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IRS Finally Requires Information Reporting for Commodity Certificate Gains

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The long-running controversy over whether commodity certificate gains should be the subject of information reporting\(^4\) was resolved on July 24, 2007, with issuance of *Notice 2007-63.*\(^3\) That move by the Internal Revenue Service placed all four methods of paying marketing loan benefits (loan deficiency payments, Commodity Credit Corporation (CCC) loans repaid with cash, CCC loans repaid with generic commodity certificates and forfeiture of commodities to CCC under non-recourse loans) under the federal commodity subsidy program\(^3\) on the same footing insofar as information reporting is concerned.\(^4\)

**Background**

Of the three forms of subsidies under the 2002 farm bill,\(^5\) direct payments, countercyclical payments and marketing loan benefits, only marketing loan benefits have produced controversy over how the benefits are handled. The controversy has arisen because one of the methods of paying marketing loan benefits – repayment of CCC loans with generic commodity certificates – has not involved reporting of the gain involved to the Internal Revenue Service or to the taxpayer.\(^6\) The other three methods of receiving the benefits – loan deficiency payments, CCC loans repaid with cash and forfeiture of commodities to CCC – have all involved reporting of gains on Form 1099-G.

**Example:**

Assume the upland cotton loan rate (which is set by Congress) is 52 cents per pound. A CCC loan is obtained for the loan rate amount, 52 cents per pound. If the adjusted world price (AWP) is 32 cents per pound (the approximation of fair market value for the commodity) the eligible participant would receive a payment of 20 cents per pound (the difference between the loan rate of 52 cents per pound and the AWP of 32 cents per pound). The 20 cents per pound would be reported to the IRS and the taxpayer on Form CCC-1099-G.

That would be the case if the benefit is paid as a loan deficiency payment (LDP), on repayment of a CCC loan with cash or by forfeiture of the commodity to CCC. However, until issuance of *Notice 2007-63*\(^3\) that was not the case for repayment of CCC loans with generic commodity certificates.

**The IRS response**

Indeed, IRS had insisted in 2004,\(^8\) in response to criticism of the longstanding practice of not requiring an information return for marketing loan gains arising from repayment

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with generic commodity certificates, that information returns were not required, although the Service conceded that such gains were taxable. The IRS pronouncement in 2004 stated –

“A farmer can use CCC certificates to facilitate repayment of a CCC loan. If a farmer uses cash instead of certificates, the farmer will receive a Form CCC-1099-G Information Return showing the market gain realized. However, if a farmer uses CCC certificates to facilitate repayment of a CCC loan, the farmer will not receive any information return. Regardless of whether a CCC-1099-G is received, the market gain is either reported as income or as an adjustment to the basis of the commodity, depending on whether the special election has been made.”

By going that far but not requiring information reporting, the IRS focused attention on the moral hazard involved, by acknowledging that the gain is taxable but refusing to order information reporting even though the other three methods of delivering marketing loan benefits all involved information reporting. That stance was criticized.

Reconsideration by IRS

On July 24, 2007, the Internal Revenue Service reversed course and issued guidance stating that “for loans repaid on or after January 1, 2007, the CCC reports market gain associated with the repayment of a CCC loan whether the taxpayer repays the loan with cash or uses CCC certificates in repayment of the loan.” The CCC reports the market gain on Form 1099-G, Certain Government Payments.”

The same publication also confirmed that a taxpayer who has elected to treat CCC loans as income can account for the market gain “. . . for the year in which a CCC loan is repaid by making an adjustment to the basis of the commodity that secures the loan. The taxpayer’s basis in the commodity before the repayment of the loan is equal to the amount of the loan previously reported as income. That basis is reduced by the amount of any market gain associated with the repayment of the loan.”

In conclusion

With all of the attention currently being focused on payment limitations, this development is likely to be greeted warmly by those urging a level playing field in handling subsidy payments. However, marketing loan benefits associated with repayment of CCC loans with generic commodity certificates and forfeiture of commodities to CCC in repayment of non-recourse loans remain exempt from the statutory payment limitation of $75,000 for that type of benefit.

FOOTNOTES


4 See note 1 supra.

5 See note 3 supra.


CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ADVERSE POSSESSION

FENCE. The two properties involved had once been part of the same ranch. The plaintiffs purchased their parcel from the ranch owner and their parcel was enclosed by a single fence which they treated as the boundary to their land. The plaintiffs planted the land with blue spruce trees, including the area in dispute on the north side of the southern boundary. The defendants purchased their parcel from someone who had purchased the parcel from the ranch owner. A survey was performed, showing the true boundary line north of the fence so the defendants had the fence removed and built a new fence on the true boundary. The plaintiffs filed suit to quiet title and for damages for the trees removed on the disputed strip by the defendants. The fence was in disrepair and did not follow a straight line but wandered with the topography of the land. The evidence also showed that the fence served only as a pasture division fence on the original ranch and never served as a boundary line. The trial court entered judgment for the defendants because the