Overview of the tax changes 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 changes including specialized tax breaks for the farming industry (along with a crackdown on farm losses) and new and modified credits related to the production of certain fuels, among other things. Here's a summary of the key tax provisions in the 2008 Farm Act:

- Conservation reserve payments made after 2007 are not subject to self-employment tax if received by an individual who is getting Social Security retirement or disability payments.
- The favorable tax treatment of capital gain property donated for qualified conservation is extended for two years (through 2009).
- A new deduction is allowed for endangered species recovery expenses incurred after 2008.
- There is a one-year cut in the tax rate for a corporation's qualified timber gain. For tax years ending after May 22, 2008 and beginning on or before May 22, 2009, a 15% alternative tax applies on the portion of a corporation's taxable income that consists of qualified timber gain (or, if less, the net capital gain) for a tax year. In addition the rules for REITs (real estate investment trusts) holding timber property are liberalized temporarily.
- A new tax credit is created for the development of cellulosic biofuels, which are biofuels produced from agricultural waste, wood chips, switch grass and other non-food feedstocks. This credit, available for fuel produced after 2008 and through 2012, is a nonrefundable income tax credit for each gallon of qualified cellulosic fuel production of the producer for the tax year. The amount of the credit per gallon is $1.01, except for cellulosic biofuel that is alcohol. For cellulosic biofuel that is alcohol, the $1.01 credit amount is reduced by (1) the credit amount applicable for such alcohol under the alcohol mixture credit in effect at the time cellulosic biofuel is produced, and (2) in the case of cellulosic biofuel that is ethanol, the credit amount for small ethanol producers as in effect at the time the cellulosic biofuel fuel is produced.
- The 51¢ per-gallon incentive for ethanol is reduced to 45¢ per gallon for calendar year 2009 and thereafter. This reduction is subject to an exception geared to ethanol production.
- A new tax credit is created for agricultural chemicals security. The new law provides retailers of agricultural products and chemicals and manufacturers, formulators, or distributors of certain pesticides a business tax credit for 30% of costs for the protection of such chemicals or pesticides. Such protection costs include employee security training and background checks, installation of security equipment, and computer network safeguards. The credit has a $2 million annual limit and a per facility limitation of $100,000 (reduced by credits received for the five prior tax years). This credit is effective for expenses paid or incurred after May 22, 2008, and before Jan. 1, 2013.
- Qualifying mutual ditch, reservoir, or irrigation company stock may be eligible for Code Sec. 1031 treatment. This provision is effective for exchanges after May 22, 2008.
- For property placed in service after 2008 and before 2014, all racehorses are classified as three-year property for depreciation purposes, regardless of their age.

Temporary assistance to victims of the 2007 Kansas tornado disaster is provided, including increased ability to deduct personal losses, increased business expense deductions, and help for affected businesses that continued to pay their employees after the disaster struck.

The amount of farming losses (other than those arising because of fire, storm losses, etc.) that a taxpayer may use to reduce other non-farming business income is limited for certain taxpayers. For tax years beginning after 2009, the farming loss of a non-C corporation taxpayer for any tax year in which any applicable subsidies are received will be limited to the greater of (1) $300,000 ($150,000 in the case of a married person filing a separate return), or (2) the taxpayer's total net farm income for the prior five tax years. Applicable subsidies are (a) any direct or counter-cyclical payments under title I of the Heartland, Habitat, Harvest, and Horticulture Act of 2008 (or any payment elected in lieu of any such payment), or (b) any Commodity Credit Corporation (CCC) loan. Total net farm income is an aggregation of all income and loss from farming businesses for the prior five tax years.

For tax years beginning after 2007, the farm optional method and nonfarm optional method for computing net earnings from self-employment are modified so that electing taxpayers may pay more in optional self-employment taxes and thus become eligible for Social Security benefits.

The CCC is required to always provide IRS and the farmer with information returns showing the amount of market gain the farmer realizes when he or she repays a CCC market assistance loan.

For large corporations (those with assets of at least $1 billion), estimated tax payments due in July, August, and September of 2012 are increased by 7.75% of the payment otherwise due, and the next required payment is reduced accordingly.

Please keep in mind that this is only a summary of the tax changes in the new law. If you would like to discuss any of these provisions in greater detail, please do not hesitate to call.