in gross income by the payee or distributee in the manner provided under I.R.C. § 72. Some exceptions apply:

(1) I.R.C. § 408(d)(3) provides that I.R.C. § 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of I.R.C. §§ 408(d)(3)(A) and (d)(3)(B).

I.R.C. § 408(d)(3)(A) provides that I.R.C. § 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if: (a) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the payment or distribution is received; or (b) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to I.R.C. § 408(d)(3)).

(2) I.R.C. § 408(d)(3)(B) provides that I.R.C. § 408(d)(3) does not apply to any amount described in I.R.C. § 408(d)(3)(A) received by an individual from an IRA if at any time during the one-year period ending on the day of such receipt such individual received any other amount described in I.R.C. § 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of I.R.C. § 408(d)(3).

However, under I.R.C. § 408(d)(3)(C)(i) in the case of an inherited IRA, I.R.C. § 408(d)(3) shall not apply to any amount received by an individual from such account and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution. Thus, amounts in an IRA received through inheritance are included in gross income of the payee or distributee.[4] In addition, in general no IRA amount transferred from an inherited IRA to another IRA is excluded from gross income by reason of such transfer. I.R.C. § 408(d)(3)(C)(ii) provides that an IRA will be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual and such individual *was not the surviving spouse of such other individual*.

Thus, under the original disposition of the decedent's IRA, the passing of the IRA funds to the trust and then to the son and grandchildren would have been taxable income to the son and grandchildren.

The IRS ruled that, for purposes of section 408(d)(3), (1) the surviving spouse will be treated as having acquired the decedent's IRA directly from the decedent, and not from the decedent's estate or trust; (2) the surviving spouse was eligible to roll over the IRA to one or more IRAs established and maintained in the surviving spouse's name pursuant under I.R.C. § 408(d)(3)(A)(i), provided that the rollover occurs no later than the 60th day following the day the proceeds of the IRA are distributed; and (3) the surviving spouse will not be required to include in gross income for federal income tax purposes for the calendar year in which the distribution and rollover occur the amount distributed from the IRA and timely rolled over into an IRA established and maintained in the surviving spouse's name, provided the rollover contribution meets the requirements of I.R.C. § 408(d)(3).

ENDNOTES

[1] Ltr. Rul. 201901005, Oct. 10, 2018. See discussion of individual retirement accounts at Achenbach, *Farm Income Tax Manual*, § 3.29 (Matthew Bender/LEXIS 2018); Harl and Achenbach, *Agricultural Law* § 28.06[20] (Matthew Bender/LEXIS 2018).

[2] See Harl and Achenbach, *Agricultural Law* § 44.09 for discussion of qualified disclaimers.

[3] I.R.C. § 2518(b)(2).

[4] I.R.C. § 408(d)(1).

CASES, REGULATIONS AND STATUTES

BANKRUPTCY

CHAPTER 12

AUTOMATIC STAY. The debtor was the sole owner of a limited liability company (LLC) and operated a farm. The LLC purchased farm equipment using the proceeds of a loan which was personally guaranteed by the debtor. The debtor's 2016 and 2017 tax returns included a Schedule F to report the LLC's income and expenses, which include a "Depreciation and Amortization Report" listing equipment owned by the LLC, and the farm equipment at issue here was included on that list. The debtor filed for Chapter 12 and the debtor 's Amended Schedule A/B lists the debtor's 100 percent ownership interest in the LLC with a directive to refer to the "list of corporate equipment" attached to the schedules. The attached list includes the farm equipment at issue here and was titled "List of Secured Corporate Debt with Personal Guarantees." The creditor filed an unsecured proof of claim for the amount of the unpaid purchase loan. The court found that there was no evidence presented that the debtor personally owned any of the equipment in issue. The creditor moved for relief from the automatic stay, arguing that the equipment was not estate property because it was purchased by the LLC. The debtor argued that the debtor's personal guarantee makes the automatic stay enforceable because the equipment was necessary for a successful reorganization. The court looked to S.C. Code Ann. § 33-44-201 which provides that "A limited liability company is a legal entity distinct from its members." A comment to S.C. Code Ann. § 33-44-501 states that the members of an LLC "have no property interest in property owned by [the LLC]." Instead, a member holds a distributional interest in the LLC. See S.C. Code Ann. § 33-44-501. Thus, the court held that that an LLC's member's bankruptcy estate has no interest in property of an LLC

and that the estate's property interest is limited to the member's distributional interest. Therefore, the court held that the automatic stay did not apply to property not owned by the debtor and thus not included in the bankruptcy estate. The creditor was grant relief from the automatic stay as to the farm equipment purchased with the LLC loan. ***In re*** **Ollis, 2019 Bankr. LEXIS 130 (Bankr. D. S.C. 2019)**.

CONTRACTS

ORAL CONTRACT. The plaintiff was a dairy farm which placed an oral order for hay with the defendant. Over eight months, the defendant would submit invoices for the hay for payment and would deliver the hay after payment. The defendant alleged that the plaintiff agreed to assume the risk of deterioration or other loss of the hay while the hay was still stored on the defendant's farm. The defendant suffered a fire before the last shipment of hay was delivered which destroyed the last of the hay. The plaintiff had paid for the hay and sued for breach of contract for failure to deliver the hay. The defendant argued that the risk of loss was borne by the plaintiff. The plaintiff sought summary judgment. Because this was a contract for the sale of goods, the U.C.C. governs. N.M. Stat. Ann. § 55-2-509 (U.C.C. § 2-509), allocates the risk of loss among parties in the absence of breach: "(3) In any case not within Subsection (1) or (2) of this section,3 the risk of loss passes to the buyer on the buyer's receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery. (4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval and on effect of breach on risk of loss." The court found that the parties disputed whether the oral contract contained a provision shifting the risk of loss to the plaintiff, therefore, summary judgment was improper. The court also noted that, in the absence of clear language shifting the risk of loss, the shifting of the loss could be shown by trade usage or practice or by a course of dealing or performance. The UCC defines a "trade usage" as "any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question." N.M. Stat. Ann. § 55-1-303(c). The court found that both parties provided some evidence of the trade usage in the area; therefore, summary judgment was improper on this issue as well. Finally, the plaintiff claimed that the risk of loss did not shift because the plaintiff did not pay for the hay until after the fire. However, neither party provided sufficient evidence of the date of payment for the hay, the hay paid for by that payment and the hay destroyed by the fire. Neither party was able to provide documentation which clearly identified the hay purchased and the hay destroyed. Thus, summary judgment on this issue was also denied. **Philmar Dairy, LLC v. Armstrong Farms, 2019 U.S. Dist. LEXIS 13701 (D. N.M. 2019)**.

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. Note: The IRS has provided for a simplified method of obtaining an extension of time to file a portability election for small estates that are not normally subject to filing a Form 706. See *Rev. Proc. 2017-34, 2017-1 C.B. 1282*. **Ltr. 201852016, Sept. 24, 2018.**

FEDERAL FARM PROGRAMS

CITRUS. The AMS has adopted as final regulations which decrease the assessment rate for Florida citrus handlers from the $0.02, the rate that was established for the 2017–18 fiscal periods, to $0.015 per 4/5-bushel carton of citrus for the 2018–19 and subsequent fiscal periods. **84 Fed. Reg. 2047 (Feb. 6, 2019)**.

CROP INSURANCE. The plaintiffs were winter wheat farmers who applied for crop insurance for their 2015 winter wheat crops. The plaintiffs sought to exclude low yield crop years from the actual production history (APH) yield but were rejected by the Federal Crop Insurance Corporation (FCIC). Under 7 U.S.C. § 1058(a)(1), if the FCIC determines that "sufficient actuarial data are available," the FCIC "may insure, or provide reinsurance for insurers of, producers of agricultural commodities grown in the United States." Thus, winter wheat farmers can purchase insurance to protect against below-average harvests. The policies at issue here offered yield protection, which is "insurance that only provides protection against a production loss" due to "unavoidable, naturally occurring events." See 7 C.F.R. § 457.8 (Common Crop Insurance Policy Basic Provisions, Definition & Causes of Loss Sections). The amount of coverage available for purchase is determined by multiplying the production guarantee by the projected price. A "projected price" is calculated by the FCIC for each crop for each crop year and the production guarantee is the number of bushels of wheat insured, and is determined by multiplying the approved yield per acre by the coverage level percentage elected by the farmer. The coverage level percentage is the percentage of a farmer's expected harvest that the farmer

wishes to insure. See 7 U.S.C. § 1508(c)(4)(A). The approved yield is the actual production history (APH) yield, calculated by summing the yearly yields and dividing the sum by the number of yields." See 7 C.F.R. § 457.8. A farmer's actual production history is a simple average of between four and ten years of production data. See 7 U.S.C. § 1508(g)(2)(A); 7 C.F.R. § 457.8. Therefore, if production is abnormally low in one of those years, a farmer's APH will be depressed until that data point falls out of the APH calculation. The FCIC may adjust a farmer's actual production history when a farmer had experienced an especially poor harvest. See 7 U.S.C. § 1508(g)(4). This yield exclusion applied when the FCIC used a farmer's actual production history for an agricultural commodity for any of the 2001 and subsequent crop years. See 7 U.S.C. § 1508(g)(4)(A). 7 U.S.C. § 1508(g)(4)(C)(i) provides for an APH yield exclusion which allows a farmer to exclude a yield from the FCIC's APH calculation when the per planted acre yield of the agricultural commodity in the county of the producer was at least 50 percent below the simple average of the per planted acre yield of the agricultural commodity in the county during the previous 10 consecutive crop years. The FCIC claimed that the yield exclusion was not available to the plaintiffs for the 2015 crop year because the USDA's actuarial documents and data were insufficient to provide the exclusion in 2015. Essentially, the FCIS argued that the statute did not provide a specific date for implementation of the APH yield exclusion; therefore, the FCIC did not have to allow the exclusion until it had fully researched and prepared the actuarial documents needed to provide for the exclusion. However, the court found that the statute, 7 U.S.C. § 1508(g)(4), was clear that the APH exclusion was to be available for the 2014 and subsequent crop years. Therefore, the denial of crop insurance with the APH yield exclusion was improper. **Ausmus v. Perdue, 2018 U.S. App. LEXIS 32475 (10th Cir. 2019)**.

FRUITS AND VEGETABLES. The AMS has issued an interim rule which will remove seven voluntary U.S. grade standards and one consumer standard for fresh fruits and vegetables as part of the USDA's work to eliminate regulations that are outdated, unnecessary, ineffective, or impose costs that exceed benefits. The affected fruits and vegetables are cantaloups, celery, Persian limes, peaches, apricots, nectarines and honey dew melons. The consumer standard for celery stalks is also being removed. None of the eight voluntary standards slated for removal from the CFR are related to a current, active marketing order, import regulation, or export act. The cost of printing these eight standards in the CFR annually exceeds the benefits of further inclusion in the CFR. These voluntary standards and all subsequent revisions or new standards for these products will be available in a separate publication. The standards for the affected commodities will continue to be administered by the AMS Specialty Crops Inspection Division and catalogued using the existing numbering system for voluntary standards. **84 Fed. Reg. 959 (Feb. 1, 2019)**.

MEAT. The AMS has issued proposed regulations which amend its meat grading, certification and standards regulations to update a number of outdated administrative and organizational references, clarify agency action as it relates to the withdrawal or denial of service, update the official shields and grademarks associated with the grading service, and make reference to the use of instrument grading equipment as a means of determining official grades on beef and lamb carcasses. **84 Fed. Reg. 1641 (Feb. 5, 2019)**.

RAISINS. The AMS has adopted as final regulations increasing the assessment rate collected from raisin handlers from $17.00 to $22.00 per ton of assessable raisins acquired by handlers for the 2018–19 and subsequent crop years. **84 Fed. Reg. 2049 (Feb. 6, 2019)**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. In a Chief Counsel Advice letter, the taxpayer was an accrual method taxpayer with an applicable financial statement (AFS) that filed its tax return on a calendar year basis. The taxpayer proposed to adopt a method under *Rev. Proc. 2018-60, 2018-51 I.R.B. 1045* to comply with I.R.C. § 451(b), as amended by section 13221 of the Tax Cuts and Jobs Act, *Pub. L. No. 115-97, 131 Stat. 2113 (2017)* (TCJA). The taxpayer's current method of accounting was an impermissible method that did not comply with either the all events test of I.R.C. § 451, as amended by the TCJA or with I.R.C. § 451, prior to being amended by the TCJA. The TCJA modified I.R.C. § 451 concerning the timing of the recognition of income in that an accrual method taxpayer recognizes income no later than the tax year in which the income is taken into account as revenue in an applicable financial statement under IRS rules. Thus, an accrual method taxpayer with an applicable financial statement will include an item in income under I.R.C. § 451 upon the earlier of when the all events test is met or when the taxpayer includes such item in revenue in an applicable financial statement. I.R.C. § 451(b)(1)(C), as amended, provides that the all events test is met with respect to any item of gross income if all the events have occurred which fix the right to receive such income and the amount of such income can be determined with reasonable accuracy. I.R.C. § 446(e) generally provides that a taxpayer who changes its method of accounting on the basis of which it regularly computes income in keeping its books shall, before computing taxable income under the new method, secure the consent of the Secretary. See Treas. Reg. § 1.446-1(e)(3)(ii). Rev. Proc. *2017-59, 2017-48 I.R.B. 543*, provides the most recent general procedures under I.R.C. § 446 and Treas. Reg § 1.446-1(e) by which a taxpayer may obtain automatic consent of the Commissioner to change a method of accounting described in the List of Automatic Changes. Rev. Proc. 2018-31, 2018-22 I.R.B. 637 contains the current list of automatic changes. *Rev. Proc. 2018-60, 2018-51 I.R.B. 1045* provides automatic method change consent to comply with I.R.C. §§ 451(b)(1)(A) and 451(b)(4). *Rev. Proc. 2018-60* provides that the revenue procedure applies to a taxpayer that

wants to change to a method of accounting that treats an item of gross income, or portion thereof, as meeting the all events test no later than when such item, or portion thereof, is taken into account as revenue in its AFS under I.R.C. § 451(b)(1)(A). The revenue procedure also applies to an accrual method taxpayer with an AFS that wants to change its method of accounting for the recognition of income to a method of accounting that complies with I.R.C. § 451(b)(1)(A). *Rev. Proc. 2018-60* also provides automatic consent for method changes to comply with I.R.C. § 451(b)(1)(A), as amended by the TCJA. The operative rule set forth in I.R.C. § 451(b)(1)(A) includes the requirements of the all events test under I.R.C. § 451(b)(1)(C). Thus, to satisfy I.R.C. § 451(b)(1)(A), a taxpayer must also comply with the all events test as defined in I.R.C. § 451(b)(1)(C). Accordingly, a taxpayer that complies with all the terms and conditions set forth in *Rev. Proc. 2018-60*, may obtain automatic consent of the Commissioner to change from a method that is impermissible under I.R.C. § 451(b)(1)(C) to a permissible method that complies with I.R.C. § 451(b)(1)(A), as amended by TCJA. **CCA 201852019, Dec. 17, 2018**.

CHARITABLE DEDUCTIONS. The taxpayers, husband and wife, purchased a residence which they wanted to remove and replace with new construction. The taxpayers contracted with a non-profit charitable organization (the charity) to remove all salvageable items but not to demolish the house. The taxpayers did not record the conveyance of the removable property with the county. The charity required a cash donation to help defray any costs incurred in the removal of property and the taxpayers gave the charity $10,000 in one year and $1,500 in the second year. The taxpayers obtained two appraisals of the house; one valued the house at its highest and best use as a house moved to a new location as is and the second appraisal of the house with all the salvageable property removed. The taxpayers claimed charitable deductions for the value of the house at its highest and best value and for the cash donations. The IRS disallowed the deductions because (1) the taxpayers failed to transfer a full interest in the property donated and (2) the taxpayers received a benefit in exchange for the cash donations. I.R.C. § 170(f)(3)(A) generally restricts a taxpayer's ability to claim a charitable deduction for the donation of an interest in property which consists of less than the taxpayer's entire interest in such property, except in certain circumstances. See also Treas. Reg. § 1.170-7(a)(1). The court stated that the determination of whether a full or partial interest has been conveyed is initially a question of state law. The court fond that under maryland law, for someone other than the record landowner to own the improvements on the land, there must be a recorded deed or other instrument of record showing transfer of the title to the improvements to another owner. Because the taxpayers failed to record the contract with the charity for the removal of salvageable items, the court held that the taxpayers failed to effectively transfer any full interest in property to the charity and no charitable deduction was allowed. Alternatively, the court found that neither appraisal of the house were sufficient to support a charitable deduction. Under I.R.C. § 170(f)(11) charitable contributions of property for which a deduction of more than $5,000 is claimed must be accompanied by a qualified appraisal of the donated property. The court held that the appraisal based on the highest and best use of the property did not reflect the actual value of the house which was to be stripped of salvageable property. The court also held that the appraisal based on the value of the house without the salvageable material was also incorrect in that it did not account for the damage that would result from the removal of the materials. Thus, the charitable deduction was also improper for lack of a qualified appraisal. The did uphold the charitable deduction for the cash donations, finding that the taxpayers did not receive any benefit in exchange for the donations. The court noted that the contract with the charity did not decrease the costs of demolishing the house or otherwise benefit the taxpayers. **Mann v. United States, 2019-1 U.S. Tax Cas. (CCH) ¶ 50,145 (D. Md. 2019)**.

COURT AWARDS AND SETTLEMENTS. The taxpayer was employed as a computer consultant engineer and was fired after reporting unethical conduct by other employees. The taxpayer filed suit against the employer for breach of contract, antitrust violations, civil conspiracy, failure to pay wages, and wrongful discharge. The petition did not allege any personal injury or sickness although the taxpayer claimed that the firing caused emotional distress which resulted in health problems. The parties settled and the settlement listed amounts for unpaid wages and amounts for emotional distress damages. The settlement was paid over two tax years and each year, the taxpayer had the returns prepared by an accountant who reported the settlement payments on Schedule C and then included a deduction for "personal injury" the first year and a deduction for "pain and suffering" the second year, both just sufficient to offset the settlement payment. I.R.C. § 104(a)(2) excludes from gross income "any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness." The court noted that, for a taxpayer to fall within this exclusion, the taxpayer must show that there is "a direct causal link between the damages and the personal injuries sustained." The court looks at the underlying petition for the lawsuit and the language of the settlement that compensation was intended for personal physical injuries or sickness. The court found that the settlement included payment for emotional distress damages which were expressly included in taxable income under I.R.C. § 104(a). The taxpayer argued, however, that the settlement payments were for the physical injuries caused by the "stress" of the wrongful termination of employment. The court found that the taxpayer had testified that the physical ailments caused by the termination were the result of "emotional distress;" thus, the court found that the settlement payments were made only for emotional distress and not for any physical injury or sickness. The court held that the settlement payments were taxable income to the taxpayer. **Doyle v. Comm'r, T.C. Memo. 2019-8**.

DIVORCE. The taxpayer was divorced and the divorce decree provided that the taxpayer and former spouse would own one-half of their residence and would be responsible for one-half of all expenses, including the mortgage, taxes, homeowner's insurance, utilities, homeowner's association fees, and similar

expenses. The decree also provided that each party had a 60 day right of first refusal to purchase the other party's interest in the property by paying one-half of the equity in the property. Just over six years after the divorce, the taxpayer and former spouse obtained court permission to sell the taxpayer's interest in the property to the former spouse under modified terms. *Issue 1. I.R.C. § 1041(a)* provides that no gain or loss is recognized on a transfer of property from an individual to (1) a spouse, or (2) a former spouse if the transfer is incident to a divorce, essentially deferring the tax consequences (recognition of gain or loss) until the transferee disposes of the property. I.R.C. § 1041(b) provides that in the case of any transfer to which I.R.C. § 1041(a) applies, the property is treated as acquired by the transferee by gift for federal income tax purposes, and the basis of the transferee in the property is adjusted basis of the transferor. Treas. Reg. § 1.1041-1T(b), Q&A 7, provides that a transfer of property is treated as related to the cessation of the marriage if the transfer is pursuant to a divorce or separation instrument, as defined in I.R.C. § 71(b)(2), and the transfer occurs not more than six years after the date on which the marriage ceases. A divorce or separation instrument includes a modification or amendment to such decree or instrument. Any transfer not pursuant to a divorce or separation instrument and any transfer occurring more than 6 years after the cessation of the marriage are presumed to be not related to the cessation of the marriage. This presumption may be rebutted only by showing that the transfer was made to effect the division of property owned by the former spouses at the time of the cessation of the marriage. I.R.C. § 71(b)(2) provides that the term "divorce or separation instrument" means (1) a decree of divorce or separate maintenance or written instrument incident to such a decree, (2) a written separation agreement, or (3) a decree (not described in subsection (1)) requiring a spouse to make payments for the support or maintenance of the other spouse. The IRS ruled that, although the sale of the taxpayer's interest to the former spouse occurred more than six years after the divorce, the sale was made under the original divorce decree with some modifications approved by the court; therefore, the sale qualified for I.R.C. § 1041(a) treatment. Issue 2: I.R.C. § 2516 provides that where husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within the three-year period beginning on the date one year before such agreement is entered into (whether or not such agreement is approved by the divorce decree), any transfers of property or interests in property made pursuant to such agreement (1) to either spouse in settlement of his or her marital or property rights, or (2) to provide a reasonable allowance for the support of issue of the marriage during minority, shall be deemed to be transfers made for a full and adequate consideration in money or money's worth. Thus, the IRS ruled that the transfer by the taxpayer to the former spouse is not a gift but was made for full and adequate consideration in money or money's worth. **Ltr. Rul. 201901003, Sept. 4, 2018**.

IRS. The IRS has issued a notice a name change, effective January 1, 2019, from the Office of the Associate Chief Counsel (Tax Exempt and Government Entities) (CC:TEGE) to the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) (CC:EEE). Within CC:EEE, the name of the Office of the Deputy Associate Chief Counsel (Exempt Organizations, Employment Tax, and Government Entities) (CC:TEGE:EOEG) is changed to the Office of the Deputy Associate Chief Counsel (Exempt Organizations and Employment Taxes) (CC:EEE:EOET). In addition, in order to reflect the CC:EEE name change, the office symbols of the Office of the Deputy Associate Chief Counsel (Employee Benefits) are changed to CC:EEE:EB. **Notice CC-2019-001**.

NET OPERATING LOSSES. The taxpayers hired a tax professional to prepare their 203 and 2014 returns and the 2014 return contained an irrevocable election to waive the carryback period for any net operating loss (NOL) for 2014. The taxpayers claimed that this election was made without consulting them or obtaining their approval. The tax return preparer made the election because prior NOLs had offset tax liability when carried back to 2011 and 2012. The IRS found errors in the taxpayers' 2012 and assessed a deficiency. The 2012 return errors were caused by the tax return preparer who failed to properly account for passthrough entity items. The IRS refused to allow the taxpayers to carryback their 2014 NOL because of the election made with the 2014 return. Under I.R.C. § 172(a), taxpayers may usually deduct the sum of (1) NOL carryovers and (2) NOL carrybacks to a taxable year on their income tax return for that year. Taxpayers can carry back unused amounts of NOL to the two taxable years immediately preceding the year recognizing the NOL, then carry any remaining NOL over through the twenty taxable years following the year it was recognized. See I.R.C. § 172(b)(1)(A). Taxpayers must carry unused NOL back two years before carrying it over, unless they elect under I.R.C. § 172(b)(3) to waive their right to carry back the NOL. Treas. Reg. § 301.9100-12T details the "manner" of making this election: taxpayers must attach a statement to the return for the taxable year in question, state that the election is made under I.R.C. § 172(b)(3), and provide information about the election, including the period for which it applies and the taxpayer's basis or entitlement for making the election. See Treas. Reg. §§ 301.9100-12T(a), (d). I.R.C. § 172(b)(3) provides that "such election, once made for any taxable year, shall be irrevocable for such taxable year." The taxpayer claimed that they neither knew about nor approved the election; therefore, they should be allowed to revoke the election in order to overcome the errors made in the 2012 return caused by the return preparer. The court held that the statute, I.R.C. § 172(b)(3), had no provision for errors or lack of taxpayer intent to allow for revocation of the election and the IRS properly disallowed any carryback of the 2014 NOLs. The decision is designated as not for publication. **Bea v. Comm'r, 2019-1 U.S. Tax Cas. (CCH) ¶ 50,143 (11th Cir. 2019)**.

PARTNERSHIPS.

ELECTION TO ADJUST BASIS. The taxpayer was a limited partnership taxed as a partnership for federal tax purposes. During the tax year, an individual who owned an interest in the partnership through a trust died. Although the taxpayer intended to file the election under I.R.C. § 754, the election was inadvertently omitted from the return for the tax year of the death. I.R.C. § 754 provides that a partnership may elect to adjust the basis of partnership property when there is a distribution of property or a transfer of a partnership interest, including all distributions of property by

the partnership and to all transfers of interests in the partnership during the taxable year with respect to which the election was filed and all subsequent taxable years. Treas. Reg. § 1.754-1(b) provides that an election under I.R.C. § 754 to adjust the basis of partnership property under I.R.C. §§ 734(b) and 743(b), with respect to a distribution of property to a partner or a transfer of an interest in a partnership, must be made in a written statement filed with the partnership return for the taxable year during which the distribution or transfer occurs. For the election to be valid, the statement must (1) set forth the name and address of the partnership making the election, (2) be signed by any one of the partners, and (3) contain a declaration that the partnership elects under I.R.C. § 754 to apply the provisions of I.R.C. §§ 734(b) and 743(b). Under Treas. Reg. § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election, under all subtitles of the Code, except subtitles E, G, H, and I. Treas. Reg. §§ 301.9100-1 through 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make an election. The IRS granted the taxpayer an extension of time to file the election under I.R.C. § 754. **Ltr. Rul. 201852013, Sept. 20, 2018)**.

PENSION PLANS. For plans beginning in January 2019 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 3.10 percent. The 30-year Treasury weighted average is 2.92 percent, and the 90 percent to 105 percent permissible range is 2.63 percent to 3.06 percent. The 24-month average corporate bond segment rates for January 2019, *without adjustment* by the 25-year average segment rates are: 2.55 percent for the first segment; 3.93 percent for the second segment; and 4.49 percent for the third segment. The 24-month average corporate bond segment rates for January 2019, taking into account the 25-year average segment rates, are: 3.74 percent for the first segment; 5.35 percent for the second segment; and 6.11 percent for the third segment. **Notice 2019-13, I.R.B. 2019-8**.

SAFE HARBOR INTEREST RATES
February 2019

	Annual	Semi-annual	Quarterly	Monthly
		Short-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
		Mid-term		
AFR	2.63	2.61	2.60	2.60
110 percent AFR	2.89	2.87	2.86	2.85
120 percent AFR	3.15	3.13	3.12	3.11
		Long-term		
AFR	2.91	2.89	2.88	2.87
110 percent AFR	3.21	3.18	3.17	3.16
120 percent AFR	3.50	3.47	3.46	3.45

Rev. Rul. 2019-4, I.R.B. 2019-7.

LANDLORD AND TENANT

HOLDOVER DAMAGES. The plaintiff was the defendant's aunt and owned 75 percent of a farm leased to the defendant. The other 25 percent of the farm was owned by the defendant's father who was also the plaintiff's brother. The parties had entered into a cash lease for 2016 and, when the defendant failed to make full payment of the rent by October 2016, the plaintiff gave written notice of termination of the lease. However, the defendant's father told the defendant to continue farming the property for 2017. The defendant failed to make any rent payments for 2017 and the plaintiff filed a forcible entry and detainer action, requesting holdover damages. The trial court award possession of the farm and ordered damages equal to the unpaid rent plus holdover damages of twice the rent. 735 ILCS 5/9-202 provides: "Wilfully holding over. If any tenant or any person who is in or comes into possession of any lands, tenements or hereditaments, by, from or under, or by collusion with the tenant, wilfully holds over any lands, tenements or hereditaments, after the expiration of his or her term or terms, and after demand made in writing, for the possession thereof, by his or her landlord, or the person to whom the remainder or reversion of such lands, tenements or hereditaments belongs, the person so holding over, shall, for the time the landlord or rightful owner is so kept out of possession, pay to the person so kept out of possession, or his or her legal representatives, at the rate of double the yearly value of the lands, tenements or hereditaments so detained to be recovered by a civil action." The main issue was whether the defendant "wilfully" retained possession of the land after receiving the written termination notice. The court noted that the statute did not define "wilfully" but several court cases under the statute held that "wilful" behavior was not found where the holdover tenant remained in possession for "colorably justifiable reasons" or a "reasonable belief" that the tenant was entitled to remain in possession. The court found that the defendant had simply ignored the notice of termination and continued farming without a reasonable belief that the lease continued. In addition, the court noted that the defendant failed to pay any rent during the holdover period. The court also briefly looked at the issue of whether the plaintiff as 75 percent owner could terminate the lease without the approval of the 25 percent owner. The court agreed with the holding in *Daugherty v. Burns, 772 N.E.2d 237 (Ill. Ct. App. 2002)*, that one or more joint owners of property may terminate an oral lease agreement without the unanimous consent of all joint owners. Therefore, the court upheld the trial court verdict and damage award, including double rent damages for the holdover period. **Schroeder v. Post, 2019 Il App. LEXIS 25 (Ill. Ct. App. 2019)**.

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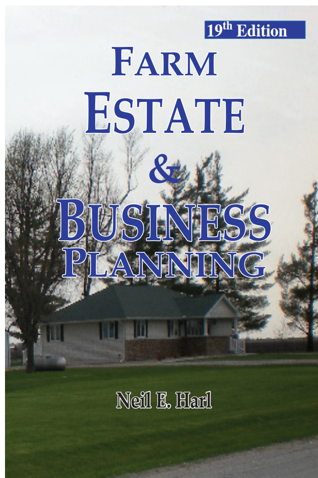

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