Limitation on farming losses in the Heartland, Habitat, Harvest, and Horticulture Act of 2008

Dear Reader,

The recently enacted "Heartland, Habitat, Harvest, and Horticulture Act of 2008" (the 2008 Farm Act) contains a package of tax incentives to promote conservation investment in farm country. Those incentives are paid for, in part, by a new limitation on farming losses for certain taxpayers. In essence, the new law limits agricultural losses that can be claimed to the greater of $300,000 ($150,000 for a married person filing separately) or the net farm income for the previous five years if the taxpayer receives any 2008 Farm Act commodity payments or Commodity Credit Corporation loans. Here is a closer look at this new limitation.

Except for passive activity rules in Code Sec. 469, the amount of farming losses that a taxpayer may claim is not limited under pre-2008 Farm Act law. The new provision, which is effective for tax years beginning after December 31, 2009, alters that situation by limiting the amount of farming losses that a taxpayer, other than a C corporation, may use to offset non-farm business income. The limitation amount is the greater of $300,000 ($150,000 in the case of a married person filing a separate return) or the total net farm income the taxpayer has received over the last five years. For example, assume a taxpayer has $300,000 of net farm income and $700,000 of non-farm income in 2010, and $1 million of net farm income in each tax year 2011 to 2014. In 2015, he incurs a $7 million farming loss. Under the new provision, his farming loss in 2015 is limited to the greater of (1) $300,000 or (2) $4.3 million (total net farm income for the prior five tax years). The $4.3 million of the farming loss allowed in 2015 may be carried back to the prior five tax years.

Losses that are limited in a particular year may be carried forward to subsequent years.

For partnerships and S corporations, the limit is applied at the partner or shareholder level. Farming losses arising by reason of fire, storm, or other casualty, or by reason of disease or drought, are disregarded for purposes of calculating the new limitation.

This provision only applies to eligible taxpayers who receive any direct or counter-cyclical payments under title I of the 2008 Farm Act (or any payment elected in lieu of any such payment), or any Commodity Credit Corporation loan. For purposes of this provision, the definition of "farming business" is broadened to include the processing of commodities, without regard to whether such activity is incidental, by a taxpayer otherwise engaged in a farming business with respect to such commodities.

I hope this information is helpful. If you would like more details about this or any other aspect of the new law, please do not hesitate to call.