THOMAS COLBERT, ROBERT COLBERT AND JUDITH COLBERT, WILLIAM HOLCK AND MARY JANE HOLCK, WARREN ANSCHUTZ AND SARAH ANSCHUTS (O) (2017)

Topic Code: C012 Capital Gain Deduction **Document Reference:** 17201015

Iowa Department of Inspections and Appeals
Administrative Hearings Division
Wallace State Office Building – Third Floor
Des Moines, IA 50319

In the Matter of	)	DIA No. 16IDR063-066
	)	
	)	Rev. Docket:
Thomas Colbert,	)	# 2010-200-1-0255
Robert Colbert and Judith Colbert,	)	# 2010-200-1-0256
William Holck and Mary Jane Holck,	)	# 2010-200-1-0257
Warren Anschutz and Sarah Anschutz,	)	# 2010-200-1-0300
	)	
v.	)	
	)	**PROPOSED ORDER**
Iowa Department of Revenue.	)	
	)	
INDIVIDUAL INCOME TAX	)	

Statement of the Case

The Iowa Department of Revenue issued individual income tax assessments against taxpayers Thomas Colbert, Robert and Judith Colbert, William and Mary Jane Holck, and Warren and Sarah Anschutz, disallowing capital gains deductions claimed by the taxpayers on their 2007 Iowa Individual Tax Returns and imposing additional income tax, penalty, and interest against the taxpayers. The taxpayers filed timely Protests to challenge the assessments. The Department filed Answers to each Protest on July 28, 2016, and collectively forwarded the following Protest files to this office:

Revenue Docket #	DIA Docket #	Taxpayer(s)
2010-200-1-0255	16IDR063	Thomas Colbert
2010-200-1-0256	16IDR064	Robert and Judith Colbert
2010-200-1-0257	16IDR065	William and Mary Jane Holck
2010-200-1-0300	16IDR066	Warren and Sarah Anschutz

The protests were consolidated into a single contested case proceeding on uncontested motion of the Department, as allowed by 701 Iowa Admin. Code (IAC) 7.17(14).

A contested case hearing for the protests was scheduled for December 12, 2016. The parties filed a joint motion on November 23, 2016, indicating that they had agreed to submit the case largely upon stipulated facts, with the possible addition of limited testimony on the date scheduled for hearing, and asking for a scheduling order allowing the submission of stipulated facts, briefs, and oral argument. The motion was granted.

A stipulation of fact and exhibits A – L were filed on December 8, 2016. The stipulation included an agreed upon statement of the issues presented. Hearing was held at the Wallace State Office Building on December 12, 2016. The Protestors were collectively represented by attorneys Roger McEowen and David Bibler. Assistant Attorney General Hristo Chaprazov represented the Department. Technical Tax Specialist Malia Kirkpatrick also appeared for the Department. The stipulation and exhibits were admitted into evidence and Terry Lockie testified. The taxpayers filed an initial brief on January 17, 2017. The Department's responsive brief was filed on February 9, 2017. The Department filed a statement regarding the scope of the case on February 21, 2017, conceding that under some circumstances a trust may claim a net capital gain deduction and acknowledging the taxpayers prevail on the first of three stipulated issues. Oral argument was on March 6, 2017, and the case was submitted.

Motion to Amend: On February 17, 2017, the taxpayers filed a Motion to Amend the Protest, seeking to add a claim for recovery of litigation expenses. In essence, the motion argued that a policy letter issued by the Department in October of 2016, but not made public until February 9, 2017, narrowed the scope of contested issues and greatly increased the taxpayers' likelihood of success. The Department filed a resistance, asserting that the motion to amend was untimely. A reply to the resistance was filed. Argument on the motion was held March 6, 2017, following argument on the merits of the protest. The parties were told that the motion would be denied.

The Motion to Amend was denied primarily because it was untimely. The rules governing practice and procedure before the Department of Revenue control this proceeding. 701 IAC ch. 7. The rules include the following provision allowing amendment of a protest: "The protester may amend the protest at any time prior to the commencement of the evidentiary hearing." 701 IAC 7.8(9). The taxpayers' motion is this case was filed more than two months after the December 12th evidentiary hearing on the merits of the protests and was untimely.

In addition, the taxpayers mischaracterize the October 2016 policy letter, which is cited as the basis for the motion. The position set forth in the letter does not represent a significant departure from past guidance from the Department on the question of whether a trust may qualify for the capital gains deduction. Nor is this letter the first time the agency has adopted the reasoning of *Carter Trust, ex rel. Fortson v. United States*, 256 F.Supp.2d 536 (N.D. Tex. 2003) with regard to material participation by a trust. *Compare* IDOR Policy Letter: Iowa Capital Gain Deduction – Material Participation of a Trust, Doc. Ref. No. 16201075 (10/28/2016), *with* IDOR Policy Letter: Iowa Capital Gain Deduction from Trust, Doc Ref. No. 07201015 (2/26/2007). The 2007 Policy Letter is available through the Tax Library on the Department of Revenue's website. The Department did not knowingly withhold authority from the taxpayers. Even if the rule controlling amendment of a protest allowed a late-filed amendment upon a showing of good cause, which it does not; I would deny the motion in this case.

Issues Presented

The parties stipulated to the following statement of the issues presented:

a) May a trust claim the Iowa net capital gain deduction under section 422.7(21)? [1]

b) If the ALJ finds that a trust may claim the Iowa net capital gain deduction under section 422.7(21), did the Trust actually claim the deduction on its 2007 Iowa Fiduciary Tax Return?

c) If the ALJ finds that the Trust claimed the deduction on its 2007 Iowa Fiduciary Tax Return, did the Trust materially participation in the crop-share activity during the relevant period by virtue of the material participation of the co-trustees?

Statement of Facts

The relevant facts are essentially undisputed. John G. Colbert ("Decedent") died testate on December 12, 1989. (Stipulations of Fact, ¶ 1) The Decedent's will devised the residue of his estate to the John G. Colbert Trust ("Colbert Trust") and appointed two of the Decedent's six children as co-trustees of the trust. The Decedent's will was probated in 1989. (*Id*., at ¶ 2) Among the residue of the Decedent's estate were two parcels of farmland located Northwest of Danbury, Iowa, totaling 272 acres. (*Id*., at ¶ 3)

The co-trustees, Richard J. Colbert and David L. Colbert, were authorized to continue the farming operations taking place on the land, which they did. At all times relevant to this contested case, the farmland was leased subject to crop-share agreements. (*Id*., at ¶ 4) Pursuant to the terms of the Colbert Trust, net income from trust property was to be distributed to the Decedent's surviving spouse, Carrie Jane Colbert, during her lifetime. (*Id*., at ¶ 5) Upon the surviving spouse's death, the trust corpus was to be divided in six equal shares and distributed to the Decedent's children ("beneficiaries"). (*Id*., at ¶ 6)

Carrie Colbert died on February 28, 2007. In June of 2007, the Colbert Trust sold both parcels of farmland, realizing a combined net gain of $634,470.00. By the end of 2007, all remaining trust property had been sold and the Colbert Trust unwound its operations. (*Id*., at ¶ 7) The trust reported gain from the farmland as a capital gain and took a corresponding income distribution deduction on its 2007 federal income tax return. (Exhibit B, Form 1041 – page 1, lines 4 & 18) The trust reported no federal income tax due. Federal Schedule K-1 forms report all income, including gain from sale of the farmland, was distributed in equal shares to the six Colbert Trust beneficiaries. (Stipulation of Facts, ¶ 8; Exhibit B, Form 1041 & Schedule K-1 forms)

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[1] As noted above, the Department now acknowledges there are circumstances under which a trust may claim the section 422.7(21) net capital gain deduction.

The trust also reported the net capital gain from the farmland on its Iowa Fiduciary Return and took a corresponding income distribution deduction. (Exhibit C, Form IA 1041 – page 1, lines 6 & 19) The trust reported no state income tax due. State Schedule B forms show net long-term capital gain totaling $106,113.00 was distributed to each of the six Colbert Trust beneficiaries. (Stipulations of Fact, ¶ 9; Exhibit C, Schedule B forms at line 6) The "Other Information" section of each Schedule B form included the following comment: "Note Line 6 $105,745 of the gain is on qualified Iowa farmland that is eligible for Iowa [capital] gains deduction." (Stipulations of Fact, ¶ 10; Exhibit C, - Schedule B forms)

Each of the six Colbert Trust beneficiaries claimed a net capital gain deduction of $105,745 on their 2007 Iowa individual income tax return. (Stipulations of Fact, ¶ 11) The Iowa Department of Revenue reviewed each of the beneficiaries' returns and allowed the net capital gain deductions claimed by co-trustees Richard J. Colbert and David L. Colbert, finding their in involvement in crop share activity constituted material participation in the trust farming activity. (*See* Exhibit L) The Department denied the deductions claimed by the remaining four beneficiaries, finding none of them materially participated in the Colbert Trust's farming activities. (*Id.*) Notice of the assessment of additional tax, penalty, and interest was issued to the four non-trustee beneficiaries on July 19, 2010.[2] (Exhibit H) They each filed a timely protest of the assessment. (Exhibit I)

The facts set forth above were stipulated by the parties. The stipulations were supplemented by testimony from a single witness: Terry Lockie, the CPA who prepared the 2007 Iowa fiduciary tax return for the Colbert Trust. Ms. Lockie holds a Master's degree in accounting and became licensed as a Certified Public Accountant in Iowa in 1976 or 1977. (Tr. at pp. 73-74) Lockie believed the sale of the farmland held by the Colbert Trust qualified for the Iowa capital gain deduction. (Tr. at pp. 9-11) The farmland was sold during the final year of trust operation and all trust property was distributed to the beneficiaries. The trust did not claim a capital gain deduction at the trust level, in part because the Iowa Schedule B did not have any place for a capital gain dedution and in part because the tax preparation software Lockie was using would not allow a deduction on the return to flow through to the Schedule B reports of distributions to the beneficiaries. (Tr. at pp. 11, 22, 51-52, 55-57, 70-72; Exhibit L) Rather, like the federal return, the Iowa return showed all 2007 trust income was distributed in equal shares to the beneficiaries. Lockie added the comment to the Iowa Schedule B forms to flag gain distributed to each beneficiary from the farmland sale as eligible for the Iowa capital gain deduction. (Tr. at pp. 11-12)

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[2] The amount of tax assessed varied based other factors affecting the individual beneficiaries tax liability. $8,297.00 in tax was assessed against Thomas Colbert; $5,661.00 in tax was assessed against Robert Colbert; $8428.00 in tax was assessed against William Holck; and $8,750.00 was assessed against Warren Anschutz. (Exhibit H)

Conclusions of Law

All residents and nonresidents of the state are required to pay tax on taxable income earned in Iowa. Iowa Code §§ 422.5, 422.8 (2007).[3] Iowa law authorizes the Department of Revenue to examine individual income tax returns and determine the tax due. If the tax found is greater than the amount paid, the Department shall compute the amount due, together with applicable interest and penalty, and issue a notice of assessment. Iowa Code § 422.25(1). "A taxpayer may appeal to the director for revision of the tax, interest, or penalties assessed at any time within sixty days from the date of the notice of assessment of tax, additional tax, interest, or penalties." Iowa Code § 422.28.

In most cases, it is incumbent upon a taxpayer protesting a tax assessment to show error in the assessment. The burden of proof shifts to the Department to establish allegations of fraud and in some cases where an assessment is not made within six years after a return became due. In all other cases, the burden of proof is upon the taxpayer. Iowa Code § 421.60(6)(c). Here, the Taxpayers challenge assessments for 2007 tax year that was issued on May 13, 2010 (Warren Anschutz) and July 19, 2010 (William Holck, Robert Colbert, and Thomas Colbert), less than six years after the returns became due and the Department is not alleging fraud. Therefore, the burden of proof falls upon the taxpayer to prove that the assessment was made in error. *Camacho v. Iowa Dep't of Revenue and Fin.*, 666 N.W.2d 537, 542 (Iowa 2003) (and cases cited therein).

The starting point for the calculation of taxable income is "adjusted gross income [AGI] before the net operating loss deduction as properly calculated for federal income tax purposes under the Internal Revenue Code." Iowa Code § 422.7. A number of exclusions, adjustments, and deductions from federal AGI are used to determine taxable income for purposes of Iowa income tax. Iowa Code §§ 422.5, 422.7, 422.9. This case concerns application of Code subsection 422.7(21)(a), which allows net capital gain income from the sale of certain property to be deducted from taxable income. A taxpayer is allowed to reduce AGI by subtracting:

> Net capital gain from the sale of real property used in a business, in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years, or from the sale of a business, as defined in section 423.1, in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years. . . .

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[3] The law governing individual income tax liability for tax year 2007 applies in this case. Except as otherwise noted, all references to Iowa statutes and Department rules herein will be to the version of the statutes and rules in place when the return for the 2007 tax year was due.

Iowa Code § 422.7(21)(a)(1); *see also* 701 IAC 40.38 (implementing the capital gains deduction or exclusion).[4] The ten-year ownership and the ten-year material participation requirements must both be met for a property sale to qualify for the Iowa capital gain deduction.

Because the capital gain deduction exempts income from tax it must be narrowly construed.

> A party seeking a tax exemption bears a heavy burden. As our prior cases demonstrate, taxation is the rule, exemption is the exception. *Van Buren County Hosp. & Clinics v. Bd. of Rev.*, 650 N.W.2d 580, 586 (Iowa 2002) (noting that exemptions exist only as a matter of legislative grace and are generally disfavored as inequitable and unfair). Exemptions from taxation, therefore, are "'construed strictly against the taxpayer and liberally in favor of the taxing body.' " *Ranniger v. Iowa Dep't of Revenue & Fin.,* 746 N.W.2d 267, 269 (Iowa 2008) (quoting *Iowa Auto Dealers Ass'n v. Iowa Dep't of Revenue,* 301 N.W.2d 760, 762 (Iowa 1981)).

Iowa Network Services, Inc. v. Iowa Dep't of Revenue, 784 N.W.2d 772, 776 (Iowa 2010); *see also Ranniger v. Iowa Dep't of Revenue*, 746 N.W.2d 267, 269 (Iowa 2008) (holding section 422.7(21) creates an exclusion from taxation and must be construed strictly against the taxpayer). "Doubts are resolved against exemption." *Hy-Vee Food Stores, Inc. v. Iowa Dep't of Revenue & Fin.*, 379 N.W.2d 37, 39-40 (Iowa Ct. App. 1985).

The income at issue here stems from the sale of farmland transferred to a testamentary trust created under the will of John G. Colbert following Colbert's death in 1988. The farmland was continuously farmed under a crop-share lease agreement until it was sold by the trust in 2007. Co-trustees Richard Colbert and David Colbert assumed the function of landlords under the lease and made management decisions related to the farming operation. The Department recognizes that the Trust met the 10 year ownership or holding-period requirement and that co-trustees materially participated in the farming operation. The operative questions are whether the Colbert Trust could and did claim the Iowa net capital gain deduction and, alternatively, whether the beneficiaries who were not trustees may claim the net capital gain deduction on income from the sale that was distributed to them during the final year of trust operation.

The first stipulated issue is no longer contested. The Department concedes that a trust may, under appropriate circumstances, claim for the net capital gain deduction – and rightly so. The Department acknowledged as much during the informal procedures for these protests, stating: "If the trust did not distribute cash out to the beneficiaries, the trust would have been responsible for paying tax on [the gain from sale of the farmland]

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[4] Rule 40.38 refers to this reduction of federal AGI both as a "deduction" and as an "exclusion." These terms are used interchangeable herein to indicate a reduction of taxable income.

and as the taxpayer, the trust would have been eligible to take the net capital gain deduction." (Exhibit K, at p. 2, ¶ 4) As the Department reasoned in a policy letter issued in the year the Colbert Trust property was sold:

> Iowa Code section 422.4(16) states that in cases of estates or trusts [as with other taxpayers], the words "taxable income" mean the taxable income (without a deduction for personal exemption) as computed for federal tax purposes under the Internal Revenue Code, but with the adjustments specified in section 422.7 plus the Iowa income tax deducted in computing the federal taxable income and minus federal income taxes as provided in section 422.9. In addition, a "taxpayer" is defined in Iowa Code section 422.3(6) to include any person, corporation, or fiduciary who is subject to a tax imposed under chapter 422 of the Iowa Code. Therefore, trusts are entitled by Iowa law to the adjustments set forth in Iowa Code section 422.7, which include the capital gain deduction.

IDOR Policy Letter: Iowa Capital Gain Deduction from Trust, Doc Ref. No. 07201015 (2/26/2007); *see also* IDOR Policy Letter: Iowa Capital Gain Deduction – Material Participation of a Trust, Doc. Ref. No. 16201075 (10/28/2016). If the ten-year ownership and ten-year material participation requirements are met, a trust is entitled to claim the net capital gain deduction. A trust may establish material participation through the activities of trust fiduciaries, including trustees. *Id.*, citing *Carter Trust ex rel. Fortson v. U.S.*, 256 F.Supp.2d 536 (N.D. Tex. 2003) (finding, in case where trust was the taxpayer, that material participation is determined by reference to acts of fiduciaries and agents of the trust, including trustees).

The second issue is whether the Colbert Trust actually did claim the deduction on its 2007 Iowa Fiduciary Tax Return. As the Department explained its most recent policy letter addressing the applicability of the capital gain deduction to trusts:

> If the net capital gain is allocated to corpus, the estate or trust is entitled to the deduction. If the will or trust instrument requires capital gain to be distributed to the beneficiaries or if the trustee or personal representative of a decedent's estate is authorized to allocate capital gain to income and distributes the capital gain, then the capital gain deduction is allocated to the beneficiaries and is not a deduction to the estate or trust.

IDOR Policy Letter: Iowa Capital Gain Deduction – Material Participation of a Trust, Doc. Ref. No. 16201075 (10/28/2016), citing 701 IAC 89.8(8)(l) (rule governing fiduciary returns, reportable income and deductions, capital gain deduction).[5] "If the

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[5] This rule provides:

> l. *The capital gains deduction*. 26 U.S.C. Section 1202(b) provides that an estate or trust is allowed a deduction for net capital gain received during the taxable year. Except for the requirement of allocation between the beneficiaries

trust is responsible for the tax on the gain, material participation is measured at the trust level" and the "activities of fiduciaries, employees, and agents are considered." *Id.*, citing 701 IAC 89.8(8)(l) and *Carter Trust*, 256 F.Supp.2d at 543.

> However, if the beneficiary is responsible for tax on the gain, the material participation is measured at the beneficiary level. 701 IAC 89.8(8)(l). Each beneficiary must independently be able to show material participation in the business. Beneficiaries who cannot show they materially participated in the business may not claim the capital gain deduction.

Id. This recent guidance is consistent both with rule 89.8(8)(l), which governs fiduciary returns, and with rule 40.38(7), which governs determination of net income and the capital gain deduction.

> In situations in which real property was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gain from the sale of the real property flows through to the owners of the business entity for federal income tax purposes, the owners can exclude the capital gain from their net incomes if the real property was owned for ten or more years and the owners had materially participated in the business for ten years prior to the date of sale of the real property, . . .

701 IAC 40.38(7) (fourth unnumbered paragraph; now rule 40.38(2)(c)).

All evidence in the record supports a finding that the Colbert Trust did not claim a net capital gain deduction to reduce taxable income from the farmland sale on its 2007 Iowa income tax return. Rather, the trust claimed deduction based on distribution of the income to the six beneficiaries and each of the beneficiaries sought to use their share of the capital gain deduction to reduce their individual taxable income. This distinguishes the facts of this case from the facts underlying the *Carter Trust* decision. Here, the trust was not the taxpayer. The beneficiaries were responsible for tax on the gain. Under the operative rules governing the Iowa capital gain deduction, only the beneficiaries who

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> and the estate or trust, the deduction is computed in the same manner as the net capital gain deduction allowed individuals. See federal regulation Section 1.12021 (b). If the net capital gain is allocated to corpus, the estate or trust is entitled to the deduction. If the will or trust instrument requires capital gain to be distributed to the beneficiaries or if the trustee or personal representative of a decedent's estate is authorized to allocate capital gain to income and distributes the capital gain, then the net capital gain deduction is allocated to the beneficiaries and is not a deduction to the estate or trust. The gain distributed must not be diminished by the deduction. It must first be combined with any other capital gains and losses of the beneficiary prior to determining whether the net capital gain deduction is applicable for the beneficiary's taxable year.

701 IAC 89.8(8)(l).

materially participated in the farming operation during the ten years prior to the land sale are entitled to claim the deduction.

The taxpayers argue that state and federal law required principal receipts to be allocated to principal and making the trust the taxpayer and effectively excluding the capital gain in this case from distributable income as a matter of law. *See* Taxpayers' Initial Brief at pp. 7-8. Neither of the authorities cited by the taxpayers supports this argument. The taxpayers first rely on Iowa Code section 673.410, for the proposition that principal receipts, including "cash or other property received from the sale ... of a principal asset, including realized profit," "must be allocated to principal." Iowa Code § 637.410(2). This provision of the Uniform Principal and Income Act is does not apply when alternate action is expressly provided for in the terms of the trust. Iowa Code § 638.701. The terms of the Colbert Trust expressly authorized the trustees to determine what was principal and what was trust income and in their discretion "to allocate or apportion receipts and disbursements between principal and income." (Exhibit A, at Art. X, ¶ B) This express authority to allocate receipts to disbursable income renders Code section 637.410 inapplicable to this trust and to the transaction at issue here.

The taxpayers also cite to Internal Revenue Code (I.R.C.) section 643(a)(3), noting that this provision "generally treats capital gain as being excludible from the trust's distributable net income." Again, they ignore the operative portion of the cited reference.

> (a) Distributable net income
>
> For purposes of this part, the term "distributable net income" means, with respect to any taxable year, the taxable income of the estate or trust computed with the following modifications-
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> ***
>
> (3) Capital gains and losses
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> Gains from the sale or exchange of capital assets shall be excluded to *the extent that such gains are allocated to corpus and are not* (A) *paid,* credited, or required to be distributed *to any beneficiary during the taxable year*, or (B) paid, permanently set aside, or to be used for the purposes specified in section 642(c). . . .

26 U.S.C. § 643(a)(3) (emphasis added). While this statute allows capital gain to be excluded from a trust's distributable net income when certain preconditions are met, nothing within the terms of the statute in any way requires capital gain to be allocated to principal or excluded from distributable income.

Finally, the taxpayers argue, "[t]he fact that the Trust's final return claimed no income and appeared to distribute the gain to the beneficiaries in equal shares with each beneficiary being issued an Iowa Schedule B showing that beneficiary's amount of excluded capital gain is the result of the tax software used to prepare the final trust return" and should not impact the applicability of the capital gain deduction. *See* Taxpayers' Initial Brief at pp. 8-9. As stated by Ms. Lockie at hearing: "Well, if we had taken the capital gain deduction on the trust return, that wouldn't have gone out to the beneficiaries and there would have been less capital gains on their schedule – Iowa Schedule B. It would have been the same exact bottom line on their returns." (Tr. at p. 22)

The problem with this argument is that it fails to acknowledge the strict construction of exemptions from taxation. How forms are completed and income is reported matter. As the United States Supreme Court explained in a similar context more than forty years ago:

> Even if we were to assume, arguendo, that the hypothetical transaction posed by the taxpayer and the Court of Appeals was indistinguishable, as a matter of economic reality, from what actually occurred, we would not be required, for that reason alone, to recognize a claimed deduction for debt discount. The propriety of a deduction does not turn upon general equitable considerations, such as a demonstration of effective economic and practical equavalence. Rather, it depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed. ... This Court has observed repeatedly that, while a taxpayer is free to organize his affairs as he chooses, nevertheless, once having done so, he must accept the tax consequences of his choice, whether contemplated or not, ... and may not enjoy the benefit of some other route he might have chosen to follow but did not. To make the taxability of the transaction depend upon the determination whether there existed an alternative form which the statute did not tax would create burden and uncertainty. ...

Comm'r v. Nat'l Alfalfa Dehydrating & Milling Co., 417 U.S. 134, 148-49 (1974) (quotations and citations omitted).

Although the Colbert Trust met the 10 year holding period and material participation requirements of the Iowa net capital gain deduction, the trust did not claim the capital gain deduction. The taxpayers in these cases were not trustees of the Colbert Trust and make no claim that they personally participated in the farming operation. Under Iowa law, material participation by the trust does not automatically flow to these beneficiaries and they are not entitled to individually claim the net capital gain deduction.

For all of the reasons discussed above, I conclude that the Department correctly found that income the non-trustee beneficiaries received during the 2007 tax year from the sale of farmland by the Colbert Trust did not qualify for the Iowa capital gain deduction. Therefore, the assessments underlying these protests must be upheld.

Order

The assessment of income tax, penalty, and interest for the 2007 tax year against each of the protesting taxpayers is AFFIRMED. The Taxpayers shall pay the full amount of the assessed tax and penalty, plus all accumulated interest. The Department shall take any action necessary to implement and enforce this decision.

Issued on June 13th, 2017.

Christie J. Scase
Administrative Law Judge

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NOTICE

Any aggrieved party has 30 days, including Saturdays, Sundays and legal holidays, of the date of this Proposed Decision to file an appeal to the Director of the Department of Revenue. 701 IAC 7.17(8)(d). The appeal must be made in writing. The appeal shall be directed to:

Office of the Director
Iowa Department of Revenue
Hoover State Office Building
Des Moines, Iowa 50319