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Cases, Regulations and Statutes

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who had been using the provision in past years.[3] Many of those making use of the "small partnership" as it was called, know that the trend is for partnership tax law to gradually become more complex (and expensive for professional assistance in filing) and are looking elsewhere for assistance. For many, shifting to a partnership status is unattractive for that reason and also because the clear trend has been for partnership status to shift gradually for other reasons to greater and greater complexity. Some are considering shifting to tenancy common ownership status. Others, in light of the dramatically larger amount passing at death under the 2017 tax bill for federal estate tax purposes, are considering shifting to joint tenancy with right of survivorship. Others are looking at limited liability company status but are wary that some authority exists that shifting to LLC status could lead to partnership characterization (which could invoke several undesirable features along the complexity line). There is really no clear choice that is free of negatives. Yet, for many it is a high stakes choice with the chosen path possibly leading to costly outcomes both in time and in funding.

One farm couple in their 80s with 1,000 acres abhors the partnership complexity and has no desire to get into partnership complexities now existing and even more being considered under the guise of partnership "audits." Their plea – why would Congress bow to a few CPAs and repeal what has worked very well for many, many years?

ENDNOTES

[1] Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 1101[a], 129 Stat. 584 (2015).

[2] *Id.*

[3] See, e.g., Ltr. Rul. 200418028, Jan. 27, 2004.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

CHAPTER 12

DISMISSAL. The debtor was an LLC which filed its articles of organization with the secretary of state on August 2, 2017 at 10:52 a.m. That same day, the two members of the LLC transferred by quitclaim deed to the LLC farm property which was scheduled for a sheriff's sale the next day. The LLC filed for Chapter 12 on the same day at 4:59 p.m. The debtor filed only the petition and the creditors' matrix. Two weeks later, the trustee filed a motion to dismiss the case with a request to bar any refiling for 180 days. The case was dismissed on September 11 prior to a hearing on the trustee's motion and no refiling bar was included. The case was reinstated but before the trustee's motion could be heard, the debtor filed a motion to dismiss. The members of the LLC had filed personal Chapter 12 cases which were all dismissed for failure to file confirmable plans. Section 1208(b) provides that Chapter 12 debtors may move to dismiss their cases at any time, and upon such a request, the court shall dismiss the case, provided that the case has not previously been converted from another chapter. The trustee argued that a Chapter 12 case can be dismissed for cause under Section 1208(c) and that the debtor filed the case only to hinder and delay the collection of debts because the debtor could not have generated any farm income or debt within a day before filing the petition so as to qualify as a farm debtor under Section 101(18). The issue was whether the right to seek a dismissal under Section 1208(c) overrides the debtor's right to dismiss a case. The court noted a split in authority over the issue but refused to rule one way or the other on the issue but held that the court could accept the debtor's motion to dismiss and as part of the dismissal impose conditions on the debtor's right to refile. The debtor argued that Sections 349 and 109(g) set out two instances in which the court can impose a 180-day bar to refiling upon dismissal of a case: (1) the dismissal was due to the debtor's willful failure to abide by the court's orders or to appear before the court in proper prosecution of the case and (2) the debtor asks for and obtains voluntary dismissal of his case in response to a creditor's relief from stay motion. The court disagreed and held that Section 349(a) allowed the court authority to place conditions on refiling where the conduct of the members of the debtor amounted to bad faith serial filings in bankruptcy. Therefore, the court ordered the case to be dismissed and prohibited the debtor from refiling in Chapter 12 for 180 days. ***In re* Valentine Hill Farm, LLC, 2018 Bankr. LEXIS 184 (Bankr. S.D. Ind. 2018)**.

The debtor filed a Chapter 12 case in November 2017 and listed secured debt of $700,000 and unsecured debt of $1 million. The debtor listed income for 2015 and 2016 of about $10 million each year but no income for 2017. At the meeting of creditors, the debtor invoked the Fifth Amendment in refusing to answer questions and refused to produce any documents, giving the reasons that either no documents existed or that they were under the control of the debtor's father. The trust filed a motion to dismiss the case for bad faith for the failure of the debtor to answer the questions and provide records. In addition, a bank holding a secured claim sought an order to compel the debtor to explain the disappearance of 2,100 head of cattle which secured a loan with the bank. The court also heard from the USDA which was interested in the debtor as to whether the debtor sold corn-fed cattle as grass-fed cattle, a possible criminal violation. The court noted that these complaints and the potential for more from other creditors indicated that many of the claims against the debtor would be nondischargeable. The court found that the failure of the debtor to answer questions and produce documents about the debtor's business and finances was a clear indication of a bad faith filing by the debtor, solely for the purpose of delaying the investigation of the debtor's estate. Thus, the court ordered the case to be dismissed and prohibited the debtor from refiling any case within 180 days. The court also rejected a creditor's motion to convert the case to Chapter 7 because such a conversion would require a showing that the debtor had committed fraud and at the stage of the case here, no proof of fraud had been determined. In addition, the court noted that a conversion to Chapter 7 would not solve the problem of a debtor who refused to answer creditors' questions or produce financial documents. ***In re* Rogers, 2018 Bankr. LEXIS 187 (Bankr. W.D. N.Y. 2018)**.

PLAN. The debtor filed for Chapter 12 and a plan was confirmed in October 2014. In October 2017, the debtor filed a motion to modify the plan to provide for payments to be made directly by the debtor to creditors and to be made beyond five years after the first payments were made under the plan. The debtor cited a change in conditions resulting from the sale of all farmland and the debtor's medical issues which prevented full time work. Section 1229(c) provides "A plan modified under this section may not provide for payments over a period that expires after three years after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time." The debtor cited *In re Hart, 90 B.R. 150, 151 (Bankr. E.D. N.C. 1988)* which allowed a Chapter 12 debtor to modify a confirmed plan to provide for payments to creditors for more than five years. The court disagreed with the holding in In re Hart and held that Section 1229(c) was unambiguous in prohibiting modification of Chapter 12 plan payments beyond five years after the first plan payments were made. ***In re* Stone, 2018 Bankr. LEXIS 380 (Bankr. S.D. Tex. 2018)**.

FEDERAL ESTATE AND GIFT TAXATION

No Items.

FEDERAL FARM PROGRAMS

BIOFUELS. The CCC has announced that it has withdrawn support for the Farm-to-Fleet Biofuel Production Incentive Program (BPI), and is cancelling funding for the BPI payments to companies that are refining biofuel in the United States from certain domestically grown feedstocks converted to drop-in biofuel for delivery to supply biofuels to the Navy. USDA has reassessed how to best use limited available funds and has determined that the BPI is no longer a priority for CCC funding. The impact of this withdrawal is that suppliers of fuel containing a biofuel blend to the U.S. Navy are no longer eligible to receive a CCC incentive payment, through the Farm- to-Fleet BPI Program. **83 Fed. Reg. 4631 (Feb. 1, 2018)**.

EGGS. The FSIS has issued proposed regulations amending the egg products inspection regulations by requiring official plants that process egg products to develop and implement Hazard Analysis and Critical Control Point (HACCP) Systems and Sanitation Standard Operating Procedures (Sanitation SOPs) and to meet other sanitation requirements consistent with the meat and poultry regulations. The proposed regulations eliminate current regulatory provisions that are inconsistent with HACCP, Sanitation SOPs, and the proposed sanitation requirements. FSIS is also proposing to specify in the regulations that official plants are required to process egg products to be edible without additional preparation to achieve food safety. **83 Fed. Reg. 6314 (Feb. 13, 2018)**.

FEDERAL INCOME TAXATION

C CORPORATIONS

RENTAL FROM SHAREHOLDER. The taxpayer was a C corporation solely-owned by a medical doctor. The shareholder owned a two story residence and rented the second story to the taxpayer as an office where the shareholder performed administrative tasks for a medical practice performed at a hospital. The shareholder used the taxpayer's business bank account to pay the mortgage on the residence and the taxpayer claimed the mortgage payments as a deduction for rent. The shareholder claimed the mortgage interest as a deduction on the shareholder's personal tax return but did not include the full mortgage payments as rental income. The court noted that I.R.C. § 280A does not provide for a home office deduction for corporations. The court found that the taxpayer failed to provide evidence of a *bona fide* rental arrangement between the taxpayer and the shareholder, including no written agreement, and no specifics as to the terms of any rental agreement. In addition, the failure of the shareholder to include the mortgage payments as rental income was also proof that a *bona fide* arrangement was not intended by the taxpayer or the shareholder. Thus, the court held that the deduction for rent was properly disallowed by the IRS. **Christopher C.L. Ng MD, Inc. APC v. Comm'r, T.C. Memo. 2018-14**.

CASUALTY LOSSES. I.R.C. § 165(a) generally allows taxpayers to deduct losses sustained during the taxable year that are not compensated for by insurance or otherwise. For personal- use property, such as a taxpayer's personal residence, I.R.C. § 165(c)(3) limits an individual's deduction to losses arising from fire, storm, shipwreck, or other casualty, or from theft. A casualty is damage, destruction, or loss of property that results from an identifiable event that is sudden, unexpected, and unusual. See *Rev. Rul. 72-592, 1972-2 C.B. 101*. Damage or loss resulting from progressive deterioration of property through a steadily operating cause is not a casualty loss. In view of the unique circumstances surrounding the damage caused by deteriorating concrete foundations containing the mineral pyrrhotite, the IRS has provided a safe harbor method that treats certain damage resulting from deteriorating concrete foundations as a casualty loss and provides a formula for determining the amount of the loss. Accordingly, for an individual taxpayer within the scope of this revenue procedure, the IRS will not challenge the taxpayer's treatment of damage resulting from a deteriorating concrete foundation as a casualty loss if the loss is determined and reported as provided in the revenue procedure. *Rev. Proc. 2017-60, 2017-2 C.B. 559*. The IRS has modified *Rev. Proc. 2017-60* to extend the time for individuals to pay to repair damage to their personal residences resulting from deteriorating concrete foundations caused by the presence of the mineral pyrrhotite. If a taxpayer pays to repair damage to that taxpayer's personal residence caused by a deteriorating concrete foundation during the taxpayer's 2016 taxable year or earlier, the taxpayer may treat the amount paid as a casualty loss on a timely Form 1040X, *Amended U.S. Individual Income Tax Return*, for the taxable year of payment. If a taxpayer pays to repair the damage during the taxpayer's 2017 taxable year or prior to a timely filed (including extensions) original *U.S. Individual Income Tax Return* (Form 1040, 1040A or 1040EZ) for the 2017 taxable year, the taxpayer may treat the amount paid as a casualty loss on the taxpayer's original 2017 income tax return (or a timely filed Form 1040X for the 2017 taxable year). If a taxpayer pays to repair the damage after filing an original 2017 income tax return and prior to the last day for filing a timely Form 1040X for the 2017 taxable year, the taxpayer may treat the amount paid as a casualty loss on a timely filed Form 1040X for the 2017 taxable year. **Rev. Proc. 2018-14, I.R.B. 2018-09**.

CONTACTING IRS. The IRS published information which reminded taxpayers and tax professionals that they will be asked to verify their identities if they call the IRS. Callers should be prepared to verify their identities if they need to call the agency. Taxpayers should have the following documents ready: (1) Social Security numbers and birth dates for those who were named on the tax return in question; (2) an ITIN letter if the taxpayer has one in lieu of a Social Security number; (3) filing status – Single, Head of Household, Married Filing Joint or Married Filing Separate; (4) the prior-year tax return; (5) a copy of the tax return in question; and (6) any IRS letters or notices received by the taxpayer. By law, IRS assistors will only speak with the taxpayer or to their legally designated representative. If taxpayers or tax professionals are calling about a third party's account, they should be prepared to verify their identities and provide information about the third party they are representing, including (1) oral or written authorization from the third-party to discuss the account; (2) the ability to verify the taxpayer's name, SSN/ITIN, tax period, and tax form(s) filed; (3) PTIN or PIN if a third-party designee; (4) a current, completed and signed Form 8821, *Tax Information Authorization* or (5) a completed and signed Form 2848, *Power of Attorney and Declaration of Representative*. Questions regarding a deceased taxpayer require different steps so caller should be prepared to fax: (1) the deceased taxpayer's death certificate, and (2) either copies of Letters Testamentary approved by the court, or IRS Form 56, *Notice Concerning Fiduciary Relationship (for estate executors)*. **IR-2018-28.**

DATA THEFT. The IRS has published information for tax preparers who experience a data theft. *Contact the IRS and law enforcement*: Report client data theft to the local IRS Stakeholder Liaison. Liaisons will notify IRS Criminal Investigation and other appropriate offices within the agency on behalf of the preparer. If reported quickly, the IRS can take steps to block fraudulent returns in a preparer's clients' names. Also contact the local office of the Federal Bureau of Investigation and file a police report on the data theft. *Contact state agencies where they prepare state returns*: Most states require that the attorney general be notified of data thefts. This process may involve contacting multiple offices. *Contact experts*: Security experts can determine the cause and scope of the theft and can also figure out how to prevent further losses. Preparers should check to see if their insurance policy covers expenses related to the data loss. *Contact clients and other services*: The Federal Trade Commission offers tips and templates for businesses that suffer data compromise and have suggested language for informing clients. *Send a letter to victims letting them know about the theft*. Preparers should work with law enforcement on timing. A preparer who has prior-year data in their system may need to contact former clients. The tax software provider may need to take steps to prevent inappropriate use of the compromised account for e-filing. Thieves may have stolen passwords from the preparer's website and client portal provider. The preparer and provider would need to reset these. Preparers should contact the credit and identity theft protection agencies. Certain states require credit monitoring and identity theft protection to victims of ID theft. Preparers should also notify credit bureaus if there is a compromise. The preparer's clients may seek their services. The IRS reminds tax professionals that toll-free assistors cannot accept third-party notification of tax-related identity theft. Clients should file a Form 14039, *Identity Theft Affidavit*, only if their electronic return is rejected as a duplicate, or they are directed to do so. **IRS Tax Tip 2018-23**.

DISASTER LOSSES. On January 2, 2018, the President determined that certain areas in Maine were eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms and flooding which began on November 1, 2017. **FEMA-4354-DR.** On January 2, 2018, the President determined that certain areas in New Hampshire were eligible for assistance from the government under the Act as a result of a severe storm and flooding which began on October 29, 2017. **FEMA-4355-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).

HOBBY LOSSES. The taxpayer owned a profitable company which provided mechanical inspection services for major oil refineries and gas plants. In 1997 the taxpayer purchased a cattle ranch with "the intent to make a profit" but from 1997 through 2015, the operation claimed only net losses, with 14 of those years receiving less than $1,000 in gross receipts. The court found that the taxpayer had personally made improvements to the property, including replacement of fences, buildings and equipment, and that the property had appreciated in value from $175,000 to $725,000. The court looked at the nine factors of Treas. Reg. §1.183-2(b) and held that the taxpayer engaged in the cattle ranching activity with the intent to make a profit because (1) the taxpayer spent a substantial amount of time personally working the ranch and making improvements; (2) the taxpayer had a reasonable expectation of appreciation in value of the land and operation; and (3) the taxpayer received no recreational benefit or personal pleasure from the operation.

The court characterized the taxpayer's efforts as building up the cattle operation on unimproved land in expectation that the resulting operation would be profitable in the future. It is notable in this case, as distinguished from a majority of other cases involving farm and ranch operations, that the court held that the taxpayer did not operate the cattle ranch in a businesslike manner, a finding which more often than not results in a holding that a farm or ranch operation is not operated with the intent to make a profit. The court found that, although the taxpayer used sophisticated accounting and other business practices in the taxpayer's oil and gas inspection company, the taxpayer kept the minimum of records, no separate bank account, no business plan and insufficient records by which the taxpayer could analyze and modify the activity to increase profits. Thus, the holding appears to conflict with the majority of other hobby loss cases, especially when considering that the court also made neutral and negative findings as to (1) the lack expertise of the taxpayer, (2) the success of the taxpayer in operating another business, which the court discounted because the taxpayer's other successful business was operated significantly differently from the cattle business; (3) the existence of only losses from the operation, mitigated by weather, market and other factors outside the taxpayer's control; (4) the existence of no profitable years; and (5) the losses from the cattle operation offset significant income from other sources. Thus, the court found a profit motive using only three of the nine factors in the regulations as to a cattle operation in existence for 19 years without any profits. **Wicks v. United States, 2018-1 U.S. Tax Cas. (CCH) ¶ 50,142 (N.D. Okla. 2018)**.

INNOCENT SPOUSE RELIEF. In 2009, the taxpayer was married and unemployed. The taxpayer's former spouse operated an air conditioning business which the taxpayer knew was in financial trouble. In 2009, the taxpayer withdrew money from a retirement account which the former spouse wasted on an investment. The couple filed a joint return for 2009 and listed the retirement plan distribution as income but the couple did not pay the taxes owed on the return. The taxpayer knew the taxes would not be paid but believed the former spouse that business income would be forthcoming to pay the taxes. The taxes, however, were not paid. The couple divorced in 2013 after the taxpayer suffered verbal abuse and learned about secret transactions from the former spouse's business. The taxpayer sought innocent spouse relief under I.R.C. § 6015(f) but was denied by the IRS because the taxpayer knew about the unpaid taxes and knew the taxes would not be paid. The divorce decree did not provide that the former spouse was solely liable for the unpaid taxes. *Rev. Proc. 2013-34, 2013-2 C.B. 397*, provides seven threshold conditions that a spouse must meet to qualify for relief under I.R.C. § 6015(f): (1) the requesting spouse filed a joint return for the taxable year for which relief is sought; (2) the relief is not available to the requesting spouse under I.R.C. § 6015(b) or (c); (3) the claim for relief is timely filed; (4) no assets were transferred between the spouses as part of a fraudulent scheme; (5) the nonrequesting spouse did not transfer disqualified assets to the requesting spouse; (6) the requesting spouse did not knowingly participate in the filing of a fraudulent joint return; and (7) absent certain enumerated exceptions, the tax liability from which the requesting spouse seeks relief is attributable to an item of the nonrequesting spouse or an underpayment resulting from the nonrequesting spouse's income. The IRS and court agreed that the first six conditions were met in this case and that at least a portion of the tax liability was attributable to the distribution from the taxpayer's retirement plan. The court looked at three possible exceptions to the attribution rule: (1) the requesting spouse did not know or have reason to know that funds intended for payment of tax were misappropriated by the nonrequesting spouse; (2) abuse of the taxpayer before the return was filed that affected the requesting spouse's ability to challenge the treatment of items on the return or question payment of any balance due; and (3) fraud committed by the nonrequesting spouse that is the reason for the erroneous item. The court held that none of these exceptions applied under the facts presented by the taxpayer. However, the court held that the portion of the taxes attributable to the former spouse's business was eligible for relief because the taxpayer had no control over the business. **Minton v. Comm'r, T.C. Memo. 2018-15**.

NOTICE OF DEFICIENCY. The taxpayer timely filed a 2014 return but omitted $9,999 of wages and failed to include the standard deduction. The IRS made a mathematical adjustment to the return by including the standard deduction, which resulted in a refund which the IRS paid. Upon further examination of the return, the IRS assessed taxes based on including the $9,999 in wages and $7,765 in discharge of indebtedness income. The taxpayer filed a petition with the Tax Court in January 2017. In February 2017, the IRS issued a Notice CP2000, *Proposed Changes to Your 2014 Form 1040*, which conceded that the taxpayer did not receive cancellation of indebtedness income of $7,765 and reduced the assessment. The taxpayer argued that the entire Notice of Deficiency was invalid because (1) it was filed after the taxpayer filed the petition or (2) the IRS had already issued a refund. The court held that an error as to one part of the Notice of Deficiency did not invalidate other parts of the Notice and that the IRS retained the right to make adjustments after issuing a refund, unless the refund was part of a closing agreement, valid compromise, or final adjudication. **Krantz v. Comm'r, T.C. Memo. 2018-17**.

PENALTIES. The IRS has issued a revenue procedure which updates *Rev. Proc. 2016-13, 2016-1 C.B. 290*, and identifies circumstances under which the disclosure on a taxpayer's income tax return with respect to an item or position is adequate for the purpose of reducing the understatement of income tax under I.R.C. § 6662(d) (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the tax return preparer penalty under I.R.C. § 6694(a) (relating to understatements due to unreasonable positions) with respect to income tax returns. For tax items not included in this revenue procedure, disclosure is adequate with respect to that item only if made on a properly completed Form 8275, *Disclosure Statement*, or 8275-R, *Regulation Disclosure Statement*, as appropriate, attached to the return for the year or to a qualified amended return. This revenue procedure applies to any income tax return filed on 2017 tax forms for a taxable year beginning in 2017, and to any income tax return filed in 2018 on 2017 tax forms for short taxable years beginning in 2018. **Rev. Proc. 2018-11, 2018-1 C.B. 334**.

PENSION PLANS. For plans beginning in February 2018 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 2.88 percent. The 30-year Treasury weighted average is 2.83 percent, and the 90 percent to 105 percent permissible range is 2.55 percent to 2.98 percent. The 24-month average corporate bond segment rates for February 2018, *without adjustment* by the 25-year average segment rates are: 1.84 percent for the first segment; 3.66 percent for the second segment; and 4.49 percent for the third segment. The 24-month average corporate bond segment rates for February 2018, taking into account the 25-year average segment rates, are: 3.92 percent for the first segment; 5.52 percent for the second segment; and 6.29 percent for the third segment. **Notice 2018-16, I.R.B. 2018-10**.

REPAIRS. The taxpayers, husband and wife, owned four rental properties and claimed a deduction for the cost of repairs to two of the properties. The IRS denied the deduction for just over one-half of the claimed deduction. The denied deduction included expenditures for new carpet, remodeling, repair of air conditioning units, new walls and doors, new ceilings and new electrical wiring and fixtures. The IRS argued that these expenses were required to be capitalized in the basis of the properties. I.R.C. § 263(a)(1) requires capitalization of amounts "paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate." See also Treas. Reg. § 163(a)-3. A current deduction is allowed only expenditures that are made to restore property to a sound state or to mend it, with the purpose of keeping the property in an ordinarily efficient operating condition. Such expenditures do not add to the property's value, nor do they appreciably prolong its life; instead they merely keep the property in an operating condition over its probable useful life for the uses for which it was acquired. Conversely, expenditures for replacements, alterations, improvements, or additions which prolong a property's life, increase its value, or make it adaptable to a different use are treated as additions to capital. The taxpayers argued that the denied expenses were primarily limited to repair and replace worn areas in the rental properties and were not a wholesale remodeling of the properties. The IRS argued that the taxpayers failed to provide sufficient evidence to support their claims, including appraisals, evidence of the original items or the useful life of the properties before and after the repairs. The court noted that the taxpayer provided only testimony as to the nature of the expenditures and did not provide any corroborating evidence. Therefore, the court upheld the IRS denial of the deductions. **Brown v. Comm'r, T.C. Summary Op. 2018-6**.

The taxpayer owned a 265 acre property on which the taxpayer produced grapes and leased for horse and cattle grazing. The property was irrigated by a spring line that the taxpayer installed on the property to run water from a natural spring to the grape vines and pastures. The property had several private roads which the taxpayer maintained. The taxpayer hired a contractor to work on the spring line, fences and roads and claimed the expenses for this work as current deductions for the years in which the work was performed. The IRS disallowed most of the deductions, recharacterizing the expenses as capital expenditures to be added to the property basis. I.R.C. § 263(a)(1) requires capitalization of amounts "paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate." See also Treas. Reg. § 163(a)-3. The court noted that the Tenth Circuit Court of Appeals has "evolved what may be called the 'one-year' rule of thumb, under which an expenditure should be capitalized if it brings about the acquisition of an asset having a period of useful life in excess of one year or if it secures a like advantage to the taxpayer which has a life of more than one year." In addition, the Tenth Circuit has stated that an "overriding precept that an expenditure made for an item which is part of a 'general plan' of rehabilitation, modernization, and improvement of the property, must be capitalized, even though, standing alone, the item may appropriately be classified as one of repair." See *United States v. Wehrli, 400 F.2d 686 (10th Cir. 1968)*. Because the work was done over several months and the contractor performed work on each project at the same time, the taxpayer presented a worksheet allocating the various work periods to each job. The taxpayer argued that the work was primarily repairs of the spring line, road and fences. However, the court found that over the time of the work, the entire spring line was replaced with a stronger system, the road work was done to replace a washed out road and the fence work was required as part of the spring line replacement. The court held that all of this work was part of a rehabilitation and improvement plan of the taxpayer; therefore, the costs of the work had to be capitalized in the basis of the property and could not be deducted currently. **Wells v. Comm'r, T.C. Memo. 2018-11**.

S CORPORATIONS

SHAREHOLDER BASIS. The taxpayer was a 49 percent shareholder of an S corporation which owned a condominium complex. The taxpayer obtained a personal loan from a bank which was contributed to another S corporation owned by the taxpayer and the taxpayer's parent. The other S corporation then transferred the funds to the condo corporation. The condo corporation also engaged in a series of transactions with other S corporations in which the taxpayer was a shareholder. The taxpayer claimed net operating losses (NOLs) from the condo corporation based on the loans from the affiliated corporations. The IRS disallowed the NOLs for the affiliates' loans because the taxpayer did not provide adequate records to prove that the transactions were loans or even the amount of the loans. The court found that the transactions were listed on the affiliates' books as capital contributions, payroll expenses and offsetting accounts payable and accounts receivable. Treas. Reg. § 1.1366-2(a)(2)(i) provides: "The term basis of any indebtedness of the S corporation to the shareholder means the shareholder's adjusted basis . . . in any *bona fide* indebtedness of the S corporation that runs directly to the shareholder. Whether indebtedness is *bona fide* indebtedness to a shareholder is determined under general Federal tax principles and depends upon all of the facts and circumstances." Citing case law, the court ruled that "federal tax principles" include the judicial test requiring actual economic outlay in order for shareholder indebtedness to the corporation in order to increase the shareholder's basis. The court found that the taxpayer failed to prove that any of the intercorporate affiliates' transactions were loans from the taxpayer to the condo corporation. Thus, the court held that the transactions involving the affiliated corporations did not increase the taxpayer's basis and the NOLs based on the claimed basis were properly disallowed. **Merulo v. Comm'r, T.C. Memo. 2018-16**.

SAFE HARBOR INTEREST RATES

March 2018

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	1.96	1.95	1.95	1.94
110 percent AFR	2.16	2.15	2.14	2.14
120 percent AFR	2.35	2.34	2.33	2.33
		Mid-term		
AFR	2.57	2.55	2.54	2.54
110 percent AFR	2.83	2.81	2.80	2.79
120 percent AFR	3.08	3.06	3.05	3.04
		Long-term		
AFR	2.88	2.86	2.85	2.84
110 percent AFR	3.17	3.15	3.14	3.13
120 percent AFR	3.46	3.43	3.42	3.41

Rev. Rul. 2018-6, I.R.B. 2018-10.

WITHHOLDING. The IRS has issued a Notice which (1) extends the effective period of Forms W-4, *Employee's Withholding Allowance Certificate*, furnished to claim exemption from income tax withholding under I.R.C. § 3402(n) for 2017 until February 28, 2018, and permits employees to claim exemption from withholding for 2018 by temporarily using the 2017 Form W-4; (2) temporarily suspends the requirement under I.R.C. § 3402(f)(2)(B)1 that employees must furnish their employers new Forms W-4 within 10 days of changes in status that reduce the withholding allowances they are entitled to claim; (3) provides that the optional withholding rate on supplemental wage payments under Treas. Reg. § 31.3402(g)-1 is 22 percent for 2018 through 2025; and (4) provides that, for 2018, withholding under I.R.C. § 3405(a)(4) on periodic payments when no withholding certificate is in effect is based on treating the payee as a married individual claiming three withholding allowances. Sections 11001 and 11041 of the Tax Cut and Jobs Act of 2017, Pub. L. No. 115-97 (TCJA), made changes to income tax rates, income tax deductions and credits, and federal income tax withholding. The IRS is currently working on revising Form W-4 to reflect the changes made by the TCJA, such as changes in available itemized deductions, increases in the child tax credit, the new dependent credit, and the repeal of dependent exemptions. As a result, the 2018 Form W-4 may not be released until after February 15, 2018. The Notice also extends the effective period of Forms W-4 furnished to claim exemption from income tax withholding for 2017 to February 28, 2018, and describes the procedures by which employees may claim exemption from withholding for 2018 under I.R.C. § 3402(n) using the 2017 Form W-4. These procedures expire 30 days after the 2018 Form W-4 is released. **Notice 2018-14, I.R.B. 2018-7**.

SECURED TRANSACTIONS

FINANCING STATEMENTS. The debtor borrowed funds from a bank to purchase a fertilizer spreader. The bank filed a financing statement with County Clerk of Court and listed the debtor's name as Kenneth Pierce. The debtor's drivers license at the time of filing of the financing statement listed the debtor's name as Kenneth Ray Pierce and was signed as Kenneth Ray Pierce. The debtor's driver's license at the time of trial listed the debtor's name as Kenneth Ray Pierce but was signed as only Kenneth Pierce. The debtor filed for Chapter 12 bankruptcy and the debtor sought to have the bank debt declared unsecured because the financing statement was not perfected because the debtor's name was incorrect. O.C.G.A. § 11-9-502(a) provides in part that a financing statement is sufficient if it "(1) Provides the name of the debtor; . . ." O.C.G.A. § 11-9-503(a)(4) provides that a "financing statement sufficiently provides the name of the debtor: . . . (4) Subject to subsection (g) of this Code section, if the debtor is an individual to whom this state has issued a driver's license that has not expired, only if the financing statement provides the name of the individual which is indicated on the driver's license . . .." Subsection (g) provides "If this state has issued to an individual more than one driver's license of a kind described in paragraph (4) of subsection (a) of this Code section, the one that was issued most recently is the one to which such paragraph refers." Thus, the financing statement did not match the debtor's driver's license at the time of filing. However, the court noted that O.C.G.A. § 11-9-506(a) provides that "A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading" and O.C.G.A. § 11-9-506(b) provides that "a financing statement that fails sufficiently to provide the name of the debtor in accordance with [O.C.G.A. § 11-9-503(a)] is seriously misleading." The bank argued that, because the debtor's driver's license's signature at the time of filing matched the name on the financing statement, the financing statement complied with the name requirement of O.C.G.A. § 11-9-502(a). The court disagreed and held that the debtor's name on the financing statement must agree with the name printed on the license by the state; therefore, the financing statement was not properly perfected and the bank's loan was unsecured. **Pierce v. Farm Bureau Bank, 2018 Bankr. LEXIS 287 (Bankr. S.D. Ga. 2018)**.

IN THE NEWS

EXTENSION OF EXPIRED TAX PROVISIONS. The Bipartisan Budget Act of 2018, Pub. L. No. 115-___, §§ 40101 *et seq*., February 9, 2018, retroactively extended to the end of 2017 several provisions which expired at the end of *2016*. The extended provisions include (1) the exclusion from gross income of discharge of qualified principal residence indebtedness; (2) the mortgage insurance premiums treated as qualified residence interest; (3) the above-the-line deduction for qualified tuition and related expenses; (4) the credit for nonbusiness energy property; (5) the credit for residential energy property; (6) the credit for new qualified fuel cell motor vehicles; (7) the credit for alternative fuel vehicle refueling property; and (8) the credit for 2-wheeled plug-in electric vehicles. Taxpayer who have already filed their 2017 returns will need to file amended returns to claim the benefits of these provisions. **Tax-Related Portions of the Legislative Language of the Bipartisan Budget Act of 2018, (CCH) 2018ARD 029-7**.

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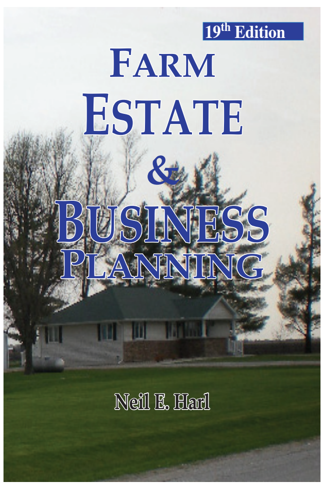

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