45.8 billion in net sales in 2017.[2] The contemplated merger translates into fewer firms engaged in grain handling and less competition in buying grain. It is likely that the Department of Justice, Antitrust Division, will scrutinize the proposed merger but only rarely has that resulted in action to halt a proposed merger. Halting of mergers has been at a low ebb in recent years, as is widely known.

My position has been that the federal agencies monitoring concentration have been less than aggressive since the change of leadership in Washington in 1980, particularly in mergers. The Obama Administration early in that administration took the initiative to launch an effort to limit mergers (and other efforts to limit competition) but it ran into resistance and dropped the fairly aggressive effort to intervene in instances where competition was threatened.

The evils of high levels of concentration are well known. Healthy competition in the long run continues to be the most important feature of any economic system. It is difficult to see how anyone who is interested in enhancing competition (or even maintaining competition) could be complacent about the proposed merger.

ENDNOTES

[1] 15 U.S.C. §§ 1 and 2.

[2] See Todd Neeley, DTN Staff Reporter, "Weighing Possible Huge Mergers," February 21,2018.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

CONTRACTS

PROMISSORY ESTOPPEL. The plaintiff had leased farmland from the defendant over several years. The plaintiff claimed that the defendant had promised that the plaintiff would have a first option to purchase the farmland but had sold the property to a third party without offering the property first to the plaintiff. The plaintiff sued for breach of contract and "equitable claims." The leases contained specific language allocating various farming expenses to the landlord defendant and to the tenant plaintiff but no language as to the plaintiff's alleged right of first option to purchase the property. In the trial court, the jury verdict was for the plaintiff on the breach of contract action but the trial court overruled the jury and dismissed the breach of contract claim for lack of substantial evidence. That ruling was upheld on appeal, with the appellate court holding that there was insufficient evidence of any agreement between the parties to grant the plaintiff a right of first refusal to purchase the farm. *See Kunde v. Bowman, 888 N.W.2d 680 (Iowa Ct. App. 2016)*. The plaintiff sought a further appeal as to the equitable claims, arguing that there remained issues of fact on the claims not determined in the original jury trial. As to the equitable claims, the plaintiff argued that the equitable doctrines of *quantum meruit* and unjust enrichment entitled the plaintiff to recover the costs of improvements made to the farm in reliance on the right of first refusal. The appellate court ruled that such equitable claims could only be brought if there were no express agreements between the parties as to the improvements. Because the lease had specific provisions governing the allocation of improvement costs, the court held that neither equitable claim could be brought in this case. The final equitable claim was based on promissory estoppel. The court examined the history of the promissory estoppel doctrine in Iowa and noted that the Iowa Supreme Court had originally established the elements of a claim of promissory estoppel as (1) a clear and definite oral agreement; (2) the plaintiff acted to the plaintiff's detriment solely in reliance on said agreement; and (3) a weighing of all the equities entitles plaintiff to the equitable relief of estoppel. *See Miller v. Lawlor, 66 N.W.2d 267 (Iowa 1954)*. However, a later case changed the elements to "(1) a clear and definite promise; (2) the promise was made with the promisor's clear understanding that the promisee was seeking an assurance upon which the promisee could rely and without which he would not act; (3) the promisee acted to his substantial detriment in reasonable reliance on the promise; and (4) the injustice can be avoided only be enforcement of the promise." *See Schoff v. Combined Ins. Co. of America, 604 N.W.2d 43 (Iowa 1999)*. The appellate court noted that subsequent Iowa cases were inconsistent in using the three-part test of *Miller* and the four-part test of *Scholl*. The appellate court ruled that the four-part test was the controlling authority. The appellate court remanded the case on the promissory estoppel claim because the trial court did not make findings as to whether a clear and definite promise had been made and whether the plaintiff reasonably relied on the promise to the plaintiff's detriment. *Kunde v. Estate of Bowman, 2018 Iowa App. LEXIS 190 (Iowa Ct. App. 2018)*.

FEDERAL ESTATE AND GIFT TAXATION

PROPERTY ACQUIRED PRIOR TO 1990. The taxpayers were a father and mother and their six children. The taxpayers collectively purchased real property prior to 1990. The parents each acquired a life estate in the use and income from the property and the children each received a remainder interest in the property. Each taxpayer contributed separate funds for the purchase equal to the actuarial value of their interest in the property. At a date not identified in the ruling, a portion of the real property was sold and the proceeds transferred to an irrevocable trust, with the parents receiving a life estate interest in the trust income and the children receiving remainder interests, all similar to the interests held in the property before the sale. The parents proposed to transfer a portion of their life estate interests to the children such that the children will hold interests as tenants in common in a portion of the property. The IRS ruled that the remaining property acquired prior to 1990 was not affected by the changes made to I.R.C. §§ 2701-2704 in 1990. The IRS also ruled that the transfers of the life estates to the remainder holders in trust would be treated as gifts to the extent the life estate holders received less than full consideration for the property. The gifts would be valued by using the actuarial value of the individual life estate interests determined by applying the I.R.C. § 7520 rate in effect for the month in which the conveyances take place. The IRS also ruled that the transferred life estates would not be included in the parents' estates for federal estate tax purposes. **Ltr. Rul. 201808001, Nov. 16, 2017; Ltr. Rul. 201808002, Nov. 16, 2017; Ltr. Rul. 201808003, Nov. 16, 2017**.

FEDERAL FARM PROGRAMS

No items.

FEDERAL INCOME TAXATION

ALIMONY. The taxpayer was divorced and the divorce decree required the taxpayer to make regular maintenance payments to the ex-spouse based on the taxpayer's income and the decree provided that these payments were taxable to the ex-spouse and deductible alimony for the taxpayer. The decree also provided for the sale of the marital residence, with the taxpayer liable for all mortgage payments and costs of sale, and equal division of the proceeds of the sale. The taxpayer argued that the post-divorce costs of sale and repairs should have been deducted from the proceeds of the sale before dividing the proceeds; however, the local court held that the gross proceeds of the sale were to be divided and not reduced by any costs or other payments made by the taxpayer. The taxpayer claimed the maintenance payments as deductible alimony and also included one-half of the post-divorce residence costs as deductible alimony. I.R.C. § 71(b)(1) lists four criteria for a payment to qualify as alimony. The requirement at issue here was under I.R.C. § 71(b)(1)(D) that the payor has no obligation to make the payment after the death of the payee. The court found that the divorce decree was silent on this issue and the court looked to Illinois law to determine whether the payment of the residential equity survived the death of the ex-spouse. The court found that, under 750 ILCS 5/510(c), the liability for periodic maintenance payments expires on the death of the ex-spouse and that property settlement payments do not expire at the ex-spouse's death. Thus, the court court held that, because the equity split payment was a one-time lump sum property settlement payment, the payment did not qualify as a deductible alimony payment. **Hexum v. Comm'r, 2018-1 U.S. Tax Cas. (CCH) ¶ 50,168 (7th Cir. 2018),** ***aff'g unrep. T.C. case***.

BAD DEBTS. The taxpayer and friend had participated in scuba diving as young adults. The friend continued the activity after moving to Belize and wanted to start a scuba diving business. The taxpayer agreed to provide money to help start the business in exchange for a 50 percent interest in the business. Although the taxpayer characterized the money as a loan, no written loan agreement was executed and no interest or repayment terms were set. After the death of the friend, the friend's widow decided to continue the business but continued to require additional funds from the taxpayer. Again, the advances of funds were not accompanied by any written loan agreements. After 17 years of contributions to the business, the taxpayer stopped the advances after more than $11 million had been contributed. As part of a tax planning scheme by the taxpayer's tax advisors, they drew up retroactive loan agreements and recommended that the taxpayer sell a portion of the taxpayer's "loans" to the widow for one dollar, thus creating capital losses which would offset capital gains realized by the taxpayer from other activities. The IRS recharacterized the "loans" as capital contributions and disallowed the losses. The court looked to the 11 factors identified by the court in *A.R. Lantz Co. v. United States, 424 F.2d 1330 (9th Cir. 1970)* for determining whether the advances were debt or equity: the names given to the certificates evidencing the indebtedness; the presence or absence of a maturity date; the source of the payments; the right to enforce the payment of principal and interest; participation in management; a status equal to or inferior to that of regular corporate creditors; the intent of the parties; "thin" or adequate capitalization; identity of interest between creditor and stockholder; payment of interest only out of "dividend" money; and the ability of the corporation to obtain loans from outside lending institutions. Note: This case is appealable to the Ninth Circuit Court of Appeals. The court held that the advances were equity because (1) there was no contemporaneous documentation characterizing the advances as loans; (2) there was no fixed repayment date; (3) the taxpayer expected repayment from profits after the business became profitable; (4) the taxpayer never asked for nor did the taxpayer receive any repayment; (5) the taxpayer never obtained any seniority status as to other lenders; (6) the business obtained loans from unrelated parties and did execute loan agreements with interest and repayment terms; and (7) the taxpayer continued to advance funds for operating expenses even when the business was insolvent. The court held that, at the time the funds were advanced to the business, the taxpayer intended the amounts to be capital contributions to the business and not *bona fide* loans; therefore, the advances were not deductible as business bad debts. **Burke v. Comm'r, T.C. Memo. 2018-18**.

CAPITAL GAINS. The taxpayer was a partnership formed for the purpose of purchasing unimproved land for development as residential and commercial lots. In 1988, the taxpayer purchased 883 acres of land formerly used as an oil field. The property was split by three easements into three parcels. The taxpayer removed the oil production equipment and facilities and performed environmental cleanup of the land. Before the taxpayer began the sale of individual lots, the economic recession of 2007-2008 prevented any sales of the lots and the taxpayer members agreed to hold the land as an investment until the economic conditions improved. In 2011, an unrelated party agreed to purchase the three parcels in two transactions. The sales agreements transferred title in fee to the purchaser but granted the taxpayer a small percentage of any sales of lots. The taxpayer claimed the gain from the sales as capital gain but the IRS, in an administrative adjustment, recharacterized the income as ordinary gain. I.R.C. § 1221(a)(1) provides that a capital asset is "property held by the taxpayer (whether or not connected with his trade or business)" but excludes, among other things, "inventory" and "property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business." The court stated that the three principal questions to be considered in deciding whether gain is capital in character are: (1) was taxpayer engaged in a trade or business, and, if so, what business; (2) was taxpayer holding the property primarily for sale in that business; and (3) were the sales contemplated by taxpayer ordinary in the course of that business?" The court also stated that additional factors were relevant to the issue, including the frequency of similar sales, the length of time the property was held by the taxpayer, any advertising done to sell the property, the original intent for the purchase of the property, and the extent of any improvements. The court found that, although the taxpayer originally intended the property to be sold as part of its business to develop unimproved land for sale of lots, that intention changed when the real estate market collapsed during the economic recession in 2008. After that time, no sales were made, no further improvements were made, no advertising was used and the property was sold in large parcels and not as lots. Therefore, the court held that the three parcels were not sold in the course of the taxpayer's business and the proceeds were capital gains from holding the property only for investment. **Sugar Land Ranch Development, LLC v. Comm'r, T.C. Memo. 2018-21**.

The taxpayer was an LLC taxed as a partnership which owned a hotel and restaurant operated by an unrelated management company. The taxpayer entered into an agreement to sell the hotel and restaurant to a third party, under which the buyer paid a nonrefundable deposit of about one-fourth of the selling price. The buyer defaulted on the agreement two years later and the taxpayer retained the deposit. The taxpayer claimed the deposit as capital gains income but the IRS recharacterized the deposit as ordinary income. The taxpayer and IRS agreed that the proceeds of a sale of the hotel would have been taxable as long-term capital gains. However, I.R.C. § Section 1234A provides: "Gain or loss attributable to the cancellation, lapse, expiration, or other termination of … a right or obligation … with respect to property which is (or on acquisition would be) a capital asset in the hands of the taxpayer … shall be treated as gain or loss from the sale of a capital asset. The court stated that I.R.C. § 1234A applies only to property that is appropriately classified as a "capital asset" in the taxpayer's hands during the tax year that the deposit was retained by the taxpayer. I.R.C. § 1221(a)(2) states that "[f]or purposes of this subtitle, the term 'capital asset' means property held by the taxpayer (whether or not connected with his trade or business), but does not include … property, used in his trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or real property used in his trade or business." The court held that, because the hotel and restaurant was used in the taxpayer's business, the property was subject to the I.R.C. § 1221(a)(2) exclusion. The taxpayer argued that the plain reading of the statutes produced an absurd result and argued that the court should interpret the statutes to characterize the retained deposit as if the sale had occurred. The court rejected this argument as contrary to the clear language of the statutes. **Cri-Leslie, LLC v. Comm'r, 2018-1 U.S. Tax Cas. (CCH) ¶ 50,160 (11th Cir. 2018), *aff'g* 147 T.C. 217 (2016)**.

HEALTH INSURANCE. The IRS has issued proposed regulations changing the definition of "short-term, limited-duration insurance" under the Affordable Care Act to increase the duration limit from less than three months to less than 12 months. **83 Fed. Reg. 7437 (Feb. 21, 2018)**.

HOBBY LOSSES. The U.S. Supreme Court has denied *certiroari* in the following case. The taxpayer was engaged in the training, showing and breeding of dressage horses. In the six tax years involved, the taxpayer had only $588 in income and over $154,000 in expenses. The taxpayer's activities with the horses in these years was minimal but the court found that the taxpayer maintained a "going concern." However, the court held that the losses from the horse activities were not deductible because the taxpayer did not operate the activity with the intent to make a profit. The ruling was based on these factors: (1) the taxpayer spent very little time on the activity during the years involved; (2) the taxpayer had insufficient assets in the horse activity to expect any appreciation sufficient to cover the losses; (3) the taxpayer did not have other successful similar businesses, including past horse activities; (4) the taxpayer had substantial losses during the years involved; (5) the taxpayer had no years of profit; (6) the losses offset income from other activities; and (7) the taxpayer received personal pleasure from riding horses. The court discussed one of the main factors in many hobby loss cases, the carrying on of the activity in a businesslike manner, which includes recordkeeping, modifying the activity to make it more profitable, advertising and other usual business supporting activities. The court found this factor neutral in this case because the IRS failed to provide any evidence of these matters. The appellate court affirmed in a decision designated as not for publication. **McMillan v. Comm'r, 2017-1 U.S. Tax Cas. (CCH) ¶ 50,234 (9th Cir. 2017), *aff'g*, T.C. Memo. 2015-109**.

INCOME FROM TRIBAL LANDS. The taxpayer was a Native American and an enrolled member of the Seneca Nation. The taxpayer obtained permission from the Nation to mine and sell gravel from tribal lands. The taxpayer excluded the income from the sale of gravel from taxable income, arguing the Indian General Allotment Act of 1887, ch 119, created an income tax exemption for the sale of gravel mined from tribal lands. During the case, the taxpayer also claimed the exemption under the Canandaigua Treaty, 7 Stat. 44 (1794) and the Treaty with the

Seneca, 7 Stat. 586 (1842) (the 1842 Act). The court held first that the General Allotment Act of 1887 did provide exemptions but specifically excluded the Seneca Nation from its provisions; therefore, the gravel income was not exempt from taxation under that Act. In addition, the court found that the Allotment Act exemption from tax applied only to land allotted to an individual tribal member. Because the gravel was mined from tribal lands by the taxpayer, the income from the sale of that gravel was not covered by the exemption in the Allotment Act. Second, the court held that the Canandaigua Treaty did not create any rights as to individual members of the Seneca Nation but applied only to the lands held by the Nation as an entity. In addition, the court found that the treaty only prevented the United States government from taking or "disturbing" the land belonging to the Nation. The court held that the provision did not grant any tax exemption from the sale of tribal property. The 1842 Act provided: ". . . to protect such of the lands of the Seneca Indians, within the State of New York, as may from time to time remain in their possession from all taxes, and assessment for roads, highways, or any other purpose until such lands shall be sold and conveyed by the said Indians, and the possession thereof shall have been relinquished by them." The taxpayer argued that this provision provided a tax exemption for income from tribal lands; however, the court interpreted the 1842 Act to provide an exemption only from taxes on tribal land and not any income derived from that land. The court noted that the income tax liability arises once the gravel is removed from the land and sold separately from the land. **Perkins v. Comm'r, 150 T.C. No. 6 (2018)**.

IRA. The taxpayer received a distribution from an IRA annuity which was maintained by an insurance company. The taxpayer failed to rollover the distribution to another IRA within the 60-day period prescribed by I.R.C. § 408(d)(3)(A). The taxpayer asserted that the failure to accomplish a rollover was due to the failure of the taxpayer's financial advisor to invest the distribution in another IRA account and a medical condition that impaired the taxpayer's cognitive function and ability to understand financial statements. The investment advisor invested the distribution in various bonds, mutual funds and certificates of deposit which the taxpayer believed were held by the IRA account. The taxpayer first became aware of the failed rollover in when the taxpayer received a Notice of Deficiency from the IRS. *Rev. Proc. 2003-16, 2003-1 C.B. 359*, provides that the IRS will issue a ruling waiving the 60-day rollover requirement in cases where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster or other events beyond the reasonable control of the taxpayer. In determining whether to grant a waiver of the 60-day rollover requirement pursuant to I.R.C. § 408(d)(3)(I), the IRS will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred. The IRS granted the taxpayer a waiver of the 60-day rollover period. **Ltr. Rul. 201807010, Nov. 22, 2017**.

MORTGAGE INTEREST. The IRS has published information on the newly-enacted restrictions on home mortgages. The Tax Cuts and Jobs Act of 2017 suspends from 2018 until 2026 the deduction for interest paid on home equity loans and lines of credit, unless they are used to buy, build or substantially improve the taxpayer's home that secures the loan. Under the new law, for example, interest on a home equity loan used to build an addition to an existing home is typically deductible, while interest on the same loan used to pay personal living expenses, such as credit card debts, is not. As under prior law, the loan must be secured by the taxpayer's main home or second home (known as a qualified residence), not exceed the cost of the home and meet other requirements. *New dollar limit on total qualified residence loan balance*. For anyone considering taking out a mortgage, the new law imposes a lower dollar limit on mortgages qualifying for the home mortgage interest deduction. Beginning in 2018, taxpayers may only deduct interest on $750,000 of qualified residence loans. The limit is $375,000 for a married taxpayer filing a separate return. These are down from the prior limits of $1 million, or $500,000 for a married taxpayer filing a separate return. The limits apply to the combined amount of loans used to buy, build or substantially improve the taxpayer's main home and second home. The following examples illustrate these points. *Example 1*: In January 2018, a taxpayer takes out a $500,000 mortgage to purchase a main home with a fair market value of $800,000. In February 2018, the taxpayer takes out a $250,000 home equity loan to put an addition on the main home. Both loans are secured by the main home and the total does not exceed the cost of the home. Because the total amount of both loans does not exceed $750,000, all of the interest paid on the loans is deductible. However, if the taxpayer used the home equity loan proceeds for personal expenses, such as paying off student loans and credit cards, then the interest on the home equity loan would not be deductible. *Example 2*: In January 2018, a taxpayer takes out a $500,000 mortgage to purchase a main home. The loan is secured by the main home. In February 2018, the taxpayer takes out a $250,000 loan to purchase a vacation home. The loan is secured by the vacation home. Because the total amount of both mortgages does not exceed $750,000, all of the interest paid on both mortgages is deductible. However, if the taxpayer took out a $250,000 home equity loan on the main home to purchase the vacation home, then the interest on the home equity loan would not be deductible. *Example 3*: In January 2018, a taxpayer takes out a $500,000 mortgage to purchase a main home. The loan is secured by the main home. In February 2018, the taxpayer takes out a $500,000 loan to purchase a vacation home. The loan is secured by the vacation home. Because the total amount of both mortgages exceeds $750,000, not all of the interest paid on the mortgages is deductible. A percentage of the total interest paid is deductible (see Publication 936). **IR-2018-32**.

PARTNERSHIPS.

CAPITAL GAINS. The IRS has announced that it intends to issue regulations providing guidance on the application of I.R.C. § 1061 enacted by the Tax Cut and Jobs Act, Public Law

115-97. I.R.C. § 1061(a) provides in general that if one or more applicable partnership interests are held by a taxpayer at any time during the taxable year, the excess (if any) of (1) the taxpayer's net long-term capital gain with respect to such interests for such taxable year, over (2) the taxpayer's net long-term capital gain with respect to such interests for such taxable year computed by applying paragraphs (3) and (4) of I.R.C. § 1222 by substituting "3 years" for "1 year," shall be treated as short-term capital gain, notwithstanding I.R.C. § 83 or any election in effect under I.R.C. § 83(b). Carried interests are ownership interests in a partnership that share in the partnership's net profits. Carried interests often are issued to investment managers in connection with the investment manager's services. These interests often result in the holder receiving capital gains which are taxed at a lower rate, rather than ordinary income. I.R.C. § 1061(c)(1) generally defines the term "applicable partnership interest" as meaning any interest in a partnership which, directly or indirectly, is transferred to (or is held by) the taxpayer in connection with the performance of substantial services by the taxpayer, or any other related person, in any applicable trade or business. I.R.C. § 1061(c)(4)(A) provides that the term "applicable partnership interest" shall not include any interest in a partnership directly or indirectly held by a corporation. I.R.C. § 1361(a)(1) provides in general that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under I.R.C. § 1362(a) is in effect for such year. I.R.C. § 1361(a)(2) provides in general that the term "C corporation" means, with respect to any taxable year, a corporation which is not an S corporation for such year. I.R.C. § 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation and which does not -- (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in I.R.C. § 1361(c)(2), or an organization described in I.R.C. § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock. The announcement states that the IRS intends that the proposed regulations will provide that the term "corporation" for purposes of I.R.C. § 1061(c)(4)(A) does not include an S corporation. **Notice 2018-18, I.R.B. 2018-12**.

PROPERTY

CONVEYANCES. The plaintiff was the nephew of the decedent and sued the niece of the decedent to recover an 80-acre farm which the niece inherited from the decedent. The plaintiff alleged that the decedent had conveyed the property to the plaintiff by written documents in 2001 in exchange for the plaintiff's working on the farm while the decedent was disabled. The plaintiff claimed that the defendant had agreed to the conveyance but the defendant denied any such agreement. The evidence also showed that, in 2010, the decedent had conveyed the same 80 acres to the decedent for life with the remainder to pass to the niece. In 2002 the decedent executed the last will which devised the 80 acres to the niece. The trial court dismissed the action to enforce the 2001 conveyance because the written document was not a recordable document since it did not include a legal description of the property or any terms of consideration. The evidence also showed that, although the plaintiff claimed that the conveyance took immediate effect, the plaintiff made no claim to the property during the decedent's life. The court stated that, for a writing transferring an interest in land to comport with the statute of frauds, Mich. Cod. L. § 566.106, it must be certain and definite with regard to the parties, property, consideration, premises, and time of performance and the writing must be signed by the parties to be charged. The appellate court affirmed the trial court's ruling, holding that the plaintiff's document was not "certain and definite" as to the property description, the consideration involved, or the time of performance. The appellate also found that the description in the conveyance also fit for other property owned by the decedent and was clearly ambiguous. The plaintiff also argued that, although the document of conveyance did not strictly comply with the statute of frauds, the document was clear evidence of the decedent's intent to convey the property. The appellate court disagreed, noting that the decedent had made two subsequent conveyances of the property as if the property belonged to the decedent: first, in 2002 when the decedent executed the will and second, in 2010 when the decedent conveyed the property to the decedent for life. **Leavine v. Gembarski, 2018 Mich. App. LEXIS 331 (Mich. Ct. App. 2018)**.

ZONING

WIND TURBINES. The defendant county's zoning ordinances included several permitted uses for land in agriculturally-zoned districts. One of the enumerated permitted uses was "Electrical and natural gas transmission and regulating facilities." A local farmer owned land in an agricultural district and had granted easements to a company to build and operate electricity-generating wind turbines on the property. The defendant's zoning administrator ruled that the wind turbines were electrical transmission and regulating facilities and no permit to build and operate wind turbines was required. Neighbors of the land involved sued to overturn the defendant's ruling, arguing that the wind turbines were not a permitted use. The trial court reversed the defendant's ruling and held that the wind turbines were not a permitted use. On appeal, the appellate court affirmed. The appellate court looked at the dictionary definition of the words "electrical transmission and regulating facilities" and found that the defendant failed to provide evidence that the wind turbines transmitted and regulated electricity, only that they generated it. Thus, the appellate court held that there was insufficient evidence to support the defendant's ruling that the wind turbines met the permitted use in the zoning ordinance. **Woods v. Fayette Cty. Zoning Bd. of Adjustment, 2018 Iowa App. LEXIS 184 (Iowa 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 IRS has now reprogrammed its processing systems to handle the three benefits most likely to be claimed on returns filed early in the tax season. As a result, taxpayers can now file returns claiming: (1) the exclusion from gross income of discharge of qualified principal residence indebtedness (often, foreclosure-related debt forgiveness), claimed on Form 982; (2) mortgage insurance premiums treated as qualified residence interest, generally claimed by low- and middle-income filers on Schedule A; and (3) the deduction for qualified tuition and related expenses claimed on Form 8917. The IRS is working closely with tax professionals and the tax-preparation industry to ensure that their available software processes can now accommodate these new provisions. The IRS is continuing to update its systems to handle returns claiming the other tax benefits extended by the new law, enacted on Feb. 9. In general, these benefits affect a smaller number of taxpayers. Taxpayers eligible for these benefits can avoid delays or possibly needing to file an amended return later, by filing after IRS systems have been updated to reflect these changes. Check IRS.gov/Extenders for future updates. Taxpayers who have already filed their 2017 federal tax return and now wish to claim one of these renewed tax benefits can do so by filing an amended return on Form 1040X. Amended returns cannot be filed electronically and can take up to 16 weeks to process. **IR-2018-33**.

TAX SCAMS. The IRS has issued a warning to taxpayers of a new twist on an old scam. Criminals are depositing fraudulent tax refunds into individuals' actual bank accounts, then attempting to reclaim the refund from the taxpayers. The thief hacks tax preparers' computers to steal taxpayer data; uses the stolen information to file tax returns as the taxpayers; has refunds deposited into taxpayers' bank accounts; and contacts their victims, telling them the money was mistakenly deposited into their accounts and asking them to return it. While the IRS is aware of variations of this scam, the agency also knows that this scam may continue to evolve. Here are two current versions of this scam:

• Criminals pose as debt collection agency officials acting on behalf of the IRS. The thief contacts the taxpayer to report an erroneous refund deposit and request that the taxpayer forward the money to the thief's collection agency.

• The taxpayer who received the erroneous refund gets an automated call with a recorded voice saying the caller is from the IRS. The recording threatens the taxpayer with criminal fraud charges, an arrest warrant and a "blacklisting" of his or her Social Security number. The recorded voice gives the taxpayer a phony case number and telephone number to call to return the refund.

If someone contacts a taxpayer about an erroneous refund, the taxpayers should remember

• There are established procedures taxpayers should follow to return erroneous funds to the IRS. Tax Topic Number 161 - *Returning an Erroneous Refund* has full details about how to return the money, including the actual mailing addresses where a taxpayer should send a paper check, if necessary. By law, interest may accrue on erroneous refunds.

• The IRS encourages taxpayers to discuss the issue with their financial institutions because there may be a need to close bank accounts.

• Taxpayers receiving erroneous refunds also should contact their tax preparers immediately. See also *Taxpayer Guide to Identity Theft* online at https://www.irs.gov/newsroom/taxpayer-guide-to-identity-theft. **IRS Tax Tip 2018-32**.

WITHHOLDING TAXES. The IRS has published an updated Withholding Calculator on IRS.gov and a new version of Form W-4 to help taxpayers check their 2018 tax withholding following passage of the Tax Cuts and Jobs Act in December. The Tax Cuts and Jobs Act made changes to the tax law, including increasing the standard deduction, removing personal exemptions, increasing the child tax credit, limiting or discontinuing certain deductions and changing the tax rates and brackets. If changes to withholding should be made, the Withholding Calculator gives employees the information they need to fill out a new Form W-4, *Employee's Withholding Allowance Certificate* to be submitted W-4 to their employers. The withholding changes do not affect 2017 tax returns due this April. However, having a completed 2017 tax return can help taxpayers work with the Withholding Calculator to determine their proper withholding for 2018 and avoid issues when they file next year. The IRS encourages employees to use the Withholding Calculator to perform a quick "paycheck checkup." An employee checking their withholding can help protect against having too little tax withheld and facing an unexpected tax bill or penalty at tax time in 2019. It can also prevent employees from having too much tax withheld; with the average refund topping $2,800, some taxpayers might prefer to have less tax withheld up front and receive more in their paychecks. The Withholding Calculator can be used by taxpayers who want to update their withholding in response to the new law or who start a new job or have other changes in their personal circumstances in 2018. As a first step to reflect the tax law changes, the IRS released new withholding tables in January. These tables were designed to produce the correct amount of tax withholding -- avoiding under- and over-withholding of tax -- for those with simple tax situations, including singles and married couples with only one job, who have no dependents, and who have not claimed itemized deductions, adjustments to income or tax credits. People with more complicated financial situations might need to revise their W-4. With the new tax law changes, it is especially important for these people to use the Withholding Calculator on IRS.gov to make sure they have the right amount of withholding. Among the groups who should check their withholding are: two-income families; people with two or more jobs at the same time or who only work for part of the year; people with children who claim credits such as the Child Tax Credit; people who itemized deductions in 2017; and people with high incomes and more complex tax returns. Taxpayers with more complex situations might need to use Publication 505, *Tax Withholding and Estimated Tax*, expected to be available on IRS.gov in early spring, instead of the Withholding Calculator. This includes those who owe self-employment tax, the alternative minimum tax, or tax on unearned income from dependents, and people who have capital gains and dividends. Taxpayers should keep in mind that the Withholding Calculator results are only as accurate as the information entered. If a taxpayer's circumstances change during the year, the taxpayer should come back to the calculator to make sure the withholding is still correct. There is no need to complete the worksheets that accompany Form W-4 if the calculator is used. **IR-2018-36**.

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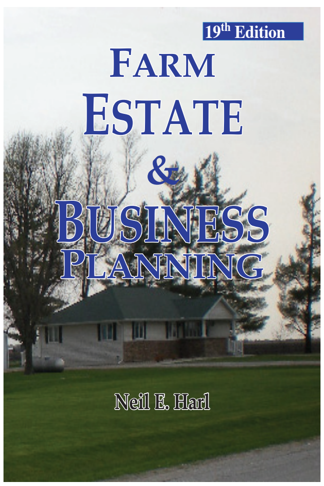

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