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Congressional research service report to Congress on CRP is incomplete and misleading

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A panel study of Iowa farm financial conditions: 2000-2007, continued from page 3

If commodity prices do remain strong, one of the unresolved questions is how the farms represented by the panel will fare. Will a rising tide lift all boats or will the range in adjusted cash income become wider? The lower 20 percent group has higher debt-to-asset ratios and is more dependent upon government payments as a source of cash income. This group may be more vulnerable to changes in the cost structure of agricultural assets. And, it is unclear how the new farm bill will influence farm income and equity growth across this rather broad spectrum of farm structures. Farm size, enterprise mix, financial condition and human capital will all contribute to the ability of farmers to adapt to changing conditions. The full version of this report is available at: <http://www.extension.iastate.edu/Publications/FM1883.pdf>

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Congressional research service report to Congress on CRP is incomplete and misleading

by Neil E. Harl, Charles F. Curtiss Distinguished Professor in Agriculture and Emeritus Professor of Economics, Iowa State University, Ames, Iowa. Member of the Iowa Bar, 515-294-6354, harl@iastate.edu

On April 10, 2008, the Congressional Research Service released a report to Congress on the Conservation Reserve Program (CRP) which does not recognize the key issues in the controversy and which is both incomplete and misleading. Inasmuch as the Congressional Research Service was set up as the research arm of Congress, the contents of the report, coming at a crucial time when the 2008 farm bill, H.R. 2419, is in conference committee, are particularly important.

The key shortcomings of the CRS report

On the self-employment tax issue, which is of central importance, the CRS report commences the analysis by leading the reader to assume that the issue of exclusion of CRP payments from self-employment tax has arisen only in recent years and that the argument is all about the breadth of the exclusion from self-employment tax liability. The report dismisses the fact that CRP payments were historically not subject to SE tax for those who fell short of carrying on a trade or business (those who were retired, those who were disabled and those who were mere investors) from the time of the first sign-up under the CRP program in 1986 until IRS announced a change in position in 2003. Thus, it is misleading to omit any mention of the longstanding tax treatment of CRP payments. It is also misleading to treat the issue as involving a loss of revenue when the former exemptions are restored as the Congressional Committees have repeatedly done in their calculations. Allowing IRS to change the law as evidenced

by Section 1402(a) of the Internal Revenue Code and resist challenges on the ground that any relaxation of the revisionist rule would constitute a cut in tax revenue is not only disingenuous; it goes well beyond the proper role of IRS as was extensively discussed in 1998.

What is at issue here is an attempt by the Internal Revenue Service to redraw the line between income from a trade or business (which triggers self-employment tax) and income from an entity falling short of the trade or business test and, therefore, is not subject to SE tax. Nowhere in the CRS report is that test even mentioned and nowhere is Section 1402(a) of the Internal Revenue Code cited. With the IRS position taken in the 2003 ruling and the 2006 Notice, plus the revenue ruling threatened in the 2006 Notice, there would be no investment activity, even those held by those in retirement or disabled, that would not be subject to SE tax. The attempt by the Service to redraw the line of what constitutes a trade or business goes well beyond the CRP issue. If the IRS position prevails, it will pose a serious threat to the meaning of "trade or business" in all sectors of the economy.

No challenge to IRS authorities cited in support of the service position

The CRS report makes no mention of the lack of authority in support of the IRS position on imposition of SE tax on CRP payments falling well short of the trade or business test. As

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discussed in more details elsewhere, the Service agrees that the term "trade or business" has the same meaning as when used in Section 162 of the Internal Revenue Code. Of the many cases which have addressed the issue of "trade or business" in the context of Section 162, in Notice 2006-108 the IRS singled out one of those cases, Groetzing v. Commissioner in support of the Service position that merely signing up for CRP constitutes a trade or business. The Supreme Court in Groetzing stated that the "... resolution of this issue [meaning of 'trade or business'] requires an examination of the facts of each case." The Groetzing case involved a gambler who devoted 60 to 80 hours per week to pari-mutuel wagering on dog races with a view to earning a living from such activity. The taxpayer went to the track six days per week for 48 weeks in the year in question. The betting activity was more than a full-time job.

It is an unbelievable reach to assert that a case involving a taxpayer putting in up to twice the number of hours in a

normal work week could stand as authority for a situation where merely signing up for a conservation program constitutes a trade or business.

In conclusion

The CRS report totally ignored the core issue involved in the debate over whether all CRP payments or only those from an activity constituting a "trade or business" should be subject to self-employment tax. That core issue is where the line for what amounts to a trade or business should be drawn. There is no discernible support in tax law for the notion that the line should be drawn to include all profit making ventures as has been suggested by the Internal Revenue Service. That is what the Congress needs to understand in considering H.R. 2419.

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Value-added business success factors -- the role of management and operations

by Don Senechal, Founding Principal, The Windmill Group; F. Larry Leistritz, Professor, Department of Agribusiness and Applied Economics, North Dakota State University; and Nancy Hodur, Research Scientist, Department of Agribusiness and Applied Economics, North Dakota State University

(fifth in a series of six)

There has been a surge of interest in farmer-owned business ventures that seek to capture additional value from commodities past the farm gate. Some of these ventures have been very successful, some marginally successful, and some have failed. Supported by funding from the Ag Marketing Resource Center at Iowa State University, we conducted in-depth interviews with farmer-owned businesses to determine the key factors that influenced the relative success or failure of these ventures. A better understanding of why some ventures succeeded while others failed provides valuable insight for the success of future farmer-owned businesses. This article focuses on the role of management and operations for business success.

Research method

To identify factors having the greatest impact on the success or failure of farmer-owned business ventures, a cross-section of seven farmer-owned commodity processing businesses formed since 1990 in North Dakota, South Dakota, and Minnesota were selected. Extensive interviews were conducted with individuals who played, or continue to play, an important role in the formation and operation of the business. This included leaders in the formation of the business, key members of the management team, selected board members, lenders, local leaders and others.

Research results

Competent professional management is essential to a business venture's success. The right Chief Executive Officer (CEO) and management team can mean the difference between success and failure. Management needs to be involved very early in the business project. One successful venture we interviewed hired its CEO prior to the equity drive. The CEO was then able to lead the equity drive and provide input on plant design and oversee construction. The plant was up and running on schedule.

While this example is more often the exception than the rule (the CEO often comes on board after a successful equity drive), all of the businesses we interviewed agreed the sooner the CEO is hired, the better the start-up process unfolds. Although board members are usually successful producers and community leaders, there is no substitute for good professional management.

It was also particularly helpful when the CEO had been involved in similar start-up operations.

Management recruitment -- The board should plan for a significant investment in the recruitment and retention of a CEO. Recruitment strategies varied among the businesses we interviewed, with several using executive placement (a.k.a. headhunter) firms. One CEO responded to an ad in a trade magazine. Another CEO of a successful venture was re-

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