under I.R.C. § 2036(a)(1) or 2036(a)(2), the value of the trust property included in the taxpayer’s gross estate is reduced by the value of the ex-spouse’s outstanding income interest (determined in accordance with the valuation tables prescribed in Treas. Reg. § 20.2031-7). The IRS ruled that the fair market value of the trust property on the taxpayer’s date of death (or the alternate valuation date, as the case may be), reduced by the fair market value of the ex-spouse’s outstanding term interest will be includable in the taxpayer’s gross estate upon death under I.R.C. §§ 2036(a)(1) and 2036(a)(2). Ltr. Rul. 201707007, Oct. 31, 2016, Ltr. Rul. 201707008, Oct. 31, 2016.

IRA. The decedent owned an IRA on the date of death which provided for an inter vivos trust as beneficiary. However, the estate representative could not locate any evidence of any trust created by the decedent. In addition, the decedent’s will made no mention of any trust. The decedent’s will lists only the surviving spouse as heir to the entire estate. The surviving spouse intended to petition a local court to change the beneficiary of the IRA to the surviving spouse and then roll over the funds in the IRA to the surviving spouse’s IRA. The custodian of the IRA refused to change the beneficiary unless ordered to do so by a court. The IRS ruled that (1) once the IRA beneficiary is changed by order of the local court, the IRA will not be an inherited IRA as to the surviving spouse; (2) the local court has no authority to make the surviving spouse a “designated beneficiary” under I.R.C. § 401(a)(9); and (3) because there is no designated beneficiary, the IRA distributions made within five years to the surviving spouse are eligible for tax-free rollover to the surviving spouse’s IRA, although any distributions made more than five years after the date of death would not be eligible for rollover treatment. Ltr. Rul. 201706004, Nov. 3, 2016.

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. 201706003, Oct. 27, 2016, Ltr. Rul. 201706008, Oct. 24, 2016, Ltr. Rul. 201606011, Oct. 17, 2016, Ltr. Rul. 201706012, July 15, 2016, Ltr. Rul. 201706015, Oct. 19, 2016, Ltr. Rul. 201706016, Oct. 19, 2016.

FEDERAL INCOME TAXATION

ACCOUNTING PERIOD. The taxpayer filed a late Form 1128, Application To Adopt, Change, or Retain a Tax Year, to change its accounting period, for federal income tax purposes, from a taxable year ending December 31, to a 52-53-week taxable year ending on the Saturday nearest to January 31. Section 6.02(1) of Rev. Proc. 2002-39, 2002-1 C.B. 1046, provides that a taxpayer must file a Form 1128 no earlier than the day following the end of the first effective year and no later than the due date (not including extensions) of the federal income tax return for the first effective year. The IRS granted an extension of time to file a return with the election attached. Ltr. Rul. 201706017, Nov. 15, 2016.

ALIMONY. The taxpayer was divorced and the divorce decree provided for lump sum payments to the former spouse. I.R.C. § 71(a) provides that gross income includes amounts received as alimony or separate maintenance if (1) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument; (2) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under I.R.C. § 71 and not allowable as a deduction under I.R.C. § 215; (3) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made; and (4) there is no liability to make such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payment after the death of the payee spouse. The IRS found that factors (1), (3) and (4) were met in that the payments were part of the divorce decree, the taxpayer and former spouse no longer lived together, and although the divorce decree did not specifically state that the payments were to end upon the death of the former spouse, state law provided that such payments terminated upon the death of the former spouse. However, the IRS ruled that the second requirement under I.R.C. § 71(a) was not met because the divorce decree provided that the lump sum payments were not to be included in the former spouse’s taxable income; therefore, the payments were not alimony. The IRS noted that the taxpayer and former spouse had agreed to treat the payments as taxable income to the former spouse but the divorce decree stated otherwise. Ltr. Rul. 201706006, Nov. 7, 2016.

CAPITAL GAINS. The IRS has published information about capital gains and losses: Capital Assets. Capital assets include property such as a home or a car. It also includes investment property, like stocks and bonds. Gains and Losses. A capital gain or loss is the difference between the basis and the amount the seller gets when they sell an asset. The basis is usually what the seller paid for the asset. For details about inherited property, see IRS Publication 544, IRS Publication 550 and IRS
DISASTER LOSSES. On February 25, 2017, the President determined that certain areas in South Dakota were eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of a severe winter storm which began on December 24, 2016. FEMA-4299-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).

On February 10, 2017, the President determined that certain areas in Oklahoma were eligible for assistance from the government under the Act as a result of a severe winter storm which began on January 13, 2017. FEMA-4299-DR. On February 10, 2017, the President determined that certain areas in Louisiana were eligible for assistance from the government under the Act as a result of severe storms and tornadoes which began on February 7, 2017. FEMA-4300-DR. On February 14, 2017, the President determined that certain areas in California were eligible for assistance from the government under the Act as a result of severe winter storms and flooding which began on January 3, 2017. FEMA-4301-DR. Accordingly, taxpayers in these areas may deduct the losses on their 2017 or 2016 federal income tax returns. See I.R.C. § 165(i).

PARTNERSHIPS.

ELECTION TO ADJUST PARTNERSHIP BASIS. The taxpayer was a limited partnership taxed as a partnership for federal tax purposes. During the tax year, one of the partners died and the taxpayer failed to make the I.R.C. § 754 election to adjust the basis of partnership property on a timely filed return. The IRS granted an extension of time to file an amended return with the election. Ltr. Rul. 201707011, Oct. 25, 2016.

PASSIVE ACTIVITY LOSSES. The taxpayers, husband and wife, were both dentists in the same practice. Each taxpayer worked about half time. The husband also operated a real estate brokerage and managed several rental properties owned by the couple. The husband provided evidence of over 1,000 hours spent per year on the real estate and rental activities. The taxpayer did not elect to have all the rental activities treated as a single rental real estate activity. As a general rule under I.R.C. § 469(c)(2), rental activities are per se passive whether or not the taxpayer materially participates. As an exception under I.R.C. § 469(c)(7), rental activities of taxpayers in real property trades or businesses (real estate professionals) are not treated as passive if the taxpayer materially participates in the rental activity. Under I.R.C. § 469(c)(7)(B) a taxpayer is a real estate professional if (1) more than one-half of the personal services performed in trades or businesses by the taxpayer during such taxable year are performed in real property trades or businesses in which the taxpayer materially participates, and (2) such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates. The IRS conceded that the husband materially participated in the rental real estate activity. The taxpayers provided evidence of the husband’s rental activities through contemporaneous written activity logs, the husband’s testimony, the wife’s testimony and the testimony of other witnesses and the court found that the husband proved more than 1,000 hours spent on the activity in the tax years involved. The court also found sufficient evidence that the husband worked less than 1,000 hours as a dentist in the tax year; therefore, the court held that the taxpayer’s were allowed to deduct losses from the rental activity. Zarrinnegar v. Comm’r. T.C. Memo. 2017-34.

RETURNS. The IRS has published information about what taxpayers need to do if a name change occurs during the tax year for the taxpayer or a member of the taxpayer’s family. All the names on a taxpayer’s tax return must match Social Security Administration records. A name mismatch can delay a tax refund. Reporting Name Changes. Taxpayers who have become married during the tax year and are now using a new spouse’s last name or hyphenate their name and taxpayers who became divorced during the tax year and are now back to using a former last name should notify the SSA of a name change. That way the new name on IRS records will match the SSA records. Making Dependent’s Name Change. Notify the SSA if a dependent had a name change. For example, if a taxpayer adopted a child and the child’s last name changed. If the child does not have a social security number, the taxpayer may use a temporary adoption taxpayer identification number on their tax return. Apply for an ATIN by filing Form W-7A. Application for Taxpayer Identification Number for Pending U.S. Adoptions, with the IRS. Visit IRS.gov to get the form. Getting a New SS Card. File Form SS-5, Application for a Social Security Card. The form is on SSA.gov or by calling 800-772-1213. The taxpayer’s new card will reflect the name change. IRS Tax Tip 2017-19.

The IRS has published a reminder to farmers and fishermen...
about the March 1 deadline to take advantage of special rules that can allow them to forgo making quarterly estimated tax payments. Taxpayers with income from farming or fishing have until March 1, 2017 to file their 2016 Form 1040 and pay the tax due to avoid making estimated tax payments. This rule generally applies if farming or fishing income was at least two-thirds of the total gross income in either the current or the preceding tax year. IRS Direct Pay offers individual taxpayers an easy way to quickly pay the tax amount due or make quarterly estimated tax payments directly from checking or savings accounts without any fees or pre-registration. Direct Pay is available 24 hours a day, seven days a week and taxpayers can schedule a payment up to 30 days in advance. Last year, IRS Direct Pay received more than nine million tax payments from individual taxpayers totaling more than $31.6 billion. When a taxpayer uses the tool, the taxpayer receives instant confirmation after submitting their payment. Direct Pay is available 24 hours a day, seven days a week and taxpayers can schedule a payment up to 30 days in advance. Last year, IRS Direct Pay received more than nine million tax payments from individual taxpayers totaling more than $31.6 billion. When a taxpayer uses the tool, the taxpayer receives instant confirmation after submitting their payment. Direct Pay cannot be used to pay the federal highway use tax, payroll taxes or other business taxes. The Electronic Federal Tax Payment System (EFTPS) allows individual and business taxpayers to pay their federal taxes electronically. Taxpayers must enroll and receive a PIN in the mail to use EFTPS. Visit IRS.gov/payments to check out other payment options. Farmers and fishers choosing not to file by March 1 should have made an estimated tax payment by Jan. 17 to avoid a penalty. Taxpayers should keep a copy of their tax return. Beginning in 2017, taxpayers using a software product for the first time may need their adjusted gross income amount from their prior-year tax return to verify their identity. IRS Special Edition Tax Tip 2017-05.

SAFE HARBOR INTEREST RATES

<table>
<thead>
<tr>
<th>March 2017</th>
<th>Annual</th>
<th>Semi-annual</th>
<th>Quarterly</th>
<th>Monthly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Short-term</td>
<td>AFR</td>
<td>1.01</td>
<td>1.01</td>
<td>1.01</td>
</tr>
<tr>
<td></td>
<td>110 percent AFR</td>
<td>1.11</td>
<td>1.11</td>
<td>1.11</td>
</tr>
<tr>
<td></td>
<td>120 percent AFR</td>
<td>1.21</td>
<td>1.21</td>
<td>1.21</td>
</tr>
<tr>
<td>Mid-term</td>
<td>AFR</td>
<td>2.05</td>
<td>2.04</td>
<td>2.03</td>
</tr>
<tr>
<td></td>
<td>110 percent AFR</td>
<td>2.25</td>
<td>2.24</td>
<td>2.23</td>
</tr>
<tr>
<td></td>
<td>120 percent AFR</td>
<td>2.46</td>
<td>2.45</td>
<td>2.44</td>
</tr>
<tr>
<td>Long-term</td>
<td>AFR</td>
<td>2.78</td>
<td>2.76</td>
<td>2.75</td>
</tr>
<tr>
<td></td>
<td>110 percent AFR</td>
<td>3.06</td>
<td>3.04</td>
<td>3.03</td>
</tr>
<tr>
<td></td>
<td>120 percent AFR</td>
<td>3.34</td>
<td>3.31</td>
<td>3.30</td>
</tr>
</tbody>
</table>

SAFE HARBOR INTEREST RATES

<table>
<thead>
<tr>
<th>March 2017</th>
<th>Annual</th>
<th>Semi-annual</th>
<th>Quarterly</th>
<th>Monthly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Short-term</td>
<td>AFR</td>
<td>1.01</td>
<td>1.01</td>
<td>1.01</td>
</tr>
<tr>
<td></td>
<td>110 percent AFR</td>
<td>1.11</td>
<td>1.11</td>
<td>1.11</td>
</tr>
<tr>
<td></td>
<td>120 percent AFR</td>
<td>1.21</td>
<td>1.21</td>
<td>1.21</td>
</tr>
<tr>
<td>Mid-term</td>
<td>AFR</td>
<td>2.05</td>
<td>2.04</td>
<td>2.03</td>
</tr>
<tr>
<td></td>
<td>110 percent AFR</td>
<td>2.25</td>
<td>2.24</td>
<td>2.23</td>
</tr>
<tr>
<td></td>
<td>120 percent AFR</td>
<td>2.46</td>
<td>2.45</td>
<td>2.44</td>
</tr>
<tr>
<td>Long-term</td>
<td>AFR</td>
<td>2.78</td>
<td>2.76</td>
<td>2.75</td>
</tr>
<tr>
<td></td>
<td>110 percent AFR</td>
<td>3.06</td>
<td>3.04</td>
<td>3.03</td>
</tr>
<tr>
<td></td>
<td>120 percent AFR</td>
<td>3.34</td>
<td>3.31</td>
<td>3.30</td>
</tr>
</tbody>
</table>


SOCIAL SECURITY Benefits. The IRS has published information about the taxability of social security benefits. Form SSA-1099. If taxpayers received social security benefits in 2016, they should receive a Form SSA-1099, Social Security Benefit Statement, showing the amount of their benefits. Only Income from Social Security. If social security payments were a taxpayer’s only income in 2016, the benefits may not be taxable and the taxpayer also may not need to file a federal income tax return. If the taxpayer receives income from other sources, the taxpayer may have to pay taxes on some of the benefits. Interactive Tax Tools. Taxpayers can get answers to their tax questions with this helpful tool, Are My Social Security or Railroad Retirement Tier I Benefits Taxable, to see if any of their benefits are taxable. They can also visit IRS.gov and use the Interactive Tax Assistant tool. Tax Formula. Here is a quick way to find out if a taxpayer must pay taxes on social security benefits: add one-half of the social security income to all other income, including tax-exempt interest. Then compare that amount to the base amount for their filing status. If the total is more than the base amount, some of the benefits may be taxable. Base Amounts. The three base amounts are:

- $25,000 – if taxpayers are single, head of household, qualifying widow or widower with a dependent child or married filing separately and lived apart from their spouse for all of 2016.
- $32,000 – if they are married filing jointly.
- $0 – if they are married filing separately and lived with their spouse at any time during the year. IRS Tax Tip 2017-13.

TAX PROTESTER. The taxpayer was a self-employed farmer who had not filed a tax return since 1991, if ever. The taxpayer was characterized by the court as a tax protester. The IRS had made assessments of tax based on substitute returns for 1991 through 1997 and sought a judgment declaring the assessments of tax, interest and statutory additions as a lien against the three farms owned by the taxpayer. The IRS sought foreclosure on the liens. After the IRS started collection efforts, the taxpayer placed the farms in trusts; however, the taxpayer continued to operate the farms as the taxpayer’s own. The court found that the trusts were merely a nominee of the taxpayer and that the taxpayer had sufficient legal and beneficial interests in the trusts for the tax liens to attach to the property in the trusts. The appellate court affirmed in a decision designated as not for publication. United States v. Sanders, 2017-1 U.S. Tax Cas. (CCH) ¶ 50,160 (7th Cir. 2017), aff’d, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,192 (S.D. Ill. 2016).

WITHHOLDING TAXES. The taxpayer was the parent of an employee of a restaurant owned by an LLC. Neither the taxpayer nor the child was a member of the LLC. The taxpayer visited the restaurant and bar area and occasionally performed small tasks to help out with the restaurant. On four occasions, the taxpayer helped by filling out checks to be signed by the owner. The taxpayer filled out an signed two other checks to pay restaurant suppliers when the owner was not available, although the taxpayer was not a signatory on the checking account. All but one of these checks were made prior to financial difficulties of the restaurant. The restaurant failed to withhold and pay employment taxes for three years and eventually ceased doing business. The IRS sought to collect trust fund recovery penalties (TFRPs) from the taxpayer as a “responsible person” in the business without much investigation because the statute of limitations on assessment of the taxes was about to run out. The evidence at trial showed that the IRS investigating agent had mistook as the taxpayer’s signatures on many of the business checks for the signature of the taxpayer’s child who did have authority to write checks for the business. I.R.C. § 6672 allows the IRS to impose penalties on certain persons who fail to withhold and pay over trust fund taxes. The penalty under I.R.C. § 6672 is equal to the total amount of the tax that was withheld but not paid over and is imposed on any “person” required to collect, truthfully account for, or pay over any tax withheld who willfully fails to do so. The term “person” is often taken to mean a “responsible person” and includes an officer or employee of a corporation who, as such, is under a duty.
The IRS has published information for withholding taxes for non-U.S. citizens with taxable income. The Internal Revenue Code generally requires non-U.S. citizens, whom the code defines as either resident or non-resident aliens, who are engaged in a trade or business within the U.S. to file tax returns. Non-resident aliens such as foreign students, teachers or trainees temporarily in the United States on F, J, M or Q visas are considered engaged in a trade or business. Most individuals in F-1, J-1, M-1, Q-1 and Q-2 non-immigrant status are eligible to be employed in the U.S. and are eligible to apply for a Social Security number if they are actually employed in the United States. Those not eligible for an SSN but who have a tax filing requirement may request an Individual Taxpayer Identification Number from the IRS. The non-U.S. citizen’s name must be reported exactly as it appears on the official documentation provided to the withholding agent (such as a Social Security Administration card or some other form of official governmental documentation). Filing a Form 1040-NR or 1040NR-EZ is required by non-U.S. citizens who have a taxable event such as: (1) a taxable scholarship or fellowship, as described in Chapter 1 of Publication 970, Tax Benefits for Education; (2) income partially or totally exempt from tax under the Internal Revenue Code. Non-U.S. citizens also must attach one copy (generally Copy B) for each Form 1042-S received to their tax returns. Non-U.S. citizens should review the Form 1042-S to ensure it accurately reflects their name and income. If the form does not contain accurate information, they must contact the withholding agent for an amended Form 1042-S. What Withholding Agents Must Do Generally, non-U.S. citizens who have taxable income also may have withholding of taxes by the source of their income. Withholding agents are required to complete Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding. Withholding agents must provide five copies of the Form 1042-S. Copy A should go to the IRS; Copies B, C and D to the recipient of the income; and copy E should be retained by the withholding agent. All information, including the name of the taxpayer, must match exactly on all copies of Form 1042-S. If withholding agents create a substitute Form 1042-S, all five copies must be in the same physical format. The size, shape and format of any substitute form must adhere to the rules of Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns. The official Form 1042-S is the standard for substitute forms. A common error is to have a Form 1042-S listing two or more recipients in box 13a. The 2016 instructions to Form 1042-S have been updated to clarify that in the case of joint owners, Form 1042-S can only list one of the owners in box 13a. Withholding agents should review Fact Sheet 2017-3, where they can find the latest changes to Form 1042-S instructions and common errors that delay processing of tax returns. IR-2017-43.

**IN THE NEWS**

**EARNED INCOME TAX AND CHILD TAX CREDIT REFUNDS.** As the IRS begins releasing refunds for taxpayers who claimed the earned income tax credit and the additional child tax credit, the tax agency reminded taxpayers that they should not expect refunds to be available in bank accounts or on debit cards until the week of Feb. 27. The additional time is due to several factors, including weekends, the Presidents Day holiday and the time banks often need to process direct deposits. Many of these refunds had been held since the filing season started in late January due to new requirements of the 2015 Protecting Americans from Tax Hikes (PATH) Act. The IRS reminds taxpayers that the most common question taxpayers have about the status of their refund can easily be answered on IRS.gov by visiting the “Where’s My Refund?” tool. “Where’s My Refund?” will be updated Feb. 18 for the vast majority of early filers who claimed the earned income tax credit and the additional child tax credit. Before Feb. 18, 2017, some taxpayers may see a projected date or a message that indicates the IRS is processing their return. Taxpayers should keep in mind that “Where’s My Refund?” is only updated once daily, usually overnight, so there’s no need to check it multiple times per day. IR-2017-36.

**TAX SCAMS.** The IRS, state tax agencies and the tax industry warn tax professionals to be alert to a new phishing email scam impersonating software providers. The scam email comes with the subject line, “Access Locked.” It tells recipients that access to their tax prep software accounts has been “suspended due to errors in your security details.” The scam email asks the tax professional to address the issue by using an “unlock” link provided in the email. However, the link will take the tax professionals to a fake web page, where they are asked to enter their user name and password. Instead of unlocking accounts, the tax professionals actually are inadvertently providing their information to cybercriminals who use the stolen credentials to access the preparers’ accounts and to steal client information. The Security Summit partners, which includes the IRS, state tax agencies and the nation’s tax community, remind tax professionals and taxpayers to never open a link or an attachment from a suspicious email. Tax professionals can review additional tips to protect clients and themselves at the Security Summit’s awareness campaign, Protect Your Clients, Protect Yourself, on IRS.gov. For tax professionals who receive emails purportedly from their tax software providers suggesting their accounts have been suspended, they should send those scam emails to their tax software provider. For Windows users, please this process to help the investigation of these scam emails: Use “Save As” to save the scam. Under “save as type” in the drop down menu, select “plain text” and save to your desk top. Do not click on any links. Open a new email and attach this saved email as a file. Send your new email containing the attachment to your tax software provider, as well as a copy to Phishing@IRS.gov. See IRS Special Tax Tip 2017-04 for a list of the “Dirty Dozen” tax scams for 2017. IR-2017-39.
The Agricultural Law Press is honored to publish the completely revised and updated 19th 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 for both the print and digital versions of the book.