

## Section 126.—Certain Cost-Sharing Payments

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

**Cost-share payments.** The Conservation Reserve Program (CRP) is a small watershed program administered by the Secretary of Agriculture that is substantially similar to the type of programs described in sections 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 CRP 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. 2003-59

#### ISSUE

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

#### FACTS

The CRP, authorized under Title XII of the Food Security Act of 1985, as amended, Pub. L. No. 99-198, 99 Stat. 1504, and reauthorized under the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-127, 110 Stat. 888, is a voluntary program for soil, water, and wild-

life conservation, wetland establishment and restoration, and reforestation. The Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624, 104 Stat. 3359, established the umbrella program “Environmental Conservation Acreage Reserve Program,” which is made up of the CRP and the Wetland Reserve Program, which was determined in Rev. Rul. 97-55, 1997-2 C.B. 20, to be within the scope of § 126(a)(9).

Landowners who participate in the CRP enter into one or more 10 to 15 year cost-share contracts with the Department of Agriculture. Under a cost-share contract, a farmer or rancher agrees to implement approved conservation-related practices on the land in return for cost-share payments equal to 50 percent of the actual or average cost of establishing a practice. Typically, cost-share payments range from \$20 to \$500 per acre. There is no maximum cost-share payment per person, however, the per acre payment for some practices is limited based on local land values.

In addition to cost-share payments, all participants in the CRP also receive annual rental payments for the 10 to 15 year contract duration. Rental payments range from \$30 to \$160 per acre, depending on soil type and local market rates, plus up to an additional \$9 per acre for cover maintenance, with a maximum of \$50,000 per person for any fiscal year. Some participants also may receive a one-time incentive payment of up to 20 percent of the annual payment for certain practices.

The Secretary of Agriculture has determined that the CRP is a small watershed program and that the cost-share payments under the CRP 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 Commis-

sioner 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 type 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 for certain cost-share payments to determine what portion of the cost-share payments is excludable from gross income under § 126. The rental payments and incentive payments received under the CRP are not cost-share payments and therefore are not excludable from gross income. See § 16A.126-1.

#### HOLDING

The CRP is a small watershed program administered by the Secretary of Agriculture that 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 CRP 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. Rental payments and incentive payments are not cost-share payments and are not excludable from gross income. See § 16A.126-1(b)(2)(iii).

#### 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).