

Tax Discussions and Treatments for CRP and CREP

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This Talk

- **Changes in Tax Law Related to CRP/CREP**
 - Self-employment Tax
 - Permanent Conservation Easement Tax Deduction
- **Types of Income From CRP/CREP**
 - Annual, Cost-share, Term, Permanent Payments
- **Social Security Recipients**
- **Present-use and Easements, Use Change?**
- **NC Real Property Conservation Credit**
- **Summary**

New Farm Bill & CRP

- Farm Bill (Public Law 110-246) : CRP payments made to Social Security recipients (retirees, survivors, disability) can be excluded from self-employment tax
- Under the new provision taxpayers who are receiving specified social security payments are not included in the earning from self-employment

Note: CREP not specifically mentioned

Enhanced Tax Deduction (CE)

- For CE contributions made between 1/1/08 & before 1/1/10:
- 50% deduction for all taxpayers other than corporations
- Qualified Farmers and Ranchers (> 50% gross income from farming or ranching) to deduct donations up to 100% with a 15 year carry-forward.

Farming Defined

- Cultivating the soil, or raising or harvesting any **ag or hort commodity**. Included raising, shearing, feeding caring, training and management of animals
- Handling, drying, packing, grading or storing an **ag or hort commodity** in its unmanufactured state, but only if owner, tenant, or operator produced more than $\frac{1}{2}$ of the commodity

Farming Defined

- **Planting, cultivating, caring for, or cutting trees**, or the preparations (other than milling) for market

I.R.C 2032A(e)(5)

CRP/CREP Payments

- IRS treats payment types differently
- Certain payments receive “special” treatment
- Lets review them each separately

Annual (rental) Payments

- CRP/CREP Annual payments are:
- Regular income
- Subject to Self-employment
- EXCEPT for certain Social Security recipients

Bonus Payments

- Some CRP / CREP program participants are offered a one time “bonus” for enrolling acreage (based on Corn yield, etc.)
- Bonus payments are treated as ordinary income

Cost-Share Payments

- Monies coming from federal or state funds are treated similarly.
- Payments may be eligible for either IRC Sections 126 or 175 treatments as to exclusion from income (Sec 126) or deduction (Sec. 175)
- Income, if taxable, is subject to ordinary income tax and SE tax

Cost-share Elections

- IRC Sec 126 elections allows for the exclusion of income for approved soil and water conservation cost share payments.
- IRC Sec 175 allows for the deduction of approved soil and water conservation expenses subject to 25% of gross farm income.

Maintenance Payments

- Gov't Payments made for maintenance purposes are includable for income tax purposes and SE tax purposes
- Expenses made by the landowner for maintenance are deductible for business purposes.
- Any surplus may qualify for Cost-share elections

Term Easement Payments

- Term Easement payments for a term of less than 30 years are subject to ordinary income tax
- Term easement payments for terms of 30 years or greater may qualify for capital gains treatment [[Reg § 1.1031\(a\)-1\(c\)](#) ; [FTC ¶ I-3076](#) ; [USTR ¶ 10,314.03](#)]

Permanent Easement Payments

- Perpetual easements qualify for Long-term Capital Gains treatment
- Amount of Gain can be reduced by costs of sale, basis in existing property

Enhanced Conservation Easement Deductions

- The Farm Bill changes the expiration date of the enhanced deduction to the end of 2009.
- Effective for contributions in tax years beginning after December 31, 2007, and before January 1, 2010

Farm Bill § 15302; I.R.C. § 170(b)(1)(E)(vi) and (2)(B)(iii)

Enhanced Conservation Easement Deductions

- All taxpayers other than corporations to deduct donations of conservation easements up to 50% of their AGI
- Ranchers and farmers (who receive more than 50% of their gross income from farm or ranch business activities) to deduct donations of conservation easements up to 100% of their AGI

Enhanced Conservation Easement Deductions

- Corporate farmers and ranchers could deduct up to 100% of their taxable income
- Excess charitable contribution deduction generated by an easement donation could be carried forward for up to 15 years (subject to the applicable 50% or 100% of AGI or 100% of taxable income limit)

Enhanced Conservation Easement Deductions

- *Qualified farmer or rancher for this provision means a taxpayer whose gross income from the trade or business of farming is greater than 50% of the taxpayer's total gross income for the tax year*
- (conducting a timber sale to meet these provisions in the year of a donation may be a means of meeting this definition)

Soil & Water Conservation TC

- Taxpayers in the farm business can deduct soil and water conservation (rather than capitalizing those costs)
- Deduction is limited to 25% of gross income derived from farming during that tax year

Soil & Water Conservation TC

- Excess is deductible in succeeding years subject to 25% gross farm income
- New for 2009:**
- Farm bill expands Conservation TC to Endangered Species
 - Site specific management included in recovery plans under ESA
 - Limited to 25% cap on gross farm income

Farm Bill 15303 IRC 175