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IRS Notice on SE Tax for CRP Payments

The uncertainty in handling conservation reserve program (CRP) payments existing since 2003 has been partially reduced, in a manner adverse to taxpayers, by the issuance of Notice 2006-108 in early December, 2006. The Internal Revenue Service response to the controversy was to – (1) issue Notice 2006-108; (2) announce that a revenue ruling is forthcoming; (3) obsoletely Rev. Rul. 60-32, a key ruling in this area for nearly 50 years; and (4) invite comments on the Notice through March 19, 2007.

The action taken by the Internal Revenue Service is in direct opposition to what was well-settled law dating back to 1988 and will mean a significant tax increase for retired and disabled taxpayers and for investors whose CRP land does not bear a “direct nexus” to a trade or business of farming.

IRS Guidance being relied on by taxpayers

In 1988, the Internal Revenue Service issued a private letter ruling indicating that payments received by a retired landowner who bid land into the conservation reserve program were not subject to self-employment tax. Various statements from both IRS and the Social Security Administration indicated that where the farm operator or owner was materially participating in the farm operation, CRP payments were properly includible in net earnings from self-employment, subject to self-employment tax.

Additional guidance came from a 1996 Tax Court case involving a Texas farmer who bought land already under a CRP contract. The Tax Court held that the CRP payments were subject to self-employment tax because of the “direct nexus” or connection with the farming operation. The farmer used the equipment and employees from the farming operation to maintain the seeding on the CRP acreage and to clip the weeds and admitted that, at the end of the 10-year CRP contract, the land would be part of the regular farming operation. Under that case, retired landowner who had land enrolled in the CRP would not have SE income from the payments and neither would a mere investor who had land in the CRP. A 1998 Tax Court case held that CRP payments were “rent” and not subject to self-employment tax but that decision was overturned on appeal. The appellate court, in dictum, specifically rejected the application of “material participation” to CRP contracts (pointing out that material participation was applicable only to landlord-tenant relationships). It is important to note that the Sixth Circuit Court of Appeals reversed the Tax Court decision without articulating a clear test as to the line between what is and what is not a trade or business as required by the statute.

The 2003 “bomb shell”

On June 23, 2003, IRS issued a Chief Counsel’s Office letter ruling, stating that all CRP

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payments should be reported on a business schedule, not a Form 4835 (for non-material participation landlords) or Schedule E (rents). That meant that all CRP payments would be subject to the 15.3 percent self-employment tax, including payments to retired or disabled landowners as well as to mere investors with land under CRP contracts. Moreover, the language also appeared to apply to other federal conservation-oriented programs such as the conservation security program, the wetlands reserve program and the grasslands reserve program.

The CCA letter ruling triggered several responses. Legislative bills that had been introduced earlier were dusted off and reintroduced. And Rep. Earl Pomeroy of North Dakota commenced a crusade to convince IRS that their position was not in accord with established tax law. A meeting in Bismarck, North Dakota, on March 26, 2004, produced little in the way of results so Pomeroy arranged a meeting on June 8, 2004 in Washington, D.C. with IRS Commissioner Mark Everson and several senior IRS staff members. At both meetings, this author laid out a history of the controversy and urged IRS to harmonize the 1988 and 2003 rulings.

At the request of Commissioner Everson, a file of materials was submitted in late June of 2004. In October of 2005, IRS admitted to losing the file so a replacement file was submitted. The IRS response came on December 5, 2006. Notice 2006-108

Notice 2006-108

The IRS response, Notice 2006-108, indicated that a revenue ruling was anticipated with an opportunity for comments through March 19, 2007.

The Notice examined two fact situations – a farmer carrying on a farming operation who bids part of the land into the CRP; the other fact situation involved a situation where the landowner rented out part of the land and bid the rest into CRP, with the work on the CRP land done by a third party. In both instances, the payments were subject to self-employment tax.

In its reasoning, IRS tossed out material participation, citing Wuebker v. Commissioner, as applicable only to landlord-tenant relationships, disregarded the “direct nexus” concept of Ray v. Commissioner, and interpreted the statutory language of “trade or business” as interpreted by the U.S. Supreme Court as requiring that a taxpayer be “. . . involved in the activity with continuity and regularity and . . . the taxpayer’s primary purpose for engaging in the activity must be for income or profit.” The Notice boldly asserts, without support, that “[p]articipation in a CRP contract is a trade or business” and that the 10-year term during which a CRP participant has duties to perform in “tilling, seeding, fertilizing, and weed control” assures the “continuity and regularity” necessary to be a trade or business. The Notice obsoletes Rev. Rul. 60-32 which posed an embarrassing obstacle to the reasoning in Notice 2006-108.

The Notice does not mention other federal conservation programs but at least some of those programs are also likely to fall within the scope of the Notice with the expansive interpretation employed of “trade or business.”

Footnotes

4 1960-1 C.B. 23.
8 Id.
9 E.g., Letter from Peter K. Scott, Associate Chief Counsel, Technical, March 10, 1987.
10 Ray v. Comm’r, T.C. Memo. 1886-436.
11 Id.
12 Id.
14 Commissioner v. Wuebker, 205 F.3d 897 (6th Cir. 2000).
15 I.R.C. § 1402(a).
17 Id.
21 Id.
22 205 F.3d 897 (6th Cir. 2000).
23 T.C. Memo. 1996-436.
26 1960-1 C.B. 23.


By Neil E. Harl

Application of the Self-Employment Contributions Act (SECA) Tax to Payments Made by the U.S. Department of Agriculture (USDA) Under the Conservation Reserve Program (CRP)

I. This Commentator’s Conclusions

It is the belief of this commentator that Notice 2006-108, I.R.B. 2006-51, which would impose the 15.3 percent self-employment tax on all participants in the federal conservation reserve program is not consistent with statutory law and case law applicable to the issue in question and is also inconsistent with the Internal Revenue Service position on this matter over at least the past four decades. The key issue is whether, as the Notice maintains, “. . . participation in a CRP contract is a trade or business” for a landowner who rents out part of the land to a farmer and enrolls the remainder in the conservation reserve program (CRP). It is submitted that there is no authority in existence at any level (other than Announcement 83-43, I.R.B. 1983-10, 28, which was
thoroughly discredited when it was issued and stands no higher today) that supports the conclusion in the Notice in question. While this commentator agrees that the term “trade or business” has never been defined statutorily, administratively or through litigation, it is abundantly clear that it is improper to take the position that all arrangements entered into for profit, regardless of the level of involvement of the taxpayer, should automatically be deemed to be a trade or business. That would reduce the language in I.R.C. § 1402(a) to a meaningless passage, including all activities or ventures of taxpayers entered into for profit, including activities which are merely investment in nature and all retired and disabled taxpayers regardless of the level of involvement of the activity.

II. What is CRP?

The Conservation Reserve Program (CRP) is an agricultural program administered by the United States Department of Agriculture. Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1508 (1985). Under the CRP, the Secretary of Agriculture is authorized to enter into long-term contracts (typically 10 years) to assist owners and operators of highly erodible cropland in conserving and improving the soil and water resources of farms and ranches. By entering into a contract, the owner or operator agrees to implement a conservation plan approved by the local conservation district for converting the highly erodible cropland normally devoted to the production of agricultural commodities to a less intensive use. Typically, the land is seeded down with the landowner agreeing to establish and maintain a suitable vegetative cover for the land. Once the seeding is established, the landowner’s involvement under the contract is usually limited to clipping the seedling once or twice each year and to patch areas where the cover crop fails out or is otherwise inadequate.

III. Meaning of “trade or business”

It is agreed that the issue is governed by I.R.C. § 1402(a) which states “[t]he term ‘net earnings from self-employment’ means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle. . . .” The regulations issued under Section 1402, Treas. Reg. § 1.1402(c)-1, state that, for the purpose of the tax on self-employment income, the term “trade or business” has the same meaning as when used in section 162.

Commissioner v. Groetzinger. The reference to I.R.C. § 162, brings in all of the cases and interpretative authority on deductibility of trade or business expenses. Of the many cases and rulings which have addressed the issue of ‘trade or business’ in the context of deductibility of expenses, the Notice singles out one of those cases, Commissioner v. Groetzinger, 480 U.S. 23 (1987), in support of the Service position that merely participating in the CRP constitutes a trade or business. The Supreme Court in Groetzinger stated that the “. . . resolution of this issue [meaning of ‘trade or business’] ‘requires an examination of the facts in each case.’ The Supreme Court goes on to point out, in further elucidation of its position, that “. . . the difficulty rests in the Code’s wide utilization in various contexts of the term ‘trade or business,’ in the absence of an all-purpose definition by statute or regulation, and in our concern that an attempt judicially to formulate and impose a test for all situations would be counterproductive, unhelpful, and even somewhat precarious for the overall integrity of the Code. We leave repair or revision, if any be needed, which we doubt, to the Congress where we feel, at this late date, the ultimate responsibility rests.”

The author of Notice 2006-108 (and the proposed revenue ruling) disregarded the high court’s cautionary approach to the problem of defining the term “trade or business” and proceeded to craft a definition that is not consistent with the court’s guidance to look at “the facts in each case” and that proceeds to attempt to impose a highly simplistic definition that is consistent with no precedent other than Ann. 83-43 which has no standing whatsoever as pointed out below.

It is helpful to note the facts in Commissioner v. Groetzinger. Groetzinger was 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. His betting activity was more than a full-time job. The taxpayer had no other employment and gambled solely for his own account. The Tax Court held that Groetzinger was in the trade or business of gambling so that no part of his gambling losses was an item of tax preference subjecting him to the minimum tax in effect in 1978. The Court of Appeals for the Seventh Circuit affirmed and the U.S. Supreme Court affirmed the Court of Appeals decision. The language relied upon by the drafter of the Notice (and the proposed revenue ruling) is dictum and does not reflect the holding in the case.

It is an incredible reach to believe that a case involving a taxpayer putting up to twice the number of hours in a normal work week into a venture, gambling or otherwise, in which it was judicially determined that the activity was a ‘trade or business,’ should stand as authority for the position that a retired or disabled taxpayer (or a mere investor who plays a passive role in the investment activity) should have income from self-employment. The holding of Commissioner v. Groetzinger was that a fulltime gambler who makes wagers solely for the taxpayer’s own account is engaged in a trade or business within the meaning of I.R.C. §§ 162(a) and 62(l).

The drafter of Notice 2006-108, I.R.B. 2006-51, singled out dictum from the court opinion that “. . . to be engaged in a trade or business, the taxpayer must be involved in the activity with continuity and regularity and that the taxpayer’s primary purpose for engaging in the activity must be for income or profit.” Conveniently, for the Service position, the drafter of the Notice ignored the sentence at the beginning of that paragraph of the opinion where the court stated, “[o]f course, not every income-producing and profit-making endeavor constitutes a trade or business.” The court followed that sentence by stating “[t]he income tax law, almost from the beginning, has distinguished between a trade or business, on the one hand, and ‘transactions entered into for profit but not connected with. . . business or trade.’” This is what is missing from the Notice – any recognition that a transaction entered into for profit could fall short, indeed, fall far short, of being a trade or business.

A review of the many other cases litigated under I.R.C. § 162 provides no support for the position taken in Notice 2006-108.

Rev. Rul. 60-32 states that payments and benefits attributable to the acreage reserve program (Soil Bank Act, Title I of the Agricultural Act of 1956, 7 U.S.C. 1801) are includible in determining the recipient’s net earnings from self-employment if he operates his farm personally or through agents or employees but if “...he does not so operate or materially participate, payments received are not to be included in determining net earnings from self-employment.” (Emphasis added)

Thus, on its face, Ann. 83-43 is at odds with Rev. Rul. 60-32. That was obvious to everyone in 1983 when Ann. 83-43 was issued (I was deeply involved in the controversy that resulted in the issuance of Ann. 83-43 and in drafting Pub. L. No. 98-4, 97 Stat. 7 (1983), which thoroughly eclipsed Ann. 83-43 and relegated the Announcement to the ash heap because of the incorrect statement in Q&A 3). Q&A 3 was wrong when it was issued in 1983; it is just as wrong today. If the drafter of Notice 2006-108 knew that, it was kept well hidden. The crowning indignity is that Notice 2006-108 obsoleted Rev. Rul. 60-32 which has served as guidance for 46 years and remains as the most correct and accurate statement of liability for self-employment tax in the agricultural context.

Wuebker v. Commissioner. Notice 2006-108 lavishes a great deal of attention on Wuebker v. Commissioner, 205 F.3d 897 (6th Cir. 2000), and implies that Wuebker supports the position taken in the Notice that all participants in a CRP contract are deemed to be carrying on a trade or business. In fact, the Sixth Circuit Court of Appeals embraced the Tax Court reasoning in Ray v. Commissioner, T.C. Memo. 1996-436, that CRP participation by a taxpayer carrying on the trade or business of farming should be subjected to a “direct nexus” test. Under that test, which was met in Ray and also in Wuebker, if the CRP land bore a direct nexus to the farming operation, self-employment tax is payable on the annual CRP payments. Indeed, the Sixth Circuit stated, “the facts of Ray are almost identical to those in the case before us, and the decision’s reasoning is sound.”

The Wuebker decision affords no support whatsoever for the position taken in Notice 2006-108 that all participants in a CRP contract, including retired and disabled landowners as well as mere investors, had income from self-employment from the annual CRP payments.

Other authority. Notice 2006-108 cites to I.R.C. § 126 (which provides for an exclusion for approved cost-share payments under various federal and state programs) in support of the positions taken in the Notice. The passage in the Notice dealing with Section 126 is confusing at best but the section provides no support for the Notice. Payments under an eligible state or federal program are excludible if for “improvements.” See Temp. Treas. Reg. § 16A.126-1(a). See also Graves v. Commissioner, 89 T.C. 49 (1987), which referred to “capital improvements subject to depreciation.” Participation in CRP usually does not involve improvements and to reference Section 126 is a “red herring” in the context of liability for self-employment tax.

The Notice does not mention Ltr. Rul. 8822064, March 7, 1988, which has been relied upon for nearly 20 years and which involved a fact situation similar to Taxpayer B in Notice 2006-108. In the Notice, Taxpayer B had ceased “ ... all activities related to the business of farming in the year before he enters into the CRP contract. In the next calendar year, B rents out a portion of his land to another farmer and enters into a 10-year contract with respect to the remaining portion of his land. B arranges for a third party to perform the tilling, seeding, fertilizing and weed control required under the CRP contract and to fulfill the other contractual requirements.” The Notice and the proposed revenue ruling state that the CRP payments are subject to the 15.3 percent self-employment tax. The facts are very similar to those in the 1988 letter ruling with the opposite conclusion.

In the 1988 ruling, a retired landowner enrolled 116.9 acres of tillable land out of a 160 acre tract of farmland in CRP after several years of leasing the land to a tenant under a crop share lease. The ruling states that “... the payments you receive pursuant to your participation in the CRP are not includible in computing ‘net earnings from self-employment.’” Were Notice 2006-108 applied to that set of facts, it would produce the opposite outcome.

Finally, mention is made of Hasbrouck v. Commissioner, T.C. Memo. 1998-249. Although that case dealt with whether the Internal Revenue Service position was substantially justified, the facts involved a situation where the taxpayers purchased land that had already been bid into CRP and attempted to deduct expenses on Schedule F. On audit, IRS objected, alleging that the taxpayers were not engaged in a trade or business on the CRP land and, hence, could not deduct expenses on Schedule F. That is precisely the opposite position taken by IRS in Notice 2006-108. The IRS representative in Hasbrouck eventually conceded the case in full.

IV. In Conclusion

The mischief in Notice 2006-108 actually began with issuance of CCA Ltr. Rul. 200325002, May 29, 2003, which took almost the same position as was taken in Notice 2006-108. After a storm of protest, that the 2003 ruling was inconsistent with prior authority, a session with the Commissioner and staff in Washington, D.C. on June 8, 2004, produced a commitment on the part of the Service to harmonize the 2003 ruling with the earlier authority. Such has not been accomplished with Notice 2006-108.

My recommendation is to withdraw the Notice, go back to the drawing board, and endeavor to craft a ruling that will be consistent with relevant authorities on the meaning of “trade or business.” I would also urge that hearings be held on this matter; it is an important issue for the agricultural sector and influences the economic attractiveness of the conservation reserve program for many landowners. If implemented as is, the Notice and the proposed revenue ruling pose a serious threat to the meaning of “trade or business” in all sectors of the economy.

Note:

Comments are to be submitted by March 19, 2007 to:

Internal Revenue Service
Office of the Associate Chief Counsel
(Tax Exempt and Government Entities) CC:TEGE
1111 Constitution Avenue, N.W., Rm. 4000
Washington, D.C. 20224
Attn: Elliot Rogers
Comments may be e-mailed to: notice.comments@irs.gov
SUMMARY OF SELECTED PROVISIONS IN THE TAX RELIEF AND HEALTH CARE ACT OF 2006

By Roger A. McEown

Overview

One of the last acts of the 109th Congress was to pass H.R. 6111, the Tax Relief and Health Care Act of 2006 (Act).1 The President signed the Act on December 20, 2006. The Act extends some provisions of the Code that had either expired or were set to expire soon, and makes key modifications to Health Savings Accounts. This article summarizes selected provisions of the Act.

Extension of Various Tax Provisions (Title I of the Act)

The Act extends the following provisions through 2007:

• The deduction for qualified tuition and related expenses for higher education;2
• The deduction for state and local sales taxes;3
• The research and development credit4 (the Act also makes other changes, including increasing the rates for the alternative incremental credit5 and creating an alternative simplified credit);6
• The work opportunity tax credit and welfare-to-work tax credit (the Act also consolidates the two credits);7
• The election to treat combat pay as earned income for the earned income tax credit;8
• The above-the-line deduction of up to $250 for out-of-pocket classroom expenses of school teachers;9
• The provision allowing brownfield remediation costs to be expensed (the Act also extends the provision to the cleanup of petroleum products);10
• The provision allowing 15-year straight-line cost recovery for qualified leasehold improvements;11
• The enhanced charitable contribution deduction for corporate donations of computer technology equipment;12
• The authority for Archer medical savings accounts;13
• The suspension of the percentage depletion method’s income limitation for oil and natural gas produced from marginal properties;14

The Act extends the following selected provisions beyond 2007:

• The new markets tax credit is extended through 2008, and the deadline for placing certain Gulf Opportunity Zone property in service to be eligible for bonus depreciation is extended through 2010.15

Energy Tax Provisions (Title II of the Act)

The Act extends several temporary energy tax provisions through 2008:

• The renewable energy credit;16
• The clean renewable energy bonds credit.17
• The deduction for energy-efficient commercial buildings;18
• The credit for energy-efficient homes;19
• The credit for residential energy-efficient property;20
• The energy credit;21 and
• The rule contained in I.R.C. § 4041 that lowers the fuel excise tax rate on qualified methanol and ethanol fuel.22

Title II also includes several non-extender provisions. For example, for cellulosic biomass ethanol plant property placed in service prior to January 1, 2013, the Act provides an additional first-year depreciation deduction equal to 50 percent of the taxpayer’s adjusted basis in the property.23 Also, the bill increases the types of expenditures that may be made from the Leaking Underground Storage Tank Trust Fund,24 and amends the I.R.C. § 45K credit for producing fuel from a non-conventional source so that the credit phaseout, which occurs when the reference price of oil exceeds $23.50 per barrel (adjusted for inflation), does not apply to facilities producing coke and coke gas.25

Health Savings Accounts (Title III of the Act)

The Act allows a one-time tax-free transfer of funds from a flexible spending arrangement or health reimbursement arrangement to a health savings account (HSA).26 An employee who fails to remain an eligible individual (e.g., fails to be covered by a high-deductible health plan) during the 12-month period following the distribution is subject to tax on the distribution and a 10 percent penalty tax.27 An employer who offers the distribution to some, but not all, eligible individuals is also subject to an excise tax.28

The Act also allows a one-time, tax-free distribution (roll-over) from an individual retirement account to an HSA, subject to several limitations.29 An individual who does not remain an eligible individual during the 12-month period following the distribution is subject to tax on the distribution and a 10 percent penalty tax.

The Act retools the limits on deductible annual contributions to an HSA.30 HSA contributions are no longer limited to the annual deductible of the individual’s high deductible health policy. Instead, for 2007, the maximum contribution limit is $2,850 for single coverage or $5,650 for family coverage. Individuals age 55 or over may make an additional catch-up contribution of $800 for 2007.31

In addition, an individual who is HSA-eligible for only part of a year, including during the last month of that year, can be treated as eligible for that entire year.32 An individual who does not remain HSA-eligible during the following year is subject to tax on the contributions that would have exceeded the deduction limitations, had they applied, and a 10 percent penalty tax.33

The Act also provides that, for purposes of determining whether an employer is subject to the excise tax in I.R.C. § 4980G for failing to make comparable HSA contributions, highly compensated employees are not treated as comparable participating employees for non-highly compensated employees.34

Other Provisions (Title IV of the Act)

For purposes of the manufacturer’s deduction of I.R.C. § 199, the Act treats Puerto Rico as part of the United States, so long as the taxpayer’s gross receipts from sources within Puerto Rico are subject to U.S. taxation.35

For alternative minimum tax purposes, the minimum tax credit that a taxpayer may carry forward to reduce regular income taxes in future years is made partially refundable for unused credits that have been carried forward.36

Under I.R.C. §6039, corporations involved in a transfer

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8 Leonard Dolezal Professor of Agricultural Law, Iowa State University, Ames, Iowa. Member of the Nebraska and Kansas Bars; honorary member of the Iowa Bar.
of stock options to an individual must provide information about the transfer to the individual. The Act requires that the corporation file a return with the IRS in addition to providing information to the person involved in the transfer.37

The Act increases the maximum $500 penalty on individuals who file a frivolous income tax return to $5,000 and applies the penalty provision to all taxpayers and federal taxes.38 IRS may impose a penalty of up to $5,000 on taxpayers who make frivolous submissions for collection due process hearings, installment agreements, offers-in-compromise, and taxpayer assistance orders, and the Act authorizes the IRS to disregard such submissions. The Act also requires IRS to publish a list of frivolous positions, arguments, requests, and submissions.

The Act makes qualifying settlement funds for the cleanup of hazardous waste sites tax-exempt on a permanent basis.39 During a corporate division such as a spin-off, a distribution of stock in a controlled subsidiary by a parent corporation to its shareholders is tax-free to both the distributing corporation and the shareholders if the requirements of I.R.C. § 355 are met. One requirement is that both the parent corporation and subsidiary must have engaged in the active conduct of a trade or business for at least five years. Under TIPRA, the “active conduct” test is determined by looking at the activities of the entire affiliated group, not just the parent and subsidiary. The Act makes the TIPRA provision permanent.40

Before amendment by TIPRA, the sale of self-created musical works resulted in ordinary income. TIPRA created a temporary rule that allows a taxpayer to treat the work as a capital asset and, therefore, to be taxed on the gain from the sale at the applicable capital gains rates. The Act makes the TIPRA provision permanent.41

Under I.R.C. § 143, mortgage revenue bonds are tax-exempt bonds used to finance below-market rate mortgages for low- and moderate-income homebuyers who have not owned a home for the past three years. The Act provides a one-time waiver of the three-year requirement for bonds used to finance residences for veterans.42

Under I.R.C. § 121, taxpayers may exclude from gross income up to $250,000 ($500,000 if married filing jointly) of the gain realized from the sale of a principal residence. The taxpayer must have used the property as a principal residence for at least two of the five years preceding the date of sale. A taxpayer may elect to suspend the 5-year period for up to 10 years during the time that the taxpayer or spouse is on qualified official extended duty as a member of the uniformed services or U.S. Foreign Service. The Act allows intelligence community employees to make the suspension election for sales made before January 1, 2011.43

I.R.C. §163 allows a deduction for interest paid on acquisition indebtedness or home equity indebtedness for the taxpayer’s residence. To assist home buyers that pay either no down payment or very little, the Act provides for an itemized deduction for qualified mortgage insurance premiums paid on qualified residences purchased in 2007.44

The Act makes permanent the TIPRA rule contained in I.R.C. § 7872 that exempts loans made pursuant to a continuing care contract to a qualified continuing care facility from the below-market interest rate rules.45

FOOTNOTES

2 Act, § 101, amending I.R.C. § 222(e). For 2006 and 2007, the above-the-line deduction is set at a maximum of $4,000 for married taxpayers filing jointly with adjusted gross income of $130,000 or less.
3 Act, § 103, amending I.R.C. § 164(b)(5)(I). The deduction is calculated either in accordance with receipts or using the Optional State Sales Tax Tables contained in IRS Pub. 600.
4 Act, § 104, amending I.R.C. § 41(h)(1)(B). The credit is generally equal to 20 percent of the taxpayer’s “qualified research expenses” that exceed a base amount.
5 The alternative incremental credit uses a “stated percentage” of qualified expenses that exceed the taxpayer’s average research expenditures over four years. Beginning in 2007, the amount is 3 percent of qualified research expenses between 1 and 1.5 percent of average annual gross receipts, 4 percent of qualified expenses between 1.5 and 2 percent of average annual gross receipts, and 5 percent of qualified expenses exceeding 2 percent.
6 Act, § 104, amending I.R.C. § 41(h)(1)(B), effective for 2007. Under the simplified method, the credit is 12 percent of the qualified research expenses that exceed 50 percent of the average qualified research expenses for the three preceding tax years. If the taxpayer has no qualified expenses in any one of the preceding three years, the credit is 6 percent of the current qualified research expenses.
7 Act, § 105, amending I.R.C. §§ 51(c)(4)(B) and 51A(f).
9 Act, § 108, amending I.R.C. § 62(a)(2). Eligible taxpayers must work at least 900 hours during the school year. No carryover of any unused portion of the deduction to a future year is allowed.
10 Act, § 109, amending I.R.C. § 198(h).
11 Act, § 113, amending clauses (iv) and (v) of I.R.C. § 168(e)(3)(E).
12 Act, § 116, amending I.R.C. § 170(e)(6)(G). In addition, for contributions after 2005, the deduction is available for equipment “assembled by” the donor.
13 Act, § 117, amending paragraphs (2) and (3)(B) of I.R.C. § 220(i).
15 Act, § 120. I.R.C. § 123 provides rules for making elections under the extended provisions to account for the fact that some provisions had expired in 2005.
16 Act, § 201, amending I.R.C. § 45(d).
17 Act, § 202, amending I.R.C. § 54. The Act also raises the caps on the amount of bonds that may be issued and the amount that may be used to finance projects of governmental bodies.
18 Act, § 204, amending I.R.C. § 179(D)(h).
19 Act, § 205, amending I.R.C. § 45L(g).
20 Act, § 206, amending I.R.C. § 25(D)(g). The Act also replaces the term “qualified photovoltaic property expenditures” with “qualified solar electric property expenditures.” Act, § 206(b).
22 Act, § 208, amending I.R.C. § 4041(b)(2).
24 Act, § 210, amending I.R.C. § 9508(c), effective upon enactment.
25 Act, § 211, amending I.R.C. § 45K(g)(2), effective for fuel produced and used after December 31, 2005, in taxable years ending after such date.
26 Act, § 302, amending I.R.C. § 106, applicable for distributions
made on or after December 20, 2006. The maximum transfer amount is the lesser of the balance as of the date of the transfer or September 21, 2006. The transfer must be made before January 1, 2012. Enrollment in an FSA in 2006 will not affect eligibility to enroll in a high deductible health plan and have an HSA in 2007, if the balance in the FSA is zero on December 31, 2006, or if the balance in the FSA is transferred to the HSA.

27 Act, § 305, effective for tax years beginning after 2006.
28 Act, § 306, amending I.R.C. § 4980G.
30 Act, § 303, amending I.R.C. § 223(b), paragraph 2.
31 The COLAs for determining the limitations are to be calculated and released by June 1 of each year. Act, § 304, amending I.R.C. § 223(g), paragraph 1.
32 Act, § 305, effective for tax years beginning after 2006. Thus, enrollees may fund a full year’s contribution to their HSA for partial year coverage as long as they remain enrolled in the high deductible health policy for 12 months. The previous rule permitted enrollees to only fund their HSA for the portion of the year in which they were enrolled in a high deductible health policy.
33 Id.
34 Act, § 306, amending I.R.C. § 4980F.

CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr

BANKRUPTCY

CHAPTER 12

PLAN. The debtors’ Chapter 12 was objected to by creditors because (1) it did not provide for interest on plan payments and (2) the plan required the FSA to forgive disaster loans given to the debtors. The court noted that the plan provided for payments to the creditors which were equal to what the creditors would receive in a liquidation. The court held that Section 1225(a)(4) required the payment of interest on claims if there was estate property available after full payment of claims; therefore, the debtors’ plan could not be confirmed without provision for interest on claims. The court also held that the plan provision for forgiveness of the FSA loan was improper because there was sufficient estate property to pay the loan. The court also noted that the plan could not be confirmed because the debtors failed to provide sufficient evidence of income to support all plan payments. The court upheld the dismissal of the case because the debtor had failed three times to present a confirmable plan over eight months. In re Rice, 2006 Bankr. LEXIS 3298 (Bankr. 8th Cir. 2006).

CORPORATIONS

OWNERSHIP OF FARM LAND. The Court of Appeals for the Eighth Circuit has affirmed a decision that Neb. Const. Art. XII, § 8 violated the dormant commerce clause in prohibiting corporations or syndicates from acquiring an interest in real property used for farming or ranching in Nebraska. See McEowen & Harl, “Federal Court Strikes Down Nebraska Corporate Farming Law,” 17 Agric. L. Dig. 1 (2006). Jones v. Gale, 2006 U.S. App. LEXIS 30588 (8th Cir. 2006), aff’g, 405 F. Supp. 2d 1066 (D. Neb. 2005).

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE. The FCIC has adopted as final regulations amending the Common Crop Insurance Regulations, Nursery Crop Insurance Provisions by amending the definition of “liners.” The regulations also finalize the Nursery Peak Inventory Endorsement to clarify that the peak amount of insurance is limited to 200 percent of the amount of insurance established under the Nursery Crop Insurance Provisions. The amendments will be applicable to the 2008 and succeeding crop years. 71 Fed. Reg. 74455 (Dec. 12, 2006).

The FCIC has issued proposed regulations amending the Common Crop Insurance Regulations, Millet Crop Insurance Provisions to remove the reduction in indemnity for any unharvested millet acreage to better meet the needs of insured producers. The changes will apply for the 2008 and succeeding crop years. 71 Fed. Reg. 77628 (Dec. 27, 2006).

HORSES. The APHIS has issued proposed regulations amending the regulations pertaining to the importation of horses to establish