a deduction would have been allowable under section 181 without regard to section 181(a)(2) and (g), or section 168(k)."

[7] I.R.C. § 168(k)(2)(E)(ii) requires that the acquired property was not used by the taxpayer at any time prior to such acquisition and the acquisition of such property meets the requirements of I.R.C. § 179(d)(2)(A), (B), and (C) and I.R.C. § 179(d)(3).

[8] I.R.C. § 168(k)(2)(A).

[9] I.R.C. § 168(g)(7) (election to have the alternative depreciation system apply).

[10] I.R.C. § 280F(b) (listed property with limited business use).

[11] Pub. L. No. 115-97, § 13204, 131 Stat. 2108 (2017).

[12] Prop. Treas. Reg. § 1.168(k)-2(b)(2)(i)(A).

[13] Pub. L. No. 115-97, § 13201, 131 Stat. 2092 (2017).

[14] See Prop. Treas. Reg. § 1.168(k)-2(b)(3)(ii).

[15] See Prop. Treas. Reg. § 1.168(k)-2(b)(3)(iii).

[16] See Prop. Treas. Reg. § 1.168(k)-2(b)(3)(ii).

[17] See Prop. Treas. Reg. § 1.168(k)-2(b)(3)(ii)(B).

[18] See Prop. Treas. Reg. § 1.168(k)-2(b)(3)(ii)(B).

[19] See Prop. Treas. Reg. § 1.168(k)-2(b)(3)(ii)(B).

[20] Prop. Treas. Reg. § 1.168(k)-2(b)(2)(ii).

[21] This exclusion applies to property placed in service in any taxable year beginning before January 1, 2018, because Section 12001(b)(13) of the TCJA 2017 repealed I.R.C. § 168(k)(4) for taxable years beginning after December 31, 2017.

[22] I.R.C. § 168(k)(9) provides that qualified property does not include any property that is primarily used in a trade or business described in I.R.C. § 163(j)(7)(A)(iv), or (B) any property used in a trade or business that has had floor plan financing indebtedness (as defined in I.R.C. § 163(j)(9)) if the floor plan financing interest related to such indebtedness was taken into account under I.R.C. § 163(j)(1)(C). I.R.C. § 163(j) applies to taxable years beginning after December 31, 2017. Thus, the exclusion of property described in I.R.C. § 168(k)(9) from the additional first year depreciation deduction applies to property placed in service in any taxable year beginning after December 31, 2017.

[23] Prop. Treas. Reg. § 1.168(k)-2(e)(1).

[24] Prop. Treas. Reg. § 1.168(k)-2(e)(2).

[25] Prop. Treas. Reg. § 1.168(k)-2(e)(1) (election out); § 1.168(k)-2(e)(2) (election for plants). The election is to be made in the manner prescribed on Form 4562, *Depreciation and Amortization*, and its instructions. The election is made separately by each person owning qualified property (for example, for each member of a consolidated group by the common parent of the group, by the partnership (including basis adjustments in the partnership assets under section 743(b)), or by the S corporation).

[26] Prop. Treas. Reg. § 1.168(k)-2(e)(3). Because I.R.C. § 168(k)(10) does not state that the election may be made "with respect to any class of property" as stated in I.R.C. § 168(k)(7) for making the election out of the additional first year depreciation deduction, the proposed regulations provide that the election under I.R.C. § 168(k)(10) applies to all qualified property.

[27] Prop. Treas. Reg. § 1.168(k)-2(e)(5). Under Treas. Reg. § 301.9100-3, the Commissioner may grant a request to revoke the election if the taxpayer acted reasonably and in good faith, and the revocation will not prejudice the interests of the government. An election may not be revoked through a request under I.R.C. § 446(e) to change the taxpayer's method of accounting.

[28] Prop. Treas. Reg. § 1.168(k)-2(e)(5)(ii).

[29] Prop. Treas. Reg. § 1.168(k)-2(d)(ii).

[30] Prop. Treas. Reg. § 1.168(k)-2(f)(i).

[31] Prop. Treas. Reg. § 1.168(k)-2(d).

[32] Prop. Treas. Reg. § 1.168(k)-2(d).

[33] Prop. Treas. Reg. § 1.168(k)-2(f)(3).

[34] Prop. Treas. Reg. § 1.168(k)-2(f)(3).

CASES, REGULATIONS AND STATUTES

BANKRUPTCY

CHAPTER 12

PLAN. The debtor filed for Chapter 12 in March 2018 and filed a plan in July 2018. The plan provided for payment of secured loans from the CCC and FSA. The debtor testified as to the anticipated income and expenses during the life of the plan but did not present cash flow statements or other written evidence to support the debtor's expected income and expenses. The trustee and USDA filed objections to the plan based on its lack of feasibility and failure of the debtor to correctly state the amount of the CCC and FSA loans. Section 1225(a)(6) provides that "the court shall confirm a plan if . . . the debtor will be able to make all payments under the plan and to comply with the plan." The court found that, although the debtor testified as to how the debtor planned to meet the Chapter 12 plan payments, the debtor did not provide specific details as to factors that could allow or prevent the debtor from meeting the income requirements for making all plan payments. The court noted that the debtor had no provision for reserves to meet shortfalls in income and that much of the income exceeded the income of previous years. Although the debtor had plans to increase income, most of these plans, such as increased irrigation also required additional expenses. Thus, the court held that the plan could not be confirmed for lack of sufficient evidence that the plan payments could be made on a timely basis. ***In re* Morris, 2018 Bankr. LEXIS 2803 (Bankr. N.D. Miss. 2018)**.

The debtor was an LLC owned by two individuals who also owned another LLC. The debtor filed for Chapter 12 in February 2018 and filed a plan in July 2018 which was objected to by several creditors and the trustee as not proposed in good faith, not feasible , and as not providing creditors with at least the amount received in a Chapter 7 case as required by Section 1225. The debtor's plan estimated income from several sources: (1) income from the sale of crops, (2) federal farm program payments, (3) funds provided by the other LLC, and income from custom grain storage and drying. The court found that (1) the income from the crops was too uncertain because a portion of the debtor's land was subject to

a foreclosure action and crop prices were in decline; (2) the income from the custom storage and drying was overstated because some of the land and equipment was subject tot he foreclosure action; (3) the money from the other LLC was unlikely to be available because the other LLC was in default on some of its loans; and (4) the federal payments were dependent upon the crop production. The court rejected the debtor's claim that the unsecured creditors would receive as much or more than in a Chapter 7 case because the income and expenses projections contained several flaws and unsubstantiated claims. Thus, the court held that the plan was not confirmable because it was not feasible and did not provide creditors with as much as they would receive in a Chapter 7 case. The court ordered the case to be dismissed in 14 days to allow the debtor time to convert the case to a Chapter 7 case. ***In re* CF Beef & Grain, LLC, 2018 Bankr. LEXIS 2837 (Bankr. E.D. Wis. 2018)**.

FEDERAL TAX

SETOFF. The debtors filed for Chapter 7 in May 2014 and identified the IRS as an unsecured creditor for unpaid taxes for 2008, 2009 and 2010. The debtors also listed an exemption, under the Va. Code § 34-4 homestead exemption, covering a income tax refund for 2013. In June 2014, the debtors filed their 2013 federal tax return claiming a refund for overpayment of withheld taxes. Later in June 2014, the IRS informed the debtors that their 2013 refund was applied to their outstanding tax deficiencies from 2008, 2009 and 2010, with the remainder waived due to the bankruptcy filing. The debtors sought recovery of the 2013 tax refund. The Bankruptcy Court granted summary judgment for the debtors. The IRS appealed, raising four grounds: (1) the Bankruptcy Court lacked jurisdiction to compel the IRS to refund the tax overpayment; (2) the debtors' 2013 federal income tax overpayment did not become part of the bankruptcy estate until after the IRS set off the overpayment against the debtors' pre-petition income tax liability pursuant to I.R.C. § 6402; (3) the United States did not need to object to the debtors' claim for a refund to preserve its setoff rights because the debtors' refund claim lacked any value; and, (4) the United States's setoff right under Section 553 supersedes the debtors' exemption rights under Section 522. *Sovereign Immunity*. The IRS argued that the Bankruptcy Court lacked jurisdiction to hear the debtors' refund suit because the United States has not waived its sovereign immunity from such cases under Section 106 in that none of the Bankruptcy Code sections referenced in Section 106, specifically Sections 505, 522, 542, and 553, provides the debtors with an avenue for bringing a suit to recover a tax overpayment. The court held that both Section 522 (exemptions) and Section 553 (setoff) are involved in the debtors' action; therefore, Section 106 expressly waives the governmental immunity by listing both Sections 522 and 553. *Offset*. The court acknowledged that the tension between Sections 522 and 553 have created conflicting holdings among a large number of cases. However, the court held that the refund became vested in the debtors on December 31, 2013 and part of the bankruptcy estate upon the filing of the case in May 2014 and Section 522 superseded application of Section 553. Thus, the court held that the Bankruptcy Court's grant of summary judgment to the debtors for recovery of the refund was proper. **United States v. Copley, 2018-2 U.S. Tax Cas. (CCH) ¶ 50,406 (E.D. Va. 2018), *aff'g*, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,293 (Bankr. E.D. Va. 2016)**.

FEDERAL ESTATE AND GIFT TAXATION

POWER OF APPOINTMENT. The taxpayer and spouse established an irrevocable trust for their three grandchildren, with remainders to their descendants. Each grandchild received an equal share in the trust and the trust provided that the trustee "may from time to time pay to or for the benefit of such grandchild or his or her issue, such part of the net income and principal as the trustee deems advisable and in their respective best interests; provided, however, that in all but extraordinary emergency situations, distributions to the grandchild and his or her issue shall be limited to their medical and educational needs." The trust also provided provided that, during the calendar year, the grandchild may make withdrawals from any additions to the principal of the share during such year. After the trust was created, a review by another attorney discovered two scrivener's errors: First, the trust's grant to each grandchild of the right to withdraw the entire amount of any contribution to that grandchild's separate share of the trust failed to limit the withdrawal right to the gift tax annual exclusion amount, causing the grandchild to possess general powers of appointment (within the meaning of I.R.C. §§ 2514 and 2041) over the entire amount of the contribution to that grandchild's separate share of the trust. Second, each grandchild's withdrawal right over the assets contributed to trust in any given year is non-cumulative and lapses in its entirety on an annual basis. Since the lapse was not limited to the greater of $5,000 or 5 percent of the value of the trust assets, any lapse of a grandchild's withdrawal right would be treated as a taxable transfer by that grandchild under I.R.C. § 2514 to the extent that the property that could have been withdrawn exceeds in value the greater of $5,000 or 5 percent of the aggregate value of the assets subject to withdrawal. The trustee obtained a local court order reforming the two trust provisions to (1) limit the beneficiaries' withdrawal rights to the gift tax annual exclusion amount, and (2) limit the annual lapse of the withdrawal rights to the greater of $5,000 or 5 percent of the value of the trust assets. The IRS ruled that the reformation of the trust provisions (1) did not cause any of the beneficiaries to possess a general power of appointment, (2) did not constitute an exercise or release of a general power of appointment, and (3) did not result in a gift if a beneficiary allowed the withdrawal right to lapse. **Ltr. Rul. 201837005, May 24, 2018; Ltr. Rul. 201837006, May 24, 2018; Ltr. Rul. 201837007, May 24, 2018; Ltr. Rul. 201837008, May 24, 2018; Ltr. Rul. 201837009, May 24, 2018.**

FEDERAL FARM PROGRAMS

MARKET FACILITATION PROGRAM. MFP provides payments to producers with commodities that have been

significantly impacted by actions of foreign governments resulting in the loss of traditional exports. The FSA has announced the availability of MFP funds for eligible producers of shelled almonds and fresh sweet cherries On behalf of the CCC, the FSA administers the MFP. MFP participants will receive an MFP payment, based on the eligible production multiplied by the participant's share multiplied by the MFP payment rate. The MFP payment rates and units of measure that will be in effect beginning at the start of the application period, are—

Commodity	Unit	Rate ($/unit)
Shelled Almonds	pound	$0.03
Fresh Sweet Cherries	pound	0.16

The initial payment rate will apply to the first 50 percent of the producer's total production of the selected commodity. On or about December 3, 2018, CCC may announce a second payment rate, if applicable, that will apply to the remaining 50 percent of the producer's production for the selected commodity. MFP payment at either the initial payment rate or at a second payment rate will be made after a producer harvests 100 percent of the crop and certifies the amount of production. The actual production used to calculate an MFP payment is 2018 production in which the applicant had an ownership share. Specifically, required production information is (1) the harvested production for the 2018 crop year and (2) an ownership share for a crop will be as reported to FSA on the acreage report, form FSA-578, "Report of Acreage." **83 Fed. Reg. 48410 (Sept. 25, 2018)**.

FEDERAL INCOME TAXATION

CORPORATIONS

RELATED PARTIES. In 2016, the IRS adopted as final regulations under I.R.C. § 385 that establish threshold documentation requirements that ordinarily must be satisfied in order for certain related-party interests in a corporation to be treated as indebtedness for federal tax purposes, and treat as stock related-party interests that otherwise would be treated as indebtedness for federal tax purposes. The final regulations generally affect corporations, including those that are partners of certain partnerships, when those corporations or partnerships issue purported indebtedness to related corporations or partnerships. *T.D. 9790, 81 Fed. Reg. 72858 (Oct. 21, 2016)*. The IRS now proposes to remove these final regulations pursuant to E.O. 13789 as significant tax regulations that impose an undue financial burden on U.S. taxpayers and/or add undue complexity to the federal tax laws. The IRS indicated that it will continue to study the issues involved and may propose new regulations which would be substantially simplified and streamlined to reduce the burden on U.S. corporations, would still require sufficient documentation and other information for tax administration purposes, and would be proposed with a prospective effective date to allow sufficient lead-time for taxpayers to design and implement systems to comply with those regulations. **REG-130244-17, 83 Fed. Reg. 48265 (Sept. 24, 2018)**.

DEPRECIATION. This ruling applies tax law prior to passage of the TCJA 2017. The taxpayer was a partnership which acquired real property to be rehabilitated and leased as commercial and residential property. During the tax year, the taxpayer placed in service several items of real and personal property that were qualified property (as defined in I.R.C. § 168(k)(2) before the application of I.R.C. § 168(k)(2)(D)(iii)) including qualified leasehold improvement property (as defined in I.R.C. § 168(e)(6)). An accounting firm was engaged to prepare the taxpayer's federal tax returns for the tax year and the taxpayer advised the firm that the additional first year depreciation deduction was not to be claimed for property for which a rehabilitation credit under I.R.C. § 47 was being claimed and that the election not to deduct the additional first year depreciation is to be made for such property. The taxpayer claimed rehabilitation credits for the qualified leasehold improvement property placed in service during the tax year. On the return for the tax year, the taxpayer did not deduct the additional first year depreciation for any qualified leasehold improvement property placed in service during that taxable year, but did deduct depreciation for such property under the general depreciation system of I.R.C. § 168(a) by using the straight-line method of depreciation, a 15-year recovery period, and the half-year convention. Due to an inadvertent error made by the firm, the return included the election under I.R.C. § 168(f)(1) to not apply I.R.C. § 168 for qualified leasehold improvement property rather than elections under I.R.C. § 168(k)(2)(D)(iii) not to claim the additional first year depreciation under I.R.C. § 168(k) for such property. 1.168(k)-1(e)(3)(i) provides that the election not to deduct additional first year depreciation must be made by the due date (including extensions) of the federal tax return for the taxable year in which the property is placed in service by the taxpayer. Treas. Reg. § 1.168(k)-1(e)(3)(ii) provides that the election not to deduct additional first year depreciation must be made in the manner prescribed on Form 4562, *Depreciation and Amortization*, and its instructions. The instructions to Form 4562 for the tax year involved provided that the election not to deduct the additional first year depreciation is made by attaching a statement to the taxpayer's timely filed tax return indicating that the taxpayer is electing not to deduct the additional first year depreciation and the class of property for which the taxpayer is making the election. Under Treas. Reg. § 301.9100-1, the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election. The IRS granted the taxpayer an extension of 60 days to make the election out of additional first year depreciation. **Ltr. Rul. 201838001, June 22, 2018**.

DISASTER LOSSES. On August 20, 2018, the President determined that certain areas in Iowa 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 tornadoes which began on June 6, 2018. **FEMA-4386-DR**. On August 20, 2018, the President determined that certain areas in Connecticut were eligible for assistance from the government under the Act as a result of severe storms and tornadoes which began on May 15, 2018. **FEMA-4385-DR**. On August 27, 2018, the President determined that certain areas in Nebraska were eligible for assistance from the government under the Act as a result of severe storms and tornadoes which began on July 1, 2018. **FEMA-4387-DR**. On September 5, 2018, the President determined

that certain areas in Minnesota were eligible for assistance from the government under the Act as a result of severe storms and tornadoes which began on Juy 11, 2018. **FEMA-4390-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). On December 20, 2017, the President determined that certain areas in Alaska were eligible for assistance from the government under the Act as a result of a severe storm which began on September 28, 2017. **FEMA-4351-DR**. Accordingly, taxpayers in these areas may deduct the losses on their 2017 or 2018 federal income tax returns. See I.R.C. § 165(i).

DISCHARGE OF INDEBTEDNESS. The taxpayers were husband and wife. The husband had been a state employee enrolled in a retirement plan with the state. The husband left that employment, receiving the amount in the retirement plan, for a few years but returned to state employment in 2011. In 2013, the husband obtained permission to increase the retirement plan to include credit for the prior employment, if the husband paid back the amount received after the termination of the prior employment. The amount was to be paid back in monthly installments. In September of 2013, the amount due on this plan was $52,326. In November 2013 the amount owed was $51,343. In September 2013 the taxpayers received a discharge of a credit card debt and in November 2013 the taxpayer received a discharge of another credit card debt. The taxpayers did not include the discharged indebtedness in income and the IRS assessed a deficiency for taxes on the total amount of debt discharged. The issue was whether the amount owed on the employee retirement plan was a liability under I.R.C. § 108. If the amount owed was a debt, the taxpayers were insolvent in September and November 2013 when the credit card debts were discharged and the taxpayer were eligible for the insolvency exception in I.R.C. § 108(a)(1)(B). I.R.C. § 108(a)(1)(B) excludes discharge of indebtedness income from gross income if the discharge occurs when the taxpayer is insolvent. Under I.R.C. § 108(d)(3), a taxpayer is insolvent if, immediately before the discharge of debt, the taxpayer's liabilities exceeded the fair market value of the assets. I.R.C. § 108(a)(3) provides that the amount of income excluded by virtue of a taxpayer's insolvency may not exceed the amount by which the taxpayer is insolvent. The court cited *Merkel v. Commissioner, 109 T.C. 463 (1997), aff'd, 192 F.3d 844 (9th Cir. 1999)*, for the principle that "a taxpayer claiming the benefit of the insolvency exclusion must prove . . . with respect to any obligation claimed to be a liability, that, as of the calculation date, it is more probable than not that he will be called upon to pay that obligation in the amount claimed." In this case the court found that the retirement payments were a voluntary obligation of the husband, were paid to an account that the husband owned, and were not mandatory if the husband left the employment for any reason. The court held that the retirement plan payments were not a liability under I.R.C. § 108 and did not make the taxpayers insolvent at the time of the discharge of indebtedness; therefore, the discharged debt was taxable income in 2013. **Jackson v. Comm'r, T.C. Summary Op. 2018-43**.

The IRS assessed a tax deficiency against the taxpayers, husband and wife, for unreported discharge of indebtedness income. A bank had issued a Form 1099-C, *Cancellation of Debt*, reporting $1,136.85 in discharged consumer loans. The taxpayers did not report the discharged debt as income and argued that the IRS had the burden of proof to prove the amount of discharged debt. The taxpayers cited *Portillo v. Comm'r 932 F.2d 1128, 1133 (5th Cir. 1991), aff'g in part, rev'g in part and remanding in part, T.C. Memo. 1990-68,* for the requirement that the IRS could not rely solely on a Form 1099-C to prove the discharge of indebtedness. The court agreed with the taxpayers' citation of *Portillo*, but found that the IRS had provided a statement from the bank showing an amount due a small amount greater than the amount shown on the Form 1099-C; therefore, the IRS had provided sufficient evidence of the discharged debt to shift the burden to the taxpayers to prove any error. Because the taxpayer did not provide any evidence to support their claim that no debt was discharged, the court held that the IRS deficiency was correct. **Hernandez v. Comm'r, T.C. Memo. 2018-163**.

FAMILY AND MEDICAL LEAVE. The IRS has issued a Notice which provides guidance in question and answer form on the employer credit for paid family and medical leave under I.R.C. § 45S. I.R.C. § 45S was added by the TCJA 2017, *Pub. L. 115-97, 131 Stat. 2504 (2017)*. For purposes of I.R.C. § 38, regarding the general business credit, I.R.C. § 45S establishes a business credit for employers that provide paid family and medical leave. The credit is equal to a percentage of wages paid to qualifying employees while they are on family and medical leave. The purposes for which an employee may take family and medical leave under section 45S are the same purposes for which an employee may take family and medical leave under 29 U.S.C. § 2601. To be eligible to claim the credit, an employer must have a written policy that satisfies four requirements. First, the policy must cover all qualifying employees. To be a qualifying employee in 2018, the employee must not have had compensation from the employer of more than $72,000 in 2017. Second, the policy must provide at least two weeks of annual paid family and medical leave for each full-time qualifying employee and at least a proportionate amount of leave for each part-time qualifying employee. Third, the policy must provide for payment of at least 50 percent of the qualifying employee's wages while the employee is on leave. Fourth, if an employer employs qualifying employees who are not covered under 29 U.S.C. § 2601, the employer's written policy must include language providing "non-interference" protections. Any leave paid by a state or local government or required by state or local law is not taken into account for any purpose in determining the amount of paid family and medical leave provided by the employer. Thus, any such leave is not taken into account in determining the amount of paid family and medical leave provided by the employer, the rate of payment under the employer's written policy, or the determination of the credit. For purposes of the credit, an employer is any person for whom an individual performs services as an employee under the usual common law rules applicable in determining the employer-employee relationship. Wages qualifying for the credit generally have the same meaning as wages subject to the FUTA, determined without regard to the $7,000 FUTA wage limitation. **Notice 2018-71, I.R.B. 2018-41**.

INNOCENT SPOUSE RELIEF. The taxpayer and former spouse had filed in 2012 a joint return for 2011 while the couple were separated and during the pendency of their divorce proceedings. The taxpayer sent the return to the spouse for

approval. The spouse had income from employment and disability payments but the spouse had not informed the taxpayer about the disability payments and had not submitted any W-2 or other income reporting forms to the taxpayer. After the IRS assessed a deficiency for the unreported disability payments, the taxpayer sought innocent spouse relief under I.R.C. § 6015(c) from joint and several liability for the taxes on the unreported disability payment income. Although the IRS granted relief, the former spouse intervened and argued that relief should be denied. I.R.C. § 6015(c) generally allows a separated or divorced spouse to elect to limit the liability for any deficiency assessed with respect to a joint return to the portion of the deficiency that is properly allocable to the electing individual under I.R.C. § 6015(d) as if the spouses had filed separate returns. To be eligible for I.R.C. § 6015(c) relief, the electing spouse must establish that: (1) the spouses filed a joint return for the year at issue; (2) the spouses were, at the time the election for relief was made, legally separated or divorced or had not been members of the same household at any time during the previous 12 months; (3) the election for relief was made after a deficiency was determined but no later than two years after the Commissioner began collection activities; and (4) the deficiency remains unpaid. In this case, the IRS agreed that the taxpayer met the four requirements. However, I.R.C. § 6015(c)(3)(C) denies otherwise available I.R.C. § 6015(c) relief to the electing spouse if it is shown that he or she "had actual knowledge, at the time such individual signed the return, of any item giving rise to a deficiency (or portion thereof) which is not allocable to such individual under subsection (d)." The court found that the taxpayer did not have knowledge of the disability payments because (1) the spouse maintained a separate bank account, (2) no information return was provided showing the disability payments, and (3) the taxpayer had no knowledge of the disability payments. Thus, the court held that the IRS had properly granted the taxpayer relief from joint and several liability for taxes on the spouse's disability payments. **Merlo v. Comm'r, T.C. Summary Op. 2018-47**.

MOVING EXPENSES. The IRS has issued a Notice which provides guidance on the application of I.R.C. § 132(g)(2) to employer reimbursements *received* in a taxable year beginning after December 31, 2017, for qualified moving expenses *incurred* in connection with a move that occurred prior to January 1, 2018. Section 11048(a) of the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2088 (2017) (TCJA 2017), amended I.R.C. § 132(g) by adding I.R.C. § 132(g)(2). I.R.C. § 132(g)(2) provides that I.R.C. § 132(a)(6) does not apply to taxable years beginning after December 31, 2017, and before January 1, 2026, except in the case of a member of the Armed Forces of the United States on active duty who moves pursuant to a military order and incident to a permanent change of station. Section 11048(b) of the TCJA 2017 provides that this amendment applies to taxable years beginning after December 31, 2017. The Notice provides that the suspension of the exclusion from income provided by I.R.C. § 132(a)(6) under I.R.C. § 132(g)(2) does not apply to amounts received directly or indirectly by an individual in 2018 from an employer for expenses incurred in connection with a move occurring prior to January 1, 2018, that would have been deductible as moving expenses under I.R.C. § 217 if they had been paid directly by the individual prior to January 1, 2018, and that otherwise satisfy the requirements under I.R.C. § 132(g)(1). Such amounts will be qualified moving expense reimbursements under I.R.C. § 132(g)(1) that are excludable under I.R.C. § 132(a)(6). **Notice 2018-75, I.R.B. 2018-41**.

PENSION PLANS. For plans beginning in September 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 3.04 percent. The 30-year Treasury weighted average is 2.87 percent, and the 90 percent to 105 percent permissible range is 2.58 percent to 3.01 percent. The 24-month average corporate bond segment rates for September 2018, *without adjustment* by the 25-year average segment rates are: 2.28 percent for the first segment; 3.81 percent for the second segment; and 4.46 percent for the third segment. The 24-month average corporate bond segment rates for September 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 2018-73, I.R.B. 2018-40**.

RETURNS. The IRS has issued a revenue procedure which sets forth the 2018 requirements for (1) using official IRS forms to file information returns with the IRS, (2) preparing acceptable substitutes of the official IRS forms to file information returns with the IRS, and (3) using official or acceptable substitute forms to furnish information to recipients. A substitute form or statement is one that is not published by the IRS. For a substitute form or statement to be acceptable to the IRS, it must conform to the official form or the specifications outlined in the revenue procedure. A taxpayer should not submit any substitute forms or statements listed above to the IRS for approval. Privately published forms may not state, "This is an IRS approved form." Filers making payments to certain recipients during a calendar year are required by various provisions of the Internal Revenue Code to file information returns with the IRS for these payments. These filers also must provide this information to their recipients. In some cases, this also applies to payments received. The procedure provides specifications that apply to recipient statements (generally Copy B). In general, I.R.C. § 6011 contains requirements for filers of information returns. A filer must file information returns electronically or on paper, but a filer who is required to file 250 or more information returns of any one type during a calendar year must file those returns electronically. **Rev. Proc. 2018-46, I.R.B. 2018-39, 460**.

SAFE HARBOR INTEREST RATES
October 2018

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	2.55	2.53	2.52	2.52
110 percent AFR	2.80	2.78	2.77	2.76
120 percent AFR	3.06	3.04	3.03	3.02
		Mid-term		
AFR	2.83	2.81	2.80	2.79
110 percent AFR	3.11	3.09	3.08	3.07
120 percent AFR	3.40	3.37	3.36	3.35
		Long-term		
AFR	2.99	2.97	2.96	2.95
110 percent AFR	3.30	3.27	3.26	3.25
120 percent AFR	3.59	3.56	3.54	3.53

Rev. Rul. 2018-27, I.R.B. 2018-41.

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FARM ESTATE & BUSINESS PLANNING

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