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REPORTING GOVERNMENT FARM PROGRAM PAYMENTS
— by Neil E. Harl

As a general rule, federal (and state) agricultural program payments received as cash or in the form of services are includible in income. The time at which the amounts are received or made available is ordinarily the time the payments are to be included in income. Amounts are considered to be "made available" in the year in which program requirements have been met, regardless of whether an application had been signed to receive final payment. The fact that a farm operator does not sign the application for final payment until the following year does not defer income to the later year.

Payments under a lease. In general, agricultural program payments received under a crop share or livestock share lease are reported into income and are considered to be self-employment income if the landlord materially participates under the lease. Indeed, government payments are handled as other farm income from the operation is treated. If other farm income is reportable as rent, and is not subject to self-employment tax, neither are government payments to be reported as self-employment income. Likewise, if other farm income is reported as earned income, so too must government farm program payments be reported as self-employment income.

A taxpayer receiving income from rents is subject to self-employment tax if the operation constitutes a trade or business. If an operation does not constitute a trade or business, "rentals from real estate and from personal property leased with the real estate" are excluded from net earnings from self-employment tax.

Conservation Program Payments. As a multi-year program of land diversion, the Conservation Reserve Program (CRP) poses additional questions. For a landowner who is not retired, who is materially participating in the operation, and who does not retire during the 10-year CRP land diversion period, CRP payments are likely to be treated as self-employment income.

For a landowner who is retired at the time the land is bid into the CRP program and who is not materially participating, payments received under the CRP program should not be considered as net income from self-employment. In a 1988 letter ruling in which the land owner had terminated the lease several months before the land was bid into the CRP program and thus no tenant was involved, the landowner's activities under the CRP did not constitute material participation.

For landowners who retire after bidding the land into the CRP program, the outcome is less clear. Some authorities focus on the taxpayer's status at the time the agreement was entered into. This has been the case with the 1987 dairy termination program and the earlier soil bank program.

Other authorities suggest that it is the taxpayer's status at the time that payments are received that determines liability for self-employment tax. The answer will not be known until the issue is addressed by a ruling or a case.

FOOTNOTES

1 Treas. Reg. § 1.61-4. See Baboquinari Cattle Co. v. Comm'r, 47 B.T.A. 129 (1942), aff'd, 135 F.2d 114 (9th Cir. 1943); Harding v. Comm'r, T.C. Memo. 1970-179; Driscoll v. Comm'r, 3 T.C.M. 73 (1944), aff'd and rev'd, 147 F.2d 493 (5th Cir. 1945); Graves v. Comm'r, 88 T.C. 28 (1986), aff'd on reconsideration, 89 T.C. 49 (1987) (payments received under Water Bank Program in exchange for set-aside of 770 acres includible in gross income as rent).


3 Rev. Rul. 65-98,1965-1 C.B. 213 (advance and final diversion payments made under 1963 Feed Grain Program includible in gross income when received or made available to taxpayer, whichever was earlier).

4 Id.
BANKRUPTCY

ESTATE PROPERTY. Prior to bankruptcy, the debtors transferred their residence to a trust for the benefit of the debtors. The trust instrument provided that the trustee had the power to sell the property only with the permission of the debtors and contained spendthrift trust provisions. The remainder of the trust was to pass to the debtors’ issue.

The court held that the trust was not a valid spendthrift trust and was included in estate property. The court also held that the debtors’ children owned no interest in the trust because the entire beneficial interest belonged to the debtors and the debtors retained control over sale of the trust property. In re Frangos, 132 B.R. 723 (Bankr. N.D. Ohio 1991).

EXEMPTIONS.

HOMESTEAD. Four months prior to filing bankruptcy the debtor moved out of the residence because judgment creditors told the debtor that the house would be sold. The debtor claimed the house as exempt and stated that she would move back into the house and repair it if the exemption was allowed. The court held that the debtor did not occupy the residence because creditors told the debtor she would lose the house. In re Wells, 132 B.R. 966 (Bankr. D. N.M. 1991).

PENSION PLAN. The debtor claimed an exemption in an ERISA qualified pension plan established by the debtor’s corporation. The court held that the plan was not excluded from the bankruptcy estate under ERISA as a nonbankruptcy law exemption but was exempt under Fla. Stat. § 222.21, which was not pre-empted by ERISA. The court also held that the Florida exemption was not unconstitutional in that Fla. Const. Art. 10, § 4(a)(2) did not require physical possession as of the date of the bankruptcy petition where the only reason the debtor did not occupy the residence was because creditors told the debtor she would lose the house. In re Rosenbloom, 132 B.R. 970 (Bankr. S.D. Fla. 1991).

The debtor claimed an exemption in an ERISA qualified pension plan. The court held that the plan was not exempt from the bankruptcy estate under ERISA as a nonbankruptcy law exemption and was not exempt under Ariz. Rev. Stat. § 14,533 (N.D. Ala. 1966).


7 Stevenson v. Comm’r, T.C. Memo. 1989-357 (business of leasing and selling portable advertising signs).

8 I.R.C. § 1402(b).


11 Id.

12 Notice 87-26, 1987-1 C.B. 470.


14 Soc. Sec. Rul. 67-42 (cropland adjustment program).