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

are received; and (3) the taxpayer would not be required to include in gross income for federal tax purposes, for the year in which a distribution from the decedent's IRA is made, any portion of the proceeds distributed from the decedent's IRA which is timely rolled over to one or more IRAs set up and maintained in the taxpayer's name. **Ltr. Rul. 201934006, May 30, 2019**.

SPECIAL USE VALUATION. Under I.R.C. § 2032A(e)(7)(A)(ii), rates on new Farm Credit System Bank loans are used in computing the special use value of real property used as a farm for which an election is made under I.R.C. § 2032A. The IRS has issued the 2019 list of average annual effective interest rates charged on new loans by the Farm Credit Bank system to be used in the four districts in computing the value of real property for special use valuation purposes for deaths in 2019:

District	2019 Interest Rate
AgFirst, FCB	5.27
AgriBank, FCB	4.68
CoBank, FCB	4.37
Texas, FCB	5.00

District	States
AgFirst	Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, West Virginia
AgriBank	Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Wisconsin, Wyoming
CoBank	Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Idaho, Kansas, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New Mexico, New York, Nevada, Oklahoma, Oregon, Rhode Island, Utah, Vermont, Washington
Texas	Alabama, Louisiana, Mississippi, Texas

Rev. Rul. 2019-18, I.R.B. 2019-35, 668.

VALUATION. The decedent's estate included 567,092 shares of stock in a corporation. On June 19, 2008 the estate filed its federal estate tax return and elected to use the value of the stock at the stock exchange's price on the alternate valuation date of six months after the death of the decedent. On September 13, 2013, the estate filed for a refund, alleging that the stock was worthless on the valuation date because a criminal fraud had been perpetrated against the corporation. That claim was dismissed and a second claim for refund was field based on the executor's medical impairment of financial ability for the five years after the decedent's death. I.R.C. § 6511(a) provides in pertinent part: "Claim for credit of refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later. . .." The court found that the refund claims were filed more than five years (first return) and more than four years (amended return) after the filing; thus, the refund claim was late and barred jurisdiction of the court over the case. The estate argued that, under I.R.C. § 6511(h), the limitations periods for filing refund claims was tolled by the financial disability of the executor. I.R.C. § 6511(h) provides " . . . an individual is financially disabled if such individual is unable to manage his financial affairs by reason of a medically determinable physical or mental impairment of the individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. . . ." The court held that I.R.C. § 6511(h) applies only to individuals and that an estate was not an individual. Thus, the court held that the estate's refund claim was not eligible for suspension under I.R.C. § 6511(h). Although these holdings were sufficient to dismiss the case, the court also looked at the issue of whether the stock could be valued based on information unknown to the estate or other shareholders. Treas. Reg. § 20.2031-2(b) provides "if there is a market for stocks or bonds, on a stock exchange, in an over-the-counter market, or otherwise, the mean between the highest and lowest quoted selling prices on the valuation date is the fair market value per share or bond." In this case, the court found that had the estate sold the stock upon the decedent's death or within six months thereafter, the estate would have received the market rate for the stock as of that date, and that was the appropriate valuation under the regulations. Thus, the court held that the sole method of valuing the exchange-traded stock was the stock price on either the date of death or the alternate valuation date. **Carter v. United States, 2019 U.S. Dist. LEXIS 134035 (N.D. Ala. 2019)**.

FEDERAL FARM PROGRAMS

FOOD FOR PROGRESS PROGRAM. The CCC has adopted a final regulations amending the regulations governing the Food for Progress Program to include colleges and universities among the entities eligible for awards under the program. The Agricultural Improvement Act of 2018 (the 2018 Farm Bill) added colleges and universities to the list of eligible entities in the Food for Progress Act of 1985. The Food for Progress Program provides for the donation of U.S. agricultural commodities to developing countries and emerging democracies committed to introducing and expanding free enterprise in the agricultural sector. The commodities are generally sold on the local market and the proceeds are used to support agricultural development activities. The program has two principal objectives: to improve agricultural productivity and to expand trade in agricultural products. See 7 U.S.C. § 1736o. The Foreign Agricultural Service implements the Food for Progress Program on behalf of CCC. See *7 CFR Part 1499*. **84 Fed. Reg. 45057 (Aug. 28, 2019)**.

FEDERAL INCOME TAXATION

BUSINESS EXPENSES. The taxpayer owned and operated

a tax return preparation business and obtained funds from five individuals to help expend the business. The taxpayer prepared nine purported promissory notes, which listed a "loan period" and also a "return on investment" percentage of 100% or more. Only one of the purported promissory notes was signed. The taxpayer hired return preparers throughout the country as independent contractors, with the taxpayer's company serving as a clearinghouse for processing returns and also providing training and support to the contractors. Each contractor developed and maintained his or her own client base and prepared returns for these clients. The taxpayer claimed deductions for re-payments to the investors and for commissions paid to the independent contractors. I.R.C. § 163(a) allows a deduction for interest paid or accrued within the taxable year on indebtedness. The court looked at seven factors to determine whether the taxpayer entered into a *bona fide* debtor-creditor relationship: (1) a debt instrument, (2) a statement that interest will be charged, (3) a fixed schedule for repayment, (4) collateral to secure payment, (5) actual repayment, (6) reasonable prospects of advancement and repayment of the funds, and (7) the parties' conducting themselves as if the transaction were a loan. The court held that the investment transactions did not represent *bona fide* loans because (1) all but one of the notes were unsigned; (2) no interest rate was listed; (3) the notes had no execution dates; and (4) as to the one signed note, the taxpayer failed to show that the funds came from the alleged creditor. The court noted that the taxpayer failed to provide any testimony from the alleged creditors that they intended the funds to be loans and treated them as loans. I.R.C. § 162(a) permits a deduction for the commissions if shown to be ordinary and necessary expenses in carrying on the taxpayer's business. The commissions needed to be proved by documentary evidence such as cancelled checks, payroll records or bank statements. The court found that the taxpayer credibly testified about the payment of the commissions, provided payroll reports and a list of Forms 1099-MISC for the payments to the contractors. However, the court found that the taxpayer's records were disorganized, inconsistent and incomplete and required the court to estimate the actual amount of the payments in the tax year involved. The court held that only the amount of payments consistently and accurately proved by the records would be allowed as deductible. The court reasoned that to allow any addition deduction would reward the taxpayer for "inexactitudes of his own making." **Moore v. Comm'r, T.C. Memo. 2019-100**.

DEPRECIATION. The IRS has issued a revenue procedure which provides guidance for making a late election, or to revoke an election, under I.R.C. § 168(k)(5), (7), or (10) for certain property acquired by the taxpayer after September 27, 2017, and placed in service or planted or grafted, as applicable, by the taxpayer during its taxable year that includes September 28, 2017. TCJA extended the placed-in-service date from before January 1, 2020, to before January 1, 2027 (from before January 1, 2021, to before January 1, 2028, for property described in § 168(k)(2)(B) or (C)); and the date on which a specified plant is planted or grafted by the taxpayer was extended from before January 1, 2020, to before January 1, 2027. Additionally, the TCJA repealed I.R.C. § 168(k)(4), relating to the election to accelerate alternative minimum tax credits in lieu of the additional first year depreciation deduction, for taxable years beginning after December 31, 2017. *Section 168(k)(5) Election*: I.R.C. § 168(k)(5) allows a taxpayer to elect to deduct additional first year depreciation for any specified plant, as defined in I.R.C. § 168(k)(5)(B), that is planted before January 1, 2027, or grafted before that date to a plant that has already been planted, by the taxpayer in the ordinary course of its farming business, as defined in I.R.C. § 263A(e)(4). If the taxpayer makes this election, the additional first year depreciation deduction is allowable for the specified plant for the taxable year in which that specified plant is planted or grafted, and that specified plant is not treated as qualified property under I.R.C. § 168(k) in the year the plant is placed in service. I.R.C. § 168(k)(5)(C) provides that once made, the I.R.C. § 168(k)(5) election may be revoked only with the consent of the Commissioner. Except for the date, the TCJA did not amend I.R.C. § 168(k)(5). *Rev. Proc. 2017-33, I.R.B. 2017-19. 1236* provides the procedures for making the I.R.C. § 168(k)(5) election. The I.R.C. § 168(k)(5) election must be made by the due date, including extensions, of the federal tax return for the taxable year in which the taxpayer plants or grafts the specified plant to which the election applies, and must be made in the manner prescribed on Form 4562, *Depreciation and Amortization*, and its instructions. The instructions to the Form 4562 for the 2016 and 2017 taxable years provide that the election is made by attaching a statement to the taxpayer's timely filed tax return indicating that the taxpayer is electing to apply I.R.C. § 168(k)(5) and identifying the specified plant(s) for which the taxpayer is making the election. *Section 168(k)(7) Election*: I.R.C. § 168(k)(7) allows a taxpayer to elect not to deduct additional first year depreciation for all qualified property that is in the same class of property and placed in service by the taxpayer in the same taxable year. I.R.C. § 168(k)(7) provides that once made, the election may be revoked only with the consent of the Commissioner. The TCJA did not amend I.R.C. § 168(k)(7). *Rev. Proc. 2017-33* provides that rules similar to the rules in Treas. Reg. § 1.168(k)-1(e)(3) apply for purposes of I.R.C. § 168(k)(7). Treas. Reg. § 1.168(k)-1(e)(3) provides the procedures for making the election not to deduct the additional first year depreciation deduction for all qualified property that is in the same class of property and placed in service by the taxpayer in the same taxable year. In accordance with Treas. Reg. § 1.168(k)-1(e)(3), the election must be made by the due date, including extensions, of the federal tax return for the taxable year in which the taxpayer places in service the qualified property, and must be made in the manner prescribed on Form 4562 and its instructions. The instructions to the Form 4562 for the 2016 and 2017 taxable years provide that the election 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. *Section 168(k)(10) Election*: The TCJA added I.R.C. § 168(k)(10) which allows a taxpayer to elect to deduct 50-percent, instead of 100-percent, additional first year depreciation for qualified property acquired after September 27, 2017, by the taxpayer and placed in service or planted or grafted,

as applicable, by the taxpayer during its taxable year that includes September 28, 2017. The new revenue procedure provides the procedures for making late elections, or revoking elections, under I.R.C. § 168(k)(5), (7), or (10) for property acquired by a taxpayer after September 27, 2017, and placed in service or planted or grafted, as applicable, by the taxpayer during its taxable year that includes September 28, 2017. The new revenue procedure also provides the procedures for a taxpayer to obtain automatic consent for a change in method of accounting to make these late elections or to revoke these elections. **Rev. Proc. 2019-33, I.R.B. 2019-34, 662**.

FAMILY AND MEDICAL LEAVES. The IRS has published information for employers who provide paid family and medical leave to their employees and might qualify for a credit that can reduce the taxes they owe, called the employer credit for family and medical leave. To be eligible, an employer must: (1) have a written policy that meets several requirements under *Notice 2018-71, I.R.B. 2018-41, 548 (See* 29 *Agric. L. Dig*. 150 (2018); and (2) provide at least two weeks of paid family and medical leave to full-time employees, a prorated amount of paid leave for part-time employees, and pay for leave that is at least 50 percent of the wages normally paid to employees. The credit is available for wages paid in taxable years beginning after Dec. 31, 2017, and before Jan. 1, 2020. The credit is generally equal to 12.5 to 25 percent of paid family and medical leave for qualifying employees. The percentage is based on how much employers pay each employee for family and medical leave. Qualifying leave is leave can be for any or all the reasons specified in the Family and Medical Leave Act: (1) birth of an employee's child; (2) care for the child; (3) placement of a child with the employee for adoption or foster care; (4) care for the employee's spouse, child, or parent who has a serious health condition; (5) serious health condition that makes the employee unable to perform the functions of their job; (5) any qualifying emergency due to an employee's spouse, child, or parent being on covered active duty in the Armed Forces, including the taxpayer being notified of an impending order to covered active duty; or (6) care for a service member who is the employee's spouse, child, parent, or next of kin. To claim the credit, employers will file two forms with their tax return: Form 8994, *Credit for Paid Family and Medical Leave*, and Form 3800, *General Business Credit*. **Tax Reform Tax Tip 2019-115**.

PARTNERSHIPS

INTEREST. The taxpayer's father was a partner in several partnerships which owned and operated rental real estate businesses. The partnerships borrowed money and distributed the proceeds to the partners and the father invested the funds in money market funds other investment assets. The father was not personally liable on the loans which were secured by the partnership assets. The father treated the father's share of the partnerships' interest expense as investment interest, reported on Schedule A. The father transferred 50 percent of the father's interests in the partnership and at the death of the father, the taxpayer inherited additional interests in the partnerships. As with the father, the taxpayer was not personally liable for the partnership loans. However, the taxpayer reported the taxpayer's share of the partnerships' interest expenses on Schedule E as interest paid on indebtedness allocated to the partnerships' assets and deductible against the taxpayer's share of the partnerships' income. For taxpayers other than corporations, personal interest is generally nondeductible. Nondeductible personal interest is defined in I.R.C. § 163(h)(2) to exclude "interest paid or incurred on indebtedness properly allocable to a trade or business" and "any interest which is taken into account under section 469 in computing income or loss from a passive activity." Under I.R.C. § 163(h)(2)(B), personal interest also excludes "any investment interest (within the meaning of subsection (d))." Although investment interest is deductible, it is deductible, under I.R.C. § 163(d), only to the extent of investment income. The court found, and the IRS agreed, that the partnerships did not incur the interest from property held for investment. Under *Notice 89-35, 1989-1 C.B. 675*, if a partnership uses debt proceeds to fund a distribution to partners i.e., to make debt-financed distributions each partner's use of the proceeds determines whether the interest passed through constitutes investment interest. However, the IRS argued that the taxpayer had to treat the interest as investment interest because that is how the father treated the interest. The court found no authority for this position. The court noted that the father used the debt-financed distribution to acquire investments; therefore, the interest expense was correctly allocated to investment interest. The taxpayer, however, did not receive any debt-financed distribution and did not make any investments with the partnership interests received by gift and inheritance. Under Temp. Treas. Reg. § 1.163-8T(c)(3)(ii), if a taxpayer "takes property subject to a debt, and no debt proceeds are disbursed to the taxpayer, the debt is treated for purposes of this section as if the taxpayer used an amount of the debt proceeds equal to the balance of the debt outstanding at such time to make an expenditure for such property." The court held that, under *Notice 89-35*, the taxpayer received a debt-financed acquisition and not a distribution; therefore, the interest passed through from the partnerships as interest paid on the partnership assets, properly reported on Schedule E and deductible from the taxpayer's share of partnership income. **Lipnick v. Comm'r, 153 T.C. No. 1 (2019)**.

PASSIVE ACTIVITY LOSSES. The taxpayers, husband and wife, purchased two contiguous residential rental properties which were adjacent to their own residence. The wife was employed full time and the husband was retired and performed most of the administrative and maintenance activities on the rental properties. In the tax year involved, the taxpayers reported a $27,488 loss. The IRS disallowed the loss deduction because neither taxpayer qualified as a real estate professional under I.R.C. § 469(c)(7)(B). To qualify as a real estate professional, a taxpayer generally must "perform more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates." For taxpayers filing a joint return, at least one spouse must independently satisfy the 750-hour requirement. Under Treas. Reg. § 1.469-9(e)(1), the "material participation" requirement applies separately to each interest in rental real estate unless the taxpayer has made an election to

treat all real estate activities as a single activity. The IRS conceded that the taxpayers had elected to combine the two properties into one activity. The court found that the taxpayer presented evidence of over 920 hours of participation in the rental activity but the evidence did not establish which taxpayer performed the activity on many days. The court found other problems with the recorded activities in that the record assigned each activity a minimum of one hour, including one hour for receiving a rent payment, one hour for issuing a receipt, and one hour for making a bank deposit. The court concluded that the taxpayers had inflated the amount of time for these and other activities in order to exceed the 750 hour requirement for the husband; therefore, the record of activities lacked credibility. After removing most of the inflated hours in the record, the court held that the taxpayers failed to prove more than 750 hours were spent on the activity by either taxpayer and the loss was properly disallowed by the IRS. **Hairston v. Comm'r, T.C. Memo. 2019-104**.

QUARTERLY INTEREST RATES. The IRS has announced that, for the period October 1, 2019 through December 31, 2019, the interest rate paid on tax overpayments remained at 5 percent (4 percent in the case of a corporation) and for underpayments remained at 5 percent. The interest rate for underpayments by large corporations remained at 7 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 remained at 2.5 percent. **Rev. Rul. 2019-21, I.R.B. 2019-38.**

REFUNDS. The taxpayer was a tax return preparer assessed penalties for understatement of tax due to willful or reckless conduct for 2010, 2011 and 2012. The taxpayer filed a suit for refund of the penalties and the IRS sought a motion to dismiss for lack of court jurisdiction. The IRS argued that jurisdiction was lacking until the taxpayer paid the penalties. Generally, full payment of penalties is required to file a refund suit for abatement of those penalties. However, I.R.C. § 6694(c)(1-2) provides a specific exception to the full-payment rule where: (1) "within 30 days after the day on which notice and demand of any penalty . . . is made against a person who is a tax return preparer, such person pays an amount which is not less than 15 percent of the amount of such penalty and files a claim for refund of the amount so paid," and (2) the refund suit is filed within 30 days of the earlier of either the denial of the claim or six months from the filing of the claim. The court found that the taxpayer did not file the claim with the IRS until more than four months after the tax penalty was assessed. The court also found that the refund suit was filed approximately one year after the filing of the claim; therefore, the court held that the taxpayer met neither of the statutory conditions for the exception to the full-payment rule. The taxpayer also argued that the U.S. Supreme Court in *Flora v. United States, 362 U.S. 145 (1960)*, acknowledged an additional exception where the penalties were divisible, such that, if one penalty was paid in full, a refund suit would be allowed for all the penalties. The court cited several cases for the conclusion that a penalty was divisible only where resolution of one penalty or tax issue would resolve the other penalties or tax issues. The court found that each penalty for 2010, 2011 and 2012 required a separate finding of willful or reckless conduct; therefore, any holding as to one penalty would not resolve the other penalties. The court held that it lacked jurisdiction to because the taxpayer had not paid the penalties in full. **Davis v. United States, 2019 U.S. Dist. LEXIS 136979 (D. Md. 2019)**.

PARTNERSHIPS

DEFINITION. The debtor leased farmland from the plaintiff and the granted a security interest to the plaintiff in the crops grown under the lease. The debtor attempted to purchase seed on credit but the seed seller refused to sell only to the debtor but agreed to sell to the debtor and son as a partnership. The seller filed a financing statement listing the partnership as the buyer. The debtor obtained several loans from a bank in the debtor's sole name and the bank perfected a security interest in the crop under the debtor's name. After the debtor filed for Chapter 11 bankruptcy, the creditors sought priority in the proceeds of the crop. The bank argued that the partnership was a fictitious entity and that its security interest listing the debtor only had priority over the security interests listing the partnership as debtor. The Bankruptcy Court agreed and granted summary judgment to the bank. On appeal, the appellate reversed, holding that several issues of fact were not properly decided by the Bankruptcy Court as to whether a partnership existed under Minnesota law. The appellate court found that Minnesota cases focus on the intent of the parties, and hold that a partnership may be created by an expressed or implied agreement of the parties. The consent and intention of the alleged partners are key and must be ascertained from all the evidence and all the circumstances of the case. The factors indicating a partnership include the sharing of profits and whether the parties jointly owned property, carried on business as principals and agents for each other, and combined their labor and skills for a common enterprise. Here, the court found that evidence that a partnership existed included invoices signed by both the debtor and his son, contracts made in the name of the partnership, the co-mingling of grain in storage bins, and the co-ownership of farming equipment. The court also found that the bank's evidence that no partnership existed included the lack of a partnership bank account, the lack of a partnership tax return, the lack of a profit-sharing agreement, lack of state recognition, and testimony about separate farming operations. Because the Bankruptcy Court failed to discuss and make factual findings for each of these contested factors, the grant of summary judgment was improper. ***In re* Solberg, 2019 Bankr. LEXIS 2557 (Bankr. 8th Cir. 2019)**.

ERRATA

FOREIGN ACCOUNTS. The following case citation from Page 124 in the last issue (Vol. 30 No. 16) was erroneously dropped. Shortened summary: The court here found that the taxpayer failed to fully inform the taxpayer's tax return preparer about the foreign accounts and made no effort to learn about reporting such accounts; thus, the court held that the taxpayer did not exercise ordinary business care and prudence and the FBAR penalties were properly assessed. **United States v. Ott, 2019 U.S. Dist. LEXIS 132013 (E.D. Mich. 2019)**.

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