

Section 126.—Certain Cost-Sharing Payments

26 CFR 16A.126-1: *Certain cost sharing payments*
— *In general (Temporary).*

Cost-share payments. The Forest Land Enhancement Program (FLEP) is a small watershed program administered by the Secretary of Agriculture that is substantially similar to the type of programs described in section 126(a)(1) through (8) of the Code within the meaning of section 126(a)(9). All or a portion of cost-share payments received under the FLEP is eligible for exclusion from gross income to the extent permitted by section 126. Rental payments and incentive payments are not cost-share payments and are not excludable from gross income.

Rev. Rul. 2004-8

ISSUE

Is the Forest Land Enhancement Program (FLEP) substantially similar to the type of programs described in § 126 (a)(1) through (8) of the Internal Revenue Code, so that the FLEP is within the scope of § 126(a)(9) and, thereby, cost-share payments received under the FLEP are eligible for exclusion from gross income to the extent permitted by § 126?

FACTS

The FLEP, authorized under the provisions of Title VIII of the Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134, which amended the Cooperative Forestry Assistance Act of 1978, Pub. L. No. 95-313, 92 Stat. 365, is a voluntary program for non-industrial private forest landowners that provides technical, educational, and cost-share assistance to encourage the long-term sustainability of non-industrial private forest land and related resources. The FLEP replaces the Stewardship Incentives Program (SIP), which was determined in Rev. Rul. 94-27, 1994-1 C.B. 26, to be within the scope of § 126(a)(9), and the Forestry Incentives Program (FIP), which is listed in § 126(a)(8). The SIP provided

for the cost-sharing of a wide range of multiple resource management practices. The FIP provided for cost-sharing of timber stand improvements, site preparation for natural regeneration, and tree planting practices. The FLEP encompasses all of the cost-share practices authorized under both the SIP and the FIP.

A landowner who wishes to participate in the cost-share component of the FLEP must develop and implement, in cooperation with the state forester, another state official, or a professional resources manager, a management plan that addresses site specific activities and practices. The cost-share practices are limited to the treatment of 1,000 acres per year and must be implemented for a period of at least 10 years. The maximum cost-share payment for any practice may be up to 75 percent. The aggregate payment to any one landowner through 2007 may not exceed \$100,000.

The Secretary of Agriculture has determined that cost-share payments under the FLEP are primarily for the purpose of conservation.

LAW AND ANALYSIS

Under § 126(a), gross income does not include the excludable portion of payments received under certain conservation programs set forth in § 126(a)(1) through (8). Under § 126(a)(9), a program affecting “small watersheds” that is administered by the Secretary of Agriculture also is eligible for § 126 treatment if the Commissioner determines that the program is substantially similar to the type of programs described in § 126(a)(1) through (8). See § 16A.126-1(d)(3) of the temporary Income Tax Regulations for the definition of “small watershed.”

Once the Commissioner has determined that a program is substantially similar to the types of programs described in § 126(a)(1) through (8), taxpayers receiving cost-share payments under that program must determine what portion of the cost-share payments is excludable from gross income under § 126. See § 126(b)(1), and § 16A.126-1, relating to the partial exclusion of certain cost-share

payments, to determine what portion of the cost-share payments is excludable from gross income under § 126.

HOLDING

The FLEP is substantially similar to the type of programs described in § 126(a)(1) through (8) within the meaning of § 126(a)(9). All or a portion of cost-share payments received under the FLEP is eligible for exclusion from gross income to the extent permitted by § 126. See § 126(b)(1) and § 16A.126-1 to determine what portion, if any, of the cost-share payments is excludable from gross income under § 126.

DRAFTING INFORMATION

The principal author of this revenue ruling is Nicole R. Cimino of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Ms. Cimino at (202) 622-3120 (not a toll-free call).