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REPORTING GOVERNMENT PAYMENTS

— by Neil E. Harl*

The slide in crop prices (and farm income) in 1998 in many areas of the country has activated two provisions in the 1996 farm bill which are likely to be involved in reporting 1998 farm income. These two provisions, marketing assistance loans [Id.] and loan deficiency payments need to be applied in light of other provisions in existing tax law.

**Loan deficiency payments**

A loan deficiency payment (LDP) is a payment for the difference between the county loan rate for the commodity (except for extra long staple cotton) and the CCC-determined price (the posted county price). If a commodity is eligible for a Commodity Credit Corporation (CCC) loan, the commodity is eligible for an LDP. However, once a commodity is used for an LDP it is not eligible to be placed under CCC loan.

The LDP must be requested before the producer loses the “beneficial interest” in the crop and, therefore, an LDP cannot be requested once the crop has been sold. An LDP can be claimed for farm-stored or warehouse-stored commodities. An LDP can be requested on all or a portion of an eligible crop.

The LDP amount appears to be taxable in the year received and is apparently not deferrable as a federal disaster payment.

**Marketing assistance loans**

A marketing assistance loan (or marketing loan, for short) gives the borrower (operator or eligible landowner) an additional repayment option of repaying the lesser of principal plus interest on the loan or the county posted price for the commodity under the CCC loan. For “contract” commodities, any production on a farm containing eligible cropland covered by a production flexibility contract is eligible for a marketing loan. For extra long staple cotton and oil seeds, any production is eligible for the marketing loan.

The statute specifically states that a producer must, as a condition of receiving a marketing assistance loan, comply with all conservation and wetlands protection requirements during the term of the loan.

The income tax treatment of a marketing loan depends on whether the taxpayer treats CCC loans as loans or has elected at some point to treat CCC loans as income.

**Example:** Corn is placed under CCC loan ($30,000) in October of 1998. In 1999, the commodity is redeemed and the loan is paid off for $27,000 based on the county posted price at that time. The corn is sold later in 1999 for $32,000.

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With the election to treat CCC loans as income—
Gain in 1998 $30,000
Gain in 1999:
- Gain in repaying loan $3,000
- Gain on sale of corn 2,000
- 5,000 5,000
Total gain………………………………………... $35,000
With the CCC loan treated as a loan—
Gain in 1998 0-
Gain in 1999
- Gain in repaying loan $3,000
- Gain on sale of corn 32,000
- 35,000 35,000
Total gain………………………………………... $35,000

It is important to check the figures closely on information returns filed with the Internal Revenue Service. That filing does not necessarily reflect the CCC loan election and may put part of the gain in the wrong year.

Crop insurance and disaster payments
Crop insurance and disaster payments are normally reported as income in the year of receipt. However, operators and share-rent landlords on the cash method of accounting may elect to defer crop insurance proceeds and federal disaster payments to the following year if the taxpayer has a history of deferring a substantial amount in prior years (generally interpreted as more than 50 percent of the crop). It is not possible to defer only a portion of a crop.

Both crop insurance and disaster payments must be treated the same way if received in the same taxable year. Neither need be deferred, even though the taxpayer is eligible, and both can be deferred if the taxpayer elects. But it is not possible to defer one and not the other if received in the same taxable year. Of course, if received in different taxable years, the payments can be treated differently.

One election covers the insurance proceeds attributable to all crops representing a trade or business. An election counts only for the tax year in which made; application to revoke an election must be made to the District Director of Internal Revenue.

A major concern is whether the newer "revenue assurance" crop insurance contracts meet the tests for deferral. IRS, in the past, has insisted that the crop insurance recovery relate to the condition of the crop in order to be deferrable as crop insurance. Legislation has been introduced (but not yet passed) to extend the deferral opportunity to revenue assurance contracts.

Neither LDP payments nor marketing assistance loan repayment "profits" appear to be eligible for the one-year deferral. The statute refers to "...insurance proceeds received as a result of destruction or damage to crops" or federal disaster payments.

In conclusion
Year-end tax planning for 1998 will be particularly important and will involve the application of some tax concepts that have not been in general use in many parts of the country.

FOOTNOTES
3 See n. 2 supra.
7 Id.
8 See I.R.C. § 451(d).
12 16 U.S.C. § 3821 et seq.
13 7 U.S.C. § 7251(c).
15 I.R.C. § 61.
16 I.R.C. § 451(d).
18 Id.
20 Id.
21 Treas. Reg. § 1.451-6(a)(2).
22 Treas. Reg. § 1.451-6(b)(2).
23 See Harl, "Income Assurance: Are Recoveries Deferrable?" 8 Agric. L. Dig. 49 (1997).
28 See I.R.C. § 451(d).
29 Id.

Omnibus Spending Bill
by Neil E. Harl

On October 15, 1998, the Congress and the Administration reached agreement on an Omnibus Spending Bill. A final vote has not yet occurred as of press time but passage is expected. Several provisions are of particular importance to the agricultural sector and are discussed briefly here. More detailed coverage will appear in an upcoming issue of the Digest.

Chapter 12 Bankruptcy

The legislation contains a six-month extension for Chapter 12 bankruptcy (which had expired on September 30, 1998). The extension expires on April 1, 1999. The Bankruptcy Reform Bill, which did not pass, would have made Chapter 12 permanent.

Tax Provisions

The omnibus legislation embraced four tax provisions for the farm and small business sectors—
• Income averaging for farmers was made a permanent part of the Internal Revenue Code. The concept would otherwise have expired after 2000.
• A special five year net operating loss carryback for farmers was adopted. Tax refunds may be obtained for net operating loss carrybacks.
• A provision was adopted preventing application of the doctrine of constructive receipt to AMTA payments (the payments under the 1996 farm bill). Earlier, Congress had acted to allow the Spring, 1999 payment to be available for payment in the fall of 1998. Under the new provision, payments will be included in income in the year payment is actually received. Without the legislation, the payments could have been deemed to be constructively received—and hence taxable—in 1998 even though not actually received until 1999.
• The deductibility of health care insurance premiums for self-employed individuals is accelerated by the legislation. Self-employed individuals will be able to deduct 60 percent in 1999 through 2001, 70 percent in 2002 and 100 percent in 2003 and later years.

Disaster Relief
The legislation includes $2.575 billion in funding to address crop disaster losses. The Secretary of Agriculture is given broad authority to create and implement a disaster program.
• Single year disaster — the legislation makes $1.5 billion available to assist producers with crop losses in 1998.
• Multi-year disaster — an additional $875 million is made available to provide assistance to producers who have suffered a multiple-year crop loss, especially for farmers in the Upper Midwest whose crops have suffered from wheat scab disease and multi-year flooding.
• Livestock feed assistance — $200 million in funding is provided for cost share assistance to livestock producers who lost their 1998 supplies of feed to disasters.
Several conditions are imposed on the legislation—

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

BANKRUPTCY

GENERAL-ALM § 13.03.ª

EXEMPTIONS

HOMESTEAD. The debtor owned 2.61 acres which included the debtor’s residence and land leased to a corporation owned by the debtor and former spouse. The corporation operated a nursery on the leased property. The debtor constructed an irrigation system on the property and later leased the irrigated property to an unrelated third party. The entire property could not be subdivided. The court held that the leased portion of the property could not be exempt under the Florida homestead exemption. The court required the debtor to pay to the bankruptcy estate the value of the leased portion or the whole property was to be sold, with the proceeds divided between the exempt and non-exempt portions. In re Nofsinger, 221 B.R. 1018 (Bankr. S.D. Fla. 1998).

PLAN. The debtor was a purchasing cooperative which dealt in agricultural chemicals, including fertilizers, pesticides and herbicides. A creditor objected to the valuation of the inventory in the debtor’s plan. The debtor’s valuation expert testified that the value of the chemicals was only 10-15 percent of costs because the inventory of chemicals would be very difficult to sell because the chemicals were at several locations around the country, were packaged in branded containers, and were difficult to handle. The creditor argued that the inventory could be liquidated over time at no less than 50 percent of cost by continuing to sell the chemicals to the debtor’s member retailers. The court held that the debtor’s valuation would be used because the sale of the entire inventory at liquidation would yield a greater payment to creditors than any attempt to sell the inventory to member retailers. In re Voluntary