Agricultural Law Press

Publisher/Editor

Robert P. Achenbach, Jr.

* * * *

Issue Contents

Bankruptcy

Discharge **131**

Federal Estate and Gift Taxation

IRA **131**

Special use valuation **132**

Valuation **132**

Federal Farm Programs

Food for Progess Program **132**

Federal Income Taxation

Business expenses **132**

Depreciation **133**

Family and medical leaves **134**

Partnerships

Interest **134**

Passive activity losses **134**

Quarterly interest rates **135**

Refunds **135**

Partnerships

Definition **135**

Agricultural Law Digest

Volume 30, No. 17 September 6, 2019 ISSN 1051-2780

Proposed Regulations on Valuing Employer-Provided Vehicles

-by Robert P. Achenbach, Jr., J.D.

The IRS has issued new proposed regulations[1] which update the employer-provided vehicle valuation rules to comply with changes made by the Tax Cuts and Jobs Act of 2017 (the Act).[2] The proposed regulations generally increase the limitation on two special valuation rules available to employers.

Employer-Provided Special Valuation Rules

Employer-provided automobiles are generally included in an employee's income and wages at the fair market value (FMV) of the vehicle. However, the regulations under I.R.C. § 61 provide electable special valuation rules for employer-provided automobiles under which the special value is treated as the FMV of the benefit for income tax and employment tax purposes.[3] Two such special valuation rules affected by new proposed regulations are the fleet-average valuation rule and the vehicle cents-per-mile valuation rule.[4] These two special valuation rules are subject to limitations, including that they may be used only in connection with vehicles having values that do not exceed a maximum amount set forth in the regulations.

Fleet-Average Rule. Generally, the automobile lease valuation rule is used to determine the value of the personal use of an employer-provided automobile available to an employee for an entire year is a portion of the annual lease value relating to the availability of the automobile for personal use.[5] If the FMV of the automobile does not exceed a maximum value, an employer with a fleet of 20 or more automobiles may use a fleet-average value for purposes of calculating the annual lease value of any automobile in the fleet.[6]

The fleet-average value is the average of the fair market values of all the automobiles in the fleet; however, the fleet-average valuation rule for a calendar year may not be used if the FMV of the automobile on the first date the automobile is made available to the employee exceeds the maximum value as adjusted annually pursuant to I.R.C. § 280F(d)(7).[7]

The regulations[8] provide that the fleet-average valuation rule may be used by an employer as of January 1 of any calendar year following the calendar year in which the employer acquires a sufficient number of automobiles to total a fleet of 20 or more, each one satisfying the maximum value requirement. An employer may cease using the fleet-average valuation rule as of any January 1.

* Publisher and editor of the Agricultural Law Press.

Agricultural Law Digest is published by the Agricultural Law Press, 735 N. Maple Hill Rd., Kelso, WA 98626 (ph 360-200-5666), 24 bimonthly issues. Annual subscription $90 by e-mail. Copyright 2019 by Robert P. Achenbach, Jr. No part of this newsletter may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording or by any information storage or retrieval system, without prior permission in writing from the publisher. http://www.agrilawpress.com Printed on recycled paper.

Cents-Per-Mile Rule. Under the vehicle cents-per-mile rule, if an employer provides an employee with the use of a vehicle that the employer reasonably expects will be regularly used in the employer's trade or business throughout the calendar year; such shorter period as the vehicle may be owned or leased by the employer, or is actually driven at least 10,000 miles in the year and use of the vehicle during the year is primarily by employees,[9] the value of the personal use may be determined based on the applicable standard mileage rate multiplied by the total number of miles the vehicle is driven by the employee for personal purposes.[10]

The regulations provide that the value of the personal use may not be determined under the vehicle cents-per-mile valuation rule for a calendar year, if the fair market value of the vehicle on the first date the vehicle is made available to the employee exceeds the sum of the maximum recovery deductions allowable under I.R.C. § 280F(a) for a five-year period for an automobile first placed in service during that calendar year.[11]

The regulations state that an employer must adopt the vehicle cents- per-mile valuation rule for a vehicle to take effect by the first day on which the vehicle is used by an employee of the employer for personal use.[12] Once the vehicle cents-per-mile valuation rule has been adopted for a vehicle by an employer, the rule must be used by the employer for all subsequent years in which the vehicle qualifies for use of the rule.[13]

Valuation Limits Prior to 2018

Under the existing regulations in effect prior to 2018,[14] the vehicle cents-per-mile valuation rule could be used only to value the personal use of a vehicle having a value no greater than $12,800.[15] Prior to 2018, the fleet-average valuation rule could be used only to value the personal use of vehicles having values no greater than $16,500.[16] Each of these maximum values is adjusted annually.[17]

Proposed Regulations–Valuation Limits after 2017

The IRS has issued proposed regulations which update the fleet-average and vehicle cents-per-mile valuation rules[18] to reflect the changes made by the Act to the depreciation limitations in I.R.C. § 280F.[19] The proposed regulations increase, effective for the 2018 calendar year, the maximum base fair market value of a vehicle for use of the fleet-average or vehicle cents-per-mile valuation rule to $50,000.

The maximum fair market value of a vehicle for purposes of the fleet-average and vehicle cents-per-mile valuation rule will continue to be adjusted annually under I.R.C. § 280F(d)(7), as amended by the Act, and announced in the annual notice providing the standard mileage rates for the use of an automobile for business, charitable, medical, and moving expense purposes and the maximum standard automobile cost for purposes of an allowance under a FAVR plan.

As provided in *Notice 2019-34*,[20] the following transition rules are included in the proposed regulations:

(1) With respect to the fleet-average valuation rule, if an employer did not qualify to use the fleet-average valuation rule prior to January 1, 2018 with respect to an automobile because the fair market value of the automobile exceeded the inflation-adjusted maximum value requirement in the year the automobile was first made available to any employee of the employer, the employer may adopt the fleet-average valuation rule for 2018 or 2019, provided the fair market value of the automobile does not exceed $50,000 on January 1, 2018, or $50,400 on January 1, 2019, respectively.

(2) Similarly, with respect to the vehicle cents-per-mile valuation rule, for a vehicle first made available before calendar year 2018, if an employer could not adopt the vehicle cents-per-mile valuation rule on the first day on which the vehicle was used by the employee for personal use because the fair market value of the vehicle exceeded the inflation-adjusted limitation, the employer may first adopt the vehicle cents-per-mile valuation rule for the 2018 or 2019 taxable year with respect to the vehicle, provided the fair market value of the vehicle does not exceed $50,000 on January 1, 2018, or $50,400 on January 1, 2019.

In the preamble to the proposed regulations, the IRS stated that, until the proposed regulations are adopted as final, taxpayers may rely on the guidance provided in the proposed regulations.

ENDNOTES

[1] REG-101378-19, 84 Fed. Reg. 44258 (Aug. 23, 2019).

[2] Pub. L. No 115-97, § 13202, 131 Stat. 2108 (2017). See Achenbach, *Farm Income Tax Manual*, § 3.03[13][c][i] (2019).

[3] Treas. Reg. § 1.61-21(b)(4).

[4] Treas. Reg. §§ 1.61-21(d)(5)(v) and 1.61-21(e).

[5] Treas. Reg. § 1.61-21(d).

[6] Treas. Reg. § 1.61-21(d)(5)(v).

[7] For 2017 the maximum FMV was $21,100 for passenger automobiles and $23,300 for trucks and vans. See Notice 2017-03, I.R.B. 2017-2, 368. Note that the IRS made the maximum amount the same for automobiles and trucks. See Notice 2019-08, I.R.B. 2019-3, 354.

[8] Treas. Reg. § 1.61-21(d)(5)(v)(B).

[9] Treas. Reg. § 1.61-21(e)(1)(ii).

[10] Treas. Reg. § 1.61-21(e).

[11] Treas. Reg. § 1.61-21(e)(1)(iii)(A). For 2017 the maximum FMV was $21,100 for passenger automobiles and $23,300 for trucks and vans. See Notice 2017-03, I.R.B. 2017-2, 368. Note that TCJA 2017 made the maximum amount the same for automobiles and trucks.

[12] Treas. Reg. § 1.61-21(e)(5)(i).

[13] Treas. Reg. § 1.61-21(e)(5)(ii). An exception applies that the employer may, for any year during which use of the vehicle qualifies for the commuting valuation rule of Treas. Reg. § 1.61-21(f), use the commuting valuation rule with respect to the vehicle.

[14] Treas. Reg. § 1.61-21.

[15] Treas. Reg. § 1.61 -21(e)(1)(iii). This is the sum of the

maximum recovery deductions allowable under I.R.C. § 280F(a)(2) for the recovery period of the vehicle).

[16] Treas. Reg. § 1.61-21(d)(5)(v)(D).

[17] I.R.C. § 280F(d)(7).

[18] Treas. Reg. § 1.61-21(d),(e).

[19] REG-101378-19, 84 Fed. Reg. 44258 (Aug. 23, 2019).

[20] I.R.B. 2019-22, 1257.

CASES, RULINGS, REGULATIONS AND STATUTES

BANKRUPTCY

GENERAL

DISCHARGE. The debtor orally leased farm land from a creditor to grow alfalfa on a crop share basis. The parties agreed that the lease provided for an equal split of the costs of raising the crops and an equal split of the revenues from the sale of the crop. The debtor harvested and sold the first two cuttings. The creditor expected to receive one-half of the proceeds at that time but the debtor believed that the shares would not be determined until after the third cutting. The debtor testified that the debtor intended to pay the one-half of the proceeds of the sale of the two cuttings after the debtor sold another crop, but that crop was destroyed by frost. Thus, the debtor failed to pay the creditor for the creditor's share of the first two cuttings. However, during the sale of the first two cuttings, the debtor obtained an advance payment from the buyer for the third cutting. The debtor used the advance funds to purchase machinery in hopes of obtaining other work but that work did not materialize. When the third cutting occurred, the debtor told the creditor that the debtor would sell some farm equipment and the third cutting to pay the proceeds to the creditor for the creditor's share of all three cuttings. The creditor later learned that the third cutting had already been sold. When the debtor filed for bankruptcy, the creditor sought to have the amount owed under the lease declared nondischargeable under Section 523(a)(2)(A) for false misrepresentation and actual fraud. The court found that the crop share rent under the oral lease was an enforceable debtor for 50 percent of the proceeds of the alfalfa crop less 50 percent of the cost of producing the crop. In order to show a false misrepresentation under Section 523(a)(2)(A), a creditor must show the debtor: (1) made a representation, (2) with knowledge of its falsity, (3) deliberately for the purpose of deceiving the creditor, (4) who justifiably relied on the representation, and which (5) proximately caused the creditor damage. (1) The court found that the debtor made a representation that the creditor would be paid from the sale of farm equipment and the sale of the third cutting. (2) The court found that the debtor knew this statement was false because the debtor had already sold the third cutting in exchange for the advanced funds. (3) The court found that the debtor deliberately told the false statement to the creditor with intent to deceive the creditor. (4) The court found that the creditor justifiably relied on the debtor's statements because the debtor allowed the creditor to treat the third cutting as belonging to the creditor who even incurred additional costs in the harvesting and preparation of the crop. (5) The court found that the debtor's statements and actions foreseeably resulted in damage to the creditor. Thus, the court held that the crop share debt was nondischargeable under Section 523(a)(2)(A) for false representations. The court also discussed whether the debt was also nondischargeable under Section 523(a)(2)(A) for actual fraud. The court found that the debtor did not commit actual fraud because the debtor and creditor had differing understandings as to when the crop shares would be determined under the lease; thus, the court held that no actual fraud occurred. ***In re* Kurtz, 2019 Bankr. LEXIS 2531 (Bankr. D. Neb. 2019)**.

FEDERAL ESTATE AND GIFT TAXATION

IRA. The decedent died after the age the decedent was required to begin receiving required minimum distributions from an individual retirement account (IRA). At the time of death, the decedent was married to the taxpayer and their children were listed as the sole beneficiaries of the decedent's IRA. Subsequently, a state court named the taxpayer the sole beneficiary of the decedent's IRA and the taxpayer remained the sole beneficiary with an unlimited right to withdraw amounts from it. I.R.C. § 408(d)(3)(C)(ii) provides that an IRA will be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual, and such individual was not the surviving spouse of such other individual. Treas. Reg. § 1.408-8, Q&A-5, provides that a surviving spouse of an individual may elect to treat the spouse's entire interest as a beneficiary in the individual's IRA as the spouse's own IRA. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. The IRS found that the taxpayer was the beneficiary of the IRA. The IRS did not discuss the effect of the court order changing the beneficiary from the children to the taxpayer. The IRS ruled that (1) the decedent's IRA was not an inherited IRA within the meaning of I.R.C. § 408(d)(3)(C) with respect to the taxpayer; (2) as the sole beneficiary, the taxpayer was eligible to roll over distributions from the decedent's IRA to one or more IRAs established and maintained in the taxpayer's own name pursuant to I.R.C. § 408(d)(3)(A)(i), provided that the rollovers occur no later than the 60th day following the day the proceeds