[13] Prop. Treas. Reg. § 1.199A-2(c).

[14] Pub L No 115-97, § 11011, 131 Stat 2066 (2017), adding IRC § 199A(d).

[15] Prop. Treas. Reg. § 1.199A-1(b)(13).

[16] Note that, if the landlord's participation rises to the level of "material participation," the rent in most cases is not only trade and business income but self-employment income, reported on Schedule SE. See Harl, *Farm Income Tax Manual*, § 8.05[3] (2018) for discussion of leasing of farm property as a trade or business for self-employment purposes.

[17] Prop. Treas. Reg. § 1.199A-1(b)(13); Prop. Treas. Reg. § 1.199A-4(b)(1)(i).

[18] Pub. L. No. 115-97, § 11011, 131 Stat. 2066 (2017), adding I.R.C. § 199A(d).

[19] Pub. L. No. 115-97, § 11011, 131 Stat. 2066 (2017), adding I.R.C. § 199A(d). These limits are indexed for inflation.

[20] Prop. Treas. Reg. § 1.199A-1(b)(8). These amounts are indexed for inflation.

[21] Pub. L. No. 115-97, § 11011, 131 Stat. 2067 (2017), adding I.R.C. § 199A(e); Prop. Treas. Reg. § 1.199A-1(b)(8).

[22] Pub. L. No. 115-97, § 11011, 131 Stat. 2066 (2017), adding I.R.C. § 199A(d). Prop. Treas. Reg. § 1.199A-5(b).

[23] As defined in I.R.C. § 475(c)(2).

[24] As defined in I.R.C. § 475(e)(2).

[25] Prop. Treas. Reg. § 1.199A-5(b). A similar list of service trades or businesses is provided in I.R.C. § 448(d)(2)(A) and Treas. Reg. § 1.448-1T(e)(4)(i).

[26] Pub. L. No. 115-97, § 11011, 131 Stat. 2065 (2017), adding I.R.C. § 199A(c).

CASES, REGULATIONS AND STATUTES

BANKRUPTCY

FEDERAL TAX

DISCHARGE. The debtors originally filed a Chapter 11 case in January 2012 but the case was dismissed in June 2013. The debtors then filed a Chapter 7 no-asset case in September 2013 in which the IRS did not file a claim, although the IRS received notice of the Chapter 7 filing. The debtors received a discharge in the Chapter 7 case in December 2013. The debtors owed taxes for 2008 and 2009 and argued that these taxes were discharged in the Chapter 7 case because the IRS did not file a claim, resulting in the loss of priority for the tax claims. The court held that the failure to file a claim in a no-asset Chapter 7 case did not necessarily result in a loss of priority of the claim; in fact, the court noted that the notice of the Chapter 7 case to creditors stated that a proof of claim was not required. Under Section 523(a), an individual debtor shall not be discharged from any tax debt specified in Section 507(a)(8) which defines such tax debts as follows:

". . . allowed unsecured claims of governmental units, only to the extent that such claims are for—

(A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition—

(i) for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition; . . .."

The dispute in this case was whether the income tax obligations here fall within the time frame established under subsection (i) of §507(a)(8)(A). The court found that the 2009 tax return was due on October 15, 2010 because the debtors received the automatic six-month extension. Thus, the court held that the three years had not elapsed when the debtors filed their Chapter 7 case in September 2013. The 2008 return was due, because of the automatic extension, on October 15, 2009. The IRS argued that the prior Chapter 13 case tolled the three year limitation period for the 2008 taxes during the pendency of that case from January 2012 until June 2013, thus extending the three year period to April 2014. The IRS cited *Young v. United States, 535 U.S. 43 (2002)* which held that a bankruptcy case tolls the limitation period. However, the court noted that Congress had amended Section 507 in 2005 after the *Young* case to add a tolling provision for Section 507(a)(8)(a)(ii) but not for Section 507(a)(8)(a)(i); therefore, the court interpreted the change to indicate that Congress did not want any tolling to occur for Section 507(a)(8)(a)(i) claims. Therefore, the court held that the Chapter 11 case did not toll the limitation period for the 2008 taxes and they were discharged in the Chapter 7 case. **Comment by editor**: It appears that the court failed to account for the other 2005 amendment of Section 507(a)(8). At the end of Section 507(a)(8) is an un-numbered paragraph: "An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; *plus any time during which the stay of proceedings was in effect in a prior case under this title* or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days."(Emphasis added). This clearly codifies the *Young* holding. In addition, the argument that Congress, by adding a tolling provision in one section, indicated that no other tolling should occur, is less than convincing. As the court here indicated, without the tolling provision, debtors could file specious bankruptcy cases to delay IRS collection long enough to eliminate the priority of tax claims. **Clothier v. I.R.S., 2018-2 U.S. Tax Cas. (CCH) ¶ 50,373 (W.D. Tenn. 2018)**.

FEDERAL ESTATE AND GIFT TAXATION

DISCLAIMERS. The decedent had been the beneficiary of a pre-1977 trust which provided that during the decedent's lifetime,

any part or all of the net income and principal of the trust may be distributed to or for the decedent and the decedent's issue as the trustee in his sole discretion shall determine. Upon the death of the decedent, the trustee was to distribute the entire balance of principal and income of the trust to such of the then-living lineal descendants of a great-grandfather and great-grandmother and their spouses, and upon such estates, terms, trusts, and conditions as the decedent appointed by will, provided that any appointment to a spouse of any such descendant shall be limited to an interest of income only. With respect to all such principal and income that is not otherwise appointed, the trustee was to distribute the entire balance of principal and income of the trust to the lawful issue of the decedent then living, per stirpes, or, if no lawful issue is then living, in equal shares to the trustees of certain trusts created by the grantor for the benefit of the great-grandchildren of the great-grandfather and great-grandmother. The decedent executed a will which exercised the power of appointment over the trust to the then-living descendants of the son (grand-uncle of the taxpayer) of the great-grandfather and great-grandmother. The taxpayer was a grandchild of Great-uncle and Great-aunt and is among the class of appointees due to receive property pursuant to Beneficiary's exercise of her power of appointment over Trust in Beneficiary's will. After the decedent's death, the taxpayer received a copy of the will, as well as a copy of the trust documents. The taxpayer represented that, other than a general awareness of the possible existence of numerous trusts established within the family, the taxpayer had no actual knowledge of the trust during the decedent's lifetime. The taxpayer represented that he did not receive a copy of the trust, or know of any of the terms of the trust, during the decedent's lifetime. The taxpayer also represented that the taxpayer has not received any benefits from the trust. The taxpayer represented that the disclaimer will be valid under local law in that (a) the taxpayer has not received or accepted any interest in, nor exercised any powers over the property to be disclaimed or any benefits therefrom at any time or since the date of the decedent's death, (b) the disclaimer is in writing, irrevocable and unqualified, describing the interests to be disclaimed and is to be signed by the taxpayer, and (c) the disclaimer will be delivered to the probate court in which the estate of the decedent is administered on or before the date which is nine months after the date of the decedent's death. Treas. Reg. § 25.2511-1(c)(2) provides that in the case of taxable transfers creating an interest in the person disclaiming made before January 1, 1977, where the law governing the administration of the decedent's estate gives a beneficiary, heir, or next-of-kin a right completely and unqualifiedly to refuse to accept ownership of property transferred from a decedent (whether the transfer is effected by the decedent's will or the law of descent and distribution), a refusal to accept ownership does not constitute the making of a gift if the refusal is made within a reasonable time after knowledge of the existence of the transfer. The refusal must be unequivocal and effective under local law. A disclaimer made within nine months of the disclaimant learning of the existence of the transfer creating the interest would generally satisfy the reasonable time requirement of the regulations, in the absence of facts to the contrary. The IRS ruled that the taxpayer disclaimer will not result in the taxpayer's interest in the trust being a taxable gift under I.R.C. § 2511. **Ltr. Rul. 201831003, April 23, 2018**.

SPECIAL USE VALUATION. Under I.R.C. § 2032A(e)(7)(A)(ii), rates on new Farm Credit System Bank loans are used in computing the special use value of real property used as a farm for which an election is made under I.R.C. § 2032A. The IRS has issued the 2018 list of average annual effective interest rates charged on new loans by the Farm Credit Bank system to be used in computing the value of real property for special use valuation purposes for deaths in 2018:

District	2018 Interest Rate
AgFirst, FCB	5.09
AgriBank, FCB	4.46
CoBank, FCB	4.14
Texas, FCB	4.76

District	States
AgFirst	Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, West Virginia
AgriBank	Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Wisconsin, Wyoming
CoBank	Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Idaho, Kansas, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New Mexico, New York, Nevada, Oklahoma, Oregon, Rhode Island, Utah, Vermont, Washington
Texas	Alabama, Louisiana, Mississippi, Texas

Rev. Rul. 2018-22, I.R.B. 2018-2, 308.

FEDERAL FARM PROGRAMS

POULTRY. The APHIS has adopted as final regulations amending the regulations pertaining to certain diseases of livestock and poultry to specify conditions for payment of indemnity claims for highly pathogenic avian influenza (HPAI). The regulations provide a formula that will allow the splitting of such payments between poultry and egg owners and parties with which the owners enter into contracts to raise or care for the eggs or poultry based on the proportion of the production cycle completed. The regulations also provide for the payment of indemnity for eggs required to be destroyed due to HPAI, thus clarifying an existing policy. The regulations require owners and contractors, unless specifically exempted, to provide a statement that at the time of detection of HPAI in their facilities, they had in place and were following a biosecurity plan aimed at keeping HPAI from spreading to commercial premises. **83 Fed. Reg. 40433 (Aug. 15, 2018)**.

The AMS has adopted as final regulations changing the definition in 9 C.F.R. § 381.170(a)(1)(iii) of "roaster" chicken from "3 to 5 months of age and 5 pounds in weight or more" to "less than 12 weeks of age and 5.5 pounds or more." **83 Fed. Reg. 38273 (Aug. 6, 2018)**.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The TCJA 2017, Pub. L. No. 115-97, § 13102, 131 Stat. 2102 (2017) amended I.R.C. §§ 263A, 447, 448, 460, and 471 for small business taxpayers, increasing the gross receipts test amount, to $25 million gross receipts over the previous three tax year, for eligibility to use the cash method and providing an exemption from the requirements to apply certain method of accounting rules for inventories, cost capitalization, and long-term contracts. These amendments generally apply to taxable years beginning after December 31, 2017. The amendments to Section 460 apply to contracts entered into after December 31, 2017, in taxable years ending after December 31, 2017. *Rev. Proc. 2015-13, I.R.B. 2015-5, 419, as clarified and modified by Rev. Proc. 2015-33, I.R.B. 2015-24, 1067, as modified by Rev. Proc. 2016-1, I.R.B. 2016-1, 1, and as modified by Rev. Proc. 2017-59, I.R.B. 2017-48, 543*, provide the general procedures by which a taxpayer may obtain automatic consent of the Commissioner to a change in method of accounting described in the List of Automatic Changes. *Rev. Proc. 2018-31, I.R.B. 2018-22, 637*, contains the most recent List of Automatic Changes. This revenue procedure modifies *Rev. Proc. 2018-31* to provide additional automatic changes in method of accounting and to modify existing automatic changes in method of accounting to assist taxpayers in conforming to the legislative changes to I.R.C. §§ 263A, 447, 448, 460, and 471. *Small business taxpayer changing to overall cash method*. This change, effective for taxable years beginning after December 31, 2017, applies to a small business taxpayer that wants to change its overall method of accounting from an overall accrual method of accounting to the overall cash method of accounting for a trade or business, and is otherwise not prohibited from using the overall cash method or required to use another overall method of accounting. A small business taxpayer may be required to use a method of accounting (other than the cash method) for one or more items of income or expense under certain provisions including, for example I.R.C. §§ 475 and 1272. This change does not apply to the following: (1) banks changing to overall cash/hybrid method; however, such a bank may be eligible to change to the overall cash/hybrid method under *Rev. Proc. 2018-31 § 15.12* if it meets the requirements of that section; (2) a farming business changing to the overall cash method. See, however, *Rev. Proc. 2018-31, § 15.13*; and (3) a small business taxpayer that uses the overall cash method for a trade or business that includes amounts attributable to open accounts receivable in income as the amounts are actually or constructively received on the receivables. A small business taxpayer is a taxpayer, other than a tax shelter, that meets the I.R.C. § 448(c) gross receipts test where a taxpayer has average annual gross receipts for the three prior taxable years of $25,000,000 or less (adjusted for inflation). An open accounts receivable is any receivable that is due in full in 120 days or less and that is not subject to I.R.C. § 475. A taxpayer is required to complete only the following information on Form 3115 (Rev. December 2015) to make this change:

(a) The identification section of page 1 (above Part I);
(b) The signature section at the bottom of page 1;
(c) Part I;
(d) Part II, all lines except line 16;
(e) Part IV, all lines except line 25; and
(f) Schedule A, Part I, all lines except lines 3, 4, and 5.

The designated automatic accounting method change number for a change under this section 15.18 is "233." **Rev. Proc. 2018-40, I.R.B. 2018-34, 320**.

DEPENDENTS. The IRS has published information on a new credit for dependents. The Tax Cuts and Jobs Act added a new tax credit, the Credit for Other Dependents. It is a non-refundable credit of up to $500 per qualifying person. Taxpayers may be able to claim the new credit for dependents that these taxpayers claimed a dependency exemption for in the past. This change, along with others, can affect a family's tax situation in 2018. Checking and adjusting withholding now can prevent an unexpected tax bill and even penalties next year at tax time. The Credit for Other Dependents is available for dependents for whom taxpayers cannot claim the newly expanded Child Tax Credit. These dependents may include dependent children who are age 17 or older at the end of 2018, or parents or other qualifying relatives supported by the taxpayer. Families with qualifying children under the age of 17 should first review their eligibility for the expanded Child Tax Credit, which is larger. The Credit for Other Dependents and the Child Tax Credit begin to phase out at $400,000 of modified adjusted gross income for joint filers and $200,000 for other taxpayers. For more information about these credits, visit Steps to Take Now to Get a Jump on Next Year's Taxes on IRS.gov. **IR-2018-166**.

DEPRECIATION. The IRS has issued proposed regulations governing the changes to the bonus depreciation rules as amended by the TCJA 2017, *Pub. L. No. 115-97, § 13201, 131 Stat. 2105 (2017)*. The TCJA made several amendments to the allowance for additional first year depreciation deduction in I.R.C. § 168(k), including: (1) the additional first year depreciation deduction percentage is increased from 50 to 100 percent; (2) the property eligible for the additional first year depreciation deduction is expanded to include certain used depreciable property and certain film, television, or live theatrical productions; (3) the placed-in-service date is extended from before January 1, 2020, to before January 1, 2027 (from before January 1, 2021, to before January 1, 2028, for longer production period property or certain aircraft property described in section 168(k)(2)(B) or (C)); and (4) the date on which a specified plant is planted or grafted by the taxpayer is extended from before January 1, 2020, to before January 1, 2027. A future issue of the Digest will have an article further reviewing the proposed regulations. **REG-104397-18, 83 Fed. Reg. 39292 (Aug. 8, 2018)**.

HEALTH INSURANCE. The taxpayers, husband and wife, obtained health insurance in 2014 through a state health insurance exchange created under the Patient Protection and Affordable Care Act (ACA), *Pub. L. No. 111-148, 124 Stat. 119 (2010)*. The taxpayers elected to receive advance premium tax credits (APTC) applied against their monthly premium. The taxpayers made payments on a bankruptcy Chapter 11 plan in 2014 of $25 per month, unrelated to the insurance. The taxpayers filed a timely joint

return for 2014, claiming one child as a dependent and reporting modified adjusted gross income of $86,312. The taxpayers did not include a Form 8962, *Premium Tax Credit* and did not report the APTC on the return. Under I.R.C. § 36B(f)(2), at the end of each tax year, a taxpayer who received an APTC is required to reconcile the amount of the PTC already received with the entitlement amount. This reconciliation is done on Form 8962 filed with the taxpayer's tax return. If the amount of the APTC is more than the entitlement amount, the taxpayer owes the government the excess credit, and it is reflected as an increase in tax. A taxpayer with income greater than 400 percent of the federal poverty line (FPL) is not eligible for the PTC, and the full amount of the APTC received during the tax year must be included as a tax liability on the taxpayer's tax return. See I.R.C. § 36B(c)(1)(A), (f)(2)(B); Treas. Reg. § 1.36B-4(a)(4), Example (5). In this case, for 2014, 400 percent of the FPL for a household of three was $78,120. Although the taxpayers agreed that their MAGI exceeded 400 percent of FPL, they argued that their income should be reduced by the bankruptcy plan payments. The court held that there was no provision to adjust MAGI by any bankruptcy plan payments; therefore, the court held that the taxpayers were properly assessed the APTC received in 2014. **Palafox v. Comm'r, T.C. Memo. 2018**.

IRA. The taxpayer, a surviving spouse of the decedent, and the decedent established a trust which held community property assets. At the death of the decedent, the taxpayer became the sole trustee of the trust. The decedent's estate included an IRA which had the trust as the sole beneficiary and the trust transferred all assets to a survivor's trust. Under the terms of the survivor's trust, the taxpayer, as the sole income and principal beneficiary, was entitled to receive the right to income for life, and as much of the principal as is reasonably necessary for the taxpayer's health, support, maintenance, comfort, or happiness, to maintain, at a minimum, the taxpayer's accustomed manner of living. The trust also granted to the taxpayer the unlimited right to appoint any or all of the survivor's trust property, including to the taxpayer. Through the exercise of the taxpayer's power of appointment under the survivor's trust, the assets of the decedent's IRA were distributed and transferred to a non-IRA account of the survivor's trust. Within 60 days of the transfer, those amounts were distributed from the non-IRA account held by the survivor's trust and paid to a rollover IRA, established in the taxpayer's name. (1) the IRS ruled that the taxpayer will be treated as the payee or distributee of Decedent's IRA; (2) that the decedent's IRA is not an inherited IRA for purposes of I.R.C. § 408(d)(3) with respect to the taxpayer; (3) that the taxpayer's rollover of the assets from the decedent's IRA into the rollover IRA in the taxpayer's name was a valid rollover under I.R.C. § 408(d)(3); and (4) that the taxpayer will not be required to include in gross income for federal income tax purposes the amount distributed from the decedent's IRA and rolled over to the rollover IRA, pursuant to I.R.C. § 408(d)(3). **Ltr. Rul. 201831004, April 30, 2018**.

MARIJUANA. The taxpayers, husband and wife, through an LLC owned and operated a legal medical marijuana store which also sold non-marijuana products such as pipes, papers and other items used in the consumption of marijuana. All of the non-marijuana merchandise was purchased from third parties for resale. The LLC hired several employees to work in the store and in the warehouse where marijuana was grown to be sold in the store. The taxpayers did not provide sufficient records for the court to determine how much was paid to the employees for work in the warehouse and/or store. The store's general ledger split sales receipts among smokable marijuana merchandise, edible marijuana merchandise, non-marijuana merchandise, and undefined merchandise. I.R.C. § 280E provides that no deduction is allowed for an amount paid or incurred in carrying on a business if the business consists of trafficking in controlled substances. Although the taxpayers conceded that the LLC trafficked in controlled substances, they contended that it had a separate business of selling non-marijuana merchandise and that the business expense deductions of this separate business are not disallowed by Section 280E. The court found that the sale of marijuana and non-marijuana merchandise was part of one business because the LLC derived almost all of its revenue from marijuana merchandise and the types of non-marijuana products that it sold complemented its efforts to sell marijuana. In addition, the court found that the LLC records were insufficient to identify the separate sales of the non-marijuana merchandise, even if the businesses were separate. The court held that the business expense deductions attributable to the sales of marijuana and non-marijuana merchandise were not allowed under I.R.C. § 280E. **Alterman v. Comm'r, T.C. Memo. 2018-83**.

PENSION PLANS. For plans beginning in August 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 3.01 percent. The 30-year Treasury weighted average is 2.86 percent, and the 90 percent to 105 percent permissible range is 2.57 percent to 3.00 percent. The 24-month average corporate bond segment rates for August 2018, *without adjustment* by the 25-year average segment rates are: 2.21 percent for the first segment; 3.77 percent for the second segment; and 4.45 percent for the third segment. The 24-month average corporate bond segment rates for August 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 2018-65, I.R.B. 2018-35**.

QUALIFIED BUSINESS INCOME DEDUCTION. The IRS has issued a Notice which contains a proposed revenue procedure that provides guidance on methods for calculating W-2 wages for purposes of I.R.C. § 199A and Prop. Treas. Reg. §§ 1.199A-1 through 1.199A-6, including for purposes of Section 199A(b)(7), which, for certain specified agricultural and horticultural cooperative patrons, provides a reduction to the section 199A(a) deduction based on W-2 wages. In calculating W-2 wages for a taxable year, the Forms W-2, *Wage and Tax Statement*, or any subsequent form or document used in determining the amount of W-2 wages are those issued for the calendar year ending during the taxpayer's taxable year for wages paid to employees (or former employees) of the person for employment by the person. Prop. Treas. Reg. § 1.199A-2(b)(2)(i) also provides that, for purposes of Prop. Treas. Reg. § 1.199A-2, employees of the taxpayer are limited to employees as defined in I.R.C. § 3121(d)(1) and (2) (officers of a corporation and employees under the common law rules). Thus, Forms W-2 provided to statutory employees described in I.R.C. § 3121(d)(3) (Forms W-2 in which the "Statutory Employee" box in Box 13 is checked) should not

be included in calculating W-2 wages under the methods described in the proposed revenue procedure. The Notice emphasizes that the calculation of W-2 wages under the proposed revenue procedure are *solely for purposes of the QBI W-2 wages limitation*. W-2 wages include: (1) the total amount of wages as defined in I.R.C. § 3401(a); (2) the total amount of elective deferrals (within the meaning of I.R.C. § 402(g)(3)); (3) the compensation deferred under section 457; and (4) the amount of designated Roth contributions (as defined in I.R.C. § 402A). Under the 2018 Forms W-2, the elective deferrals under I.R.C. § 402(g)(3) and the amounts deferred under I.R.C. § 457 directly correlate to coded items reported in Box 12 on Form W-2. Box 12, Code D is for elective deferrals to a I.R.C. § 401(k) cash or deferred arrangement plan (including a SIMPLE 401(k) arrangement); Box 12, Code E is for elective deferrals under a I.R.C. § 403(b) salary reduction agreement; Box 12, Code F is for elective deferrals under a I.R.C. § 408(k)(6) salary reduction Simplified Employee Pension; Box 12, Code G is for elective deferrals and employer contributions (including nonelective deferrals) to any governmental or nongovernmental I.R.C. § 457(b) deferred compensation plan; Box 12, Code S is for employee salary reduction contributions under a I.R.C. § 408(p) SIMPLE; Box 12, Code AA is for designated Roth contributions under a I.R.C. § 401(k) plan; and Box 12, Code BB is for designated Roth contributions under a I.R.C. § 403(b) salary reduction agreement. However, designated Roth contributions are also reported in Box 1, Wages, tips, other compensation and are subject to income tax withholding. The three methods for calculating W-2 wages: *Unmodified Box method*. Under the unmodified box method, W-2 wages are calculated by taking, without modification, the lesser of—(A) the total entries in Box 1 of all Forms W-2 filed with SSA by the taxpayer with respect to employees of the taxpayer for employment by the taxpayer; or (B) the total entries in Box 5 of all Forms W-2 filed with SSA by the taxpayer with respect to employees of the taxpayer for employment by the taxpayer. *Modified Box 1 method*. Under the Modified Box 1 method, the taxpayer makes modifications to the total entries in Box 1 of Forms W-2 filed with respect to employees of the taxpayer. W-2 wages under this method are calculated as follows— (A) total the amounts in Box 1 of all Forms W-2 filed with SSA by the taxpayer with respect to employees of the taxpayer for employment by the taxpayer; (B) subtract from the total in paragraph (A) amounts included in Box 1 of Forms W-2 that are not wages for federal income tax withholding purposes, including amounts that are treated as wages for purposes of income tax withholding under I.R.C. § 3402(o) (for example, supplemental unemployment compensation benefits within the meaning of Rev. Rul. 90-72); and (C) add to the amount obtained in paragraph (B) the total of the amounts that are reported in Box 12 of Forms W-2 with respect to employees of the taxpayer for employment by the taxpayer and that are properly coded D, E, F, G, and S. *Tracking Wages method*. Under the tracking wages method, the taxpayer actually tracks total wages subject to federal income tax withholding and makes appropriate modifications. W-2 wages under this method are calculated as follows— (A) total the amounts of wages subject to federal income tax withholding that are paid to employees of the taxpayer for employment by the taxpayer and that are reported on Forms W-2 filed with SSA by the taxpayer for the calendar year; and (B) add the total of the amounts that are reported in Box 12 of Forms W-2 with respect to employees of the taxpayer for employment by the taxpayer and that are properly coded D, E, F, G, and S. *Short Tax Years*. The W-2 wages of a taxpayer with a short taxable year shall be determined under the *Tracking Wages method* as follows— (A) for purposes of tracking wages method (A), the total amount of wages subject to federal income tax withholding and reported on Form W-2 must include only those wages subject to federal income tax withholding that are actually or constructively paid to employees during the short taxable year and reported on Form W-2 for the calendar year ending with or within that short taxable year (or, for a short taxable year that does not contain a calendar year ending with or within such short taxable year, wages subject to federal income tax withholding that are actually or constructively paid to employees during the short taxable year and reported on Form W-2 for the calendar year containing such short taxable year); and (B) for purposes of tracking wages method (B), only the portion of the total amounts reported in Box 12, Codes D, E, F, G, and S on Forms W-2, that are actually deferred or contributed during the short taxable year are included in W-2 wages. **Notice 2018-2018-64, I.R.B. 2018-35**.

TRAVEL EXPENSES. The taxpayer inherited 110 acres of rural land remote from the taxpayer's residence in a city. The inherited land was valuable timberland on separate four parcels in two counties and within 35 miles of each other, with one parcel including a residence. The taxpayer traveled to the rural residence to work on the four parcels on 167 days in 2014. Most of the taxpayer's taxable income was received at the city residence in the form of Social Security benefits, interest, dividends, capital gains, and pensions. The timberland did not produce income in 2014 but the taxpayer claimed travel expenses for the trips to the timberland residence. The taxpayer used the per diem amounts in Publication 463, *Travel, Entertainment, Gift and Car Expenses*, to determine the total travel expenses claimed as a deduction on Schedule C. The IRS did not challenge whether the taxpayer's timberland work was a trade or business. *Rev. Rul. 93-86, 1993-2 C.B. 71* states that a taxpayer's "home" is generally considered to be the taxpayer's regular or principal place of business. If a taxpayer has no regular or principal place of business, then the taxpayer's abode is where personal and business connections are maintained. If a taxpayer meets neither of the above categories, then the taxpayer's is considered to be an itinerant with a "tax home" wherever the taxpayer's happens to work. The court found that the taxpayer spent more than one-half of 2014 at the city residence and that most of the taxpayer's income was received at the city residence. Under *Rev. Proc. 2011-47, § 1, 2011-43 I.R.B. 520*, a self-employed individual can deduct meal and incidental expenses computed at the federal rate established for the locality in which meal expenses were incurred while away from home. The federal published rate is deemed substantiated for purposes of Temp. Treas. Reg. § 1.274-5T(b)(2)(i) and (c). The court found that the federal per diem rate for one county was $63 per diem and the default rate of $46 per diem for the other county. Because the taxpayer did not provide specific information as to the travel to each parcel, the court estimated that the taxpayer traveled equally to both counties and allowed the per diem rate for 83.5 days for each county. The court held that the taxpayer's tax home for purposes of the timberland business was the taxpayer's residence in the city and not at the timberland. The court held that the taxpayer was allowed a deduction for travel expenses at the federal per diem rate for each county. **Maki v. Comm'r, T.C. Summary Op. 2018-30**.

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FARM ESTATE & BUSINESS PLANNING

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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.

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