which, in theory, should be influencing production levels. Idling land and other factors of production to influence price is almost unknown except in marginal areas of production.

Basic principles

U.S. farm policy in recent years has tended to be shaped more by political factors than by the delicate process of influencing agricultural production to assure the desired level of social gain. Adverse weather conditions, widespread disease outbreaks and other production-related factors complicate the drafting of farm policy, as everyone knows. It is not a simple matter, but that is hardly an excuse to ignore the steps that coincide with rational policy.

We should keep in mind that farm policy has become a major policy issue and deserves a rational policy base if we are to achieve the results that occasionally rise up in governmental circles worldwide. Few issues are more compelling than to pursue economically rational policies in every country that enable the populations to achieve an adequate diet at an achievable cost.

ENDNOTES

[1] See Harl, *The Farm Debt Crisis of the 1980s,* Iowa State University Press, 1990.

[2] *Id.*

[3] In 2013, the author was the third speaker at a sizeable gathering at Iowa State University; the first two speakers extolled the merits of pushing the incentives to produce more in order to feed a hungry world by 2050. The third speaker, this author, was criticized for going easy on the acceleration of production and reminded the group that, with our capacity to produce in this country, we could easily over produce several times between now and 2050. It turned out that it was less than five years before the over production became a significant problem once again.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

FEDERAL FARM PROGRAMS

IMPORTS. The APHIS has issued proposed regulations which would amend the regulations in 9 CFR part 93 to change the identification requirements of bovines imported from Mexico. At present, cattle from Mexico carry at least two forms of identification, generally a brand and an approved ear tag. Cattle imported from Mexico for other than immediate slaughter, are required to be branded with an "M" for steers, an "Mx" for spayed heifers, and an "MX" brand or tattoo for breeding bovines. The proposed regulations provide that all bovines imported from Mexico be branded with a single "M" to avoid branding uncertainties. In order to distinguish between feeder and breeding cattle, the brand for steers and spayed heifers would be placed on the back hip and the brand for breeding cattle would be placed on the shoulder. Cattle imported from Mexico would still require an approved ear tag. **83 Fed. Reg. 15756 (April 12, 2018)**.

ORGANIC FOOD. The AMS has announced an extension of the comment period, to May 14, 2018, for the following proposed regulation. The AMS has issued a proposed rule which would amend the National List of Allowed and Prohibited Substances provisions of the organic regulations to implement recommendations submitted to the Secretary of Agriculture by the National Organic Standards Board. This rule proposes to change the use restrictions for 17 substances allowed for organic production or handling on the National List: Micronutrients; chlorhexidine; parasiticides; fenbendazole; moxidectin; xylazine; lidocaine; procaine; methionine; excipients; alginic acid; flavors; carnauba wax; chlorine; cellulose; colors; and, glycerin. This rule also proposes to add 16 new substances on the National List to be allowed in organic production or handling: Hypochlorous acid; magnesium oxide; squid byproducts; activated charcoal; calcium borogluconate; calcium propionate; injectable vitamins, minerals, and electrolytes; kaolin pectin; mineral oil; propylene glycol; acidified sodium chlorite; zinc sulfate; potassium lactate; and, sodium lactate. The proposed rule would list the botanical pesticide, rotenone, as a prohibited substance in organic crop production. The proposed rule would remove ivermectin as an allowed parasiticide for use in organic livestock production. **83 Fed. Reg. 16010 (April 13, 2018)**.

FEDERAL INCOME TAXATION

BAD DEBT DEDUCTION. The taxpayer loaned money to a boyfriend over several years to assist the boyfriend in creating a comic strip. The loans were consolidated in 2010 and the boyfriend made some payments on the debt. In December 2010 the boyfriend stated that he had no more money and in 2011 the taxpayer sued for collection of the debt. A judgment was obtained in 2012 but no payments were made. Negotiations for payment of the debt continued through the end of 2012. The taxpayer then formed an LLC and transferred the promissory notes to the company. The court found that the debt was not worthless in 2010, the debt was not related to a business of the taxpayer, the taxpayer was not in the trade or business of lending

money, and the loan was made as a personal favor. The court held that the taxpayer was not in the lending business because the taxpayer made no other loans, did not perform a credit check, did not review financial information, and did not require collateral for the loan. The court also noted that the taxpayer's own business of consulting was not related to the loan or the boyfriend's comic activities. Therefore, the loan was not a business loan and the debt was a non-business debt. In addition, the court held that the debt was not proven worthless in 2010, when the taxpayer claimed the bad debt deduction, because the taxpayer commenced litigation in 2011 in an attempt to collect the debt and evidence in and after the trial showed that the boyfriend had regular income at the time. **Hatcher v. Comm'r, 2018-1 U.S. Tax Cas. (CCH) ¶ 50,212 (5th Cir. 2018), *aff'g*, T.C. Memo. 2016-188**.

C CORPORATIONS

ALTERNATIVE MINIMUM TAX. I.R.C. § 11(a) imposes a tax on the taxable income of corporations. Prior to changes made by the TCJA 2017, *Pub. L. No 115-97*, I.R.C. § 11(b) provided that the amount of tax imposed was based on a graduated rate structure starting at 15 percent and increasing to 35 percent of a corporation's taxable income. In addition, I.R.C. § 55(a) imposed an alternative minimum tax" (AMT) equal to the excess, if any, of the tentative minimum tax (TMT) for the taxable year, over the corporate tax for the taxable year. I.R.C. § 55(b)(1)(B) provided that in the case of a corporation, the TMT for the taxable year is 20 percent of so much of the alternative minimum taxable income (AMTI) for the taxable year as exceeds the exemption amount, reduced by the alternative minimum tax foreign tax credit for the taxable year. Section 13001(a) of the TCJA amended I.R.C. § 11(b) to provide that the amount of tax imposed by I.R.C. § 11(a) shall be 21 percent of a corporation's taxable income. Section 13001(c)(1) provides generally that this change in the tax rate for corporations is effective for taxable years beginning after December 31, 2017. Section 12001(a) of the Act amended I.R.C. § 55(a) by limiting the application of the AMT to non-corporate taxpayers, thereby repealing the AMT for corporations. Section 12001(c) of the Act provides that the changes made by § 12001 apply to taxable years beginning after December 31, 2017. I.R.C. § 15(a) provides that if any rate of tax imposed by chapter 1 changes, and if the taxable year includes the effective date of the change (unless that date is the first day of the taxable year), then (1) tentative taxes shall be computed by applying the rate for the period before the effective date of the change, and the rate for the period on and after such date, to the taxable income for the entire taxable year; and (2) the tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of days in each period bears to the number of days in the entire taxable year. I.R.C. § 15(b) provides that, for purposes of I.R.C. § 15(a), if a tax is repealed, the repeal shall be considered a change of rate, and the rate for the period after the repeal shall be zero. I.R.C. § 15(c) provides in part that for purposes of I.R.C. § 15(a) and (b), if the rate changes for taxable years "beginning after" or "ending after" a certain date, the following day shall be considered the effective date of the change. The changes made by § 13001 of the TCJA to the federal income tax rates imposed on corporations under I.R.C. § 11(b) of the Code are effective for taxable years beginning after December 31, 2017. Under I.R.C. § 15(c), for purposes of § 15(a) and (b), the effective date of the change made by § 13001 of the TCJA is January 1, 2018. The computation of tax provided under I.R.C. § 15(a) applies to a change in any rate of tax imposed by chapter 1 of the Code if the taxable year includes the effective date of the change, unless that date is the first day of the taxable year. The tax under I.R.C. § 11 is a tax imposed by chapter 1 of the Code. Consequently, a corporation with a taxable year that includes January 1, 2018, but does not start on that day, must apply I.R.C. § 15(a) to determine the amount of federal income tax imposed under I.R.C. § 11 for that taxable year. Pursuant to I.R.C. §15(a), a tentative tax of a corporation for the taxable year that includes January 1, 2018, shall be computed by applying the rates of tax imposed under I.R.C. § 11(b) prior to the change of the tax rate under § 13001 of the Act, and a tentative tax for a corporation shall be computed by applying the 21 percent rate of tax imposed under I.R.C. § 11(b) as amended by § 13001 of the TCJA. The tax imposed under I.R.C. § 11 for the taxable year that includes January 1, 2018, is the sum of that proportion of each tentative tax which the number of days in each period bears to the number of days in the entire taxable year. Certain taxpayers, such as life insurance companies and regulated investment companies, are not subject to the tax imposed under I.R.C. § 11(a), but are nonetheless taxed under other Code provisions that use the rates of tax set forth in I.R.C. § 11(b). The application of I.R.C. § 15 will apply in determining the chapter 1 tax for these taxpayers in the same manner as described above for corporations subject to the tax imposed by I.R.C. § 11(a). Section 12001 of the TCJA repealed the application of the AMT imposed under I.R.C. § 55 to corporations effective for taxable years beginning after December 31, 2017. Under I.R.C. § 15(b), the repeal of a tax shall be considered a change of tax rate, and the rate for the period after the repeal is zero for purposes of I.R.C. § 15(a). As a result, the repeal of the AMT for corporations is a change in the TMT rate from 20 percent to zero. Further, under I.R.C. § 15(c), the effective date of this change of rate is January 1, 2018. The computation of tax provided under I.R.C. § 15(a) applies to a change in any rate of tax imposed by chapter 1 of the Code if the taxable year includes the effective date of the change, unless that date is the first day of the taxable year. The tax under I.R.C. § 55 is a tax imposed by chapter 1 of the Code. Consequently, a corporation with a taxable year that includes January 1, 2018, but does not start on that day, must apply I.R.C. § 15(a) to determine the amount of its TMT for that taxable year. Pursuant to I.R.C. § 15(a), a tentative TMT for the corporation shall be computed by applying the 20 percent TMT rate provided under I.R.C. § 55(b)(1)(B) prior to the change under § 12001 of the TCJA, and a tentative TMT shall be computed by applying the zero percent TMT rate resulting from the repeal under § 12001 of the TCJA of the AMT for corporations. The corporation's TMT for the taxable year that includes January 1, 2018, is the sum of that proportion of each tentative TMT which the number of days in each period bears to the number of days in the entire taxable year. The following example illustrates the application of I.R.C. § 15(a) in determining the tax under I.R.C. §§ 11 and 55 of a corporation using a fiscal year as its taxable year for the taxable year that includes January 1, 2018. ***Example***. A subchapter C corporation, uses a June 30 taxable year. For its taxable year beginning July 1, 2017, and ending June 30,

2018, X's taxable income is $1,000,000, and its AMTI in excess of its AMT exemption amount is $2,000,000. The corporation's corporate tax under I.R.C. § 11 is computed by applying I.R.C. § 15(a) as follows

(1) Taxable income (Line 30, Form 1120)	$ 1,000,000
(2) Tax on Line 1 amount using I.R.C. § 11(b) rates before the Act	340,000
(3) Number of days in Corporation X's taxable year before January, 1, 2018	184
(4) Multiply Line 2 by Line 3	62,560,000
(5) Tax on Line 1 amount using § 11(b) rate after the Act	210,000
(6) Number of days in the taxable year after December 31, 2017	181
(7) Multiply Line 5 by Line 6	38,010,000
(8) Divide Line 4 by total number of days in the taxable year	171,397
(9) Divide Line 7 by total number of days in the taxable year	104,137
(10) Sum of Line 8 and Line 9	$ 275,534

Under I.R.C. § 15(a), the corporate tax for the taxable year ending June 30, 2018 is $275,534. Computation under I.R.C. § 55: The corporation's TMT and resulting AMT under I.R.C. § 55 is computed by applying I.R.C. § 15(a) as follows:

(1) AMTI in excess of AMT exemption amount (Line 9, Form 4626)$	2,000,000
(2) TMT on Line 1 amount using I.R.C. § 55(b)(1)(B) rate before the Act	400,000
(3) Number of days in Corporation X's taxable year before January, 1, 2018	184
(4) Multiply Line 2 by Line 3	73,600,000
(5) Divide Line 4 by total number of days in the taxable year	$201,644

It is unnecessary to compute a TMT for the portion of the taxable year beginning on and after the effective date of § 12001 of the Act because the TMT is repealed as of the effective date for purposes of applying I.R.C. § 15(a). The corporation's TMT for its taxable year ending June 30, 2018 is $201,644. Because this TMT amount for the taxable year does not exceed the corporation's corporate tax amount of $275,534, the corporation does not have an AMT liability for its taxable year ending June 30, 2018. **Notice 2018-38, I.R.B. 2018-18**.

DEPRECIATION. The IRS has issued tables detailing the (1) limitations on depreciation deductions for owners of passenger automobiles (and for trucks and vans) first placed in service during calendar year 2018 and (2) the amounts to be included in income by lessees of passenger automobiles first leased during calendar year 2018.

For passenger automobiles acquired *before* September 28, 2017 and placed in service in 2018 for which the additional first-year depreciation deduction applies, the depreciation limitations are as follows:

Tax Year	Amount
1st tax year	$16,400
2d tax year	$16,000
3d tax year	$9,600
Each succeeding year	$5,760

For passenger automobiles acquired *after* September 27, 2017 and placed in service in 2018 for which the additional first-year depreciation deduction applies, the depreciation limitations are as follows:

Tax Year	Amount
1st tax year	$18,000
2d tax year	$16,000
3d tax year	$9,600
Each succeeding year	$5,760

For passenger automobiles placed in service in 2018 for which the additional first-year depreciation deduction does not apply, the depreciation limitations are as follows:

Tax Year	Amount
1st tax year	$10,000
2d tax year	$16,000
3d tax year	$9,600
Each succeeding year	$5,760

For leased passenger automobiles, I.R.C. § 280F(c) requires a reduction in the deduction allowed to the lessee of the passenger automobile. The reduction must be substantially equivalent to the limitations on the depreciation deductions imposed on owners of passenger automobiles. Under Treas. Reg. § 1.280F-7(a), this reduction requires a lessee to include in gross income an inclusion amount determined by applying a formula to the amount obtained from tables included in the revenue procedure. The revenue procedure includes tables showing the inclusion amounts for a range of fair market values for each taxable year after the passenger automobile is first leased. **Rev. Proc. 2018-25, I.R.B. 2018-18**.

GAMBLING LOSSES. The taxpayer filed a 2013 return reporting only income from alimony and the standard deduction. The IRS audited the return and determined that the taxpayer had failed to report $33,700 in gambling winnings, based on Forms W-2G filed by two casinos. The taxpayer presented statements from the two casinos, both showing gambling losses in 2013 but stating that their records were not complete, because the records were based upon the use of a "player's card" and the taxpayer provided no evidence that the taxpayer always used the player's card while gambling. The taxpayer did not keep records of the taxpayer's gambling wins and losses. After trial, the IRS conceded that the taxpayer had some gambling losses and reduced the amount of the taxpayer taxable gambling income. However, the allowance of the gambling losses eliminated the taxpayer's standard deduction because such losses had to be claimed as itemized deductions. I.R.C. § 165(d) provides that "[l]osses from wagering transactions shall be allowed only to the extent of the gains from such transactions." For nonprofessional gamblers, the deduction for losses from wagering transactions is an itemized deduction. The court held that the taxpayer failed to prove any gambling losses greater than those allowed by the IRS, although the court noted that the IRS concession was also not based on entirely reliable records. **Henley v. Comm'r, T.C. Summary Op. 2018-22**.

HEALTH INSURANCE. The IRS has issued guidance that provides relief for certain small employers that wish to claim the Small Business Health Care Tax Credit for 2017 and later years. The Small Business Health Care Tax Credit can benefit certain small employers who provide health coverage to their employees. Generally, small employers must provide employees with a qualified health plan from a Small Business Health Options Program (SHOP) Marketplace to qualify for the credit. Also, small employers may only claim the credit for two consecutive years. In general, the relief helps employers who first claim the credit for all or part of 2016 or a later taxable year for coverage offered through a SHOP Marketplace, but do not have SHOP Marketplace plans available to offer to employees for all or part of the remainder of the credit period because the county where the employer is located has no SHOP Marketplace plans. The relief allows these employers to claim the credit for health insurance coverage provided outside of a SHOP Marketplace for the remainder of the credit period if that coverage would have qualified under the rules that applied before Jan. 1, 2014. The Notice also gives guidance about

calculating the credit under these circumstances. The notice does not affect previous transition relief for the credit that was separately provided for 2014, 2015, and 2016. For information on whether a county had or has coverage available through a SHOP Marketplace, see the "Who Gets the Credit" section of the Questions and Answers about the Small Business Health Care Tax Credit on IRS.gov. **Notice 2018-45, I.R.B. 2018-20**.

HEALTH SAVINGS ACCOUNTS. In *Rev. Proc. 2017-37, 2017-1 C.B. 1252*, the IRS announced that, for calendar year 2018, the limitation on deductions under I.R.C. § 223(b)(2)(A) for an individual with self-only coverage under a high deductible health plan was $3,450 ($6,900 for family coverage). In a recent Revenue Procedure, *Rev. Proc. 2018-18, 2018-1 C.B. 392*, the IRS had announced modified 2018 annual inflation adjustments for several tax provisions affected by the Consolidated Appropriations Act of 2018, *Pub. L. No. 115-141,* including lowering the family deductible amount to $6,850. The IRS received several complaints that the new 2018 adjustment would cause administrative and financial burdens on taxpayers who had already made contributions based on the prior announced deductible amounts. Thus, the IRS has announced that the original amount of $6,900 for family coverage will qualify for 2018. The revenue procedure also provides clarifications on how taxpayers who already received a distribution from an HSA of an excess contribution based on the $6,850 deduction limit may treat the distribution as a mistake and repay the HSA without any tax or reporting consequences. It also clarifies how to treat a distribution of an excess contribution (and earnings) based on the $6,850 deduction limit. **Rev. Proc. 2018-27, I.R.B. 2018-20**.

HOBBY LOSSES. The taxpayer was an attorney involved in the patent business. The taxpayer also owned and operated an antique car restoration activity. The restoration activity did not prosper and the taxpayer eventually reduced the inventory of vehicles. The court held that the activity was engaged in with the intent to make a profit because (1) the activity was operated in a business-like manner, (2) the taxpayer had experience in operating a business and was an expert on restoration of vehicles, (3) the taxpayer abandoned unprofitable aspects of the activity, (4) the taxpayer spent considerable time on the activity, and (5) the losses did not offset substantial income from other employment. In an opinion designated as not for publication, the appellate court affirmed. **Main v. Comm'r, 2018-1 U.S. Tax Cas. (CCH) ¶ 50,217 (9th Cir. 2018),** ***aff'g*****, T.C. Memo. 2016-127**.

INNOCENT SPOUSE RELIEF. The taxpayer was married in 2011 and filed a joint return with the ex-spouse which included deductions for charitable contributions and an education credit. Both items were attributable to the taxpayer. The IRS denied the deduction for both items and assessed a tax deficiency. The taxpayer separated from the ex-spouse in 2014 and divorced in 2015. The court held that the taxpayer was not eligible for relief under I.R.C. § 6015(b) because the items giving rise to the deficiency were attributable to the taxpayer's activities and the taxpayer was aware of the items on the 2011 return. Partial relief under I.R.C. § 6015(c) requires that the taxpayer must be divorced or legally separated from the former spouse for at least one year prior to seeking relief under Section 6015(c). The court found that the taxpayer separated from the ex-spouse in July 2014 and filed for innocent spouse relief in October 2014, less than one year after the separation; thus, the court held that the taxpayer was not entitled to relief under I.R.C. § 6015(c). The taxpayer also requested relief under the rules for equitable innocent spouse relief under I.R.C. § 6015(f). Rev. Proc. 2013-34, 2013-2 C.B. 397 provides seven conditions for granting equitable relief. The parties agreed that the first six conditions were met by the taxpayer but, as noted above, found that the taxpayer had not met the seventh condition that the items giving rise to the deficiency were not attributable to the taxpayer's activities. The seventh condition is not considered if the taxpayer shows abuse or fraud by the former spouse. The court found that the taxpayer had not proved any abuse or fraud by the former spouse; therefore, the court held that the taxpayer was not eligible for equitable relief. **Nwankwo v. Comm'r, T.C. Summary Op. 2018-23**.

LEVY. In 2005 the taxpayer sent $80,000 to the IRS to be applied to the taxpayer's mother's income tax liability; however, the IRS applied the funds to the taxpayer's account, creating an overpayment. Instead of receiving a refund, the taxpayer applied the excess to the taxpayer's tax liabilities for 2005 and 2006. In 2011 the IRS discovered the mistake and reversed the $80,000 credit as to the taxpayer. The reversal resulted in additional taxes owed for 2006 and the IRS sought to levy against the taxpayer's property to recover the additional taxes. The taxpayer argued that the situation was an erroneous refund governed by the two-year statute of limitations of I.R.C. § 6532(b). The IRS argued that the ten-year limitation period of I.R.C. § 6502(a)(1) applied because the levy was to collect unpaid taxes. The court noted that I.R.C. §§ 6403, 6407 and 6413 treat refunds or credits as separate. Thus, because I.R.C. § 6532 refers only to erroneous refunds, the two-year limitation period of Section 6532 does not apply in this case. The court held that, once the taxpayer applied the overpayment to subsequent taxes, the overpayment became a credit and subject to the 10-year limitation period of I.R.C. § 6502. **Schuster v. Comm'r, 2018-1 U.S. Tax Cas. (CCH) ¶ 50,204 (11th Cir. 2018),** ***aff'g*****, T.C. Memo. 2017-15**.

PENSION PLANS. For plans beginning in April 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 3.09 percent. The 30-year Treasury weighted average is 2.84 percent, and the 90 percent to 105 percent permissible range is 2.56 percent to 2.98 percent. The 24-month average corporate bond segment rates for April 2018, *without adjustment* by the 25-year average segment rates are: 1.94 percent for the first segment; 3.66 percent for the second segment; and 4.44 percent for the third segment. The 24-month average corporate bond segment rates for April 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 2018-34, I.R.B. 2018-18**.

SELF-EMPLOYMENT. The IRS has issued a newly revised estimated tax package, Form 1040-ES, now available on IRS.gov, designed to help taxpayers figure their estimated

payments correctly. Among other things, the package includes a quick rundown of key tax changes, income tax rate schedules for 2018 and a useful worksheet for figuring the right amount to pay. The IRS also mailed 1 million Form 1040-ES vouchers with instructions in late March to taxpayers who used the Form 1040-ES last year. A companion publication, Publication 505, *Tax Withholding and Estimated Tax*, has additional details, including worksheets and examples, that can help taxpayers determine whether they should pay estimated tax, such as those who have dividend or capital gain income, owe alternative minimum tax or have other special situations. **IR-2018-93**.

SAFE HARBOR INTEREST RATES

May 2018

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	2.18	2.17	2.16	2.16
110 percent AFR	2.40	2.39	2.38	2.38
120 percent AFR	2.62	2.60	2.59	2.59
		Mid-term		
AFR	2.69	2.67	2.66	2.66
110 percent AFR	2.96	2.94	2.93	2.92
120 percent AFR	3.23	3.20	3.19	3.18
		Long-term		
AFR	2.94	2.92	2.91	2.90
110 percent AFR	3.24	3.21	3.20	3.19
120 percent AFR	3.53	3.50	3.48	3.47

Rev. Rul. 2018-12, I.R.B. 2018-20.

STUDENT LOANS. A state established a program which provides award payments to physicians who agree to practice medicine in an area of the state designated as having a shortage of physicians. To receive a cash award payment, recipients in the program must meet certain eligibility requirements and agree to practice medicine in a designated shortage area for a designated amount of time. Such service obligation consists of either the establishment of a practice of medicine or employment as a licensed physician in the designated shortage area in the state, or a combination of both. Recipients also must have student loans either made or guaranteed by a state or federal governmental agency or by the educational institution which the recipient attended, for the purpose of paying educational expenses at the undergraduate or medical school. The award consists of annual award payments, with the each payment dependent upon the individual fulfilling the service requirement for a minimum number of months, and maintaining the eligibility requirements. Each annual award payment is limited to the lesser of the total of the recipient's undergraduate and medical school student loan expense or a certain amount. The award payments under the program are limited to repayment of educational loans that were made for undergraduate and medical education at an accredited institution, and loans made to cover expenses at a graduate school other than medical school are not included. I.R.C. § 108(f)(4) provides for the exclusion from income, of payments received under the National Health Service Corps Loan Repayment Program, and certain state loan repayment programs qualifying under § 3381 of the Public Health Service Act, or under "any other State loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services in underserved or health professional shortage areas (as determined by such State)." This provision is effective for amounts received by individuals in taxable years beginning or after December 31, 2008. In a Chief Counsel Advice letter, the IRS ruled that the amounts received under the state program were not taxable income to the recipients, either as gross income or as discharge of indebtedness income. In addition, the state is not required to provide any information reporting of the payments under I.R.C. § 6041. **CCA 201815016, Jan. 8, 2018**.

TIPS. The taxpayer engaged individuals to perform services at the taxpayer's request and on the taxpayer's premises. This ruling does not identify the taxpayer's business. The taxpayer treated the individuals as volunteers and did not directly pay the individuals any form of compensation or benefits for their services. The individuals received cash payments from amounts contributed by customers deposited in "tip boxes" placed by the taxpayer in the vicinity of where the individuals perform services to encourage customers to contribute cash amounts to the individuals. The taxpayer did not require customers to make cash contributions and customers have discretion on how much cash to contribute (including zero contribution). The amount of cash in the "tip boxes" is distributed at the end of each shift, with the individuals who performed services during a shift determining how to allocate the tip box amount between all of the individuals who performed services during that shift. Although the taxpayer was aware that customers place cash in the "tip boxes" and that the individuals working each shift distributed the cash among themselves, the taxpayer did not have a system in place for individuals to provide written statements reporting the cash amounts received to the taxpayer, and the taxpayer had knowledge of the specific amount of cash received by each individual. The taxpayer did not issue Forms W-2, *Wage and Tax Statement*, to the individuals and did not include any wages or taxes in connection with their services on Form 941, *Employer's Quarterly Federal Tax Return*. I.R.C. §§ 3101 and 3111 impose FICA taxes on employees and employers, respectively for wages as defined in I.R.C. § 3121(a). I.R.C. § 3121(a) defines wages as all remuneration for employment with certain specific exceptions. I.R.C. § 3121(a)(12)(A) excludes "tips" from the definition of wages if paid in any medium other than cash and I.R.C. § 3121(a)(12)(B) excludes cash tips received by an employee in any calendar month in the course of the employee's employment by an employer, unless the amount of the cash tips is $20 or more. I.R.C. § 3102(a) requires employers to deduct from wages and pay over the employee portion of the FICA tax. However, I.R.C. § 3102(c)(1) provides a special rule applicable to tips that the employer's obligation to deduct employee FICA tax from tips which constitute wages is applicable only to such tips as are included in a written statement furnished by the employee to the employer pursuant to I.R.C. § 6053(a), and only to the extent that collection can be made by the employer by deducting the amount of the tax from wages of the employee (excluding tips) as are under control of the employer, or from other funds made available by the employee for this purpose. Under I.R.C. § 3121(q), tips received by an employee in the course of the employee's employment are considered remuneration for that employment (and are deemed to have been paid by the employer

for purposes of the employer portion of the FICA taxes imposed by I.R.C. § 3111(a) and (b)). For purposes of determining the timing of the employer's FICA tax liability, the remuneration is deemed to be paid when a written statement including the tips is furnished to the employer by the employee pursuant to I.R.C. § 6053(a). However, if the employee did not furnish the statement, or if the statement furnished was inaccurate or incomplete, the remuneration is deemed to be paid on the date on which the IRS issues a notice and demand under I.R.C. § 3121(q) for the taxes to the employer. *Rev. Rul. 2012-18, 2012-1 C.B. 1032* provides that the absence of any of the following factors creates a doubt as to whether a payment is a tip: (1) payment must be made free from compulsion; (2) the customer must have the unrestricted right to determine the amount; (3) the payment should not be the subject of negotiation or dictated by employer policy; and (4) generally, the customer has the right to determine who receives the payment. In a Chief Counsel Advice letter, the IRS ruled that all four criteria have been met; therefore, because the employees did not provide a written report of the amount of tips received, the tips were deemed paid when the IRS issues a notice and demand under I.R.C. § 3121(q). **CCA 201816010, Dec. 4, 2017**.

IN THE NEWS

TAX CUTS AND JOBS ACT OF 2017. The IRS has published information about several provisions of the TCJA. *Expense method depreciation*. A taxpayer may elect to expense the cost of any section 179 property and deduct it in the year the property is placed in service. The new law increased the maximum deduction from $500,000 to $1 million. It also increased the phase-out threshold from $2 million to $2.5 million. The new law also expands the definition of section 179 property to allow the taxpayer to elect to include the following improvements made to nonresidential real property after the date when the property was first placed in service: (1) Qualified improvement property, which means any improvement to a building's interior. Improvements do not qualify if they are attributable to the enlargement of the building, any elevator or escalator, the internal structural framework of the building, and roofs, HVAC, fire protection systems, alarm systems and security systems. These changes apply to property placed in service in taxable years beginning after Dec. 31, 2017. *Bonus depreciation*. The new law increases the bonus depreciation percentage from 50 percent to 100 percent for qualified property acquired and placed in service after Sept. 27, 2017, and before Jan. 1, 2023. The bonus depreciation percentage for qualified property that a taxpayer acquired before Sept. 28, 2017, and placed in service before Jan. 1, 2018, remains at 50 percent. Special rules apply for longer production period property and certain aircraft. The definition of property eligible for 100 percent bonus depreciation was expanded to include used qualified property acquired and placed in service after Sept. 27, 2017, if all the following factors apply: (1) The taxpayer did not use the property at any time before acquiring it. (2) The taxpayer did not acquire the property from a related party. (3) The taxpayer did not acquire the property from a component member of a controlled group of corporations. (4) The taxpayer's basis of the used property is not figured in whole or in part by reference to the adjusted basis of the property in the hands of the seller or transferor. (5) The taxpayer's basis of the used property is not figured under the provision for deciding basis of property acquired from a decedent. Also, the cost of the used qualified property eligible for bonus depreciation does not include any carryover basis of the property, for example in a like-kind exchange or involuntary conversion. The new law added qualified film, television and live theatrical productions as types of qualified property that are eligible for 100 percent bonus depreciation. This provision applies to property acquired and placed in service after Sept. 27, 2017. Under the new law, certain types of property are not eligible for bonus depreciation, including property primarily used in the trade or business of the furnishing or sale of: electrical energy, water or sewage disposal services, gas or steam through a local distribution system or transportation of gas or steam by pipeline. This exclusion applies if the rates for the furnishing or sale have to be approved by a federal, state or local government agency, a public service or public utility commission, or an electric cooperative. The new law also adds an exclusion for any property used in a trade or business that has floor-plan financing. Floor-plan financing is secured by motor vehicle inventory that a business sells or leases to retail customers. The TCJA also removes computer or peripheral equipment from the definition of listed property. This change applies to property placed in service after Dec. 31, 2017. *Changes to treatment of certain farm property*. The TCJA shortens the recovery period for machinery and equipment used in a farming business from seven to five years. This excludes grain bins, cotton ginning assets, fences or other land improvements. The original use of the property must occur after Dec. 31, 2017. This recovery period is effective for property placed in service after Dec. 31, 2017. Also, property used in a farming business and placed in service after Dec. 31, 2017, is not required to use the 150 percent declining balance method. However, if the property is 15-year or 20-year property, the taxpayer should continue to use the 150 percent declining balance method. *Applicable recovery period for real property*. The TCJA keeps the general recovery periods of 39 years for nonresidential real property and 27.5 years for residential rental property. But, the new law changes the alternative depreciation system recovery period for residential rental property from 40 years to 30 years. Qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property are no longer separately defined and given a special 15-year recovery period under the new law. These changes affect property placed in service after Dec. 31, 2017. Under TCJA, a real property trade or business electing out of the interest deduction limit must use the alternative depreciation system to depreciate any of its nonresidential real property, residential rental property, and qualified improvement property. This change applies to taxable years beginning after Dec. 31, 2017. *Use of alternative depreciation system for farming businesses*. Farming businesses that elect out of the interest deduction limit must use the alternative depreciation system to depreciate any property with a recovery period of 10 years or more, such as single purpose agricultural or horticultural structures, trees or vines bearing fruit or nuts, farm buildings and certain land improvements. This provision applies to taxable years beginning after Dec. 31, 2017. **FS-2018-9, April 2018**.

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