

## **IRS plans to tax CRP payments**

*Court rules they're not rental income*

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A 15.3 percent self-employment tax on Conservation Reserve Program payments may be coming to an IRS office near you.

Todd King, a certified public accountant and shareholder at *Leffel, Otis & Warwick*, said a Dec. 6 notice from the Internal Revenue Service served notice that the agency plans to claim self-employment tax from everyone receiving CRP payments regardless of their level of farming participation.

King said there's no substantiation in tax law to support the position and he does not believe it can stand long.

An Agriculture Law Digest article recently highlighted the contentious issue. The author's conclusion? Go back to the drawing board "to craft a ruling that will be consistent with relevant authorities."

The issue of taxable income when it comes to land retirement has a long history that goes back in the Soil Bank era of the 1950s, said Chris Hesse, director of taxation for *Lemaster and Daniels*. Litigation along the way includes a 1999 Tax Court decision that ruled CRP income was rent and not subject to self-employment tax.

In March 2000, however, the 6<sup>th</sup> Circuit Court of Appeals, which covers Kentucky, Michigan, Ohio and Tennessee, said CRP is not rental income for the purposes of excluding it from the self-employment tax. For now, Hesse said, those are the only states where the law applies, but the IRS is going forward using that definition.

In a letter to his clients, Hesse wrote the IRS could impose penalties on taxpayers who continue to take the position CRP payment are not subject to self-employment tax.

His opinion, however, is that since the Tax Court's decision is the national ruling and the 6<sup>th</sup> District Appeals Court covers only four states, clients could continue to forgo paying the self-employment tax.

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