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# Changing CCC Loan Reporting

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## Issue Contents

### Bankruptcy

General

Estate property **35**

Chapter 12

Eligibility **35**

Chapter 13

Confirmation of plan **35**

Federal tax

Post-petition interest **35**

### Federal Agricultural Programs

Chronic wasting disease **35**

Livestock indemnity program **35**

Milk **35**

PACA **36**

Tuberculosis **36**

### Federal Estate and Gift Tax

Valuation of stock **36**

### Federal Income Taxation

Business expenses **36**

Capital expenses **36**

Corporations

Golden parachute payments **36**

Sham corporations **37**

Court awards and settlements **37**

Disaster payments **37**

Employee benefits **37**

Involuntary conversion **37**

Legal fees **37**

Returns **37**

Safe harbor interest rates

March 2002 **38**

Self employment income **38**

Tax shelters **38**

Travel expenses **38**

### Products Liability

Dairy cow **38**

### Secured Transactions

Priority **39**

### Trespass

Timber **39**

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## CHANGING CCC LOAN REPORTING

— by Neil E. Harl\*

The choices in reporting Commodity Credit Corporation (CCC) loans<sup>1</sup> have been clear for many years.<sup>2</sup> But in early 2002, the Internal Revenue Service ruled that a change in reporting methods from treating CCC loans as income to reporting CCC loans as loans has been modified and relaxed.<sup>3</sup> That is a significant change for affected taxpayers.

### The basic CCC loan pattern

As is well known, an eligible taxpayer may use agricultural commodities as collateral for a loan from the Commodity Credit Corporation.<sup>4</sup> The loans are, basically, non-recourse so that, at maturity, if the loan plus interest is not paid, the commodity may be forfeited to the CCC as full payment for the loan.<sup>5</sup>

*No election made.* If the election has not been made to treat CCC loans as income when the loan proceeds are received, the taxpayer has no taxable income until the commodity serving as collateral for the loan is sold or forfeited to the CCC as payment on the loan.<sup>6</sup> Thus, the mere taking out (and payment of) a CCC loan does not in itself have income tax consequences. Income tax is due on forfeiture of the commodity to CCC or sale of the commodity after discharge of the CCC loan.

*Election made to treat CCC loan as income.* A taxpayer may elect to report CCC loans as income in the taxable year in which the loan is received.<sup>7</sup> The election, once made, applies to all subsequent taxable years unless permission is obtained from the Internal Revenue Service to change back to treating CCC loans as loans.<sup>8</sup>

The election to treat CCC loans as income applies to all commodities for that taxpayer.<sup>9</sup> Actually, the election involves reporting as income the value of the commodity held as collateral up to the amount of the loan rather than reporting the loan itself as income.<sup>10</sup> As the regulations state

“If a taxpayer elects or has elected...to include in his gross income the amount of a loan from the Commodity Credit Corporation...then

“(1) No part of the amount realized by the Commodity Credit Corporation upon the sale or other disposition of the commodity pledged for such loan shall be recognized as income to the taxpayer, unless the taxpayer receives an amount in addition to that advanced...as the loan.”<sup>11</sup>

IRS has ruled that a Section 77 election, once made, applies to all loans in that year.<sup>12</sup>

For loans redeemed the same year, the courts have been divided. The Fifth Circuit Court of Appeals in the 1963 case of *Thompson v. Commissioner*<sup>13</sup> held that no

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income was realized from the loan allocable to a commodity that was redeemed in the same taxable year that the CCC loan was taken out. As the court stated

“§ 77 does not prescribe that the loan is income. It prescribes that it should be ‘considered as income’ and when so done, the method of computing income so adopted shall be adhered to...”<sup>14</sup>

The Ninth Circuit Court of Appeals, on the other hand, held in 1968 in *United States v. Isaak*<sup>15</sup> that the loan amount was income, even though redeemed the same year. As the court noted, the loan is the taxable event.

#### Changing methods of reporting

A taxpayer who has been reporting CCC loans as loans may shift at any time to reporting CCC loans as income.<sup>16</sup> The question is the procedure for shifting from reporting CCC loans as income to reporting such loans as loans.

Before 2002, under the regulations, application for permission to change had to be filed within 90 days after the beginning of the taxable year to be covered by the return.<sup>17</sup> IRS has established procedures for taxpayers to receive a 90-day extension of time for applying for a change in method of accounting under the regulations.<sup>18</sup> Note that, in general, requests for a change in method of accounting for several years have been able to be filed until the due date of the return with extensions.<sup>19</sup>

Effective for taxable years ending on or after December 31, 2001, IRS has ruled that a taxpayer reporting CCC loans as income can switch automatically to treating CCC loans as loans.<sup>20</sup> For the year of change, all loans that year are reported as loans.<sup>21</sup> Loans taken out previously continue to be treated as if the election to report loans as income was still in effect. As the 2002 guidance states, the change is made on a “cut-off” basis.<sup>22</sup>

This change can be very helpful for those wishing to shift back to treating CCC loans as loans late in the taxable year.

#### FOOTNOTES

- <sup>1</sup> See I.R.C. § 77.
- <sup>2</sup> See generally 4 Harl, *Agricultural Law* § 27.03[5][c] (2001); Harl, *Agricultural Law Manual* § 4.02[1] (2001). See also Harl, “Using Commodity Certificates to Redeem Crops from CCC Loan,” 12 *Agric. L. Dig.* 8 (2001).
- <sup>3</sup> Rev.Proc. 2002-9, I.R.B. 2002-3.
- <sup>4</sup> See generally 11 Harl, *Agricultural Law* Ch. 90 (2001) for a discussion of the structure and functions of the CCC.
- <sup>5</sup> *Id.*
- <sup>6</sup> Rev. Rul. 60-211, 1960-1 C.B. 35. See *DeHaven v. Comm'r*, 36 T.C. 935 (1961).
- <sup>7</sup> I.R.C. § 77(a). See *Morrow v. Comm'r*, T.C. Memo. 1991-101 (negligence penalty where pattern of reporting CCC loans as income not followed).
- <sup>8</sup> I.R.C. § 77(b).
- <sup>9</sup> Treas. Reg. § 1.77-1.
- <sup>10</sup> See Treas. Reg. § 1.77-2(a).
- <sup>11</sup> Treas. Reg. § 1.77-2(a).
- <sup>12</sup> Ltr. Rul. 8819004, Jan. 22, 1988.
- <sup>13</sup> 322 F.2d 122 (5th Cir. 1963), *affg and remanding*, 38 T.C. 153 (1962).
- <sup>14</sup> 322 F.2d 122, 131 (5th Cir. 1963).
- <sup>15</sup> 400 F.2d 869 (9th Cir. 1968).
- <sup>16</sup> I.R.C. § 77(a).
- <sup>17</sup> Treas. Reg. § 1.77-1.
- <sup>18</sup> Rev. Proc. 83-77, 1983-2 C.B. 594.
- <sup>19</sup> Rev. Proc. 2002-9, I.R.B. 2002-3.
- <sup>20</sup> Rev. Proc. 2002-9, I.R.B. 2002-3, Appendix Section 1.01(1).
- <sup>21</sup> *Id.*
- <sup>22</sup> Rev. Proc. 2002-9, Appendix Section 1.01(3), I.R.B. 2002-3, App. Sec. 1.01(3).

## AGRICULTURAL LAW

By Neil E. Harl

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