



Agricultural Law Press

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Summary of Recently Enacted Tax Legislation

-by Neil E. Harl*

Several tax bills were passed and signed in the waning days of the 110th Congress, 1st Sess. (2007). The following items are of particular significance to farm and ranch taxpayers. Several other provisions of great importance to farmers and ranchers (notably the issues of whether all Conservation Reserve Program payments should be subject to self-employment tax, the useful life for farm machinery and equipment (proposal to reduce the useful life for depreciation purposes from seven to five years) and the handling of recapture of depreciation in the event of installment sale of single purpose agricultural and horticultural structures and trees and vines producing fruits and nuts) did not make it into the year-end rush of bills that reached the President's desk.

Mortgage Forgiveness Debt Relief Act of 2007, Pub. L. No. 110-142

Discharge of indebtedness on principal residence. The Mortgage Forgiveness Debt Relief Act of 2007 was signed into law on December 20, 2007, and applies to discharges of indebtedness on or after January 1, 2007, and before January 1, 2010. **Act § 2(a), amending I.R.C. §§ 108(a)(1)(E), 108(h).**

The legislation specifies that qualified principal residence indebtedness which is discharged and which would otherwise be included in gross income of the taxpayer may be applied to reduce the income tax basis of the principal residence of the taxpayer (but not below zero). The term "qualified principal residence indebtedness" is limited to acquisition indebtedness with the amount boosted for purposes of this provision to \$2,000,000 on a joint return, \$1,000,000 for a separate return. **Act § 2(a), amending I.R.C. § 108(h).**

The term "principal residence" has the same meaning as the term is used in I.R.C. § 121. Moreover, the principal residence exclusion takes precedence over the insolvency exclusion of I.R.C. § 108(a)(1)(B). **Act § 2(c), amending I.R.C. § 108(a)(2).**

Mortgage Insurance Premiums. The Act extends the treatment of mortgage insurance premiums as interest (as specified in I.R.C. § 163(h)(3)(E)(iv)) through December 31, 2010. **Act § 3, amending I.R.C. § 163(h)(3)(E)(iv)(I).**

Benefits Provided to Volunteer Firefighters and Emergency Medical Responders. The Act specifies that, for taxable years beginning after 2007 and through 2010, for any member of a "qualified volunteer emergency response organization," gross income does not include any qualified state and local tax benefit and any "qualified payment." The latter includes "... any payment (whether reimbursement or otherwise) provided by a State or political division thereof on account of the performance of services as a member of a qualified volunteer emergency response organization." The amount excluded cannot exceed \$30

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times the number of months during the year the taxpayer performs such services. **Act § 5, adding I.R.C. § 139(B).**

Student Housing Eligible for Low Income Housing Credit. The legislation clarifies that single parents and their children and such parents are not dependents of another individual and such children are not dependents of another individual other than a parent of such children for purposes of disqualification for the low income housing credit. **Act § 6, amending I.R.C. § 42(i)(3)(ii)(I).**

Capital Gains Exclusion Under I.R.C. § 121 for Surviving Spouses. The Act extends for two years after the death of a spouse the \$500,000 exclusion under I.R.C. § 121 provided the surviving spouse remains unmarried and the requirements for the exclusion were met immediately before the date of death. **Act § 7(a), adding I.R.C. § 121(b)(4).** The amendment applies to sales or exchanges after December 31, 2007. **Act, § 7(b).**

Penalty for Failing to File Partnership Returns. The legislation increases the penalty from \$50 per partner per month to \$85 per partner per month and extends the period for imposing the penalty from five months to 12 months, effective on the date of enactment of the Act (December 21, 2007). **Act § 8(a), (b), amending I.R.C. § 6698(a), (b).** The Act does not, however, change the provision in I.R.C. § 6231(a)(1)B) by which a domestic partnership composed of 10 or fewer partners is not subject to the penalties for failing to file a timely or complete partnership return.

Failure to File S Corporation Returns. In addition to the penalty imposed for willful failure to file a return, supply information or pay tax, the Act imposes a new penalty to be assessed against an S corporation that fails to file a return or fails to supply information required under I.R.C. § 6037 at the rate of \$85 multiplied by the number of persons who were shareholders in the S corporation at any time during the taxable year. **Act § 9(a), adding I.R.C. § 6699.**

Installment Payment of Corporate Estimated Taxes. The Act increased by 1.50 percentage points the required percentages for installment payment of corporate estimated taxes, effective on the date of enactment. **Act § 10.**

Tax Increase Prevention Act of 2007, H.R. 3996

The Tax Increase Prevention Act of 2007 was signed into law on December 26, 2007, and is devoted solely to the alternative minimum tax *for taxable years beginning in 2007 only.*

Increased exemption amount. The Act raises the AMT exemption amount to \$66,250 for taxpayers who are married and file jointly, to \$44,350 for single taxpayers and to \$33,125 for married taxpayers filing separately. **Act § 2, amending I.R.C. § 55(d)(1).**

Extension of AMT relief to nonrefundable personal credits. The legislation also extends the alternative minimum tax relief (the credits can offset the alternative minimum tax) for taxable years beginning in 2007 for the dependent care credit, the HOPE credit and the lifetime learning credit (plus the District of Columbia first time homebuyer credit). **Act § 3(a), amending I.R.C. § 26(a)(2).**

Energy Independence And Security Act of 2007, Pub. L. No. 110-140

The Energy Independence and Security Act of 2007 was signed into law on December 19, 2007. Most of the tax provisions were stripped from the bill but were included in H.R. 2419 (the farm bill) by the Senate which has not yet been passed.

Extension of FUTA surtax. The Act extends the additional 0.2 percent FUTA surtax through December 31, 2008. **Act § 1501.**

Amortization of geological and geophysical expenditures. The Act provides for seven-year amortization of geological and geophysical expenditures for major integrated oil companies. **Act § 1502.**

Mandated ethanol and other biofuels use. The Act increases the mandated use of ethanol to 36 billion gallons per year by 2020 of which 21 billion gallons must come from feedstock other than corn (such as wood chips, grasses, other crop residues and other cellulosic biomass.). The mandate is 20.5 billion gallons of ethanol by 2015 of which 5.5 billion gallons is to come from "advanced biofuels" such as cellulosic. Specifically, cellulosic biofuels are mandated at 3.0 billion gallons by 2015, 16 billion gallons by 2022.

Biomass-based diesel is mandated at 0.5 billion gallons by 2009, 1.0 billion gallons by 2012. A waiver is authorized for the mandates. **Act §§ 202, 251 amending 42 U.S.C. § 7545(o)(2).**

Other significant provisions. The Act also requires that motor vehicles meet an average of 35 miles per gallon by 2020; the energy efficiency of appliances, including refrigerators, freezers and dishwashers, be increased; the energy efficiency of light bulbs be increased by 70 percent; and energy efficiency improvements be implemented for federal buildings and new commercial building construction. **Act §§ 311, 312, 313, 314, 315, 321, 431, amending 49 U.S.C. § 32902(a)(1), 32902(k); 42 U.S.C. § 6295(cc)(2), (b)(4), § 6311(1), 6313(f).**

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