duly reported all net income and losses on a Form 1065, as a matter of convenience. Management of the properties had been performed by a property management corporation of which the brothers were equal shareholders but were no longer employees. Because of "irreconcilable differences" between the brothers, the two proposed a like-kind exchange, between themselves, involving nine of the properties. After the exchange, six properties would be owned by one brother and three by the other. The tenth property would owned by the brothers as co-owners. The IRS concluded that the filing of partnership returns for five years indicated an intention to form a partnership. Therefore, the exchange was not eligible for like kind exchange treatment because the interests in the rental properties *were partnership interests rather than mere co-ownership of property and partnership interests under federal law violated I.R.C. § 1031* as then worded.

That conclusion was worrisome for many, including many farm and ranch exchangers involving co-ownership of property. The ruling identified four key factors: (1) there was co-ownership of property; (2) management services exceeded "customary" services for maintenance and repair; (3) the additional services were by the co-owners or an agent; and (4) the co-owners filed a partnership income tax return, essentially as a convenience.

After several years of criticism of the letter ruling, in *Rev. Proc. 2002-22,*[7] the Internal Revenue Service issued a revenue procedure addressing the circumstances under which advance rulings would be issued in situations involving co-ownership of rental real property in an arrangement classified as a tenancy in common. The revenue procedure specifies conditions to be met for an advance ruling.

The 2017 amendment

The 2017 amendment, cited above, merely struck the words "... this subsection shall not apply to any exchange of -... (D) interests in a partnership," which essentially nullifies the objectionable language.[8] It should be noted that the language varies somewhat from the language appearing in the earliest versions of the Act. However, it appears to retain the basic message.

Is there a clear enough message to withstand pressure?

Those who have pushed the idea of eliminating, effectively, the "partnership" as a form of organization, may well take up the cudgel in support of nullifying the 2017 amendment. Time will tell whether such a move would be effective. Hopefully, the attention given the IRS effort in recent years and the enactment of a bar to prevent nullification would be a sufficient barrier to prevent a replay (which was never really understood except for those who encountered it).

ENDNOTES

[1] Pub. L. No. 115-97, § 13303(a), ___ Stat. ___ (2017).

[2] Pub. L. No. 115-97, § 13303(b), ___ Stat. ___ (2017).

[3] *See, e.g.*, Ltr. Rul. 9741017, July 10, 1997.

[4] T.C. Memo. 2015-81, *aff'd*, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,328 (10th Cir. 2016).

[5] 2002-1 C.B. 733.

[6] See 4 Harl, *Agricultural Law* § 27.04[1][b].

[7] 2002-1 C.B. 733.

[8] See Pub. L. No. 115-97, § 13303(b)(1)(A), *amending* I.R.C. § 1031(a)(2).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

LIEN AVOIDANCE. The debtor filed for Chapter 12 in November 2016. In 2011, the debtor had granted a bank a security interest in crops, farm equipment, and general intangibles, including payments under the Agricultural Risk Coverage Program (ARC). The debtor agreed that the bank's lien was valid as to 2015 and 2016 ARC payments, received in October 2016 and October 2017 respectively. The debtor sought to avoid the lien as to the 2015 and 2016 ARC payments because the payments were received within 90 days prior to the petition and after the petition. The bank argued that the lien attached to the payments when the debtor enrolled in the ARC, well before the Chapter 12 petition. Section 547 governs avoidable preferential transfer. Under Section 547(e)(3), a transfer is not made until the debtors acquired rights in the property transferred. The debtor argued that the debtor did not have any rights to the ARC payments until all ARC program requirements had been met. The court found that, although the debtor did have to meet several requirements to receive payments, the ARC agreement with the debtor indicated that the debtor had some right to payment upon execution of the agreement and that failure to meet all requirements resulted in loss of the right to receive payments. The court noted the holding in *In re Lesmeister, 242 B.R. 920 (Bankr. D. N. D. 1999)* where the court held that a security interest in disaster assistance program payments was not avoidable even though the payments were not received until after the Chapter 12 petition. The *Lesmeister* court held that the debtor gained rights to the program payments when the program was enacted and the debtor suffered a loss covered by the program. Thus, the court in this case held that the debtor

obtained rights to the ARC payments when the debtor signed the ARC participation contracts in 2015 and 2016, well before the petition was filed. ***In re* Blake, 2018 Bankr. LEXIS 615 (Bankr. S.D. Ill. 2018)**.

FEDERAL ESTATE AND GIFT TAXATION

No items.

FEDERAL FARM PROGRAMS

COTTON. The CCC and FSA have announced the availability of cost-share funds to certain cotton producers of the United States, specifically for the 2016 cotton crop. Eligible Cotton Ginning Cost-Share Program (CGCS) participants will receive a one-time payment, based on a cost-share not to exceed 20 percent of calculated ginning costs by region, the number of cotton acres that were planted, including failed acreage, for the 2016 crop year, and the percentage of share the participant had in such cotton. Similar to other CCC programs, certain eligibility requirements apply, such as a $40,000 per individual or entity payment limit and a requirement that each participant's 3-year average adjusted gross income be $900,000 or less. CGCS payments will be made to help the domestic cotton industry find new and improved ways to market cotton. The application period is March 12, 2018 through May 11, 2018. **83 Fed. Reg. 9825 (March 8, 2018)**.

ORGANIC FOOD. The AMS has withdrawn final regulations issued at *82 Fed. Reg. 7042 (Jan. 19, 2017)* which amended the organic livestock and poultry production regulations by adding new provisions for livestock handling and transport for slaughter and avian living conditions, and expanding and clarifying existing requirements covering livestock health care practices and mammalian living conditions. Specifically, the regulations had: (1) clarified how producers and handlers must treat livestock and poultry to ensure their health and wellbeing; (2) clarified when and how certain physical alterations may be performed on organic livestock and poultry in order to minimize stress; (3) set maximum indoor and outdoor stocking density for avian species, which would vary depending on the type of production and stage of life; (4) defined outdoor access to exclude the use of structures with solid roofing for outdoor access and require livestock and poultry to have contact with soil; (5) added new requirements for transporting livestock and poultry to sale or slaughter; and (6) clarified the application of FSIS requirements regarding the handling of livestock and poultry in connection with slaughter to certified organic livestock and poultry establishments and provide for the enforcement of USDA organic regulations based on FSIS inspection findings. **83 Fed. Reg. 10775 (March 13, 2018)**.

FEDERAL INCOME TAXATION

AMERICAN OPPORTUNITY TAX CREDIT. The taxpayer had enrolled at a state university for five courses in the spring of 2013 but failed to complete the courses. The university issued a Form 1098-T listing the tuition billing but showing no payments. The taxpayer filed a Form 8863, *Education Credits (American Opportunity and Lifetime Learning Credits)* claiming the American Opportunity Tax Credit (AOTC) for 2013 for payment of tuition, a computer, books and supplies. The AOTC was denied by the IRS for failure to substantiate the amount claimed. The taxpayer presented only testimony to support the AOTC claims and did not provide any canceled checks, credit card statements, bank account statements, or account statements from the university. The court upheld the denial of the AOTC for lack of substantiation. **Harris v. Comm'r, T.C. Summary Op. 2018-12**.

CAPITALIZATION OF INTEREST. The taxpayers, husband and wife purchased a dilapidated historic mansion with the intent to renovate the property for rent. The property was divided into two sections and one section was sold. The remaining section had the mansion located on it and the taxpayers borrowed substantial funds to accomplish the renovation so as to qualify the property for federal and state historic preservation credits. As the renovation neared completion, the taxpayers hired an agent to offer the property for rent but before the property was completed, the taxpayers were forced to sell the property at a loss. The taxpayers claimed that the property was a trade or business and claimed an ordinary net operating loss from the sale which was used to offset prior and later taxable income. The IRS recharacterized the loss as a capital loss from an investment and required the interest incurred by the taxpayers on the loans as subject to the uniform capitalization rules of I.R.C. § 263A. Citing case precedent in the Second Circuit, the court stated that taxpayers must be engaged in continuous, regular, and substantial activity in relation to the management of the property to support a conclusion that the property was used in a trade or business and was not a capital asset. Among the facts considered to determine whether there is a trade or business are (1) the taxpayer's efforts to rent the property; (2) the maintenance and repairs supplied by the taxpayer or an agent of the taxpayer; (3) the taxpayer's employment of labor to manage the property or provide services to tenants; (4) the purchase of materials; (5) the collection of rent; and (6) the payment of expenses. The court held that, because the property was never rented and the taxpayers never provided rental-related services for the property, the taxpayers did not own the property as part of a trade or business and the property was a capital asset at the time of the sale. As to the allocation of the interest expenses incurred by the taxpayers in rehabilitating the property, certain indirect costs associated with producing property, including property held for investment, must be capitalized into the basis of that property. I.R.C. §§ 263A(f)(1)(A) and (B)(i) provide that interest expenses are capitalized to the

extent that they are paid or incurred during the period in which the property is being constructed or produced, and are allocable to real property. Improvements to property, including the rehabilitation or preservation of a standing building, constitute the production of property for purposes of I.R.C. § 263A. See Treas. Reg. § 1.263A-8(d)(3). The production period begins on the date on which the physical production activity is first performed and ordinarily ends on the date that the property is ready to be placed in service or held for sale. See I.R.C. § 263A(f)(4)(B) and Treas. Reg. § 1.263A-12(c)(2), (d)(1). The production period for the taxpayers' property began on the date the physical restoration work began and ended on the date when it was completely finished. Thus, the court held that the interest expenses paid or incurred during the production/renovation period had to be capitalized. **Keefe v. Comm'r, T.C. Memo. 2018-28**.

COOPERATIVES. The taxpayer was a nonprofit, nonexempt, rural telephone cooperative corporation operating on a cooperative basis. The taxpayer's bylaws required it to allocate patronage earnings among its patrons on a patronage basis. The taxpayer was the parent of an affiliated group that included a subsidiary corporation wholly owned by the taxpayer. The purpose of the subsidiary was to hold nonregulatory telecommunication assets for the benefit of the taxpayer and in furtherance of the taxpayer's telecommunication services. In an attempt to expand the taxpayer's telephone services, the subsidiary obtained a license for wireless services; however, the taxpayer was unable to effectively use the license and sold it to unrelated third parties. The IRS noted that, although neither the I.R.C. nor the regulations provide a clear definition of patronage-sourced income, the courts have, in general, held that if the income at issue is produced by a transaction which is directly related to the cooperative enterprise, such that the transaction facilitates the cooperative's marketing, purchasing, or service activities, then the income is deemed to be patronage income. In addition, the IRS, in *Rev. Rul. 69-576, 1962-2 C.B. 166*, provided the following analysis of what it means for income to be patronage sourced: "The classification of an item of income as from either patronage or nonpatronage sources is dependent on the relationship of the activity generating the income to the marketing, purchasing, or service activities of the cooperative. If the income is produced by a transaction which actually facilitates the accomplishment of the cooperative's marketing, purchasing, or service activities, the income is from patronage sources. However, if the transaction producing the income does not actually facilitate the accomplishment of these activities but merely enhances the overall profitability of the cooperative, being merely incidental to the association's cooperative operation, the income is from nonpatronage sources." In the current case, the IRS ruled that the gain from the sale of wireless cellphone license was patronage-sourced income eligible for deduction from the taxpayer's gross income for the year of sale. **Ltr. Rul. 201809005, Nov. 30, 2017**.

DISCHARGE OF INDEBTEDNESS. The taxpayers, husband and wife, purchased a townhouse in 2005 as their residence. The taxpayers moved out of the townhouse in 2010 and rented it to unrelated parties. The recession had decreased the value of the property well below the purchase nonrecourse debt held by the taxpayers and the taxpayers were forced to sell the property in 2011 in a "short" sale for less than the amount owed. The lender forgave the amount of the loan over the sale price. The lender issued a Form 1099-C, *Cancellation of Debt*, for the forgiven amount. The taxpayers also received a Form 1099-S, *Proceeds from Real Estate Transactions*, from the closing agent showing the proceeds of the sale. The taxpayers treated the sale and discharge of indebtedness as separate transactions. The taxpayers reasoned that the discharge of indebtedness was non-taxable as qualified principal residence indebtedness. Because the proceeds of the sale were less than the basis in the property, the taxpayers claimed a deduction for the loss from the sale. The court characterized the short sale as similar to a foreclosure, reconveyance in lieu of foreclosure, abandonment, or repossession. Because the lender had to approve the short sale in order for the sale to close, the court found that the sale was one transaction wherein the lender agreed to accept less than the loan amount in full payment of the loan; thus, the discharge of indebtedness amount was included in the amount realized by the taxpayers from the transaction. The court held that established case law provided that the amount realized from the sale of property encumbered by nonrecourse debt includes the full amount of the debt. See *Commissioner v. Tufts, 461 U.S. 300 (1983)*. Treas. Reg. § 1.165-9(b)(2) requires taxpayers to compute a loss using an adjusted basis that is the lesser of: (1) the taxpayer's existing adjusted basis or (2) the property's fair market value at the time of conversion. However, Treas. Reg. § 1.165-9(b)(2) applies only when computing a loss; it does not apply when computing a gain. Thus, the taxpayers' adjusted basis in their home at the time of sale was either the purchase price (for computing gain) or the fair market value at sale (for computing a loss). The amount realized on the sale, the proceeds plus the debt discharged, was less than the original purchase price basis and more than the fair market value at the sale. This produced the conundrum that using the loss rule calculation of Treas. Reg. § 1.165-9(b)(2) resulted in a gain and that using the gain rule calculation which would result in a loss. The court resolved this issue by looking at the basis provisions for gifts. If a gift has a fair market value less than the basis of the gift (carried over from the donor's basis under I.R.C. § 1015(a)), upon the subsequent sale of the gift, the carried over donor's basis is used to calculate a gain and the fair market value of the gift is used to calculate a loss. If the gift is sold for an amount between the two possible bases, no gain or loss is recognized, as provided in Treas. Reg. § 1.1015-1(a)(2). Thus, applying the gift rules to this short sale, the court held that the taxpayers recognized no gain or loss from the sale of their residence. **Simonsen v. Comm'r, 150 T.C. No. 8 (2018)**.

EMPLOYEE FRINGE BENEFITS. In a Chief Counsel Advice letter, the IRS discussed four issues: (1) Are the tax preparation services that an employer provides for the benefit of its employees working in foreign countries includable in the employees' gross income? (2) If the tax preparation services are includable in gross income, how does the employer determine their value for purposes of imputing income to the employees? (3) Does the value of the tax preparation services constitute "wages" for FICA tax purposes? (4) Does the value of the

tax preparation services constitute "wages" for purposes of federal income tax withholding? I.R.C. § 132(d) provides an exclusion from gross income for any fringe benefit that qualifies as a "working condition fringe." The term "working condition fringe" means any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under I.R.C. §§ 162 or 167. Treas. Reg. § 1.132-5(a)(1)(iii) provides that an amount that would be deductible by the employee under a section other than I.R.C. §§ 162 or 167, such as I.R.C. § 212, is not a working condition fringe. The IRS ruled that the value of the tax preparation services provided by the employer was a direct and personal benefit to the assignees. Therefore, such value is includable in income unless excluded by a specific statutory provision, such as I.R.C. § 132(d) which excludes working condition fringes. In order for a benefit to be excludable as a working condition fringe, the expense incurred in providing the benefit must be an expense that the employee could deduct under I.R.C. § 162 if the employee had paid for the benefit. As stated in *Rev. Rul. 92-69, 1992-1 C.B. 20*, in order for a fringe benefit to be excludable under I.R.C. § 132(d), as a working condition fringe, the employer must derive a substantial business benefit from the provision of the property or services that is distinct from the benefit that it would derive from the mere payment of additional compensation, and the employee's hypothetical payment for the property or services would otherwise be allowable as a deduction by the employee under I.R.C. § 162. Thus, the IRS ruled that the tax preparation services provided by the employer for the benefit of its employees working in foreign countries are includable in the employees' wages and gross income based on the fair market value of the tax preparation services. As wages, the value of the tax preparation services are subject to tax withholding and FICA taxes. **CCA 201810007, Nov. 28, 2017**.

FUEL CREDITS. The IRS has issued a Notice which provides rules taxpayers must follow to make a one-time claim for payment of the credits and payments allowable under I.R.C. §§ 6426(c), 6426(d), and 6427(e) for biodiesel (including renewable diesel) mixtures and alternative fuels sold or used during calendar year 2017. These rules are prescribed under Sections 40406, 40407, and 40415, of the Bipartisan Budget Act of 2018, Pub. L. 115–123, 132 Stat. 64 (2018) (the Act). This notice also provides instructions for how a claimant may offset its I.R.C. § 4081 liability with the I.R.C. § 6426(e) alternative fuel mixture credit for 2017, as well as instructions for how a claimant may make certain income tax claims relating to biodiesel, second generation biofuel, and alternative fuel. In addition, the notice provides a temporary modified safe harbor for semimonthly deposits of the oil spill liability tax imposed by I.R.C. § 4611, which was reinstated effective March 1, 2018, by § 40416 of the 2018 Act. **Notice 2018-21, I.R.B. 2018-13**.

HEALTH INSURANCE. The IRS has issued a Notice which clarifies the eligibility for a deductible Health Savings Account (HSA) of health plans providing benefits for male sterilization or contraceptives. I.R.C. § 223 permits eligible individuals to deduct contributions to an HSA. Among the requirements for an individual to qualify as an eligible individual under I.R.C. § 223(c)(1) is that the individual be covered under a high-deductible health plan (HDHP) and have no disqualifying health coverage. As defined in I.R.C. § 223(c)(2), an HDHP is a health plan that satisfies certain requirements, including requirements with respect to minimum deductibles and maximum out-of-pocket expenses. I.R.C. § 223(c)(2)(C) provides that "[a] plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care . . .." To be a preventive care benefit as defined for purposes of I.R.C. § 223, the benefit must either be described as preventive care for purposes of the SSA or be determined to be preventive care in guidance issued by the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS). The Notice provides that a health plan providing benefits for male sterilization or male contraceptives without a deductible, or with a deductible below the minimum deductible for an HDHP under I.R.C. § 223(c)(2)(A) is not an HDHP. However, The Notice further provides transition relief for periods before 2020 during which coverage has been provided for male sterilization or male contraceptives without a deductible, or with a deductible below the minimum deductible for an HDHP. During the transition period such plans, if they otherwise qualify, will not fail to qualify as an HDHP. **Notice 2018-12, I.R.B. 2018-12**.

INNOCENT SPOUSE RELIEF. The taxpayer and former spouse divorced in 2015. The divorce decree provided that the taxpayer and former spouse would each be liable for their own unpaid taxes. The couple had filed a joint return for 2014 but did not pay the taxes owed on the return. A portion of the unpaid taxes was attributable to wages earned by the taxpayer and a much larger portion was attributable to wages earned by the former spouse. The former spouse handled the financial affairs of the couple and prepared the 2014 tax return, although the taxpayer reviewed and signed the return. The taxpayer admitted to being aware that the couple had financial troubles, including unpaid taxes from before the couple were married. The taxpayer sought equitable innocent spouse relief under I.R.C. § 6015(f). The IRS agreed that the taxpayer met the threshold requirements under *Rev. Proc. 2013-34, 2013-2 C.B. 397* for equitable relief as to the taxes attributable to the ex-spouse's income. *Rev. Proc. 2013-34* provides five exceptions to the rule that a taxpayer cannot receive equitable relief for taxes attributable to the taxpayer's income: (1) attribution solely because of the operation of community property law; (2) nominal ownership; (3) misappropriation of funds (the requesting spouse did not know or have reason to know that funds intended for payment of tax were misappropriated by the nonrequesting spouse); (4) abuse before the return was filed that affected the requesting spouse's ability to challenge the treatment of items on the return or question payment of any balance due; and (5) fraud committed by the nonrequesting spouse that is the reason for the erroneous item. The court held that none of these exceptions applied and denied equitable relief for the taxes attributable to the taxpayer's income. *Rev. Pro. 2013-34* provides seven factors for allowing equitable relief as to taxes attributable to an ex-spouse's income: (1) marital status; (2) economic hardship; (3) in the case of an underpayment, knowledge or

reason to know that the nonrequesting spouse would not or could not pay the tax liability reported on the joint tax return; (4) legal obligation; (5) significant benefit; (6) compliance with tax laws; and (7) mental or physical health. The court found that all of the factors either were neutral or favored granting relief; therefore, the court held that the taxpayer would be granted equitable innocent spouse relief as to the taxes attributable to the ex-spouse's income. **Heedram v. Comm'r, T.C. Memo. 2018-25**.

PASSIVE ACTIVITY LOSSES. The taxpayer was a self-employer architect who worked 649 hours in 2013 working for clients. The taxpayer also owned two residential rental properties for which the taxpayer claimed $42,882 in losses on Schedule E. The taxpayer treated the two properties as one activity and the IRS did not object. The taxpayer provided a rental activity log for 2013 which the court found to show that the taxpayer spent 1137 hours on the rental activity. The taxpayer performed almost all of the management and maintenance for the two properties. The IRS disallowed all but $25,000 of the rental losses. Under I.R.C. § 469(c)(2), (4), rental activity generally is treated as a *per se* passive activity regardless of whether the taxpayer materially participates. I.R.C. § 469(c)(7) provides that rental activities of a qualifying taxpayer in a real property trade or business (i.e., a real estate professional) are not *per se* passive activities under I.R.C. § 469(c)(2) for a taxable year and, if the taxpayer materially participates in the rental real estate activities, these activities are treated as nonpassive activities. See also Treas. Reg. § 1.469-9(e)(1). A taxpayer qualifies as a real estate professional under I.R.C. § 469(c)(7)(B) if (i) more than one-half of personal services performed in trades or businesses by the taxpayer during such taxable year are performed in real property trades or businesses in which the taxpayer materially participates and (ii) such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates. The court found that the taxpayer had credibly shown that the taxpayer had worked more than 750 hours in 2013 on the rental activity; therefore, the court held that the losses from the rental activity were nonpassive and fully deductible. **Franco v. Comm'r, T.C. Summary Op. 2018-9**.

The taxpayers, husband and wife, owned five residential rental properties and the taxpayers elected to treat all the properties as one rental activity for tax purposes. During 2010 and 2011, the wife provided most of the management and maintenance services for the properties but testified that she was uncertain as to the amount of time spent on the activity. The taxpayers prepared a calendar for 2010 and 2011 during the IRS audit which showed the wife spending 1,133 and 905 hours respectively each year on the rentals. A taxpayer qualifies as a real estate professional under I.R.C. § 469(c)(7)(B) if (i) more than one-half of personal services performed in trades or businesses by the taxpayer during such taxable year are performed in real property trades or businesses in which the taxpayer materially participates and (ii) such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates. The court found that the wife's vague testimony and the calendars were insufficient proof of the hours spent on the activity and held that the losses from the activity were passive activity losses properly disallowed by the IRS. **Pourmirzaie v. Comm'r, T.C. Memo. 2018-26**.

PENSION PLANS. For plans beginning in March 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 3.13 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 March 2018, *without adjustment* by the 25-year average segment rates are: 1.89 percent for the first segment; 3.66 percent for the second segment; and 4.46 percent for the third segment. The 24-month average corporate bond segment rates for March 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 2018-22, I.R.B. 2018-14**.

The IRS has issued a revenue procedure which modifies *Rev. Proc. 2018-4, 2018-1 C.B. 146* by changing one user fee set forth in Appendix A of Rev. Proc. 2018-4, Schedule of User Fees, with respect to applications on Form 5310, *Application for Determination for Terminating Plan*. That user fee is reduced from $3,000 to $2,300, effective January 2, 2018. Applicants who paid the $3,000 user fee listed in *Rev. Proc. 2018-4* will receive a refund of $700. **Rev. Proc. 2018-19, I.R.B. 2018-14**.

QUARTERLY INTEREST RATES. The IRS has announced that, for the period April 1, 2018 through June 30, 2018, the interest rate paid on tax overpayments increases to 5 percent (4 percent in the case of a corporation) and for underpayments remains at 4 percent. The interest rate for underpayments by large corporations increases to 7 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 increases to 2.5 percent. **Rev. Rul. 2018-07, I.R.B. 2018-13.**

SAFE HARBOR INTEREST RATES

April 2018

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	2.12	2.11	2.10	2.10
110 percent AFR	2.33	2.32	2.31	2.31
120 percent AFR	2.55	2.53	2.52	2.52
		Mid-term		
AFR	2.72	2.70	2.69	2.68
110 percent AFR	2.99	2.97	2.96	2.95
120 percent AFR	3.27	3.24	3.23	3.22
		Long-term		
AFR	3.04	3.02	3.01	3.00
110 percent AFR	3.35	3.32	3.31	3.30
120 percent AFR	3.65	3.62	3.60	3.59

Rev. Rul. 2018-9, I.R.B. 2018-14.

STATE REGULATION OF AGRICULTURE

AGRICULTURAL USE. The taxpayers, two family trusts, purchased land in 2003 which was classified as residential for property tax valuation purposes. In 2012, the land was reclassified as agricultural based on the taxpayers' planting of pine trees, apple trees and hay on the property. However, in 2016, the property was reclassified as residential and the taxpayers appealed the reclassification. The taxpayers did not file federal Schedule F to report any income from farming the property. However, the taxpayers testified that they intended to sell apples, Christmas trees once the trees became productive and marketable. The defendant county Board of Review ruled that, in order for the property to be classified as agricultural, the property had to produce some income from farming as a business. Wis. Stat. § 70.32(2)(c) states that agricultural use includes the growing of short rotation woody crops, including poplars and willows, using agronomic practices. Wis. Admin. Code & Tax § 18.05(1) defines "agricultural use" as including: (a) Activities included in subsector 111 Crop Production, set forth in the North American Industry Classification System (NAICS), United States, 1997, . . . [or] . . . (c) Growing Christmas trees or ginseng." The court held that Wis. Stat. § 70.32(2)(c) refers to growing crops and does not require that the crops be marketed by the property owner. Thus, the court held that the Board of Review applied the wrong legal standard in requiring that the taxpayer have a business purpose in raising apple and Christmas trees and hay in order to qualify for the agricultural use classification. State ex rel. **Peter Ogden Family Tr. v. Bd. of Review, 2018 Wis. App. LEXIS 288 (Wis. Ct. App. 2018)**.

IN THE NEWS

EXTENSION OF EXPIRED TAX PROVISIONS. The Bipartisan Budget Act, enacted on February 9, 2018, renewed for tax year 2017 a wide range of individual and business tax benefits that had expired at the end of 2016. The Joint Committee on Taxation has produced a report on the expired provisions that were extended by the 2018 Act. **JCX-5-18, March 9, 2018**.

The IRS has announced that it is ready to process tax year 2017 returns claiming four additional tax benefits recently renewed retroactively into law. The Bipartisan Budget Act, enacted on Feb. 9, renewed for tax year 2017 a wide range of individual and business tax benefits that had expired at the end of 2016. The IRS has now reprogrammed its processing systems to handle returns claiming four energy-related tax incentives. As a result, taxpayers can now file 2017 returns claiming: (1) the credit for nonbusiness energy property claimed on Form 5695; (2) the alternative motor vehicle credit claimed on Form 8910; (3) the credit for qualified plug-in electric drive motor vehicles claimed on Form 8936; and (4) the credit for certain two-wheeled vehicles claimed on Form 8936. The IRS had already reprogrammed its processing systems to handle the three benefits most likely to be claimed on returns filed early in the tax season: (1) the exclusion from gross income of discharge of qualified principal residence indebtedness (often, foreclosure-related debt forgiveness), claimed on Form 982; (2) the mortgage insurance premiums treated as qualified residence interest, claimed on Schedule A; and (3) the deduction for qualified tuition and related expenses claimed on Form 8917. **IR-2018-59**.

FOREIGN INCOME. The IRS has published information to help taxpayers meet their filing and payment requirements for the I.R.C. § 965 transition tax. The Tax Cuts and Jobs Act requires various taxpayers that have untaxed foreign earnings and profits to pay a tax as if those earnings and profits had been repatriated to the United States. The new law outlines details on the tax rates, and certain taxpayers may elect to pay the transition tax over eight years. As the March 15 and April 17 deadlines approach for various filers, the IRS released information in a question and answer format, available at https://www.irs.gov/newsroom/questions-and-answers-about-reporting-related-to-section-965-on-2017-tax-returns. The Frequently Asked Questions address basic information for taxpayers affected by I.R.C. § 965. This includes how to report I.R.C. § 965 income and how to report and pay the associated tax liability. The information on IRS.gov also provides details on several elections under I.R.C. § 965 that taxpayers can make. The Treasury Department and the IRS previously released three pieces of guidance related to section 965 issues including *Notice 2018-07, 2018-1 C.B. 317, Notice 2018-13, 2018-1 C.B. 341, and Revenue Procedure 2018-17, 2018-1 C.B. 384*. **IR-2018-53**.

The IRS has announced it will begin to ramp down the 2014 Offshore Voluntary Disclosure Program (OVDP) and close the program on September 28, 2018. The current OVDP began in 2014 and is a modified version of the OVDP launched in 2012, which followed voluntary programs offered in 2011 and 2009. The programs have enabled U.S. taxpayers to voluntarily resolve past non-compliance related to unreported foreign financial assets and failure to file foreign information returns. The IRS notes that it will continue to use tools besides voluntary disclosure to combat offshore tax avoidance, including taxpayer education, whistleblower leads, civil examination and criminal prosecution. A separate program, the Streamlined Filing Compliance Procedures, for taxpayers who might not have been aware of their filing obligations, has helped additional taxpayers come into compliance. The Streamlined Filing Compliance Procedures will remain in place and available to eligible taxpayers. As with OVDP, the IRS has said it may end the Streamlined Filing Compliance Procedures at some point. The implementation of the Foreign Account Tax Compliance Act (FATCA) and the ongoing efforts of the IRS and the Department of Justice to ensure compliance by those with U.S. tax obligations have raised awareness of U.S. tax and information reporting obligations with respect to undisclosed foreign financial assets. Because the circumstances of taxpayers with foreign financial assets vary widely, the IRS will continue offering the following options for addressing previous failures to comply with U.S. tax and information return obligations with respect to those assets:

- IRS-Criminal Investigation Voluntary Disclosure Program;
- Streamlined Filing Compliance Procedures;
- Delinquent FBAR submission procedures; and
- Delinquent international information return submission procedures. **IR-2018-52**.

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