The "production period" is the period beginning on the date production of the property begins and ending on the date on which the property is ready to be placed in service or held for sale.[7]

The Facts of the Case

The taxpayers were three cash method entities taxed as partnerships which were owned directly or indirectly by one or more members of a common group of individuals and trusts. The court found that the three entities were related parties in that two individuals, husband and wife, owned directly or indirectly 50 percent or more of each entity. Two of the taxpayers borrowed funds to purchased farmland owned by an unrelated party and the third taxpayer borrowed funds which were further loaned to the other two entities to assist in the purchase of the farmland.

The purchased property was used primarily for growing flowers for sale as plants and the taxpayers intended to use the land for growing almonds, and the land would not produce almond crops for several years. Thus, the taxpayers incurred interest charges on the loans during the first three years that the land was prepared and the trees planted for the orchards and also incurred property taxes on the purchased land.

The taxpayers claimed the property taxes and interest expenses as current business deductions but the IRS denied the deductions and limited the deductions attributable to the land and almond trees to those allowed under the UNICAP rules.

The Taxpayers' Positions

The taxpayers argued that (1) the interest and property taxes were related solely to the purchase of the farmland because it was not produced by the taxpayers and (2) the purchase of the land did not require the production of the almond trees (i.e., the land could have been, and formerly was, used for other crops); therefore, the UNICAP rules did not apply.

The Tax Court's Analysis

The Tax Court stated that the growing of the almond trees is a production of those trees within the reach of the UNICAP rules because the rules apply to real property "produced by the taxpayer" for the taxpayer's use in a trade or business.[8] The statute does not define the term "real property" for purposes of the UNICAP rules, but the regulations define the term to include "land" and "unsevered natural products of land" and state that "unsevered natural products of land" generally include growing crops and plants, such as almonds, where the preproductive period of the crops or plants exceed two years.[9] In addition, the term "produced" includes the raising and growing of agricultural commodities.[10]

The court stated that the land itself need not be produced by the taxpayers but that the land and the almond trees were sufficiently intertwined in the sense that the almond trees cannot grow without the underlying land and the entities' placing in service of the almond trees required that the entities also place in service the underlying land. The court ruled that, although the property taxes and the interest were closely attributable to the acquisition of the land than with the almond trees, the payment of those costs was both necessary and indispensable to the growing of the almond trees so as to be considered a cost of producing those trees.

Thus, the Tax Court held, and the appellate court affirmed, that the land purchase loan interest and property taxes were indirect expenses of the production of the almond trees and required to be capitalized.

ENDNOTES

[1] Wasco Real Properties I, LLC v. Comm'r, 2018-2 U.S. Tax. Cas. (CCH) ¶ 50,511 (9th Cir. 2018), *aff'g*, T.C. Memo. 2016-224. The appellate decision is designated as not for publication.

[2] See Harl and Achenbach, *Agricultural Law*, § 28.08 (2018).

[3] I.R.C. § 263A(d)(3). See Harl and Achenbach, *Agricultural Law*, § 28.08[2][b][vi] (2018) and Achenbach, *Farm Income Tax Manual*, § 3.19[2] (2018) for discussion of this election for farmers.

[4] Treas. Reg. § 301.9100-8.

[5] I.R.C. §§ 263A(i), 448(c).

[6] I.R.C. § 263A(f).

[7] I.R.C. § 263A(f)(4)(B).

[8] I.R.C. §§ 263A(b)(1), (c)(1).

[9] Treas. Reg. § 1.263A-8(c)(1), (2).

[10] Treas. Reg. § 1.263A-4(a)(1).

CASES, REGULATIONS AND STATUTES

BANKRUPTCY

CHAPTER 12

MODIFICATION OF PLAN. The debtor filed for Chapter 12 and filed a plan. The plan provided for four annual payments to a creditor, Seed Consultants, Inc. (SCI), amounting to $13,750 each year. Farm Credit Mid-America filed an objection to the plan and the debtors submitted an agreed order resolving the Farm Credit objection but also providing for an annual payment of $13,000 without naming SCI as the recipient. Although SCI received notification of the new agreement, it did not file an objection because the agreement did not name the recipient of the $13,000 annual payment, thus believing that the payment referred to some other claim. To further complicate matters, the debtors made the first $13,750 payment but SCI received only $9,109.74 because the Chapter 12 trustee retained the trustee's fee from that payment. Thus, SCI sought payment of the balance of $4,640.26 to cure the default of the first annual payment. The debtor argued that the agreement with Farm Credit modified the plan to provide annual

payments to SCI of only $13,000 so only $3,890.26 was in default. The court noted that a subsequent agreed order by the debtors restated the original plan payments to SCI. The court cited prior cases and ruled that agreed orders which change the terms of the plan and are entered so as to resolve creditors' objections to confirmation have been explicitly deemed to modify the plan in the place of a motion to modify. However, the court held that, because the Farm Credit agreed order did not specifically mention SCI as the recipient of the $13,000 payment, the agreed order was not deemed a modification of SCI's claim. The court ordered the debtor to cure the default of the $4,640.26 by or before the due date of the next annual payment to SCI of $13,750. ***In re* Welling, 2018 Bankr. LEXIS 3914 (Bankr. N.D. Ohio 2018)**.

FEDERAL TAX

DISCHARGE. The debtors, husband and wife, failed to timely file their 2004, 2005 and 2006 returns but filed them in 2010. Also in 2010, the debtors filed for Chapter 13 bankruptcy and listed the taxes due for those years. The debtors obtained a confirmed plan which listed, but did not pay, the 2004 tax claim, listed and paid the 2005 and 2006 taxes but not any interest due. The plan was confirmed and at the end of the plan term, the debtors received a discharge. However, the discharge order cautioned that the discharge order may not have discharged all claims, including debts for certain types of taxes specified in Section 523(a)(1)(B) to the extent not paid in full under the plan. After the IRS attempted to collect the taxes post-discharge, the debtors sought a ruling that the tax debts were discharged under Section 1328(a) because they were included in the plan. Section 1328(c) provides that a debtor is discharged from all unsecured debts provided for by the plan except any debt of a kind specified in Section 523(a). Section 523 prohibits a discharge of a claim with respect to which a return, or equivalent report or notice, was not filed or given or was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition. The court found that the returns for 2004, 2005, and 2006 were not filed until (1) after the due date of the returns and (2) within two years before the filing of the petition; therefore, the court held that the 2004 taxes and interest on the 2005, and 2006 taxes were not discharged by the Chapter 13 bankruptcy discharge order. ***In re* Nedelka, 2019-1 U.S. Tax Cas. (CCH) ¶ 50,115 (Bankr. D. Del. 2018)**.

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 was not required to file a Form 706; therefore, no election was made. 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, I.R.B. 2017-26, 1282*. **Ltr. 201850015, Sept. 5, 2018.**

FEDERAL FARM PROGRAMS

CROP INSURANCE. The FCIC has adopted as final regulations amending the Common Crop Insurance Regulations, Forage Seeding Crop Insurance Provisions to update existing policy provisions and definitions to reflect current agricultural practices and allow for variations in insurance provisions based on regionally-specific agronomic conditions and potential future expansions. The changes are to be effective for the 2020 and succeeding crop years. **83 Fed. Reg. 63383 (Dec. 10, 2018)**.

POULTRY. The APHIS has issued a notice of determination that updates the National Poultry Improvement Plan (NPIP) to add provisions for compartmentalization of primary poultry breeding establishments and approval of compartment components, such as farms, feedmills, hatcheries, and egg depots. These provisions include requirements for applying for compartmentalization of facilities and for facility design and management, as well as an outline of the auditing system APHIS will use to evaluate compartments and their component operations. The regulations in 9 C.F.R. Parts 56, 145, 146, and 147 contain the provisions of the NPIP. **83 Fed. Reg. 64313 (Dec. 14, 2018)**.

FEDERAL INCOME TAXATION

BUSINESS INTEREST DEDUCTION LIMITATION. The IRS has issued a revenue procedure providing guidance for two changes under TCJA 2017 involving the business interest deduction limitation. Section 13204(a)(3) of the TCJA amended I.R.C. § 168 by (1) requiring certain property held by an electing real property trade or business, as defined in I.R.C. § 163(j)(7)(B), to be depreciated under the alternative depreciation system (ADS) in I.R.C. § 168(g), and (2) changing the recovery period under the ADS from 40 to 30 years for residential rental property. Section 13205 of the TCJA amended I.R.C. § 168 by requiring certain property held by an electing farming business, as defined in I.R.C. § 163(j)(7)(C), to be depreciated under the ADS. The revenue procedure provides the optional depreciation table for residential rental property placed in service by the taxpayer after December 31, 2017, and depreciated by the taxpayer under the ADS of I.R.C. § 168(g) using the straight-line method, a 30-year recovery period, and the mid-month convention. I.R.C. § 168(g)(1)(F) and (G) provide that the depreciation deduction provided by I.R.C. § 167(a) must be determined in accordance with the ADS in I.R.C. § 168(g) for the following types of MACRS property (as defined in Treas. Reg. § 1.168(b)-1(a)(2)): (1) any

nonresidential real property (as defined in I.R.C. § 168(e)(2)(B)), residential rental property (as defined in I.R.C. § 168(e)(2)(A)), and qualified improvement property (as defined in I.R.C. § 168(e)(6)) held by an electing real property trade or business (as defined in I.R.C. § 163(j)(7)(B) and the regulations thereunder); and (2) any property with a recovery period of 10 years or more that is held by an electing farming business (as defined in I.R.C. § 163(j)(7)(C) and the regulations thereunder). For determining what MACRS property has a recovery period of 10 years or more, the recovery period is determined in accordance with I.R.C. § 168(c). The revenue procedure provides that, for existing property described above, a change in use occurs under I.R.C. § 168(i)(5) and Treas. Reg. § 1.168(i)-4(d) for the election year as a result of the election under I.R.C. § 163(j)(7)(B) or (C), as applicable. Accordingly, depreciation for such property beginning for the election year is determined in accordance with Treas. Reg. § 1.168(i)-4(d). Pursuant to §1.168(i)-4(f), a change in computing depreciation for the election year for such existing property is not a change in method of accounting under I.R.C. § 446(e). If any such existing property was qualified property under I.R.C. § 168(k) in the taxable year in which the trade or business placed the property in service, the additional first year depreciation deduction allowable for that property is not redetermined. (See Treas. Reg. § 1.168(k)-1(f)(6)(iv)(A).) For newly-acquired property described above, the taxpayer determines the depreciation in accordance with the alternative depreciation system for such property for its placed-in-service year and the subsequent taxable years. Because such newly-acquired property is required to be depreciated under the ADS, the property is not qualified property for purposes of the additional first year depreciation deduction under I.R.C. § 168(k). (See §168(k)(2)(D).) If an electing trade or business fails to change to the ADS, the trade or business has adopted an impermissible method of accounting for that item of MACRS property. As a result, a change from that impermissible method of accounting to the straight-line method, the applicable recovery period, and/or the applicable convention under the alternative depreciation system for the item of MACRS property is a change in method of accounting under I.R.C. § 446(e). **Rev. Proc. 2019-8, I.R.B. 2019-3**.

BUSINESS EXPENSES. The IRS issued proposed regulations under I.R.C. §§ 170 and 642(c), published at 83 Fed. Reg. 43563 (Aug. 27, 2018) which generally state that, if a taxpayer makes a payment or transfers property to or for the use of an entity listed in I.R.C. § 170(c), and the taxpayer receives or expects to receive a state or local tax credit in return for such payment, the tax credit constitutes a return benefit, or *quid pro quo*, to the taxpayer and reduces the taxpayer's charitable contribution deduction under I.R.C. § 170(a). The IRS has received questions regarding the application of the proposed regulations to business entities that make payments to charitable organizations described in I.R.C. § 170(c) pursuant to state and local tax credit programs. These questions related to the application of I.R.C. § 162 to these payments, that is, whether a business entity may deduct these payments under I.R.C. § 162 as ordinary and necessary business expenses incurred in carrying on a trade or business. On September 5, 2018, the IRS released an FAQ (*IR-2018-178*) which states that the proposed regulations do not affect the availability of an ordinary and necessary business expense deduction under I.R.C. § 162. The FAQ also states that a business taxpayer making a payment to a charitable or government entity described in I.R.C. § 170(c) is generally permitted to deduct the payment as an ordinary and necessary business expense under I.R.C. § 162 if the payment is made with a business purpose. The IRS has continued to receive questions regarding the application of the proposed regulations and I.R.C. §§ 162 and 164 to taxpayers engaged in trades or businesses. These questions include whether payments by these taxpayers to organizations described in I.R.C. § 170 in return for state income, property, and other business tax credits would bear a direct relationship to the taxpayer's trade or business, such that these payments would be considered ordinary and necessary business expenses of carrying on such trade or business under I.R.C. § 162(a) to the extent of the credit received or expected. The IRS stated that, to the extent a C corporation receives or expects to receive a state or local tax credit in return for a payment to an organization described in I.R.C. § 170(c), it is reasonable to conclude that there is a direct benefit to the C corporation's business in the form of a reduction in the state or local taxes the C corporation would otherwise have to pay and, therefore, to the extent of the amount of the credit received or expected to be received, there is a reasonable expectation of financial return to the C corporation commensurate with the amount of the transfer. In the case of a business entity other than a C corporation that is regarded as separate from its owner for all federal tax purposes under Treas. Reg. § 301.7701-3 (pass-through entity) and that is operating a trade or business within the meaning of I.R.C. § 162, to the extent the credit received in return for such a payment can reduce the pass-through entity's tax liability, the IRS stated that it is reasonable to conclude that there is a direct benefit to the pass-through entity in the form of a reduction in the state or local taxes the entity would otherwise have to pay. However, under the principles of I.R.C. §§ 702 and 1366, the deductibility of the payment must be determined at the level of the individual owners of the entity if the credit received or expected to be received will reduce a state or local income tax subject to the limitations in I.R.C. § 164(b)(6). The IRS has issued a revenue procedure which provides a safe harbor for C corporations and a separate safe harbor for specified pass-through entities. *C corporation safe harbor*. If a C corporation makes a payment to or for the use of an organization described in I.R.C. § 170(c) and receives or expects to receive a tax credit that reduces a state or local tax imposed on the C corporation in return for such payment, the C corporation may treat such payment as meeting the requirements of an ordinary and necessary business expense for purposes of I.R.C. § 162(a) to the extent of the credit received or expected to be received. *Pass-through entity safe harbor*. If a specified pass-through entity makes a payment to or for the use of an organization described in I.R.C. § 170(c) and receives or expects to receive a tax credit described that the entity applies or expects to apply to offset a state or local tax other than a state or local income tax, the specified pass-through entity may treat such payment as meeting the requirements of an ordinary and necessary business expense for purposes of I.R.C. § 162(a) to the extent of the credit received or expected to be received. The revenue procedure includes examples to illustrate both safe harbors. **Rev. Proc. 2019-12, I.R.B. 2019-__**.

DISASTER LOSSES. On November 27, 2018, the President determined that certain areas in Pennsylvania 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 August 15, 2018. **FEMA-4408-DR**. On November 12, 2018, the President determined that certain areas in California were eligible for assistance from the government under the Act as a result of wildfires which began on November 8, 2018. **FEMA-4407-DR**. Accordingly, taxpayers in these areas may deduct the losses on their 2018 or 2017 federal income tax returns. See I.R.C. § 165(i).

EMPLOYEE BENEFITS. The IRS has issued a notice which provides that: (1) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2019 for which the vehicle cents-per-mile valuation rule provided under Treas. Reg. § 1.61-21(e) may be applicable is $50,000 for a passenger automobile; and (2) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2019 for which the fleet-average valuation rule provided under Treas. Reg. § 1.61-21(d) may be applicable is also $50,000 for a passenger automobile. For 2019, due to the lack of data, a separate maximum values for trucks and vans for use with the vehicle cents-per-mile and fleet-average valuation rules will not be published. If an employer provides an employee with a vehicle that is available to the employee for personal use, the value of the personal use must generally be included in the employee's income and wages. I.R.C. § 61; Treas. Reg. § 1.61-21. If the employer meets certain requirements, the employer may elect to determine the value of the personal use using certain special valuation rules, including the vehicle cents-per-mile rule and the fleet-average value rule set forth in Treas. Reg. § 1.61-21(d) and (e), respectively. Both the vehicle cents-per-mile rule and the fleet-average value rule provide that those rules may not be used to value personal use of vehicles that have fair market values exceeding specified maximum vehicle values on the first day the vehicles are made available to employees. These maximum vehicle values are indexed for inflation and must be adjusted annually using both the CPI automobile component and the Chained Consumer Price Index for All Urban Consumers (C-CPI-U) automobile component. The C-CPI-U does not currently have separate components for new cars and new trucks. **Notice 2019-8, I.R.B. 2019-3**.

EXPENSE METHOD DEPRECIATION. The IRS has issued a revenue procedure governing the amendment by Section 13101(b) of the TCJA 2017 of I.R.C. § 179 by modifying the definition of qualified real property that may be eligible as I.R.C. § 179 property under I.R.C. § 179(d)(1). For property placed in service by the taxpayer in any taxable year beginning after 2017, the following types of property are qualified real property that may be eligible as I.R.C. § 179 property under I.R.C. § 179(d)(1):

(1) *Qualified improvement property*, as described in I.R.C. § 168(e)(6), that is placed in service by the taxpayer. The definition of qualified improvement property in I.R.C. § 168(e)(6) is the same definition of that term in I.R.C. § 168(k)(3) as in effect on the day before the date of enactment of the TCJA (see also *Rev. Proc. 2017-33, I.R.B. 2017-19, 1236* for further guidance on the definition of qualified improvement property).

(2) An *improvement to nonresidential real property*, as defined in I.R.C. § 168(e)(2)(B), if the improvement is: (a) placed in service by the taxpayer after the date such nonresidential real property was first placed in service by any person; (b) I.R.C. § 1250 property; and (c) a roof; heating, ventilation, and air-conditioning property (HVAC) including all components that are in, on, or adjacent to the nonresidential real property (See Treas. Reg. § 1.48-1(e)(2)); a fire protection and alarm system; or a security system.

The revenue procedure also allows taxpayers to elect to expense or increase the amount expenses qualified real property by filing an amended return under the procedures of *Rev. Proc. 2017-33*. **Rev. Proc. 2019-8, I.R.B. 2019-3**.

HEALTH INSURANCE. The IRS has identified additional hardship exemptions from the individual shared responsibility payment under I.R.C. § 5000A that a taxpayer may claim on the 2018 federal income tax return without obtaining a hardship exemption certification from the Health Insurance Marketplace. To provide additional flexibility for the 2018 tax year, HHS announced in guidance released on September 12, 2018, that all hardship exemptions available under 45 C.F.R. § 155.605(d)(1) may be claimed by a qualifying individual (or the taxpayer who may claim a qualifying individual as a dependent) on a federal income tax return for the 2018 tax year without obtaining a hardship exemption certification from the Marketplace. Under 45 C.F.R. § 155.605(d)(1), a person is eligible for a hardship exemption for at least the month before, the month(s) during, and the month after the specific event or circumstance that creates the hardship, if the Marketplace determines that: (1) the taxpayer experienced financial or domestic circumstances, including an unexpected natural or human-caused event, such that the taxpayer had a significant, unexpected increase in essential expenses that prevented the taxpayer from obtaining coverage under a qualified health plan; (2) the expense of purchasing a qualified health plan would have caused the taxpayer to experience serious deprivation of food, shelter, clothing, or other necessities; or (3) the taxpayer has experienced other circumstances that prevented the taxpayer from obtaining coverage under a qualified health plan. The option to claim an exemption on a federal income tax return for the 2018 tax year applies in addition to the existing procedures for applying for hardship exemptions using the Marketplace exemption determination process. **Notice 2019-5, I.R.B. 2019-2, *supplementing* Notice 2017-14, I.R.B. 2017-6, 783, *supplementing* Notice 2014-76, I.R.B. 2014-50, 946**.

HOBBY LOSSES. A petition for review has been filed with the U.S. Supreme Court for the following case. The taxpayer was president of a group of real estate development companies. The taxpayer's income came primarily from trusts which owned the real estate companies. The taxpayer worked an average of 10 hours per week for the companies. The taxpayer owned a horse operation involved in the breeding, training, showing and selling of quarter horses. The court looked at the nine factors of Treas. Reg. §1.183-2(b) and held that the horse operation was not operated with the intent to make a profit because (1) although the taxpayer presented business plan for the operation, the plan was prepared only after the taxpayer was audited and the taxpayer presented no evidence that the plan was ever used; (2) although

the taxpayer demonstrated sufficient expertise in the breeding, training and showing of horses, the taxpayer did not have any expertise in the business of horses and did not engage any experts as to the profitable business of horses; (3) the taxpayer spent considerable time on the horse operation but most of that time was for personal enjoyment and recreation; (4) the taxpayer did not present information of sufficient appreciation of the value of the operation's assets to offset substantial annual losses; (5) the annual losses substantially exceeded the occasional profits; and (6) the losses offset substantial income from other sources. **Hylton v. Comm'r, 2018-1 U.S. Tax Cas. (CCH) ¶ 50,237 (4th Cir. 2018), *aff'g*, T.C. Memo. 2016-234**.

IRA. During the tax year involved, the decedent suffered from age-related mental impairment sufficient for a guardian to be appointed for care of the decedent. During that tax year, the decedent received a distribution from an IRA but the decedent failed to rollover the distribution to another IRA within the 60-day period prescribed by I.R.C. § 408(d)(3)(A). The decedent's executor asserted that the failure to accomplish a rollover was due to the decedent's mental condition that impaired the taxpayer's cognitive function and ability. Under *Rev. Proc. 2003-16, I.R.B. 2003-4, 359*, in determining whether to grant a waiver of the 60-day rollover requirement pursuant to I.R.C. § 408(d)(3)(I), the IRS will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred. The IRS granted the decedent's estate a waiver of the 60-day rollover requirement. **Ltr. Rul. 201849018, Sept. 10, 2018**.

INNOCENT SPOUSE RELIEF. The taxpayer and former spouse had filed a joint return for 2006 for which the IRS assessed a deficiency. The former spouse filed for innocent spouse relief and the Tax Court held that the spouse had signed the return under duress so no joint return was deemed filed. That ruling was upheld by the Ninth Circuit Court of Appeals and the U.S. Supreme Court denied certiorari. *Hiramanek v. Comm'r, TC Memo. 2011-280, aff'd 2015-1 U.S. Tax Cas. (CCH) ¶ 50,118 (9th Cir. 2015)*. The taxpayer also filed the current separate innocent spouse claim which was stayed until a final decision was reached in the appeals of the first case. I.R.C. § 6015 provides innocent spouse relief from joint liability for taxes only where the taxpayer originally filed a joint return. The Tax Court held that the issue of whether the taxpayer and former spouse had filed of a joint return was collaterally estopped by the final decision in the first case; therefore, no innocent spouse relief could be granted to the taxpayer because the taxpayer and former spouse had not filed a joint return. On appeal, the appellate court affirmed in a decision designated as not for publication. **Hiramanek v. Comm'r, 2019-1 U.S. Tax Cas. (CCH) ¶ 50,111 (9th Cir. 2018), *aff'g* T.C. Memo. 2016-92**.

LETTER RULINGS. The IRS has issued its annual list of procedures for issuing letter rulings. The prior procedures were modified (1) to reflect a new address to send the duplicate copy of the Form 3115 for an automatic change in method of accounting, (2) to provide new addresses for exempt organizations to send the Form 3115 and (3) to provide that exempt organizations filing a Form 3115 for a nonautomatic change in method of accounting are subject to the user fees in Appendix A of the revenue procedure. Appendix A contains a schedule of user fees for requests. **Rev. Proc. 2019-1, I.R.B. 2019-1, 1**.

The IRS has issued its annual revision of the general procedures relating to the issuance of technical advice to a director or an appeals area director by the various offices of the Associate Chief Counsel. The new procedures reflect that in transactions involving multiple taxpayers, the field office may request a single TAM only if each taxpayer agrees to participate in the process by furnishing a Form 8821, *Tax Information Authorization*, or by other written consent. The procedures also explain the rights a taxpayer has when a field office requests technical advice. **Rev. Proc. 2019-2, I.R.B. 2019-1, 106**.

The IRS has issued its annual list of tax issues for which the IRS will not give advance rulings or determination letters. **Rev. Proc. 2019-3, I.R.B. 2019-1, 130**.

The IRS has issued its annual list of procedures for issuing letter rulings issued by the Commissioner, Tax Exempt and Government Entities Division, Employee Plans and Agreements Office. **Rev. Proc. 2019-4, I.R.B. 2019-1, 146**.

The IRS has released an updated revenue procedure which explains when and how the IRS issues technical advice memoranda in the employee plans areas (including actuarial matters) and exempt organizations areas. **Rev. Proc. 2019-5, I.R.B. 2019-1, 230.**

LOSSES. The IRS has published basic information about changes to provisions for excess business losses and net operating losses. *Excess business losses*. The TCJA 2017 modified existing tax law on excess business losses by limiting losses from all types of business for noncorporate taxpayers. An excess business loss is the amount by which the total deductions from all trades or businesses exceed a taxpayer's total gross income and gains from those trades or businesses, plus $250,000, or $500,000 for a joint return. Excess business losses that are disallowed are treated as a net operating loss carryover to the following taxable year. See Form 461 and instructions, available soon, for details. Net Operating Losses. TCJA 2017 also modified net operating loss (NOL) rules. Most taxpayers no longer have the option to carryback a NOL. For most taxpayers, NOLs arising in tax years ending after 2017 can only be carried forward. Exceptions apply to certain farming losses and NOLs of insurance companies other than a life insurance company. For losses arising in taxable years beginning after Dec. 31, 2017, the new law limits the NOL deduction to 80 percent of taxable income. **IR-2018-254**.

MILEAGE DEDUCTION. The IRS has announced that the standard mileage rate for 2019 is 58 cents (increased from 54.5 in 2018) per mile for business use, 14 cents per mile for charitable use and 20 cents (increased from 18 cents in 2018) 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 (26 cents per mile

for 2019) 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 2019-2, I.R.B. 2019-3**.

PARTNERSHIPS

ADMINISTRATIVE ADJUSTMENTS. The IRS has adopted as final regulations replacing the TEFRA unified partnership audit and litigation rules. The new rules reflect the provisions of the Bipartisan Budget Act of 2015, as amended by Protecting Americans from Tax Hikes Act of 2015, Pub. L. 114-113, div. Q, § 411, 129 Stat. 3121 (2015). The regulations contain provisions and procedures for partnerships with 100 or fewer eligible partners to elect out of the new centralized partnership audit regime. Eligible partners are individuals, C corporations, eligible foreign entities, S corporations, or the estates of a deceased partner. Married taxpayers are to be considered as separate partners for the election purposes. The electing partnership is to provide the names, TINs, and federal tax classifications of all partners and must notify all partners about the election. The regulations require consistent reporting of partnership items by the partners. A partner who reports an item inconsistent with the partnership return must identify the inconsistency on the partner's tax return. As under the TEFRA rules, the regulations require partnerships to designate a representative. Any adjustment of partnership items by the IRS are issued in a notice of proposed partnership adjustment (NOPPA) provided to the partnership and partnership representative. The regulations allow a partnership to pass on the assessment of taxes in a NOPPA to the partners. The regulations affect partnerships for taxable years beginning after December 31, 2017 and any partnerships that elect application of the centralized partnership audit regime pursuant to Treas. Reg. § 301.9100-22T for taxable years beginning after November 2, 2015 and before January 1, 2018. See also *Harl, "Protecting Americans from Tax Hikes Act of 2015 (PATH)" 27 Agric. L. Dig. 1 (2016)*. **T.D. 9844, 8_ Fed. Reg. ____ (Dec. __, 2018)**.

PENALTIES. The IRS has issued a revenue procedure which updates *Rev. Proc. 2018-11, I.R.B. 2018-5, 335*, 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. Only minor editing and dating changes have been made from *Rev. Proc. 2018-11*. 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 2018 tax forms for a taxable year beginning in 2018, and to any income tax return filed in 2019 on 2018 tax forms for short taxable years beginning in 2019. **Rev. Proc. 2019-9, I.R.B. 2019-__**.

PENSION PLANS. For plans beginning in December 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 3.36 percent. The 30-year Treasury weighted average is 2.91 percent, and the 90 percent to 105 percent permissible range is 2.62 percent to 3.06 percent. The 24-month average corporate bond segment rates for December 2018, *without adjustment* by the 25-year average segment rates are: 2.50 percent for the first segment; 3.92 percent for the second segment; and 4.50 percent for the third segment. The 24-month average corporate bond segment rates for December 2018, taking into account the 25-year average segment rates, are: (1) for plan years beginning in 2017: 4.16 percent for the first segment; 5.72 percent for the second segment; and 6.48 percent for the third segment; (1) for plan years beginning in 2018: 3.92 percent for the first segment; 5.52 percent for the second segment; and 6.29 percent for the third segment; (3) for plan years beginning in 2019: 3.74 percent for the first segment; 5.35 percent for the second segment; and 6.11 percent for the third segment. **Notice 2019-3, I.R.B. 2019-3**.

PLUG-IN ELECTRIC VEHICLE CREDIT. The IRS has announced that the plug-in electric vehicle credit provided by I.R.C. § 30D will begin to phase-out for Tesla brand electric vehicles sold or leased after January 1, 2019. If a new qualified plug-in electric drive motor vehicle sold by Tesla, Inc. is purchased for use or lease on or after January 1, 2019, the allowable credit is as follows: (1) for vehicles purchased for use or lease on or after January 1, 2019, and on or before June 30, 2019, the credit is 50 percent of the otherwise allowable amount determined under I.R.C. § 30D(b); (2) for vehicles purchased for use or lease on or after July 1, 2019, and on or before December 31, 2019, the credit is 25 percent of the otherwise allowable amount determined under I.R.C. § 30D(b); (3) for vehicles purchased for use or lease on or after January 1, 2020, no credit is allowable. **Notice 2018-96, I.R.B. 2018-52**.

SAFE HARBOR INTEREST RATES
January 2019

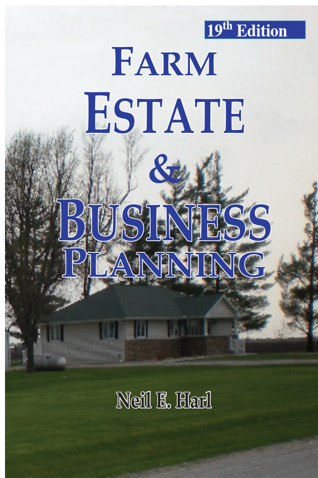
	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	2.72	2.70	2.69	2.68
110 percent AFR	2.99	2.97	2.96	2.95
120 percent AFR	3.27	3.24	3.23	3.22
		Mid-term		
AFR	2.89	2.87	2.86	2.85
110 percent AFR	3.18	3.16	3.15	3.14
120 percent AFR	3.47	3.44	3.43	3.42
		Long-term		
AFR	3.15	3.13	3.12	3.11
110 percent AFR	3.47	3.44	3.43	3.42
120 percent AFR	3.80	3.76	3.74	3.73

Rev. Rul. 2019-3, I.R.B. 2019-2.

Agricultural Law Press
735 N. Maple Hill Rd., Kelso, WA 98626

19th EDITION

FARM ESTATE & BUSINESS PLANNING



Soft cover, 8.25 x 5.5 inches, 510 pages
Published April 2016

The Agricultural Law Press is honored to publish the completely revised and updated 19th Edition of Dr. Neil E. Harl's excellent guide for farmers and ranchers who want to make the most of the state and federal income and estate tax laws to assure the least expensive and most efficient transfer of their estates to their children and heirs. This book contains detailed advice on assuring worry-free retirement years, using wills, trusts, insurance and outside investments as estate planning tools, ways to save on estate settlement costs, and an approach to setting up a plan that will eliminate arguments and friction in the family. Federal estate taxation has undergone great changes in recent years and this book sorts out these changes for you in a concise manner. *Farm Estate and Business Planning* also includes discussion of employment taxes, formation and advantages of use of business entities, federal farm payments, state laws on corporate ownership of farm land, federal gift tax law, annuities, installment obligations, charitable deductions, all with an eye to the least expensive and most efficient transfer of the farm to heirs.

Written with minimum legal jargon and numerous examples, this book is suitable for all levels of people associated with farms and ranches, from farm and ranch families to lenders and farm managers. Some lawyers and accountants circulate the book to clients as an early step in the planning process. We invite you to begin your farm and ranch estate and business planning with this book and help save your hard-earned assets for your children.

The book is also available in digital PDF format for $25; see www.agrilawpress.com for ordering information for both the print and digital versions of the book.

ORDER FORM (or call 360-200-5666)

*Free shipping and handling when check or credit card number submitted with order.

*Return in 10 days for full refund if not satisfied.

*Quantity discounts available for 10 or more books - great for handing out to clients to encourage estate planning.

___ Please send me ____ copies for $35.00 each. Check enclosed for $___________

___ Please charge my credit card: __Visa __ MasterCard __Discover __Am Express #___________________________________

_____/______Expiration date _____ Cvv code

___ Bill me and add shipping and handling of $5.00 per book.

Name - please print or type

Street address City State Zip

Phone E-mail - if you want to be informed of updates/corrections

Send to: Agricultural Law Press, 735 N. Maple Hill Rd., Kelso, WA 98626