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## REPORTING 1998 GOVERNMENT FARM PROGRAM PAYMENTS

— by Neil E. Harl\*

Determining the proper federal income tax treatment for government farm program payments for 1998, and figuring out all of the options—are not easy tasks.<sup>1</sup> It's easily the most complex situation in years. Taxpayers may have received one or more of ten items either in the form of federal payments or items subject to special treatment for income tax purposes.

### AMTA payments

The spring 1998 and fall 1998 AMTA (Agricultural Market Transition Act)<sup>2</sup> payments are reported as income in 1998.<sup>3</sup> These amounts cannot be delayed into 1999.<sup>4</sup> The AMTA payments are the regular farm program payments which continue through 2002.<sup>5</sup>

In August, 1998, legislation was signed into law allowing landowners and producers to receive the spring 1999, AMTA payment in the fall of 1998.<sup>6</sup> Later, in the Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999,<sup>7</sup> Congress acted to specify that the payments under the Federal Agriculture Improvement and Reform Act of 1996<sup>8</sup> would be taxable in the year actually received.<sup>9</sup> That meant IRS couldn't argue that the funds would be taxed in 1998 under "constructive receipt" rules even though not received until 1999.<sup>10</sup>

### "Market loss" payments

Just over \$3 billion was appropriated in the Omnibus bill<sup>11</sup> (signed October 21, 1998) for "market loss" payments to landowners and producers. The payments were made in early November and averaged about half of the regular AMTA payment for 1998. Indeed, the legislation states that the assistance "made available to owners and producers on a farm...shall be proportional to the amount of the contract payment received by the owners and producers for fiscal year 1998 under a production flexibility contract for the farm under the Agricultural Market Transition Act."<sup>12</sup>

A major issue—are the payments eligible for the one-year deferral open to disaster payments?<sup>13</sup> Although some referred to the payments as disaster payments, and Title XI of the legislation is entitled, "Emergency and Market Loss Assistance,"<sup>14</sup> the legislation was not drafted as "disaster" legislation.<sup>15</sup> The legislation as passed states that the funds are "to partially compensate the owners and producers for the loss of markets for the 1998 crop of a commodity."<sup>16</sup> That language means the payments are taxed in the year received—and that was 1998.

From the amount allocated for market loss assistance, dairy producers are to receive payments totaling \$200 million.<sup>17</sup> The details are to be specified by USDA.<sup>18</sup> Those payments are expected to be taxable in the year of receipt and aren't deferrable to the

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following year.

### Disaster payments and crop insurance

The Omnibus bill included authorization for single year and multi-year disaster payments totaling \$2.375 billion.<sup>19</sup> Both relate to crop losses. Single year disaster payments are mostly for drought. Multi-year disaster loss payments include losses from crop disease and multi-year flooding.<sup>20</sup>

Recipients of 1998 disaster assistance who did not purchase crop insurance in 1998 are required to purchase crop insurance for the next two years.<sup>21</sup>

But are the disaster payments deferrable into 1999? The Internal Revenue Code permits a one-year deferral of disaster payments—and crop insurance proceeds—for “destruction or damage to crops caused by drought, flood, or any other natural disaster, or...the inability to plant crops because of such a natural disaster...”<sup>22</sup> To be deferrable, the taxpayer must be on the cash method of accounting and the taxpayer must establish that the practice was to include income from the damaged or destroyed crops in the following year (interpreted as more than 50 percent carried over to the following year in the past).<sup>23</sup> Both crop insurance and disaster payments must be treated the same way if received in the same tax year.<sup>24</sup> Thus, if both were received in 1998, both can be deferred if the requirements are met or neither is deferred. But it's not possible to defer one and report income from the other in 1998.<sup>25</sup>

### Livestock feed assistance

An additional \$200 million was made available to provide for cost share assistance to producers who lost their 1998 supplies of feed to disasters.<sup>26</sup>

It does not appear that this benefit is deferrable into 1999 if received in 1998.

### LDP

Loan deficiency payments (LDP) are paid on a per-bushel basis and vary by crop, location and the date the decision was made to collect the LDP.<sup>27</sup> Loan deficiency payments are taxable in the year received.<sup>28</sup> For most producers that was 1998 but, in a few cases, payment wasn't made until 1999.

### Marketing loan gains

For those choosing to place commodities under CCC loan, the loan can be repaid at the lesser of principal plus interest or the posted county price.<sup>29</sup> If the PCP is below the loan rate, it produces a marketing loan gain.

In general, that gain must be reported as income in the year the loan is repaid. There is some support for the argument that taxability of the marketing loan gain can be deferred until the year the commodity is sold for those who have elected to treat CCC loans as income.<sup>30</sup> It's accomplished by reducing the income tax basis of the commodity.<sup>31</sup> That's not completely clear and may not be clarified in time for filing 1998 tax returns. Indeed, there is no authority for applying guidance issued during the era of commodity redemption with commodity certificates.<sup>32</sup>

Remember, those who have elected to treat CCC loans as income<sup>33</sup> must report as income (in the year the CCC loan is taken out) the amount of the commodity equal to the CCC loan amount.<sup>34</sup> That gives the commodity a basis.<sup>35</sup>

### In conclusion

In most instances, it will be necessary to check information returns against the taxpayer's records to be sure the correct amount is reported in the right year.

### FOOTNOTES

- <sup>1</sup> See generally 4 Harl, *Agricultural Law* § 27.03[4] (1998); Harl, *Agricultural Law Manual* § 4.02[1] (1998).
- <sup>2</sup> Federal Agriculture Improvement and Reform Act of 1996, Secs. 111-118, Pub. L. 104-127, 110 Stat. 888 (1996).
- <sup>3</sup> See I.R.C. § 451(a).
- <sup>4</sup> See I.R.C. § 451(d) (limited to “destruction or damage to crops” or “inability to plant crops”).
- <sup>5</sup> See n. 2 *supra*.
- <sup>6</sup> Pub. L. 105-228, 112 Stat. 1516 (1998).
- <sup>7</sup> H.R. 4328, 105th Cong., 2d Sess. (1998), hereinafter Omnibus Bill.
- <sup>8</sup> See n. 2 *supra*.
- <sup>9</sup> Omnibus Bill, Sec. 2012, n. 7, *supra*.
- <sup>10</sup> See 4 Harl, *supra* n. 1, § 25.03[2]; Harl, *supra* n. 1, § 4.01[1][b].
- <sup>11</sup> See n. 7 *supra*.
- <sup>12</sup> Omnibus Bill, Sec. 1111(b), n. 7 *supra*.
- <sup>13</sup> See I.R.C. § 451(d).
- <sup>14</sup> Omnibus Bill, n. 7 *supra*.
- <sup>15</sup> Omnibus Bill, Sec. 1111(d), n. 7 *supra*.
- <sup>16</sup> Omnibus Bill, Sec. 1111(a), n. 7 *supra*.
- <sup>17</sup> Omnibus Bill, Sec. 1111(d), n. 7 *supra*.
- <sup>18</sup> *Id.*
- <sup>19</sup> Omnibus Bill, Sec. 1102, n. 7 *supra*.
- <sup>20</sup> *Id.*
- <sup>21</sup> Omnibus Bill, Sec. 1102(g), n. 7 *supra*.
- <sup>22</sup> I.R.C. § 451(d).
- <sup>23</sup> See Rev. Rul. 74-145, 1974-1 C.B. 113.
- <sup>24</sup> Notice 89-55, 1989-1 C.B. 696.
- <sup>25</sup> *Id.*
- <sup>26</sup> Omnibus Bill, Sec. 1103, n. 7 *supra*.
- <sup>27</sup> 7 U.S.C. § 7235. See Harl, “Reporting Government Payments,” 9 *Agric. L. Dig.* 157 (1998).
- <sup>28</sup> See I.R.C. § 451(a).
- <sup>29</sup> 7 U.S.C. § 7231.
- <sup>30</sup> See Rev. Rul. 87-103, 1987-2 C.B. 41 (dealing with gain from commodity certificates used to redeem commodities under CCC loan).
- <sup>31</sup> *Id.*
- <sup>32</sup> *Id.*
- <sup>33</sup> I.R.C. § 77(a).
- <sup>34</sup> See Treas. Reg. § 1.77-2(a).
- <sup>35</sup> Treas. Reg. § 1.77-2(a)(1).