For a divisive reorganization to be tax-free (except for “boot”), five tests must be met

(1) The subsidiary corporation (or corporations) must be controlled immediately before the distribution by the parent corporation. At least 80 percent of the shares of all classes of stock must have been acquired before the five year period begins to run.

(2) The necessary “trade or business” must have been actively conducted for five or more years before the distribution by the parent corporation. Immediately after the distribution, both the parent corporation and the subsidiary (or subsidiaries) must be engaged in the “active conduct of a trade or business,” or immediately before the distribution, the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged immediately after the distributions in the “active conduct of a trade or business.”

(3) The corporation making the distribution must have stock or securities in the other corporation or corporations so that the persons who were shareholders in the parent corporation control the subsidiary.

(4) The parent corporation must distribute (a) all of its stock and securities in the subsidiary, or (b) enough stock to constitute control and establish to the satisfaction of IRS that the retention of stock and securities in the subsidiary was not part of a plan of tax avoidance.

(5) The distribution must not be used “principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both . . . .”

Reorganization motivated by a “business purpose”

This is the most worrisome requirement for a corporate reorganization. A distribution must be motivated, in whole or substantial part, by one or more corporate business purposes. As the regulations state, “the principal reason for this business purpose requirement is to provide nonrecognition treatment only to distributions that are incident to readjustments of corporate structures required by business exigencies and that effect only readjustments of continuing interests under modified corporate forms.”

For farm and ranch situations, the greatest concern is where the line is drawn for rental properties, notably crop share, livestock share and cash rental arrangements. In an early ruling, a crop share lease met the test. However, in a 1986 ruling a “hybrid” crop share lease failed the test because of absence of involvement in management. In a farming operation that likely would have qualified before the retirement of the managers and principal decision makers, it failed to qualify after the management duties were largely turned over to the tenant. This aspect of the “business purpose” test is arguably more demanding than similar fact situations in non-farm situations where entities rarely are operated under arrangements similar to farm arrangements.

END NOTES

2. Id.
5. I.R.C. § 355(a).
12. Id.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

HORSES. The plaintiff was injured while riding a horse owned by one defendant at a resort owned by another defendant. The defendant’s horse spooked during a trail ride and the plaintiff was thrown from the horse and injured. The plaintiff sued in negligence, negligence per se and willful, wanton and malicious conduct. The defendant resort owner moved for summary judgment based on the Wisconsin equine immunity statute, Wis. Stat. § 895.481, which provides “a person, including an equine activity sponsor or an equine professional, is immune from civil liability for acts or omissions related to his or her participation in equine activities if a person participating in the equine activity is injured or killed as the result of an inherent risk of equine activities.” The statute provides exceptions where the sponsor “(a) Provides equipment or tack that he or she knew or should have known was faulty and the faulty equipment or tack causes the injury or death. (b) Provides an equine to a person and fails to make a reasonable effort to determine the ability of the person to engage safely in an equine activity or to safely manage the particular equine provided based on the person’s representations of his or her ability. (c) Fails to conspicuously post warning signs of a dangerous inconspicuous condition known to him or her on the property that he or she owns, leases, rents or is otherwise in lawful control of or possession. (d) Acts in a willful or wanton disregard for the safety of the person. (e) Intentionally causes the injury or death.” The plaintiff argued that the plaintiff was not covered by the statute because the accident
was not an inherent risk of horse riding because it resulted from the defendant’s negligence and because exceptions (b) and (c) applied. The court held that an inherent risk of horse riding was the possibility of the defendant resort’s negligence. The court found that the defendant resort did not provide or control the horse which was owned and controlled by the defendant horse owner; therefore, the court held that exception (b) did not apply to the defendant resort. Finally, the court found no evidence presented by the plaintiff to support exception (c) but, instead, found that the horse owner made sufficient inquiry as to the plaintiff’s riding ability and selected the most docile horse to ride. Therefore, the court granted summary judgment to the defendant resort. Dilley v. Holiday Acres Properties, Inc., 2017 U.S. Dist. LEXIS 82721 (W.D. Wis. 2017).

BANKRUPTCY

GENERAL

AVOIDABLE TRANSFERS. The debtors, husband and wife, originally filed for Chapter 12 on August 1, 2011. The Chapter 12 plan was confirmed on January 31, 2012 and on June 23, 2014, a creditor loaned the debtors money to purchase a house and 75 acres. A lien against the property was granted on October 30, 2015. Another creditor sought conversion of the case to Chapter 7 on the basis of fraud in connection with the case and the case was converted to Chapter 7 on August 1, 2016. On February 8, 2017, the Chapter 7 trustee sought to avoid the October 30, 2015 lien as a preferential transfer. The issue was whether the “date of filing the petition” under Section 547 and 548 was the date of the filing of the Chapter 12 petition or the date of conversion to Chapter 7. A preferential transfer avoidance action under Section 547 involves transfers which occur within 90 days prior to the date of the petition. A fraudulent transfer avoidance action under Section 548 involves transfers within two years before the filing of the petition. The trustee argued that under In re Hoggarth, 78 B.R. 1000 (Bankr. N.D. 1987), “the preference period under section 547 commences on the date of conversion as against any post-confirmation transfers of non-plan property to non-plan creditors.” However, the court noted that Section 348 provides that a conversion of a case from one chapter to another chapter does not change the date of the filing of the petition, subject to two provisions not relevant to this case. Thus, the court held that the trustee could not bring a preferential or fraudulent transfer action as to a transaction which occurred after the date of the filing of the original Chapter 12 case. In re Loganbill, 2017 Bankr. LEXIS 1413 (Bankr. W.D. Mo. 2017).

FEDERAL FARM PROGRAMS

BEEF. The AMS has adopted as final regulations amending the Beef Promotion and Research Order (Order) established under the Beef Promotion and Research Act of 1985 by adding six Harmonized Tariff Schedule codes for imported veal and veal products and updating assessment levels for imported veal and veal products based on revised determinations of live animal equivalencies. The final regulations also amend the Order’s definition of “imported beef or beef products” by deleting its reference to tariff numbers that are no longer in use and obsolete. 82 Fed. Reg. 24455 (May 30, 2017).

CAULIFLOWER. The AMS has announced that it is revising the United States Standards for Grades of Cauliflower. The revision amends the color requirement to allow all colors of cauliflower to be certified to a U.S. grade. In addition, AMS is amending the size requirement to allow curds less than 4 inches in diameter to be certified to a grade, adding marking requirements for curd sizes less than 4 inches in diameter, and removing references to an unclassified category of cauliflower. 82 Fed. Reg. 24095 (May 25, 2017).

LUMBER. The AMS has issued proposed regulations establishing a de minimis quantity exemption threshold under the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order). The Order is administered by the Softwood Lumber Board with oversight by the USDA. In response to a 2016 federal district court decision, Resolute Forest Products Inc., v. USDA, 2016 U.S. Dist. LEXIS 164832 (D.D.C. 2016), USDA conducted a new analysis to determine a reasonable and appropriate de minimis threshold. Based on that analysis, this proposed rule would establish the de minimis quantity threshold at 15 million board feet and entities manufacturing (and domestically shipping) or importing less than 15 million board feet per year would be exempt from paying assessments under the Order. 82 Fed. Reg. 24583 (May 30, 2017).

PEANUTS. The AMS has issued proposed regulations which would implement a recommendation from the Peanut Standards Board (Board) to revise the minimum quality and handling standards for domestic and imported peanuts marketed in the

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. 201720005, Feb. 7, 2017; Ltr. Rul. 201720006, Feb. 7, 2017; Ltr. Rul. 201721001, Jan. 26, 2017; Ltr. Rul. 201721005, Feb. 9, 2017; Ltr. Rul. 201721012, Feb. 9, 2017.
United States. The Board advises the Secretary of Agriculture regarding potential changes to the standards and is comprised of producers and industry representatives. The amendments relax the allowance for damaged kernels in farmers’ stock peanuts when determining segregation. This change would increase the allowance for damaged kernels under Segregation 1 from not more than 2.49 percent to not more than 3.49 percent. The requirements for Segregation 2 would also be adjusted to reflect this change. The Board recommended this change to align the incoming standards with recent changes to the outgoing quality standards and to help increase returns to producers. 82 Fed. Reg. 24082 (May 25, 2017).

FEDERAL INCOME TAXATION

CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS. The IRS has announced that it has issued notices of certification to 84 organizations that applied for voluntary certification as a Certified Professional Employer Organization (CPEO). After the IRS receives the required surety bond from an approved CPEO applicant, the IRS will publish that CPEO’s name, address, and effective date of certification on IRS.gov. Under legislation enacted in late 2014, the IRS established a voluntary certification program for professional employer organizations (PEOs). These organizations typically handle various payroll administration and tax reporting responsibilities for their business clients. Certification affects the employment tax liabilities of both the CPEO and its clients. A CPEO is generally treated as the employer of any individual performing services for a client of the CPEO and covered by a CPEO contract between the CPEO with the client, but only for wages and other compensation paid to the individual by the CPEO. To become and remain certified under the new program, CPEOs must meet tax compliance, background, experience, business location, financial reporting, bonding, and other requirements. The IRS continues to process CPEO applications and those applicants not yet receiving a notice of certification will receive a decision from the IRS in coming weeks and months. IR-2017-103.

CHARITABLE DEDUCTION. The taxpayer was a decedent’s estate which had made a charitable contribution in one taxable year which could be reported as made in the prior tax year; however, the estate failed to make the election under I.R.C. § 642(c)(1). I.R.C. §642(c)(1) provides that in the case of an estate, there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by § 170(a), relating to deduction for charitable contributions and gifts, any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in I.R.C. § 170(c). If a charitable contribution is paid after the close of such taxable year and on or before the last day of the year following the close of such taxable year, then the trustee or administrator may elect to treat such contribution as paid during such taxable year. The IRS granted the estate an extension of time to make the election. Ltr. Rul. 201720003, Feb. 6, 2017.

CORPORATIONS.

ENTITY CLASSIFICATION. The taxpayer was a foreign entity which intended to elect to be treated as a disregarded entity. The taxpayer failed to file a timely filed Form 8832, Entity Classification Election. The IRS granted an extension of time to file the Form 8832. Ltr. Rul. 201720002, Feb. 1, 2017.

ELECTRICITY PRODUCTION CREDIT. The 2017 inflation-adjustment factors used in determining the availability of the credit for renewable electricity production, and refined coal production under I.R.C. § 45 for qualified energy resources and refined coal is 1.5566. For calendar year 2016, the inflation-adjustment factor for Indian coal production is 1.1934. The credit for refined coal production is $6.810 per ton of qualified refined coal sold in 2015. The 2016 reference price for fuel used as feedstock is $53.74 per ton. The amount of the credit is 4.5 cents per kilowatt hour on sales of electricity produced from wind energy. Because the 2016 reference price for electricity produced from wind does not exceed eight cents multiplied by the inflation adjustment factor, the phaseout of the credit does not apply to such electricity sold during calendar year 2016. Because the 2016 reference price for fuel used as feedstock for refined coal does not exceed the $31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor plus 1.7, the phaseout of the credit does not apply to refined coal sold during calendar year 2016. The phaseout of the credit for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy does not apply to such electricity sold during calendar year 2016. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy for 2016 have not yet been determined. Notice 2016-34, I.R.B. 2016-22.

EMPLOYEE EXPENSES. The taxpayer was employed full time as a licensed engineer with the state of New York and also performed consultation services as an independent contractor. The taxpayer claimed vehicle and other travel expenses as a deduction on Schedule A for expenses incurred during employment but unreimbursed by the employer. The taxpayer provided receipts and spreadsheets to substantiate the expenses. The court found that the taxpayer’s records did not comply with the strict substantiation requirements of I.R.C. § 274(d) for car and truck, meals and entertainment expenses because there was no identification of the date and business purpose of the expenses. In addition, the court found a significant number of items that were clearly personal expenses. Therefore, the court held that the taxpayer was not eligible for the deductions in excess of those allowed by the IRS. Khinda v. Comm’r, T.C. Summary Op. 2017-32.

The taxpayer was employed as a financial service professional. The company had a written policy for reimbursing employees for work-related expenses. The taxpayer claimed deductions for
work-related expenses not reimbursed by the company, primarily travel expenses. Under I.R.C. § 162, expenses incurred by an employee are deductible if not reimbursed or not reimbursable by the employer under the reimbursement policy. However, if the taxpayer does not make a claim for reimbursement of expenses eligible for reimbursement, the expenses are not deductible. The court found that the taxpayer did not submit evidence of the company reimbursement policy and did not make any claim for reimbursement. The taxpayer claimed that the unreimbursed expenses were not reimbursable because of an unwritten company policy, but the court found that the taxpayer also failed to provide any credible evidence of the unwritten policy. Therefore, because the court could not determine whether the expenses were reimbursable or not, the court held that the taxpayer failure to make a claim for reimbursement prevented the expenses from being deductible. Brown v. Comm’r, T.C. Summary Op. 2017-29.

FORECLOSURE OF TAX LIEN. The taxpayer owned a business in which the taxpayer failed to pay employment taxes for two years. The taxpayer and spouse owned a residence as tenants by the entirety free of any debt and the IRS sought to reduce to judgment the assessment of the employment taxes and force the sale of the residence to collect from the taxpayer’s share of the residence. Based on United States v. Rodgers, 461 U.S. 677 (1983) the trial court examined: (1) “the extent to which the [g]overnment’s financial interests would be prejudiced if it were relegated to a forced sale of the partial interest actually liable for the delinquent taxes;” (2) whether the spouse had “a legally recognized expectation that [the] separate property would not be subject to forced sale by the delinquent taxpayer or his or her creditors;” (3) the likely prejudice to the spouse “in personal dislocation costs and … practical undercompensation;” and (4) “the relative character and value of the non-liable and liable interests held in the property.[]” Based on these factors, the trial court denied the request to force the sale of the property and ordered instead monthly rent payments by the taxpayer as repayment of the employment taxes. The trial court also raised the issue that N.J. S.A. § 46:3-17.4 prevented the sale of a residence owned by married individuals as tenants by the entirety. The appellate court rejected this argument, noting that the New Jersey statute was not retroactive to the date that the taxpayers purchased their home. The appellate court vacated and remanded the case for rehearing on the four Rodgers factors because (1) the rental payments were insufficient to compensate the government for the taxes owed and the sale of the taxpayer’s interest alone had little value, thus favoring the sale of the entire property; (2) the spouse did not have an expectation under New Jersey law, as it existed at the time of the purchase of the home, that foreclosure was prohibited, thus the trial court needed to evaluate the spouse’s expectations under prior New Jersey law; (3) the trial court erred in valuing only the spouse’s interest in the home and should have reached that value in conjunction with the expected value of the taxpayer’s interest in the home; and (4) after the value of each interest is determined under factor (3), the relative character and value of each interest is to be used to determine the fairness of a foreclosure sale. United States v. Cardaci, 2017-1 U.S. Tax Cas. (CCH) ¶ 50,220 (3d Cir. 2017), vac’g and rem’g, 2014-1 U.S. Tax Cas. (CCH) ¶ 50,551 (D. N.J. 2014).

HOBBY LOSSES. The taxpayer was engaged in the training, showing and breeding of dressage horses. In the six tax years involved, the taxpayer had only $588 in income and over $154,000 in expenses. The taxpayer’s activities with the horses in these years was minimal but the court found that the taxpayer maintained a “going concern.” However, the court held that the losses from the horse activities were not deductible because the taxpayer did not operate the activity with the intent to make a profit. The ruling was based on these factors: (1) the taxpayer spent very little time on the activity during the years involved; (2) the taxpayer had insufficient assets in the horse activity to expect any appreciation sufficient to cover the losses; (3) the taxpayer did not have other successful similar businesses, including past horse activities; (4) the taxpayer had substantial losses during the years involved; (5) the taxpayer had no years of profit; (6) the losses offset income from other activities; and (7) the taxpayer received personal pleasure from riding horses. The court discussed one of the main factors in many hobby loss cases, the carrying on of the activity in a businesslike manner, which includes recordkeeping, modifying the activity to make it more profitable, advertising and other usual business supporting activities. The court found this factor neutral in this case because the IRS failed to provide any evidence of these matters. The appellate court affirmed in a decision designated as not for publication. McMillan v. Comm’r, 2017-1 U.S. Tax Cas. (CCH) ¶ 50,234 (9th Cir. 2017), aff’g, T.C. Memo. 2015-109.

HOME OFFICE. The taxpayer was employed as a financial service professional. The employer provided the taxpayer with an office but the taxpayer used an office in the taxpayer’s residence on occasion and after hours to do some work. The taxpayer claimed a percentage of home expenses as home office deductions which were disallowed by the IRS. The court found that the taxpayer failed to show that the home office was maintained for the convenience of the employer or that the home office was required by the employer. Thus, the court found that the home office was maintained solely for the taxpayer’s convenience, comfort and economy and was not a deductible expense. Brown v. Comm’r, T.C. Summary Op. 2017-29.

INNOCENT SPOUSE RELIEF. The taxpayer, with the help of a volunteer attorney, in 2008, filed Form 8379, Injured Spouse Allocation, to seek relief from unpaid 1996 taxes attributable to a former spouse. The relief requested a refund of payments made by the taxpayer in 2006 and 2007. However, the correct form was Form 8857, Request for Innocent Spouse Relief. The error was not discovered until the statute of limitations had passed for refunds for 2006 and 2007. The Tax Court denied most of the request for relief as untimely made. The taxpayer argued that the Form 8379 was an “informal claim” for innocent-spouse relief and, as a result, the time between the filing of the Form 8379 and Form 8857 should be tolled. On appeal the appellate court reversed, holding that the equities of the case favored granting full innocent spouse relief. The court noted that the taxpayer (1) was not a native English speaker, (2) filed the Form 8379 on the advice of an attorney, (3) was the subject of domestic abuse, and (4) was not the source of the original tax deficiency. The court also
noted that Form 8379 provided the IRS with sufficient notice that a refund claim was being made. Palomares v. Comm’r, 2017-1 U.S. Tax Cas. (CCH) ¶ 50,236 (9th Cir. 2017), rev’g, T.C. Memo. 2014-243.

IRS ASSISTANCE. Taxpayers who need in-person help from an IRS Taxpayer Assistance Center (TAC) now need to call to schedule an appointment. All TACs provide service by appointment. They are an essential service the IRS provides when a tax issue cannot be resolved online or by phone. The IRS suggests that taxpayers consider the self-service options on IRS.gov before calling for an appointment. Many questions can be resolved online without taxpayers having to travel to a Tax Assistance Center. Publication 5136, IRS Services Guide, has additional information about where to find help. The Interactive Tax Assistant asks the taxpayer a series of questions and provides answers based on their input. IRS Publication 17 covers a broad range of topics and updates on tax law changes. The IRS Tax Map finds all the relevant tax information needed in one place. The Contact Your Local Office tool on IRS.gov helps taxpayers find the closest IRS TAC, the days and hours of operation, and a list of services provided. IRS Special Tax Tip 17-10.

LETTER RULINGS. Beginning June 15, taxpayers requesting letter rulings, closing agreements and certain other rulings from the Internal Revenue Service will need to make user fee payments electronically using the federal government’s Pay.gov system. Pay.gov allows people to pay for a variety of government services online using a credit card, debit card or via direct debit or electronic funds withdrawal from a checking or savings account. In the past, ruling requesters could only make required user fee payments by check or money order. During a two-month transition period, June 15 to Aug. 15, 2017 requesters can choose to make user fee payments either through Pay.gov or by check or money order. After Aug. 15, 2017, Pay.gov will become the only permissible payment method. Rulings described in Rev. Proc. 2017-1, 2017-1 CB 1, and sent to the Docket, Records and User Fee Branch of the Legal Processing Division of the Associate Chief Counsel (Procedure and Administration) (CC:PA:LPD:DRU) are affected by this change. These include private letter rulings, closing agreements, and rulings using Form 1128, 2553, 3115 or 8716. Determination letters are not affected because they are sent to other offices as described in the revenue procedure. A letter ruling is a written determination issued to a taxpayer by IRS Chief Counsel in response to the taxpayer’s written inquiry, submitted prior to the filing of returns or reports required under federal law. In general, it concerns the requester’s status for tax purposes or the tax effects of its acts or transactions. Letter rulings and other similar ruling requests interpret the tax laws and apply them to the taxpayer’s specific set of facts. User fees range from $200 to $28,300, depending upon the type of ruling being sought. Pay.gov is used to accept payments only. The original, signed ruling request and supporting materials must still be submitted by mail or hand delivery to the IRS. To submit a user fee, taxpayers should visit www.pay.gov and use the IRS Chief Counsel User Fees (or Supplemental User Fees) for Form 1128, Form 2553, Form 3115, Form 8716, Private Letter Rulings and Closing Agreements. These forms can be found by entering “IRS Chief Counsel User Fees” in the “Search the Forms” box or by clicking on the “Agency List” link under “What Federal Agencies Can I Pay?” and choosing Internal Revenue Service. Once payment is made, taxpayers print a copy of the completed form and the receipt and include these with the letter ruling request by mail to: Internal Revenue Service, CC:PA:LPD:DRU, P.O. Box 7604, Ben Franklin Station Washington, DC 20044. For hand delivery, or if using a private courier service, deliver to: Internal Revenue Service CC:PA:LPD:DRU 1111 Constitution Avenue, NW Room 5336 Washington, DC 20224. In addition, for the fastest processing, taxpayers should Efax a copy of the pay.gov receipt, the completed form and the ruling request to this eFax line, 877-773-4950. IR-2017-102.

PASSIVE ACTIVITY LOSSES. The taxpayers, husband and wife, owned several rental properties and claimed losses on Schedule E for $154,067 and $117,712 for 2008 and 2009 respectively. The husband was employed full time as a teacher. The taxpayers presented a journal of their rental activities which did not provide full information on the nature of the work performed on the rental activity. The taxpayer did not make an election to treat the rental properties as one activity. The court found the journal insufficient evidence to prove any time spent on any of the rental properties; therefore, the taxpayer failed to demonstrate any material participation in the rental properties or that the taxpayer spent more than 750 hours per year on the properties. The court held that the losses from the rental properties were passive activity losses. McNally v. Comm’r, T.C. Memo. 2017-93.

TAX FRAUD. The taxpayer had been an IRS agent for over 29 years and had a history of claiming personal expenses as business deductions and claiming unsubstantiated business expenses as deductions. The court cited three litigated cases in which the taxpayer was held to have made such improper deductions. In the present case, the taxpayer conceded similar improper deductions for 2011, 2012 and 2013. The court found that the taxpayer fraudulently claimed improper deductions and the resulting underpayment of taxes was fraudulent with intent to conceal income and prevent collection of tax. The court also found that the taxpayer had a pattern of fraudulent tax returns. The court held that the taxpayer was subject to the tax fraud penalties under I.R.C. § 6663. Langer v. Comm’r, T.C. Memo. 2017-92.

TAX SHELTERS. In May 2015 the IRS determined that the plaintiff unlawfully promoted or failed to register certain transactions as tax shelters during the tax years 2002, 2004, and 2005, and the IRS assessed a $2.3 million penalty under I.R.C. § 6700. The plaintiff argued that the assessment was barred by either the three year statute of limitations of I.R.C. § 6501(a) or the general five year state of limitations of 28 U.S.C. § 2462. I.R.C. § 6501(a) provides “Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed … For purposes of this chapter, the term ‘return’ means the return required to be filed by the taxpayer. …” 28 U.S.C. § 2462 states: “Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued ….” The plaintiff argued that the return or claim which triggers either limitations period is the return filed by the taxpayers who participated in the tax shelters. The court held that, because the I.R.C. § 6700 penalty does not require the
filing of a return, the limitations period does not commence until the IRS makes a determination that the plaintiff violated the tax shelter provisions; therefore, the IRS assessment was timely filed and was not barred by either statute. Groves v. United States, 2017-1 U.S. Tax Cas. (CCH) ¶ 50,232 (N.D. Ill. 2017).

TRAVEL EXPENSES. The taxpayers, husband and wife, each had separate businesses; however, the wife did not report her business income and expenses on a separate Schedule C but included them on the Schedule C for the husband’s business. In the tax year involved in this case, 2012, the husband’s business terminated and the wife attempted to expand her business of providing business billing services. The wife reported $74,000 in car and truck expenses for 2012 and presented a spreadsheet purporting to show the 144 trips the wife took to four states to promote the wife’s business. Under I.R.C. § 274 and Temp. Treas. Reg. 1.274-5T, a taxpayer must provide a written contemporaneous record to substantiate all the miles claimed for a deduction. The taxpayers provided a spreadsheet showing the date, destination, beginning and ending odometer readings, total miles driven and the description of the work performed. The court held that the records were insufficient to substantiate the miles driven because (1) the spreadsheet was not created contemporaneously with the trips taken; (2) the spreadsheet contained several inconsistencies, such as ending odometer readings higher than the beginning readings; (3) each trip had an identical work description; and (4) the spreadsheet showed inconsistent total miles for trips within the same state. The court also found the records non-credible because they showed multiple long round trips on consecutive days where it would have been reasonable to combine such trips. Because the taxpayers could not explain these inconsistencies, the court disregarded the spreadsheets as credible evidence and upheld the IRS disallowance of the car and truck expenses deduction. Taylor v. Comm’r, T.C. Memo. 2017-99.

UNEMPLOYMENT COMPENSATION. The taxpayer was employed during 2013 as a school teacher but also received unemployment compensation of $3,231 as reported on Form 1099-G, Certain Government Payments, filed by the state. Although the taxpayer did not contest the IRS claim that the unemployment payments were received and not reported, the taxpayer merely argued that no record of assessment was provided to the taxpayer and made other tax-protester arguments. I.R.C. § 85(a) provides that, “[i]n the case of an individual, gross income includes unemployment compensation.” I.R.C. § 85(b) defines “unemployment compensation” to mean “any amount received under a law of the United States or a State which is in the nature of unemployment compensation.” See also Treas. Reg. § 1.85-1(b) (1)(i)-(iii). Thus, the court granted summary judgment to the IRS that the taxpayer improperly failed to report the unemployment compensation as part of taxable income for 2013. Timmins v. Comm’r, T.C. Memo. 2017-86.

NEGLIGENCE

LANDOWNER LIABILITY. The plaintiff was the grandson of the defendants. The plaintiff’s father and uncle operated the defendant’s farm and asked the plaintiff to assist them in unclogging a silo unloader. The plaintiff suffered injuries when the plaintiff’s leg became entangled in the unloader. The plaintiff and the plaintiff’s mother sued the defendants for negligence as the landowners. The defendant argued that they owed no duty of care to the plaintiff because they no longer controlled the operation of the farm. The trial court granted summary judgment to the defendants, ruling that they owed no duty of care to the injured plaintiff. On appeal, the appellate court noted that a claim of negligence requires: (1) the existence of a duty of care; (2) a breach of that duty; (3) an injury; and (4) that the breach of the duty was a proximate cause of the injury. In general, landowners owe entrants on the land the duty to inspect and keep the property free of unreasonable risks of harm, and, with respect to dangerous conditions discoverable through reasonable efforts, the landowner must either repair the conditions or provide invited entrants with adequate warnings. The court noted that the old distinctions between the duty owed to licensees and invitees has been abandoned in Minnesota in favor of a unified general duty of all tortfeasors. Thus, the appellate court reversed on the issue of duty of care, holding that the defendants did owe a general duty to inspect, repair and warn. However, the appellate court found that the plaintiffs presented no evidence that the silo unloader needed a repair which could be discovered by inspection and expressed in a warning. The appellate court noted that the sons and the plaintiff were aware of the dangers of working and unclogging with a silo unloader while it was running. Therefore, the appellate court affirmed the trial court’s grant of summary judgment based on the failure of the plaintiffs to show any breach of the duty to inspect, repair or warn. Ristau v. Ristau, 2017 Minn App. Unpub. LEXIS 489 (Minn. Ct. App. 2017).
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by Neil E. Harl

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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
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