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Cases, Regulations and Statutes

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BANKRUPTCY

CHAPTER 12

AUTOMATIC STAY. The debtor had transferred 40 acres of farm land to the debtor's son and retained a life estate in the property. The son filed for Chapter 12 bankruptcy twice, and in the second case, a secured creditor was granted relief from the automatic stay under Section 362(d)(4) for delay because of multiple filings. The grant of relief was recorded by the creditor and a foreclosure sale was scheduled. Before the foreclosure sale occurred, the debtor filed for Chapter 12. The son's second Chapter 12 case was dismissed. The creditor argued that the relief from automatic stay applied to the debtor's life estate interest in the property and sought relief from the automatic stay in the debtor's case. Under Section 362(b)(20), an order entered pursuant to Section 362(d)(4) is binding in any other case filed in the next two years purporting to affect the same real property. The order applies to the debtor whom the order was entered against and any other third party with an interest in the property seeking to obtain the benefit of the automatic stay in future bankruptcy cases for a period of two years. Thus, the court held that the relief from the automatic stay granted in the son's second Chapter 12 case applied as to the debtor's case involving the same property. ***In re* Wilson, 2017 Bankr. LEXIS 3781 (Bankr. W.D. Ky. 2017)**.

FEDERAL ESTATE AND GIFT TAXATION

ALLOCATION OF BASIS FOR DEATHS IN 2010. The decedent died in 2010 and the attorney hired by the executor failed to file a Form 8939, *Allocation of Increase in Basis for Property Acquired from a Decedent*, before January 17, 2012. The estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to file the Form 8939 to make the I.R.C. § 1022 election and to allocate basis provided by I.R.C. § 1022 to eligible property transferred as a result of the decedent's death. *Notice 2011-66, 2011-2 C.B. 184 section I.D.1*, provides that the IRS will not grant extensions of time to file a Form 8939 and will not accept a Form 8939 filed after the due date except in four limited circumstances provided in section I.D.2: "Fourth, an executor may apply for relief under § 301.9100-3 in the form of an extension of the time in which to file the Form 8939 (thus, making the Section 1022 election and the allocation of basis increase), which relief may be granted if the requirements of § 301.9100-3 are satisfied. The IRS granted an extension of time to file the election. **Ltr. Rul. 201749003, Aug. 29, 2017.**

FEDERAL FARM PROGRAMS

CONSERVATION. The USDA has adopted as final regulations amending the highly erodible land conservation and wetland conservation regulations to conform to the changes regarding conservation compliance made by the FCIC to its regulations in Catastrophic Risk Protection Endorsement; Area Risk Protection Insurance Basic Provisions; and Common Crop Insurance Policy Basic Provisions. The changes include removing the date of June 1 from the conservation compliance provisions and adding a reference to the premium billing date. Because the June 1 date is being removed, USDA is also revising the exception for farmers who began farming after June 1 to instead refer to producers who meet the Risk Management Agency's conditions for farmers who are new to farming, new to crop insurance, a new entity, or have not previously been required to file form AD–1026. **82 Fed. Reg. 58333 (Dec. 12, 2017)**.

ORGANIC FOOD. The AMS has issued a proposed regulation which sets forth the USDA intention to withdraw the Organic Livestock and Poultry Practices (OLPP) final rule published in the Federal Register on January 19, 2017, by the AMS. The OLPP final rule amended the organic livestock and poultry production requirements in the USDA organic regulations by adding new provisions for livestock handling and transport for slaughter and avian living conditions; and expands and clarifies existing requirements covering livestock care and production practices and mammalian living conditions. The OLPP final rule was originally set to take effect on March 20, 2017. **82 Fed. Reg. 59988 (Dec. 18, 2017)**.

FEDERAL INCOME TAXATION

ALTERNATIVE FUEL MIXTURE CREDIT. The taxpayer mixed gasoline and butane and sold it for use as a fuel. The taxpayer claimed the alternative fuel mixture credit under I.R.C. § 6426(e) for an open tax period ending on or before December 31, 2016, on the premise that the gasoline in the mixture is a taxable fuel and the butane in the mixture is a form of liquefied petroleum gas (LPG), an alternative fuel. The taxpayer indicated in its claim that the basis for its position that butane is a form of LPG is the language in Chapter One of IRS Publication 510, "Excise Taxes (Including Fuel Tax Credits and Refunds)," which provides, in the "Other Fuels (Including Alternative Fuels)" section, that "[l]iquefied petroleum gas includes propane, butane, pentane, or mixtures of those products." I.R.C. § 4083(a)(1) provides that gasoline is a taxable fuel. I.R.C. § 4083(a)(2)(B) provides that, to the extent prescribed in regulations, gasoline includes any gasoline blendstock, and that for purposes of I.R.C. § 4083(a)(2)(B)(i) , a gasoline blendstock includes any petroleum product component of gasoline. Because butane is a blendstock of gasoline, the IRS ruled that butane is a taxable fuel and the blending of gasoline and butane is not eligible for the alternative fuel mixture credit. **Rev. Rul. 2018-2, I.R.B. 2018-2**.

CASUALTY LOSSES. The IRS has issued two revenue procedures which provide optional safe harbors for claiming casualty loss deductions by taxpayers who suffered losses from Hurricanes Harvey, Irma and Maria in 2017. I.R.C. §165(a) generally provides that a taxpayer may deduct any loss sustained during the taxable year and not compensated for by insurance or otherwise. With respect to property not connected with a trade or business or a transaction entered into for profit, I.R.C. § 165(c)(3) limits an individual taxpayer's deduction to losses arising from fire, storm, shipwreck, or other casualty, or from theft. Treas. Reg. § 1.165-7(b) provides that the amount of a casualty loss is the lesser of (1) the difference between the fair market value of the property immediately before the casualty and the fair market value immediately after the casualty, or (2) the adjusted basis of the property. I.R.C. § 1012 and Treas. Reg. § 1.1012-1(a) provide that the basis of property generally is its cost. I.R.C. § 1016(a)(1) and Treas. Reg. § 1.1016-2(a) provide that the basis of property is adjusted for any expenditure, receipt, loss, or other item, properly chargeable to capital account, including the cost of improvements and betterments made to the property. Treas. Reg. § 1.165-7(a)(2)(i) provides that to determine the amount of the deductible loss under section 165(a), the fair market value of the property immediately before and immediately after the casualty generally shall be ascertained by competent appraisal. Treas. Reg. § 1.165-7(a)(2)(ii) provides that the cost of repairs to the property damaged is acceptable as evidence of the decrease in value of the property if the taxpayer shows that: (1) the repairs are necessary to restore the property to its condition immediately before the casualty; (2) the amount spent for such repairs is not excessive; (3) the repairs do not care for more than the damage suffered; and (4) the value of the property after the repairs does not, as a result of the repairs, exceed the value of the property immediately before the casualty. In order to use the cost-of-repairs method to determine the decrease in fair market value, the taxpayer must actually make the repairs rather than rely on estimates of repairs that will be performed in the future or not at all. The revenue procedures provide the conditions and methods for the use of five safe harbor methods for real property and one for personal property in determining the deductible casualty loss from the three hurricanes. The five safe harbors for real property losses are:

(1) estimated repair cost safe harbor method which allows taxpayers to use the lesser of two estimates by separate licensed contractors;

(2) *de minimis* safe harbor method which allows losses for less than $5,000 as estimated by the taxpayer;

(3) insurance safe harbor method which allows losses as determined by an insurance company;

(4) contractor safe harbor method which allows for losses equal to repairs made by licensed contractors, except to the extent the repairs increase the fair market value of the property over the pre-disaster value; and

(5) disaster loan appraisal safe harbor method which allows losses to be determined using an appraisal used to obtain a federal loan or loan guarantee.

For personal property, the safe harbor method allows losses for personal property based on the replacement cost of each item, reduced by 10 percent for each year the item was owned by the taxpayer. The loss for items owned for more than nine years is 10 percent of the replacement cost. **Rev. Proc. 2018-8, I.R.B. 2018-2; Rev. Proc. 2018-9, I.R.B. 2018-2**.

CHARITABLE DEDUCTIONS. The taxpayer was a limited liability company which elected to be taxed as a partnership. In 1987, the taxpayer purchased 1032 acres and in June 2009 executed a conservation easement on the land to a charitable organization. The easement agreement provided: "The burdens of this Conservation Easement shall run with the land and shall be enforceable against the Grantor and all future owners in perpetuity. The benefits shall be in gross and assignable, but only to an eligible donee as defined in Internal Revenue Code Section 1.170A-14(c)(1) [sic] as the section may be amended from time to time." The agreement also provided that (1) if the taxpayer transfers any part of the property to an owner of an adjacent property, (2) if the adjacent property is encumbered by a "comparable conservation easement", and (3) if the owner of the adjacent property and the holder of the adjacent easement agree to amend the terms of the adjacent easement to encumber the transferred portion of the property, then the transferred portion of the property will be released from the original conservation easement. The IRS disallowed a deduction for the grant of the easement, arguing that the land subject to the easement could be transferred to an entity which is not a qualified organization and that the provision did not satisfy the extinguishment requirements of Treas. Reg. § 1.170A-14(g)(3). The court focused on the first argument. The taxpayer claimed that, under South Carolina Conservation Easement Act of 1991, S.C. Code §§ 27-8-10 to 27-8-120, any holder of a conservation easement includes only qualified organizations. The court stated that, to be a "qualified organization" as that term is defined by I.R.C. § 170(h)(3), a nongovernmental organization must be described in either I.R.C. § 501(c)(3) or I.R.C. § 170(b)(1)(A)(vi). The court found that the state law definition of easement holder does not require that the organization refrain from lobbying or intervening in political campaigns; therefore, a holder of a conservation easement on adjacent land may comply with state law but not be a qualified organization under federal tax law. Thus, the court held that the easement did not qualify for a charitable deduction because it allowed a transfer of the subject property to a non-qualified organization. **Salt Point Timber, LLC v. Comm'r, T.C. Memo. 2017-245**.

CORPORATIONS

INCOME. The taxpayers were two brothers who formed a corporation that owned and operated a cattle business. The brothers each owned half of the corporation, and the brothers also jointly owned and operated an unincorporated cattle business. Nearly all the income and expenses of the cattle operation were reported by the unincorporated business on the brothers' Schedules C. The corporation's return listed only small amounts of income and expenses and was characterized by the shareholders as a management company. The taxpayers argued that the corporation's only business was the management of the accounting for the unincorporated business. However, the court found that the corporation was the publicly recognized seller and purchaser of the cattle, deposited all of the proceeds in a bank account owned by the corporation and directed the distribution of funds to the shareholders. The court held that the shareholders created a separate corporation to operate the cattle business, acted in accord with the corporation as owner of the business, and received financial benefits from the arrangement; therefore, the shareholders could not disregard the corporation as a separate entity and had to allocate the income and expenses to the corporation. On appeal, the appellate court affirmed. **Barnhart**

Ranch, Co. v. Comm'r, 2018-1 U.S. Tax Cas. (CCH) ¶ 50,103 (5th Cir. 2017), ***aff'g*****, T.C. Memo. 2016-170**.

DEDUCTION FOR PROPERTY TAXES. The IRS has published advice for taxpayers pre-paying property taxes in 2017 in order to claim a deduction for the payments on their 2017 tax returns. "In general, whether a taxpayer is allowed a deduction for the prepayment of state or local real property taxes in 2017 depends on whether the taxpayer makes the payment in 2017 and the real property taxes are assessed prior to 2018. A prepayment of anticipated real property taxes that have not been assessed prior to 2018 are not deductible in 2017. State or local law determines whether and when a property tax is assessed, which is generally when the taxpayer becomes liable for the property tax imposed." **IR-2017-210**.

DISASTER LOSSES. On November 22, 2017, the President determined that certain areas in Mississippi were eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of Hurricane Nate which began on October 6, 2017. **FEMA-4350-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).

DOMESTIC PRODUCTION ACTIVITIES DEDUCTION. The taxpayer was engaged in the farm supply and grain marketing business. The taxpayer provided farm supplies to its members and marketed their grain. The taxpayer's membership was limited to persons who are farm operators and agricultural producers. The taxpayer was a nonexempt subchapter T cooperative and a "specified agricultural cooperative" within the meaning of I.R.C. § 199(d)(3)(F). The taxpayer was required under state law and its articles of incorporation and bylaws to distribute earnings, after setting aside reasonable reserves and paying preferred stock dividends, to members each year as patronage dividends. The taxpayer did not have a similar obligation to pay patronage dividends to nonmembers. The taxpayer became a grain dealer and obtain a state grain dealer license. Taxpayer contracted with its members and other producers to purchase grain at market price. I.R.C. § 199(a) allows a deduction an amount equal to 9 percent of the lesser of – (1) the qualified production activities income of the taxpayer for the taxable year, or (2) taxable income (determined without regard to this section) for the taxable year. I.R.C. § 199(c)(1) defines the term "qualified production activities income" (QPAI) for any taxable year as an amount equal to the excess (if any) of – (A) the taxpayer's domestic production gross receipts for such taxable year, over (B) the sum of – (i) the cost of goods sold that are allocable to such receipts, and (ii) other expenses, losses, or deductions (other than the deduction allowed under § 199), which are properly allocable to such receipts. In the case of agricultural and horticultural cooperative, I.R.C. § 199(d)(3)(A) allows a deduction to patrons who receive a qualified payment from a specified agricultural or horticultural cooperative, for the taxable year in which the payment is received, equal to the portion of the deduction allowed under I.R.C. § 199(a) to the cooperative, which is (1) allowed with respect to the portion of QPAI to which such payment is attributable, and (2) identified by such cooperative in a written notice mailed to such person during the payment period described in I.R.C. § 1382(d). I.R.C. § 199(d)(3)(F) provides that, for purposes of I.R.C. § 199(d)(3), the term "specified agricultural or horticultural cooperative" means a subchapter T cooperative which is engaged – (1) in the manufacturing, production, growth, or extraction in whole or significant part of any agricultural or horticultural product, or (2) in the marketing of agricultural or horticultural products. The IRS ruled that (1) the grain payments to the taxpayer's members will constitute "per-unit retain allocations paid in money" within the meaning of I.R.C. § 1382(b)(3);(2) pursuant to I.R.C. § 199(d)(3)(D), the taxpayer will be treated as having manufactured, produced, grown, or extracted in whole or significant part the grain purchased from its members, which the members have so manufactured, produced, grown or extracted; and (3) the taxpayer could compute its qualified production activities income and taxable income could be computed pursuant to I.R.C. § 199(d)(3)(C) without regard to the deduction for per-unit retain allocations made to its members. **Ltr. Rul. 201750003, Aug. 30, 2017**.

HEALTH INSURANCE. The IRS has announced that it has extended the 2018 due date for certain entities to provide 2017 health coverage information forms to individuals. Insurers, self-insuring employers, other coverage providers, and applicable large employers now have until March 2, 2018, to provide Forms 1095-B or 1095-C to individuals, which is a 30-day extension from the original due date of Jan. 31. Insurers, self-insuring employers, other coverage providers, and applicable large employers must furnish statements to employees or covered individuals regarding the health care coverage offered to them. Individuals may use this information to determine whether, for each month of the calendar year, they may claim the premium tax credit on their individual income tax returns. This 30-day extension is automatic. Employers and providers do not have to request it. Because of these extensions, individuals may not receive their Forms 1095-B or 1095-C by the time they are ready to file their 2017 individual income tax return. While information on these forms may assist in preparing a return, the forms are not required to file. Taxpayers can prepare and file their returns using other information about their health coverage and do not have to wait for Forms 1095-B or 1095-C to file. **IR-2017-209**.

MILEAGE DEDUCTION. The IRS has announced that the standard mileage rate for 2018 is 54.5 cents (increased from 53.5 in 2017) per mile for business use, 14 cents per mile for charitable use and 18 cents (increased from 17 cents in 2017) per mile for medical and moving expense purposes. Under *Rev. Proc. 2010-51, 2010-2 C.B. 883*, a taxpayer must reduce the basis of an automobile used in business by the amount of depreciation the taxpayer claims for the automobile. If a taxpayer uses the business standard mileage rate to compute the expense of operating an automobile for any year, a per-mile amount (25 cents per mile for 2018) is treated as depreciation for those years in which the taxpayer used the business standard mileage rate. If the taxpayer deducted the actual costs of operating an automobile for one or more of those years, the taxpayer may not use the business standard mileage rate to determine the amount treated as depreciation for those years. The 2010 revenue procedure also provides rules under which the amount of ordinary and necessary expenses of local travel or transportation away from home that are paid or incurred by an employee will be deemed substantiated under Treas. Reg. §

1.274-5 when a payor (the employer, its agent, or a third party) provides a mileage allowance under a reimbursement or other expense allowance arrangement to pay for such expenses. Use of a method of substantiation described in this revenue procedure is not mandatory and a taxpayer may use actual allowable expenses if the taxpayer maintains adequate records or other sufficient evidence for proper substantiation. **Notice 2018-3, I.R.B. 2018-2**.

PARSONAGE ALLOWANCE DEDUCTION. The District Court for the Western District of Wisconsin (see prior rulings in *Freedom From Religion Foundation, Inc. v. Lew, 2013-2 U.S. Tax Cas. (CCH) ¶ 50,600 (W.D. Wis. 2013), rev'd on issue of standing, 773 F.3d 815 (7th Cir. 2014)*) ruled that the I.R.C. § 107(2) exclusion from taxable income of the parsonage allowance was unconstitutional as a violation of the Establishment Clause of the First Amendment to the U.S. Constitution. *Gaylor v. Mnuchin, 2017-2 U.S. Tax Cas. (CCH) ¶ 50,372 (W.D. Wis. 2017)*. In a further hearing in the case, the court rejected the defendants' request that only declaratory relief be granted instead of an injunction. In addition, the court ruled that the injunction would not begin until 180 days after the resolution of any appeals, thus giving Congress, the IRS and taxpayers time to adjust to the change if the holding of unconstitutionality is upheld on appeal. **Gaylor v. Mnuchin, 2018-1 U.S. Tax Cas. (CCH) ¶ 50,101 (W.D. Wis. 2017)**.

PARTNERSHIPS

ADMINISTRATIVE ADJUSTMENTS. The IRS has issued proposed regulations implementing section 1101 of the *Bipartisan Budget Act of 2015 (BBA), Public Law 114-74, 129 Stat. 584 (2015)*. Section 1101 of the BBA repeals the current rules governing partnership audits and replaces them with a new centralized partnership audit regime that, in general, assesses and collects tax at the partnership level. The proposed regulations provide rules addressing how pass-through partners take into account adjustments under the alternative to payment of the imputed underpayment described in I.R.C. § 6226 and under rules similar to I.R.C. § 6226 when a partnership files an administrative adjustment request under I.R.C. § 6227. To make corresponding changes, these proposed regulations amend portions of the previously proposed regulations under I.R.C. §§ 6226 and 6227. Additionally, these proposed regulations provide rules regarding assessment and collection, penalties and interest, and period of limitations under the new centralized partnership audit regime. The proposed regulations also address the rules for seeking judicial review of partnership adjustments. **NPRM REG-120232-17, 82 Fed. Reg. 60144 (Dec. 19, 2017)**.

ELECTION TO ADJUST BASIS. The taxpayer was a limited partnership taxed as a partnership. During the tax year one of the limited partners died; however, the taxpayer's tax advisor inadvertently failed to make the election to adjust the basis of partnership assets under I.R.C. § 754. The IRS granted an extension of time to file the election. **Ltr. Rul. 201750011, Sept. 13, 2017**.

RETURNS. The IRS has issued a Notice which amends *Notice 2017-47, 2017-2 C.B. 232* which provided penalty relief to partnerships that filed certain untimely returns or untimely requests for extensions of time to file those returns for the first taxable year that began after December 31, 2015, by the fifteenth day of the fourth month following the close of that taxable year. The updated Notice now extends relief to fiscal-year filers whose tax years began in 2016 but did not end until 2017. Section 2006 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (the Surface Transportation Act), *Pub. L. No 114–41, 129 Stat. 443 (2015)*, amended I.R.C. § 6072 and changed the date by which a partnership must file its annual return. The due date for filing the annual return of a partnership changed from the fifteenth day of the fourth month following the close of the taxable year (April 15 for calendar-year taxpayers) to the fifteenth day of the third month following the close of the taxable year (March 15 for calendar-year taxpayers). Other partnership returns affected include Form 1065-B, *U.S. Return of Income for Electing Large Partnerships*, Form 8804, *Annual Return for Partnership Withholding Tax (Section 1446)*, Form 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax*, Schedules K-1 which are generally due to the IRS on the same date as the partnership's Form 1065 or Form 1065-B. Some partnerships must also file additional returns, such as Form 5471, "Information Return of U.S. Persons With Respect to Certain Foreign Corporations," by the due date of the Form 1065 or Form 1065-B. Relief from the filing penalties will be granted if the returns are timely filed, including extensions, under the prior law. **Notice 2017-71, 2017-2 C.B. 561**.

PENSION PLANS. For plans beginning in December 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 2.80 percent. The 30-year Treasury weighted average is 2.85 percent, and the 90 percent to 105 percent permissible range is 2.57 percent to 3.00 percent. The 24-month average corporate bond segment rates for December 2017, *without adjustment* by the 25-year average segment rates are: 1.79 percent for the first segment; 3.70 percent for the second segment; and 4.56 percent for the third segment. The 24-month average corporate bond segment rates for December 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 2017-76, 2017-2 C.B. 604**.

SAFE HARBOR INTEREST RATES

January 2018

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	1.68	1.67	1.67	1.66
110 percent AFR	1.85	1.84	1.84	1.83
120 percent AFR	2.01	2.00	2.00	1.99
		Mid-term		
AFR	2.18	2.17	2.16	2.16
110 percent AFR	2.40	2.39	2.38	2.38
120 percent AFR	2.62	2.60	2.59	2.59
		Long-term		
AFR	2.59	2.57	2.56	2.56
110 percent AFR	2.85	2.83	2.82	2.81
120 percent AFR	3.10	3.08	3.07	3.06

Rev. Rul. 2018-01, I.R.B. 2018-2.

S CORPORATIONS

ELIGIBLE SHAREHOLDERS. The taxpayer was an S corporation with originally one shareholder. The shareholder transferred by gift and/or sale shares to several trusts which were not eligible shareholders under the terms of the trusts' agreements. Before the error was discovered, the trusts filed returns consistent with their ownership of S corporation stock. After the error was discovered, the trust agreements were amended to make them eligible shareholders. The IRS ruled that the termination was inadvertent and would be ignored. **Ltr. Rul. 201750013, Sept. 5, 2017**.

ENTITY SEPARATE FROM SHAREHOLDERS. The U.S. Supreme Court in *Moline Properties v. Comm'r, 319 U.S. 436 (1943)* held that a C corporation was separate from its shareholders for federal income tax purposes if the corporation was created for a *bona fide* business purpose or activity. The shareholder in *Moline* had attempted to avoid the corporate-level income tax by denying that the taxpayer was separate from the corporation. *Morton v. United States, 98 Fed. Cl. 596 (2011)*, however, held that the owner of a majority interest in several S corporations and those corporations could be considered one entity because they created a unified business enterprise. The *Morton* court held that Moline did not apply because *Moline* involved a C corporation. In a Chief Counsel advice letter, the IRS ruled that it would not follow the holding of *Morton*. The IRS noted that Morton was an "aberation" in conflict with several other cases involving S corporations, including *Steinberger v. Comm'r, T.C. Memo. 2016-104* which held that an S corporation shareholder could not combine S corporations in which the shareholder did not hold at least a majority interest and could not demonstrate a unified business enterprise. Thus, the IRS ruled that, in general, an S corporation would be treated as separate from its shareholder(s) if created for a *bona fide* business purpose or activity. At the very least, the IRS would argue that *Morton* provided a limited precedent for allowing an S corporation to be combined with a shareholder where the shareholder owned at least a majority interest in the S corporation(s) and the shareholder and entities had significant integration of business activities. **CCA 201747006, Oct. 24, 2017**.

SECOND CLASS OF STOCK. The taxpayer was incorporated and elected to be an S corporation. The taxpayer's board of directors adopted a resolution extending the eligibility to participate in the taxpayer's medical and dental plans to the taxpayer's non-employee shareholders, including beneficiaries of trusts owning taxpayer stock, and any spouse or unmarried dependent children of any shareholder or beneficiary. Thereafter, a non-employee beneficiary of trusts owning taxpayer stock and members of her family participated in the taxpayer's medical plan. The beneficiary and her family timely paid to the taxpayer the employee share of the premiums determined on the same basis as the taxpayer's employees in the medical plan, but did not reimburse the taxpayer for the employer share of the premiums. After consultation with tax advisors about the board resolution, the taxpayer's board of directors resolved to no longer allow non-employee shareholders to participate in its medical and dental plans. In addition, the beneficiary and family members paid the taxpayer the difference between the employee share of the premiums and the COBRA amount charged to former employees for medical coverage. The taxpayer represented that the board resolution was a binding agreement under state law which permitted deemed disproportionate distributions to shareholders and caused the taxpayer to have a second class of stock. The taxpayer represented that the resulting termination of its S corporation election was inadvertent, and not motivated by tax avoidance or retroactive tax planning. I.R.C. § 1362(f) provides, in part, that if (1) an election under I.R.C. § 1362(a) by any corporation was terminated under I.R.C. § 1362(d)(2); (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such termination, steps were taken so that the corporation for which the termination occurred is a small business corporation; and (4) the corporation for which the termination occurred, and each person who was a shareholder in the corporation at any time during the period specified pursuant to I.R.C. § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such termination, such corporation shall be treated as an S corporation during the period specified by the Secretary. Thus, the IRS ruled that the termination of the S corporation election was inadvertent and that such termination would be ignored. **Ltr. Rul. 201750007, Sept. 18, 2017**.

SOCIAL SECURITY TAXES. The taxpayer was a graduate medical education center which had paid FICA taxes on payments to medical students. The taxpayer was an I.R.C. § 501(a) and (c)(3) tax-exempt corporation. In 2010,the IRS has made an administrative determination to accept the position that medical residents are excepted from FICA taxes based on the student exception for tax periods ending before April 1, 2005, when new IRS regulations went into effect. See *IR-2010-25*. The IRS refunded $4.7 million in overpayment of FICA taxes plus interest. However, the IRS sought recovery of $2.3 million because it had used an overly generous interest rate for the repayment. A taxpayer is entitled to interest on overpayments at the rate established by I.R.C. § 6621. I.R.C. § 6621 sets forth the procedures for the determination of interest rates, with subsection (a) defining the different appropriate interest rates to be paid by the government (in the case of an overpayment), or for the taxpayer (in the case of underpayment).

"(1) Overpayment rate.—The overpayment rate established under this section shall be the sum of (A) the Federal short-term rate determined under subsection (b), plus (B) 3 percentage points (2 percentage points in the case of a corporation).

To the extent that an overpayment of tax by a corporation for any taxable period (as defined in subsection (c)(3), applied by substituting "overpayment" for "underpayment") exceeds $10,000, subparagraph (B) shall be applied by substituting "0.5 percentage point" for "2 percentage points".

(2) Underpayment rate.—The underpayment rate established under this section shall be the sum of– (A) the Federal short-term rate determined under subsection (b), plus (B) 3 percentage points."

The court stated that the statute thus not only creates different interest rates for overpayments versus underpayments but also provides for different rates as to individuals and corporations. Individuals receive interest at 3 percent over the federal short-term rate, while corporations receive 2 percent. And if a corporation has overpaid by more than $10,000, it will receive only 0.5 percent interest. The taxpayer argued that it should receive interest based on the individual rate because I.R.C. § 6621 applied only to for-profit C corporations. The court held that Section 6621(a) was unambiguous and the refund of the FICA taxes was eligible for the corporate interest rate on overpayments over $10,000. The court noted a similar holding in *United States v. Detroit Medical Center, 833 F.3d 671 (6th Cir. 2016)*. **Wichita Center for Graduate Medical Education v. U.S., 2017-2 U.S. Tax Cas. (CCH) ¶ 50,433 (D. Kan. 2017)**.