3-5-2010

The Meaning of "Excess Farm Losses"

Neil E. Harl

Iowa State University

Follow this and additional works at: http://lib.dr.iastate.edu/aglawdigest

Part of the Agricultural and Resource Economics Commons, Agricultural Economics Commons, Agriculture Law Commons, and the Public Economics Commons

Recommended Citation

Available at: http://lib.dr.iastate.edu/aglawdigest/vol21/iss5/1

This Article is brought to you for free and open access by the Journals at Iowa State University Digital Repository. It has been accepted for inclusion in Agricultural Law Digest by an authorized editor of Iowa State University Digital Repository. For more information, please contact digirep@iastate.edu.
The Meaning of “Excess Farm Losses”

-by Neil E. Harl

In an effort to curb the offsetting of farm losses against non-farm income, Congress in 2008 passed a provision as part of the 2008 “Farm Bill,” the Food, Conservation, and Energy Act of 2008. Aside from the fact that it is unusual for a tax provision to be included in a farm bill, the legislation is also notable because of the uncertainty over the meaning of “aggregate gross income or gain” in the legislation. The issue is important (1) because the definition of that term can affect a taxpayer’s handling of losses and (2) the Internal Revenue Code has similar language in different Code sections and the interpretations have not been the same in the resulting regulations.

The statutory provision

As enacted by Congress and signed into law, the 2008 provision specifies that, for taxpayers other than C corporations receiving an “applicable subsidy,” excess farm losses are disallowed as a deduction against non-farm income. The provision was effective for taxable years beginning after December 31, 2009.

Meaning of “excess farm losses.” The term “excess farm losses” is defined as the greater of $300,000 ($150,000 for married taxpayers filing separately) or the net farm income for the previous five years. Disallowed losses can be carried forward to the next taxable year and subsequent years.

Definition of “applicable subsidy.” The term “applicable subsidy” means any direct payments or counter-cyclic payments (or any payment in lieu of such payments) or any Commodity Credit Corporation (CCC) loan.

What is a “farming business?” The legislation defines “farming business” as defined in I.R.C. Sec. 263A(e)(4) but includes income from processing activities.

Losses disregarded. The provision specifies that casualty losses (fire, storm or other casualty) or losses by reason of disease or drought are to be disregarded in the calculations.

Relationship to passive losses. The legislation states that the provision is to be applied before the passive loss rules are invoked.

Treatment of pass-through entities. For partnerships and S corporations, and presumably for other pass-through entities, the limitation is applied at the partner or shareholder level.

* Charles F. Curtiss Distinguished Professor in Agriculture and Emeritus Professor of Economics, Iowa State University; member of the Iowa Bar.
A proportionate part of the income, gain or deduction as well as applicable subsidies are to be taken into account.\(^{14}\)

If the taxpayer is a member of a cooperative to which Subchapter T applies, any trade or business of the cooperative is treated as a trade or business of the taxpayer.\(^{15}\)

**Meaning of “aggregate gross income”**

The meaning of the term “aggregate gross income” is unclear.\(^{16}\) The term is not yet defined in regulations and is not discussed in the committee reports.\(^{17}\) However, similar although not identical language appears elsewhere in the Internal Revenue Code.

**Soil and Water Conservation Expenditures.** The Soil and Water Conservation Expenditure provision\(^{18}\) which was enacted in 1954 and which has been viewed widely as the most influential of the definitions, uses the term “gross income derived from farming.”\(^{19}\) However, that language was modified in the final regulations to include gains from the disposition of livestock held for draft, dairy, breeding or sporting purposes but gains from the sale or other disposition of farm machinery and land were not included.\(^{20}\)

**Income averaging for farmers and fishermen.** Income averaging for farmers and fishermen, in using the term “elected farm income,”\(^{21}\) in the statute and in the regulations refers to gain or loss from the sale or other disposition of property that is regularly used in the individual’s farming business for a substantial period of time except for land.\(^{22}\) The regulations make it clear that elected farm income includes the fixtures affixed to the land, however.\(^{23}\)

**Estimated gross income from farming.** The Internal Revenue Code, in the rules applicable for determining penalties for failure to pay estimated tax and providing the special treatment for farm taxpayers, refers to “gross income from farming or fishing.”\(^{24}\) The regulations under the prior provision (I.R.C. Sec. 6073) have not been reissued under I.R.C. Sec. 6654(i) but rulings indicate that the term includes the gains from the sale of livestock used in the trade or business of farming and held for draft, dairy or breeding purposes but it does not include gains from the sale of “farm land” or farm equipment subject to an allowance for depreciation.\(^{25}\) In this respect, the estimated tax provision parallels the soil and water conservation expenditure provision\(^ {26} \) and indeed the key ruling issued in 1963\(^ {27} \) refers specifically to the soil and water conservation provisions and patterns the estimated tax rules after that provision’s guidance.

It should be noted that the entire gain including that from sales of farm land and equipment was part of total gross income against which the required two-thirds (from farming) was measured.\(^ {28} \)

It is likely, until regulations are issued (if they are) or other guidance is published, it will not be clear what meaning is to be given to “aggregate gross income.”\(^ {29} \) However, the history of development of farm tax suggests that the Section 175 regulations have an edge in becoming the guidance for the “excess farm loss” provision.\(^ {30} \)

---

**ENDNOTES**


3 I.R.C. § 461(j)(1).


6 I.R.C. § 461(j)(2).

7 I.R.C. § 461(j)(3).

8 I.R.C. § 461(j)(4)(D).

9 I.R.C. § 1033.


11 I.R.C. § 461(j).

12 I.R.C. § 461(j)(7).


16 See I.R.C. § 461(j).


18 I.R.C. § 175.

19 I.R.C. § 175(b).


21 I.R.C. § 1301(a), (b)(1).


26 I.R.C. § 175.


29 I.R.C. § 461(j).

30 I.R.C. § 461(j).