CASES, REGULATIONS AND STATUTES

FEDERAL ESTATE AND GIFT TAXATION

MARITAL DEDUCTION. The decedent was survived by a spouse who was not a citizen of the United States at that time. On Schedule M of the decedent's Form 706, the estate claimed a marital deduction for property passing to a qualified domestic trust (QDOT), trust. The spouse later became a United States citizen and had continuously resided in the United States since the date of the decedent's death. The spouse was not aware of the notice and certification requirements under Treas. Reg. § 20.2056A-10(a)(2) and was not advised by a CPA. I.R.C. § 2056(a) provides that, for purposes of the tax imposed by I.R.C. § 2001, the value of the taxable estate is to be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse. I.R.C. § 2056(d)(1)(A) provides that if the surviving spouse is not a citizen of the United States, the martial deduction is not allowed under I.R.C. § 2056(a), unless the property passes to the surviving spouse in a qualified domestic trust. Under I.R.C. § 2056A, a qualified domestic trust is any trust in which: (1) the trust instrument must require that at least one trustee of the trust be an individual citizen of the United States or domestic corporation and that no distribution other than a distribution of income may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from the distribution the additional estate tax imposed by I.R.C. § 2056A(b)(1) on the distribution; (2) the trust must meet the requirements that are prescribed under Treasury regulations to ensure the collection of the tax imposed by I.R.C. § 2056A(b); and (3) the executor must make the election prescribed by I.R.C. § 2056A(d) to treat the trust as QDOT. Under I.R.C. § 2056A(d) and Treas. Reg. § 20.2056A-3(a), the election to treat a trust as a QDOT must be made on the last federal estate tax return filed before the due date (including extensions of time to file actually granted) or, if a timely return is not filed, on the first federal estate tax return filed after the due date. The election, once made, is irrevocable. No election may be made if the return is filed more than one year after the due date of the return. Under I.R.C. § 2056A(b)(12) and Treas. Reg. § 20.2056A-10(a)(1) and (2), a QDOT is no longer subject to the estate tax imposed under I.R.C. § 2056A(b) if the surviving spouse becomes a citizen of the United States, and the spouse was a resident of the United States at all times after the death of the decedent and before becoming a United States citizen, and the U.S. Trustee of the qualified domestic trust notifies the IRS and certifies in writing that the surviving spouse has become a United States citizen. Notice is to be made by filing a final Form 706-QDT on or before April 15th of the calendar year following the year that the surviving spouse becomes a citizen, unless an extension of time of up to 6 months for filing is granted under § 6081. The IRS granted the spouse and estate an extension of 120 days to file the Form706-QDT. **Ltr. Rul. 201903012, Jan. 18, 2019**.

FEDERAL FARM PROGRAMS

DOGS. The APHIS has issued proposed regulations amending the licensing requirements under the Animal Welfare Act regulations to promote compliance, reduce licensing fees, and strengthen existing safeguards that prevent individuals and businesses who have a history of noncompliance from obtaining a license or working with regulated animals. The proposed regulations also amend the veterinary care and watering standards for regulated dogs to better align the regulations with the humane care and treatment standards set by the Animal Welfare Act. **84 Fed. Reg. 10729 (March 22, 2019)**.

VETERINARIANS. The APHIS has issued proposed regulations amending the regulations governing the National Veterinary Accreditation Program by clarifying the veterinary programs for which accredited veterinarians are authorized to perform duties under the Animal Health Protection Act. **84 Fed. Reg. 8476 (March 8, 2019)**.

FEDERAL INCOME TAXATION

CHANGE OF ADDRESS. The taxpayers, husband and wife, moved in June 2015 and filed their 2014 return on October 15, 2015 but did not include their new address on the return. The taxpayers filed Forms 2848, *Power of Attorney and Declaration of Representative*, in November of 2015 and used their new address on those forms. However, in April of 2016 the taxpayers used their old address again when they submitted a Form 4868, *Application for Automatic Extension of Time To File U.S. Individual Income Tax Return*. In October 2016, prior to the taxpayers filing of their 2015 return, the IRS sent a Notice of Deficiency to the taxpayers at their old address which was returned by the USPS. The taxpayers filed an appeal in January 2017 once they learned about the Notice of Deficiency. Under I.R.C. §§ 6214(a), 6213(a), the Tax Court has jurisdiction "to redetermine the correct amount of . . . [a] deficiency"--when (1) the Commissioner mails a valid notice of deficiency to the taxpayer and (2) the taxpayer timely files a

petition with us disputing the deficiency. Thus, if the Notice of deficiency is not validly sent to the taxpayers or their petition is not timely filed, the Tax Court does not have jurisdiction to redetermine the deficiency. The court found that the taxpayers failed to file their petition for redetermination of the Notice of Deficiency within 90 days after the Notice was mailed. Under I.R.C. §§ 6212(a) and (b)(1), the IRS has properly sent a notice of deficiency if the notice is mailed to the taxpayer at the taxpayer's last known address regardless of whether the taxpayer actually receives the notice. Treas. Reg. § 301.6112-2(a) provides that a taxpayer's last known address is "the address that appears on the taxpayer's most recently filed and properly processed Federal tax return, unless the Internal Revenue Service (IRS) is given clear and concise notification of a different address." Thus, the issue in this case was whether the taxpayers' filing of Forms 2848 in November 2015 constituted returns and/or served notice of their new address. Under *Beard v. Comm'r, 82 T.C. 766 (1984), aff'd, 793 F.2d 139 (6th Cir. 1986)*, a return must meet the following criteria: "First, there must be sufficient data to calculate tax liability; second, the document must purport to be a return; third, there must be an honest and reasonable attempt to satisfy the requirements of the tax law; and fourth, the taxpayer must execute the return under penalties of perjury." The court here held that neither Form 2848 nor Form 4868 meets any of these criteria. See also *Rev. Proc. 2010-16, I.R.B. 2010-19, 664* (Forms 2848 and 4868 are not returns). In addition, the court found that neither Forms 2848 nor 4868 provided clear notification of a change of address. The instructions to the 2014 Form 2848 explicitly state: "Address information provided on Form 2848 will not change your last known address with the IRS." The 2014 Form 2848 also explicitly cautions users that it will "not be honored for any purpose other than representation before the IRS." Thus, the court held that the Notice of Deficiency was properly mailed to the taxpayers' old address because the taxpayers failed to file a return with their new address or send notice to the IRS of their new address prior to the mailing of the Notice of Deficiency. **Gregory v. Comm'r, 152 T.C. No. 7 (2019)**.

CORPORATIONS

REORGANIZATIONS. The IRS has issued a revenue ruling announcing reconsideration of two past revenue rulings governing corporation reorganizations. I.R.C. § 355(a)(1) provides that, if certain requirements are met, a corporation may distribute stock and securities of a controlled corporation to its shareholders and security holders without recognition of gain or loss or income to the recipient shareholders or security holders. Under I.R.C. § 355(a)(1)(C) and (b), and Treas. Reg. § 1.355-3(a)(1)(i), such non-recognition requires that both the distributing corporation and the controlled corporation must be engaged in an active trade or business (ATB) immediately after the distribution. I.R.C. § 355(b)(2)(B) and Treas. Reg. § 1.355-3(b)(3) provide that each trade or business must have been actively conducted throughout the five-year period ending on the date of the distribution. Treas. Reg. § 1.355-3(b)(2)(ii) describes a "trade or business" as "a specific group of activities [that] are being carried on by the corporation for the purpose of earning income or profit, and the activities included in such group include every operation that forms a part of, or a step in, the process of earning income or profit. . . ." and that "[s]uch group of activities ordinarily must include the collection of income and the payment of expenses." *Rev. Rul. 57-464, 1957-2 C.B. 244*, considered the I.R.C. § 355 qualification of a corporation's separation of a manufacturing business from a group of real estate assets consisting of an old factory building used for storage and four other buildings: a duplex apartment building rented to employees of the corporation, a small office building rented to a single tenant, and two houses, one of which was occupied by a sister-in-law of the president of the corporation. The use of the896ilding for storage "was not in itself the active operation of a business as defined in the regulations." The rental activities "produced only a nominal rental" and "negligible" net income, and the properties "were acquired either as an investment or as a convenience to employees of the manufacturing business." Thus, *Rev. Rul. 57-464* that the separation did not satisfy the ATB requirement. In *Rev. Rul. 57-492, 1957-2 C.B. 247*, a corporation which was engaged in refining, transporting, and marketing petroleum products began a separate operation to explore for and produce oil. The exploration and production operation incurred substantial expenditures but "did not include any income producing activity or any source of income" until less than five years preceding its separation from the primary refining, transportation, and marketing operation. *Rev. Rul. 57-492* held that the exploration and production operation failed to qualify as an ATB because, "[b]efore oil was discovered in commercial quantities . . ., the venture . . . did not include any income producing activity or any source of income." The IRS is studying to determine, for purposes of I.R.C. § 355, "whether a business can qualify as an ATB if entrepreneurial activities, as opposed to investment or other non-business activities, take place with the purpose of earning income in the future, but no income has yet been collected." See also the IRS statement regarding the active trade or business requirement for I.R.C. § 355 distributions, dated September 25, 2018, available at *http://www.irs.gov/newsroom/statements-from-office-of-the-chief-counsel*. The ATB analysis underlying the holdings in *Rev. Rul. 57-464* and *Rev. Rul. 57-492* focuses, in significant part, on the lack of income generated by the activities under consideration. The IRS announced that *Rev. Rul. 57-464* and *Rev. Rul. 57-492* are suspended pending completion of the study. **Rev. Rul. 2019-09, I.R.B. 2019-14**.

DEPRECIATION. The taxpayer was the common parent of an affiliated group of corporations that filed consolidated federal income tax returns on a fiscal year basis. The taxpayer used the overall accrual method of accounting. For the tax year, the taxpayer planned to make the election to deduct research and experimental expenditures paid or incurred by the taxpayer in the tax year over a 10-year period under I.R.C. § 59(e)(1) and to make the election not to deduct the additional first year depreciation under I.R.C. § 168(k) for all classes of qualified property placed in service by the taxpayer in that tax year. The taxpayer engaged a professional firm to prepare its consolidated federal income tax return and relied on the firm

to prepare and timely file the taxpayer's consolidated federal income tax return. The consolidated federal income tax return for the tax year included an election statement for the taxpayer to make an election under I.R.C. § 59(e)(1) to deduct qualified research and experimental expenditures and an election under I.R.C. § 168(k)(7) to forgo the additional first-year depreciation for all classes of property placed in service during the tax year. Due to an inadvertent error that occurred in transmitting the return electronically, the tax return preparation firm did not timely e-file the taxpayer's consolidated federal income tax return including the election statements. Because the taxpayer did not timely file its federal tax return for the tax year, the taxpayer failed to make the elections under I.R.C. § 168(k)(7) and I.R.C. § 59(e)(1). Treas. Reg. § 1.59-1(b)(1) prescribes the time and manner of making the election under I.R.C. § 59(e). According to Treas. Reg. § 1.59-1(b)(1), an election under I.R.C. § 59(e) shall only be made by attaching a statement to the taxpayer's income tax return (or amended return) for the taxable year in which the amortization of the qualified expenditures subject to the I.R.C. § 59(e) election begins. The taxpayer must file the statement no later than the date prescribed by law for filing the taxpayer's original income tax return (including any extensions of time) for the taxable year in which the amortization of the qualified expenditures subject to the I.R.C. § 59(e) election begins and include certain required information. Treas. Reg. § 1.168(k)-1(e)(3)(ii) provides that the election not to deduct additional first year depreciation must be made in the manner prescribed on Form 4562, "*Depreciation and Amortization*," and its instructions. The instructions to Form 4562 for a taxable year beginning in 2012 (the tax year involved in this ruling)provide that the election not to deduct the additional first year depreciation is made by attaching a statement to the taxpayer's timely filed tax return indicating that the taxpayer is electing not to deduct the additional first year depreciation and the class of property for which the taxpayer is making the election. The IRS granted the taxpayer an extension time to file both elections such that the original return would be considered as timely filed for purposes of the two elections. **Ltr. Rul. 201904007, Jan. 25, 2019**.

ESTIMATED TAXES. Taxpayers are generally required, by law, to pay most of their tax obligation during the year, rather than at the end of the year. This can be done by either having tax withheld from paychecks or pension payments, or by making estimated tax payments. Usually, a penalty applies at tax filing if too little is paid during the year. This penalty is an interest based amount approximately equivalent to the federal interest on the amount not paid in a timely manner. Normally, the penalty would not apply for 2018 if tax payments during the year met one of the following tests: (1) the person's tax payments were at least 90 percent of the tax liability for 2018 or (2) the person's tax payments were at least 100 percent of the prior year's tax liability, in this case from 2017. However, the 100 percent threshold is increased to 110 percent if a taxpayer's adjusted gross income is more than $150,000, or $75,000 if married and filing a separate return. The IRS has announced that it is lowering to 80 percent the threshold required to qualify for relief from the penalty for underpayment of estimated taxes. Under the relief originally announced Jan. 16, the threshold was 85 percent. The usual percentage threshold is 90 percent to avoid a penalty. This means that the IRS is now waiving the estimated tax penalty for any taxpayer who paid at least 80 percent of their total tax liability during the year through federal income tax withholding, quarterly estimated tax payments or a combination of the two. The revised waiver computation will be integrated into commercially-available tax software and reflected in the forthcoming revision of the instructions for Form 2210, *Underpayment of Estimated Tax by Individuals, Estates, and Trusts*. Taxpayers who have already filed for tax year 2018 but qualify for this expanded relief may claim a refund by filing Form 843, *Claim for Refund and Request for Abatement* and include the statement "80% Waiver of estimated tax penalty" on Line 7. This form cannot be filed electronically. For waiver purposes only, the relief lowers the 90 percent threshold to 80 percent. This means that a taxpayer will not owe a penalty if they paid at least 80 percent of their total 2018 tax liability. If the taxpayer paid less than 80 percent, then they are not eligible for the waiver and the penalty will be calculated as it normally would be, using the 90 percent threshold. **Notice 2019-25, I.R.B. 2019-15**.

HEALTH INSURANCE. In 2014 the taxpayer received $26,180 of Social Security benefits, of which $11,902 was attributable to a lump-sum payment relating to 2013 and $14,278 was attributable to 2014 Social Security benefits. During 2014 petitioner enrolled in a health insurance plan through the health insurance marketplace. From March through December 2014 petitioner received $446 monthly advance payments of the premium tax credit (PTC) to cover a portion of the cost of the monthly health insurance premiums, reaching a total of $4,460 in PTCs during 2014. The taxpayer made the election under I.R.C. § 86(e). The main issue in this case was whether the taxpayer's modified adjustable gross income (MAGI) included the taxpayer's social security benefits received in 2014, for purposes of the premium tax credit. I.R.C. § 36B(c)(1)(A) provides a refundable credit for taxpayers who are insured by a qualified health plan and have household income of no more than 400% above the federal poverty line (FPL). The FPL is determined by guidelines in effect on the first day of the exchange's regular enrollment period for the relevant year. See I.R.C. § 36B(d)(3)(B); Treas. Reg. § 1.36B-1(h). I.R.C. § 36B (d) defines MAGI, in relevant part, as follows: "Terms Relating to Income and Families. . . . (B) Modified adjusted gross income.--The term "modified adjusted gross income" means adjusted gross income increased by-- . . . (iii) an amount equal to the portion of the taxpayer's social security benefits (as defined in section 86(d)) which is not included in gross income under section 86 for the taxable year . . .." In general an I.R.C. § 86(e) election affects the amount of Social Security benefits included in gross income for the year of receipt. The amount included in gross income for the year of receipt, by reason of the portion attributable to a prior year, will not exceed the increase in gross income for the prior year that would have resulted if the portion attributable to the prior year had been received in that year. The taxpayer argued that the I.R.C. § 86(e) election excluded all of the 2013 social security benefits received in 2014 from 2014 gross income. The court disagreed

and held that the text of the statute was not ambiguous and that the taxpayer must include in MAGI all of the Social Security benefits received in 2014, irrespective of the I.R.C. § 86(e) election. As a result, the taxpayer's adjusted gross income was increased by the amount of Social Security benefits not included in gross income and the MAGI exceeded the established threshold for PTC eligibility by a relatively small amount, but enough to require repayment of the PTC received. **Johnson v. Comm'r, 152 T.C. No. 6 (2019)**.

OFFERS IN COMPROMISE. The IRS has published the 2019 revision of Form 656-Booklet, *Offer in Compromise (OIC)* which will be available for download on IRS.gov, on March 25, 2019. The booklet contains current forms and instructions for submitting an OIC. Using previous versions of the booklet may result in delayed processing of OIC applications. **E-News for Small Business 2019-06**.

PARSONAGE ALLOWANCE DEDUCTION. The Court of Appeals for the Seventh Circuit has reversed the District Court for the Western District of Wisconsin ruling that the I.R.C. § 107(2) exclusion from taxable income of the parsonage allowance was unconstitutional as a violation of the Establishment Clause of the First Amendment to the U.S. Constitution. **Gaylor v. Mnuchin, 2019 U.S. App. LEXIS 7683 (7th Cir. 2019), *rev'g*, 2017-2 U.S. Tax Cas. (CCH) ¶ 50,372 (W.D. Wis. 2017)**.

PENSION PLANS. The taxpayer was the beneficiary of a pension plan owned by the taxpayer's deceased parent. The summary plan description (SPD) stated that the plan was a defined benefit plan that consists of both employer and employee contributions. The SPD states that members were required to contribute a portion of their salary each pay period through payroll deductions; these deductions were basic employee contributions and not subject to federal income taxation in the year contributed, but those contributions would be subject to federal taxation upon distribution. The SPD further stated that members may make additional employee contributions beyond the required basic employee contributions up to 50 percent of the basic employee contribution rate and these additional employee contributions were subject to income tax in the year the contributions are made. The total benefit payable was $403,829, comprising the decedent's share of $11,245 and an employer's share of $392,584. The plan did not designate what amount, if any, of the decedent's share of $11,245 was an additional employee contribution as opposed to the required basic employee contribution. The taxpayer did not provide any evidence of any additional employee contribution made by the decedent. The taxpayer elected to receive distributions in equal monthly payments over the life of the taxpayer. The taxpayer argued that $16,245 of each of the $28,937 total annual distributions was excludable from gross income. In general, distributions from pension plans are included in taxable income, except to the extent of the investment in the contract of the plan. An employee's investment in the contract also includes amounts contributed by the employer, "but only to the extent that . . . such amounts were includable in the gross income of the employee." See I.R.C. § 72(f). Consequently, employee or employer contributions that were not includable in the employee's gross income for the contribution year are not included in the employee's investment in the contract. The court found that the taxpayer failed to provide any evidence that the decedent had made contributions to the plan which were made from post-taxable income or that the employer's contributions were included in the decedent's taxable income; therefore, the entire annual distributions to the taxpayer were taxable income. On appeal the appellate court affirmed in a decision designated as not for publication. **Harrell v. Comm'r, 2019 U.S. App. LEXIS 7670 (2d Cir. 2019), *aff'g*, T.C. Memo. 2017-76**.

For plans beginning in March 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 3.02 percent. The 30-year Treasury weighted average is 3.02 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 March 2019, *without adjustment* by the 25-year average segment rates are: 2.65 percent for the first segment; 3.95 percent for the second segment; and 4.48 percent for the third segment. The 24-month average corporate bond segment rates for March 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 2019-21, I.R.B. 2019-14**.

The IRS has issued a notice which notice provides updated static mortality tables to be used for defined benefit pension plans under I.R.C. § 430(h)(3)(A) and Section 303(h)(3)(A) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, as amended (ERISA). These updated tables, which are being issued using the methodology in the existing final regulations under § 430(h)(3)(A), apply for purposes of calculating the funding target and other items for valuation dates occurring during calendar year 2016. The notice also includes a modified unisex version of the mortality tables for use in determining minimum present value under I.R.C. § 417(e)(3) and § 205(g)(3) of ERISA for distributions with annuity starting dates that occur during stability periods beginning in the 2020 calendar year. **Notice 2019-26, I.R.B. 2019-15**.

REGULATIONS. The IRS has adopted as final regulations that remove from the Code of Federal Regulations 296 regulations that are no longer necessary because they do not have any current or future applicability under the Internal Revenue Code and amend 79 regulations to reflect the removal of the 296 regulations. **84 Fed. Reg. 9231 (March 14, 2019)**.

RETURNS. IRS has released the 2019 versions of Form 1099-R, "*Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*," Form 5498, "*IRA Contribution Information*," and the instructions for those forms. Form 1099-R is used to report designated distributions from retirement plans, annuities, IRAs, and other sources. Form 5498 is used to report contributions to IRAs, including deemed IRAs, and certain other IRA-related information, including fair market value and required minimum distributions. Deemed IRAs are separate accounts or annuities within a qualified employer plan that satisfy the requirements of a traditional or Roth IRA and are treated only as IRAs, not as part of the qualified plan. The

2019 versions of the forms will be filed with IRS and furnished to distribution recipients and IRA owners and beneficiaries in 2020.

SAFE HARBOR INTEREST RATES
April 2019

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	2.52	2.50	2.49	2.49
110 percent AFR	2.77	2.75	2.74	2.73
120 percent AFR	3.02	3.00	2.99	2.98
		Mid-term		
AFR	2.55	2.53	2.52	2.52
110 percent AFR	2.80	2.78	2.77	2.76
120 percent AFR	3.06	3.04	3.03	3.02
		Long-term		
AFR	2.89	2.87	2.86	2.85
110 percent AFR	3.18	3.16	3.15	3.14
120 percent AFR	3.47	3.44	3.43	3.42

Rev. Rul. 2019-8, I.R.B. 2019-14.

TAX SCAMS. The IRS is warning taxpayers and practitioners to steer clear of three abusive tax avoidance schemes and the unscrupulous individuals who promote them. The schemes discussed here include use of trusts, micro-captive insurance tax shelters and syndicated conservation easements. Taxpayers are reminded that those who participate in illegal schemes may face prosecution, imprisonment, civil litigation and ultimately having to pay all taxes owed along with stiff penalties and interest. *Abusive tax evasion schemes involving trusts*. Abusive trust arrangements often use multiple layers of trusts as well as offshore shell corporations and entities that are disregarded for U.S. tax purposes to attempt to hide the true ownership of assets and income or to disguise the substance of transactions. Although these schemes give the appearance of separating responsibility and control from the benefits of ownership, such as through the use of purported mortgages or rental agreements, false invoices, fees for services never performed, purchase and sale agreements and distributions, the taxpayer in fact continues to control the structures and directs any benefits received from them. Taxpayers should be aware that abusive tax evasion arrangements involving trusts will not produce the tax benefits advertised by their promoters. U.S. taxpayers engaged in transactions with foreign trusts may be subject to significant information reporting penalties for failure to file Forms 3520/3520A. Form 14242, *Report Suspected Abusive Tax Promotions or Preparers*, contains a questionnaire that should be used to record informant contacts and to facilitate referrals to the Internal Revenue Service Abusive Schemes Lead Development Center. *Abusive micro-captive insurance tax shelters*. The IRS has devoted substantial resources with more than 500 docketed cases in Tax Court and is conducting numerous income tax examinations of the participants in these arrangements, as well as promoter investigations. Tax law generally allows businesses to create "captive" insurance companies to insure against risks. The insured business claims deductions for premiums paid for insurance policies. Those amounts are paid, either as insurance premiums or reinsurance premiums, to a "captive" insurance company owned by the insured or related parties, and are used to fund losses incurred by the insured business. Traditional captive insurance typically allows a taxpayer to reduce the total cost of insurance and loss events. Insurers that qualify as small insurance companies can elect to be treated as exempt organizations or to exclude limited amounts of annual net premiums from income so that the captive insurer pays tax only on its investment income. In certain "micro-captive" structures, promoters, accountants or wealth planners persuade owners of closely-held entities to participate in schemes that lack many of the attributes of insurance. In 2017, the U.S. Tax Court disallowed the "wholly unreasonable" premium deductions the taxpayer had claimed under an I.R.C. § 831(b) micro-captive arrangement, concluding that the arrangement was not "insurance" under long established law. See *Avrahami v. Comm'r, 149 T.C. No. 7 (2017)*. In 2018, the Tax Court concluded that the transactions in a second micro-captive arrangement were not "insurance." See *Reserve Mechanical Corp. v. Comm'r, T.C. Memo. 2018-86*. *Notice 2016-66, I.R.B. 2016-47, 745* established reporting requirements for those entering into such transactions on or after Nov. 2, 2006, and created disclosure and list maintenance obligations for material advisors. Taxpayers who fail to report these arrangements may be subjected to significant penalties. *Syndicated conservation easements*. Generally, a charitable contribution deduction is not allowed for a charitable gift of property consisting of less than the donor's entire interest in that property. However, the law provides an exception for a "qualified conservation contribution" that meets certain criteria, including exclusive use for conservation purposes. If taxpayers meet the criteria in the tax code and regulations, they may claim charitable contribution deductions for the fair market value of conservation easements they donate to certain organizations. Some promoters are syndicating conservation easement transactions that purport to give investors the opportunity to obtain charitable contribution deductions and corresponding tax savings that significantly exceed the amount an investor invested. Typically, promoters of these schemes identify a pass-through entity that owns real property or form a pass-through entity to acquire real property. The promoters syndicate ownership interests in the pass-through entity or tiered entities that own the real property, suggesting to prospective investors that they may be entitled to a share of a charitable contribution deduction that greatly exceeds the amount of an investor's investment. The promoters obtain an inflated appraisal of the conservation easement based on unreasonable factual assumptions and conclusions about the development potential of the real property. In *Notice 2017-10, I.R.B. 2017-4, 542*, the IRS advises that certain of these transactions are tax avoidance transactions and identifies them and similar transactions as "Listed Transactions." The notice applies to transactions in which the promotional materials suggest to prospective investors that they may be entitled to a share of a charitable contribution deduction that equals or exceeds two and a half times the amount invested. Individuals entering into these and substantially similar transactions must disclose them to the IRS. In addition, material advisors in those transactions may have disclosure and list maintenance obligations. **IR-2019-47**.

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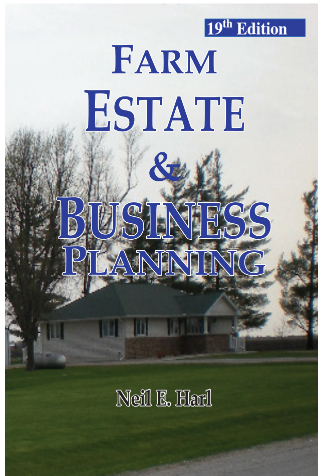

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