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Crop disaster payments are now a SURE thing, continued from page 2

The maximum charge is \$300 per producer per county, and \$900 per farm. Note that paying this fee only makes the producer eligible for the SURE payment--it does not make the uninsured crops eligible for crop insurance or NAP payments in 2008. After 2008 all crops must be insured by the

sales closing date, which is March 15 for most Iowa crops. If all crops are already insured, no other signup is necessary.

Stay in touch with your local FSA office for more details on SURE.



Tax provisions in the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill)*

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After a series of delays, a Presidential veto, the discovery that one of the titles in the bill had been inadvertently omitted in the enrolled bill that had been forwarded to the White House and votes in the House of Representatives and Senate to override the veto (by a comfortable margin in both houses), the 2008 farm bill is now law. This article will provide a summary of a few of the major provisions in the new bill.

Tax provisions

CRP "fix"

The legislation includes a partial "fix" on the long-running dispute between taxpayers and the Internal Revenue Service over whether all Conservation Reserve Program (CRP) payments should be subjected to the 15.3 percent self-employment (SE) tax. IRS had insisted in a 2003 Chief Counsel ruling and a late 2006 Notice, that all CRP payments were subject to SE tax, contrary to prior rulings and cases on the issue.

The provision in the 2008 farm bill provides that individuals receiving benefits under sections 202 or 203 of the Social Security Act (retirement benefits and disability benefits) are not subject to SE tax on CRP payments. The legislation does not address the plight of mere investors in land bid into the CRP (whose CRP land does not bear a "direct nexus" to a farm or ranch business). Thus, the basic issue involved – where the line is drawn between a "trade or business" on the one hand and an investment activity on the other – continues to be a problem and likely must await litigation to establish where that line is to be drawn. Act § 15301(a), amending I.R.C. § 1402(a)(1) and 16 U.S.C. § 3833(a).

The provision is effective for payments made after December 31, 2007. Act § 15301(c).

Conservation contributions

The legislation extends for two years (through 2009) for individuals and corporations the provision permitting deductions for conservation contributions. The bill changes

"December 31, 2007" to "December 31, 2009" in Internal Revenue Code § 170(b)(1)(E)(vi). Act § 15302(a), amending I.R.C. § 170(b)(1)(E)(vi).

Expenses for endangered species recovery

The legislation provides for a deduction under I.R.C. § 175 for expenditures incurred for endangered species recovery. The Act refers to "... expenditures paid or incurred for the purpose of achieving site-specific management actions recommended in recovery plans approved pursuant to the Endangered Species Act of 1973." Act § 15303(a)(1), amending I.R.C. § 175(c)(1).

Qualified timber gains

The bill authorizes, for a period of one year, beginning in taxable years ending after the date of enactment, a 15 percent maximum rate for qualified timber gains for corporations. Act § 15311(a), amending I.R.C. § 1201(b).

Timber REITS

The Act provides that gain from real property includes timber gains and that mineral royalty income is qualifying income for timber REITS. Also, the term "Timber Real Estate Investment Trust" is defined to mean a real estate investment trust in which more than 50 percent in value of its total assets consist of real property held in connection with the trade or business of producing timber. Act §§ 15312, 15313, amending I.R.C. § 856.

Qualified tax credit bonds

The legislation authorizes "qualified tax credit bonds," which mean "qualified forestry conservation bonds" with a credit authorized with limitations on expenditure of bond proceeds. Act § 15316, enacting I.R.C. §§ 54A, 54B.

Cellulosic biofuel credit

The legislation provides for a biofuel credit of \$1.01 per gallon for cellulosic biofuels except for cellulosic biofuels that are alcohol (the credit for those is reduced by the amount of ethanol and other credits). Act § 15321, amending I.R.C. § 40(a).

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Tax provisions in the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), continued from page 3*

Ethanol credit

The 51 cents per gallon ethanol fuels credit is reduced to 45 cents per gallon, effective after 2008. Act, § 15331(b).

Ethanol tariff

The bill extends for two years (to January 1, 2011) the ethanol tariff (of 54 cents per gallon), which is levied on imported ethanol. Act § 15333.

Agricultural bonds

The Act increases from \$250,000 to \$450,000 the loan limit on agricultural bonds relating to the exception for first-time farmers. After 2008, the amount is to be adjusted for inflation. Act § 15341(a).

Like-kind exchange for mutual ditch, reservoir, or irrigation company stock

The legislation allows like-kind exchange treatment for exchanges involving mutual ditch, reservoir, or irrigation company stock that are under I.R.C. § 501(c)(12)(A) provided the stock has been recognized by the state's highest court as representing real property or interests in real property. Act § 15342(a), adding I.R.C. § 1031(i)

The amendment is effective for exchanges completed after the date of enactment of the legislation. Act § 15342(b).

Agricultural chemicals security credit

The Act adds a credit of 30 percent of "qualified security expenditures" with a limit of \$100,000 for any "facility," and a maximum of \$2,000,000 for any taxable year for any taxpayer for costs incurred to secure agricultural chemicals including employee training, security lighting, and conducting a "security vulnerability assessment." Act § 15343(a), adding I.R.C. § 450.

Race horses

The legislation specifies that "any race horse" placed in service before January 1, 2014, is classified as three year property for depreciation purposes and race horses placed in service after December 31, 2013 if more than two years old at the time the horse is placed in service by the purchaser. Act § 15344(a), amending I.R.C. § 168(e)(3)(A)(i).

The provision is effective for property placed in service after December 31, 2008. Act § 15344(b).

Temporary relief for Kiowa County, Kansas and surrounding area.

The bill authorizes an array of special relief provisions for Kiowa County, Kansas and the surrounding area because of storms beginning on May 4, 2007. Act § 15345

Limitation on excess farm losses

For taxpayers other than a C corporation receiving an "applicable subsidy," excess farm losses (the greater of \$300,000, \$150,000 for married taxpayers filing separately or the net farm income for the previous five years) are disallowed against non-farm income. For partnerships and S corporations, the limitation is applied at the partner or shareholder

level. The term "applicable subsidy" includes direct or counter cyclical payments or any Commodity Credit Corporation loan. The limitation is applied before the passive activity loss rules of I.R.C. § 469. Act § 15351(a), adding I.R.C. § 461(j).

The provision is effective for taxable years beginning after December 31, 2009. Act § 15351(b).

Modification of the optional method of computing net earnings from self-employment

For many years, a farmer on the cash or accrual methods of accounting has been allowed to compute net earnings from self-employment in the regular manner or to use an optional method based on gross income to compute earnings from self-employment for social security purposes. See 2 Harl, Farm Income Tax Manual § 8.05[19] (2007 ed.). In effect, this guarantees some self-employment income in years when earnings from the farming operation are low or negative. Under the rules as they have existed for several years, if gross income is \$2400 or less, a farmer could report two-thirds of gross income as self-employment income. If gross income is more than \$2400 and net earnings from self-employment are less than \$1600, a farmer could report \$1600 as self-employment income. The figures have not been adjusted for inflation.

Under the 2008 legislation, the "\$2400" figure is replaced by "upper limit", which is 150 percent of the "lower limit." The "\$1600" figure is replaced by "lower limit," which is the sum of the amounts required under Section 213(d) of the Social Security Act for a quarter of coverage. For 2008, that figure is \$1,050.

The amount is inflation adjusted annually. Act § 15352, (a), (b), amending I.R.C. § 1402(a)(17) and the Social Security Act § 211(a)(16).

The change is effective for taxable years beginning after December 31, 2007. Act § 15352(c).

Information reporting on CCC transactions

The Internal Revenue Service had steadfastly refused to require Form 1099 (information) reporting for gains from payment of Commodity Credit Corporation (CCC) loans with generic commodity certificates, a favorite way to avoid farm program payment limitations, until publication of Notice 2007-63 in July of 2007, with required reporting of such gains effective January 1, 2007. The 2008 legislation requires such information reporting for all CCC loans repaid on or after January 1, 2007, regardless of the manner in which the loan was repaid. Act § 15353, enacting I.R.C. § 6039J.

Protection of social security

With several of the provisions in the 2008 Act affecting the social security system, particularly those involving self-employment income, the Act mandates an annual transfer of funds from the general revenues of the federal government to the social security trust funds in amounts ranging from \$5,000,000 for fiscal year 2009 to \$7,000,000 for fiscal year 2017. Act § 15361.