CASES, RULINGS, REGULATIONS AND STATUTES

BANKRUPTCY

GENERAL

AVOIDABLE TRANSFERS. The debtors, husband and wife owned over 200 horses and hired a ranch hand to feed the horses and clean the barn over five years but did not pay the ranch hand for the work. The debtors were under investigation for animal cruelty when they offered the ranch hand several horses in payment for the work. Although the debtors created a bill of sale for 10 horses, the ranch hand picked up only five. The ranch hand testified that he did not receive the bill of sale but did receive the registration papers for the horses. The ranch hand could not pick up the remaining horses because of the investigation of the debtor. The horses needed much care and the ranch hand rehabilitated them back to good health. The debtors filed for Chapter 12 an filed a claim against the ranch hand for return of the horses as a fraudulent transfer under Section 548. The debtors argued that the transfer of the horses was avoidable as a fraudulent transfer because the debtors did not receive any value for the horses. The court found that the debtor did not have an interest in the horses at the time of the transfer because the debtors were divested of ownership, under state law, when the animals were subject to the animal cruelty investigation. Therefore, the court held that no fraudulent transfer from the debtors to the ranch hand could have occurred. ***In re* Hoffman, 2019 U.S. Dist. LEXIS 100537 (S.D. Tex. 2019)**.

EXEMPTIONS

TENANCY BY THE ENTIRETY PROPERTY. The debtor claimed an exemption for real property in which the debtor and a non-debtor spouse owned as tenants by the entireties. The trustee objected after obtaining an agreement with the IRS to allow a portion of the recovered property to be used to pay unsecured claims. The non-debtor spouse was not jointly liable for any of the taxes secured by a federal tax lien. Section 522(b)(3)(B) allows a debtor to claim as exempt, "any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety . . . to the extent that such interest . . . is exempt from process under applicable nonbankruptcy law." Virginia law generally protects property owned as tenants by the entireties from creditor process in satisfaction of a debt owed individually by one spouse. However, where a debtor alone files bankruptcy but is jointly liable to a creditor with the non-debtor spouse, Section 522(b)(2)(B) provides that property owned as a tenant by the entireties may not be exempted from an individual debtor's bankruptcy estate and the trustee may administer such property for the benefit of the joint creditors under Section 363(h). In this case, no joint debtor/non-debtor claims existed; therefore, Section 522(b)(3)(B) applies to protect the debtor's exemption in tenancy by the entireties property. ***In re* Anderson, 2019 Bankr. LEXIS 1794 (Bankr. E.D. Va. 2019)**.

FEDERAL ESTATE AND GIFT TAXATION

GENERATION SKIPPING TRANSFERS. The settlor established an inter vivos irrevocable trust which included two separate trust shares for the benefit of each of the settlor and spouse's two children. The trust provided that the trustee shall pay to or apply for the benefit of the beneficiary so much of the income and principal of the beneficiary's share as the trustee determines necessary for the beneficiary's support, health, maintenance and education. After the beneficiary attains the age of thirty years, the trustee shall pay to or apply for the benefit of the beneficiary the entire net income of the beneficiary's share. The beneficiary shall have a limited power to appoint, upon the beneficiary's death, all or any part of the balance of the share set aside for the beneficiary, outright or in trust, in favor of any person or persons other than the beneficiary, the beneficiary's estate, the creditors of the beneficiary or the creditors of the beneficiary's estate, provided that the power may only be exercised by the beneficiary after he or she has attained the age of thirty-four years. If the beneficiary is survived by issue of the settlor's parents and the distribution of principal from the share of such issue upon the death of the beneficiary would result in the imposition of generation-skipping transfer (GST) taxes, the beneficiary shall have a general power to appoint the balance of the share, effective upon the beneficiary's death, to or for the benefit of any one or more of the beneficiary's creditors. Upon the beneficiary's death, any portion of the remaining balance for which the beneficiary has not exercised such power of appointment effectively shall be divided into separate shares, by representation, among the issue of the beneficiary who survive the beneficiary, or if there are no such issue who survive the beneficiary, the balance shall be divided into separate shares, by representation, among the living issue (who are also the living issue of the settlor) of the nearest ancestor of such beneficiary. The settlor transferred an interest in a limited partnership, to each child's trust share. Settlor and Spouse retained tax professionals to prepare their Forms 709, *United States Gift (and Generation-Skipping Transfer) Tax Returns*. The settlor and spouse consented to treat the gift as made by both of them. The Forms 709 were timely filed but the date of the transfers to each child's trust was incorrectly reported on Forms 709, Schedule A, Part 1-Gifts Subject Only to Gift Tax instead of on Schedule A, Part 3-Indirect Skips and the automatic allocation of the GST exemption was not reported on Schedule C, *Computation of Generation-Skipping Transfer Tax*. The settlor and spouse requested a ruling that the settlor's and spouse's respective GST exemption was automatically allocated to the date of transfers to each child's trust under the automatic allocation rules of I.R.C. § 2632(c). I.R.C. § 2632(a) provides that any allocation by an individual of his GST exemption under I.R.C. § 2631(a) may be made at any time on or before the date prescribed for filing

the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed. In the case of an indirect skip made after December 31, 2000, to which I.R.C. § 2642(f) does not apply, the transferor's unused GST exemption is automatically allocated to the property transferred (but not in excess of the fair market value of the property on the date of the transfer). The automatic allocation is effective whether or not a Form 709 is filed reporting the transfer, and is effective as of the date of the transfer to which it relates. An automatic allocation is irrevocable after the due date of the Form 709 for the calendar year in which the transfer is made. The IRS ruled that the settlor's and spouse's respective available GST exemption was automatically allocated to the transfers to each child's trust **Ltr. Rul. 201924001, March 12, 2019**.

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 applicable 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. However, the IRS noted that, if it is later determined that, based on the value of the gross estate and taking into account any taxable gifts, the decedent's estate is required to file an estate tax return pursuant to I.R.C. § 6018(a), the Commissioner is without authority under Treas. Reg. § 301.9100-3 to grant an extension of time to elect portability and the grant of the extension will be deemed null and void. See § 20.2010-2(a)(1). 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. 201923001, Feb. 28, 2019.**

FEDERAL INCOME TAXATION

BACKUP WITHHOLDING. The IRS has published information about backup withholding. Backup withholding comes into play where a person or business paying the taxpayer does not generally withhold taxes from certain payments. They do not do this because it is assumed the taxpayer will report and pay taxes on this income when the taxpayer files the federal tax return. There are, however, situations when the payer is required to withhold a certain percentage of tax to make sure the IRS receives the tax due on this income, known as backup withholding. Backup withholding is set at 24 percent. Here are some payments subject to backup withholding: interest payments; dividends; payment card and third-party network transactions; patronage dividends, but only if at least half the payment is in money; rents, profits, or other gains; commissions, fees, or other payments for work done as an independent contractor; payments by brokers; barter exchanges; payments by fishing boat operators, but only the part that is paid in actual money and that represents a share of the proceeds of the catch; royalty payments; and gambling winnings. Here are some situations when the payer must take out backup withholding: (1) If a taxpayer identification number is missing. A taxpayer identification number specifically identifies the taxpayer. This includes number like a Social Security number and an individual taxpayer identification number. (2) If the name provided does not match the name registered with the IRS for a specific TIN, taxpayers should make sure that the payer has their correct TIN. **IRS Tax Tip 2019-77**.

CHARITABLE DEDUCTION. The IRS has adopted as final regulations governing the deductibility of contributions to a state government in exchange for a state tax credit as part of a plan to circumvent the limitation of the state and local tax credit imposed under TCJA 2017. The regulations generally provide 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 charitable contribution deduction. In addition to credits, the regulations also address state or local tax deductions claimed in connection with a taxpayer's payment or transfer. The regulations allow taxpayers to disregard dollar-for-dollar state or local tax deductions. However, the regulations state that, if the taxpayer receives or expects to receive a state or local tax deduction that exceeds the amount of the taxpayer's payment or the fair market value of the property transferred, the taxpayer's charitable contribution deduction must be reduced. The regulations include a *de minimis* exception under which a taxpayer may disregard a state or local tax credit if such credit does not exceed 15 percent of the taxpayer's payment or 15 percent of the fair market value of the property transferred by the taxpayer. The *de minimis* exception reflects that the combined value of a state and local tax deduction, that is the combined top marginal state and local tax rate, currently does not exceed 15 percent. Accordingly, under the regulations, a state or local tax credit that does not exceed 15 percent does not reduce the taxpayer's federal deduction for a charitable contribution. Trusts and decedents' estates may claim an income tax deduction for charitable contributions under I.R.C. § 642(c). For the same reasons provided above, the regulations amend Treas. Reg. § 1.642(c)-3 to provide that the rules under Treas. Reg. § 1.170A-1(h)(3) apply to payments made by a trust or decedent's estate in determining its charitable contribution deduction under I.R.C. § 642(c). T.D. 9864, **84 Fed. Reg. 27513 (June 13, 2019)**.

The IRS has issued a Notice which announces that the IRS intends to publish a proposed regulation providing a safe harbor under I.R.C. § 164 for certain individuals who make a payment to or for the use of an entity described in I.R.C. § 170(c) in return for a state or local tax credit. Under the safe harbor, an individual may treat as a payment of state or local tax for purposes of I.R.C. § 164 the portion of a payment for which a charitable contribution deduction under I.R.C. § 170 is or will be disallowed under Treas. Reg. § 1.170A-1(h)(3). This treatment as a payment of state or local tax under I.R.C. § 164 is allowed in the taxable year in which the payment is made to the extent the resulting credit is applied, consistent with applicable state or local law, to offset the individual's state or local tax liability for such taxable year or the preceding taxable year. In states and localities that permit an individual to carry forward an excess credit amount to a subsequent taxable year, an individual may treat the carryforward amount as a state or local tax payment under I.R.C. § 164 for the taxable year or years to which the credit is applied, consistent with applicable state or local law, to offset a state or local tax liability. Prior to issuance of the proposed regulation, taxpayers may rely on the

provisions of this Notice with respect to payments described in this notice. **Notice 2019-12, I.R.B. 2019-27**.

IRS NOTICES. The IRS has published information about Notice CP 2000. The notice also provides steps taxpayers should take to resolve those issues. The IRS sends a Notice CP 2000 to the taxpayer when a tax return's information does not match data reported to the IRS by banks and other third parties. This notice is not a formal audit notification. It is simply a notice to see if the taxpayer agrees or disagrees with the proposed tax changes. Taxpayers should respond to the Notice CP2000. The taxpayer usually has 30 days from the date printed on the notice to respond. The IRS provides a phone number on each notice. IRS telephone staffers can explain the notice and what taxpayers need to do to resolve any issues. The IRS will send another notice to the taxpayer if the taxpayer does not respond to the initial Notice CP2000, or if the agency cannot accept the additional information provided. It is called an IRS Notice CP3219A, *Statutory Notice of Deficiency*. The Notice CP3219A gives detailed information about why the IRS proposes a tax change and how the agency determined the change. The notice tells taxpayers about their right to challenge the decision in Tax Court if they choose to do so. Even if they decide not to go to Tax Court, the IRS will continue to work with the taxpayer to help resolve the issue. **IRS Tax Tip 2019-78**.

PENSION PLANS. For plans beginning in June 2019 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 2.82 percent. The 30-year Treasury weighted average is 2.94 percent, and the 90 percent to 105 percent permissible range is 2.64 percent to 3.08 percent. The 24-month average corporate bond segment rates for June 2019, *without adjustment* by the 25-year average segment rates are: 2.74 percent for the first segment; 3.96 percent for the second segment; and 4.44 percent for the third segment. The 24-month average corporate bond segment rates for June 2019, taking into account the 25-year average segment rates, are: 3.74 percent for the first segment; 5.35 percent for the second segment; and 6.11 percent for the third segment. **Notice 2019-40, I.R.B. 2019-__**.

PROOF OF MAILING. On September 4, 2014, the IRS sent the taxpayer a notice of deficiency for tax years 2010, 2011, and 2012. The taxpayer's attorney prepared a petition seeking redetermination of the deficiencies and the petition included the attorney's signature and was dated November 29, 2014. Under I.R.C. § 6213(a), the petition seeking redetermination of the deficiencies at issue was due to be filed in the Tax Court within 90 days, i.e., by December 3, 2014. However, the Court did not receive the petition until January 8, 2015, 36 days after the due date. The envelope in which the petition was mailed was properly addressed to the Tax Court, included U.S. postage stamps but the envelope had no postmark or other markings affixed by the USPS. The taxpayer provided a declaration from the taxpayer's attorney about mailing the petition on November 29, 2014. I.R.C. § 7502(a)(2) provides a "timely mailed, timely filed" rule. A document delivered by U.S. mail is timely mailed if "the postmark date falls . . . on or before the prescribed date" and the document is mailed, on or before that date, in an envelope with "postage prepaid, properly addressed" to the recipient. If those conditions are met, "the date of the United States postmark stamped on the cover in which such . . . document . . . is mailed shall be deemed to be the date of delivery." The court noted that Treas. Reg. § 301.7502-1(c)(1)(iii) provides rules for envelopes with USPS and non-USPS postmarks but is silent where the envelope contains no postmark. The court cited case law that allows a court to look at extrinsic evidence, such as the intervention of holidays and the average delivery time for similar envelopes. The taxpayer suggested that the envelope was delayed by the holiday volume of mail but the court found that the time for the petition to arrive was well beyond even holiday delays. Thus, the court held that the petition was not timely mailed and the court did not have jurisdiction to hear the case. **Williams v. Comm'r, T.C. Memo. 2019-66**.

QUALIFIED BUSINESS INCOME DEDUCTION. The IRS had originally published on its website an instruction for treatment of farm income averaging for purposes of the QBID: "In figuring the amount to enter on Form 1040, line 9, Qualified Business Income Deduction, income, gains, losses, and deductions from farming or fishing should be taken into account, but only to the extent that deduction is attributable to your farming or fishing business and included in elected farm income on line 2a of Schedule J (Form 1040)." https://www.irs.gov/forms-pubs/elected-farm-income-may-be-used-to-figure-qualified-business-income-deduction-19-apr-2019. See Achenbach, "Effect of Electing Farm Income Averaging on Qualified Business Income Deduction," 30 *Agric. L. Dig*. 73 (2019). As pointed out in the above article, this instruction was less than clear and used the calculated farm averaging income amount in calculating QBI. The IRS has now revised that instruction: "Farmers and fishermen who elect to use Schedule J (Form 1040) to calculate their income tax by averaging all or part of their taxable income from their trades or businesses of farming or fishing should figure the amount that may be entered on Line 2a of Schedule J by taking into account amounts on Form 1040, line 9, Qualified Business Income Deduction, but only to the extent that deduction is attributable to any farming or fishing business. This item is in addition to the many items already listed in the instructions for Line 2a showing where to find income, gains, losses, and deductions from farming or fishing." Thus, QBI is to be calculated first and QBI is then used on Schedule J in calculating farm income averaging. The new instruction eliminates the ambiguity of the prior instruction and properly accounts for different treatment of capital gains in QBI (excluded) and farm income averaging (some included). The new instruction can be found at **https://www.irs.gov/forms-pubs/income-averaging-calculations-for-farmers-and-fishermen-should-take-into-account-the-qualified-business-income-deduction**

QUARTERLY INTEREST RATES. The IRS has announced that, for the period July 1, 2019 through September 30, 2019, the interest rate paid on tax overpayments decreased to 5 percent (4 percent in the case of a corporation) and for underpayments decreased to 5 percent. The interest rate for underpayments by large corporations decreased to 7 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 decreased to 2.5 percent. **Rev. Rul. 2019-15, I.R.B. 2019-26.**

SAFE HARBOR INTEREST RATES
July 2019

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	2.13	2.12	2.11	2.11
110 percent AFR	2.34	2.33	2.32	2.32
120 percent AFR	2.56	2.54	2.53	2.53
		Mid-term		
AFR	2.08	2.07	2.06	2.06
110 percent AFR	2.29	2.28	2.27	2.27
120 percent AFR	2.50	2.48	2.47	2.47
		Long-term		
AFR	2.50	2.48	2.47	2.47
110 percent AFR	2.75	2.73	2.72	2.71
120 percent AFR	3.00	2.98	2.97	2.96

Rev. Rul. 2019-16, I.R.B. 2019-28.

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