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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, February 4, 1997, at 12:30 p.m.

Senate

TUESDAY, JANUARY 28, 1997

The Senate met at 10 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear Father, we need You more than anything You can give us. In Your presence we feel Your grace. We are assured that we are loved and forgiven. You replenish our diminished strength with a fresh flow of energy and resiliency. The tightly wound springs of tension within us are released and unwind until there is a profound peace inside. We relinquish our worries to You and our anxiety drains away. We take courage because You have taken hold of us. Now we know that courage is fear that has said its prayers. We spread out before You the challenges of the day ahead and see them in the proper perspective of Your power. We dedicate ourselves to do things Your way under Your sway. And now, Your joy that is so much more than happiness fills us. We press on to the work of the day with enthusiasm. It's great to be alive. In the name of our Lord and Savior. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. BURNS. Mr. President, today there will be a period for morning busi-

ness until 12:30, with Senators to speak for up to 5 minutes each, with the following exceptions: Senator LOTT or his designee 30 minutes; Senator DASCHLE or his designee, 60 minutes. I ask unanimous consent that the time previously allocated to Senator COLLINS be vitiated and that Senator BOND have 20 minutes under his control during the morning business period.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BURNS. At 12:30 the Senate will recess until 2:15 for the weekly policy conferences to meet. When the Senate reconvenes after the conferences, the majority leader would expect an additional period for morning business to accommodate a number of Senators who would like to speak this afternoon.

As for the schedule for the remainder of the week, the majority leader understands that the Banking Committee will be taking action today on the nomination of Andrew Cuomo to be Secretary of Housing and Urban Development. It is his hope that the full Senate will consider this nomination either today or tomorrow. The majority leader will notify all colleagues accordingly when that becomes scheduled.

It is also the majority leader's hope that this week the Senate will consider the nomination of William Daley to be Secretary of Commerce. It is believed the Commerce Committee will finish their work on that nomination tomorrow, Wednesday. Therefore the Senate may act on Mr. Daley on Wednesday or Thursday of this week.

Once again, Senators should expect rollover votes on these important nomi-

nations this week. The majority leader thanks all Members in advance for their cooperation.

Mr. President, as we go into morning business, I yield to the Senator from Iowa, Senator GRASSLEY.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for not to exceed beyond the hour of 12:30 p.m. with Senators permitted to speak therein for not to exceed 5 minutes each.

Mr. GRASSLEY addressed the Chair. The PRESIDENT pro tempore. The able Senator from Iowa.

Mr. GRASSLEY. Thank you, Mr. President. The Senator from Montana is on the floor and he had an interest in what I am going to speak about.

FARMERS AND THE ALTERNATIVE MINIMUM TAX

Mr. GRASSLEY. Mr. President, we have had a victory—at least a temporary victory, but a good victory—with the IRS. Fifty-seven of us introduced a bipartisan bill, Senator DORGAN leading for the Democrats, myself for Republicans. The bill was introduced to do for farmers what has been the law since 1981, that if deferred sales contracts were used, farmers were still taxed on the year that the money was received.

The IRS made a ruling that for alternative minimum tax purposes that income would be taxed the year that the sale was made, not the year that the

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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money was received. Well, obviously this, if it were to go forward, would create a tremendous hardship in the agricultural community because farmers would be taxed on two crops in 1 year, rather than the planning that normally goes on in cash accounting farming.

Common sense and reasonableness have prevailed at the IRS. Last night at about 6:30 I received a telephone call from the IRS stating their decision to delay for 1 year the enactment of their latest rule so that farmers now will be able to do during the current tax filing system what they have been doing for the last 15 years, to just keep on accounting for their income for tax purposes the way that it has legally been done.

Then just within the last hour Commissioner Richardson had delivered to me her letter in response to my letter of December and also the latest recommendations as far as the regulations are concerned implementing her decision.

The fact of life is, Mr. President, that the Internal Revenue Service was aware of 57 Members of this Senate in a bipartisan spirit—and maybe her decision was because she is an appointment of the President and that it then reflects the new attitude at the White House of bipartisanship during this congressional session.

Regardless of what brought this about, I am thankful that common sense and reasonableness have prevailed. I thank each of my 57 colleagues who have been involved in this issue for their timeliness in helping us sponsor this legislation, getting it in. We will now move forward to change an erroneous IRS ruling that has been backed up by an erroneous district court case so that law reflects what Congress has intended since 1981 when deferred sales contracts were made legal and, second, when we passed the alternative minimum tax legislation in 1986.

I ask unanimous consent that the documents I have referred to be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, DC, January 28, 1997.

Hon. CHARLES E. GRASSLEY,
U.S. Senate,
Washington DC.

DEAR SENATOR GRASSLEY: In your December 31, 1996 letter, you asked me how farmers could comply with the Internal Revenue Service's position on the treatment of deferred contract commodity sales for alternative minimum tax (AMT) purposes on their 1996 federal income tax returns. You also asked that the Service provide guidance about complying with its position "before the traditional farmer tax filing deadline of March 1, 1997."

As you and I have discussed, the position of the Service is that for AMT purposes income from deferred contract commodity sales must be reported in the year of sale. However, some taxpayers have been reporting in-

come from such sales for AMT purposes in the taxable year they received their payments—not the year of sale.

Earlier today, the IRS issued a Notice, a copy of which is enclosed, advising those who have not followed the Service's position how they should report deferred contract commodity sales for AMT purposes on their returns for 1996. Basically, for 1996 tax returns, taxpayers should make no changes in how they have been reporting sales—even if contrary to the Service's position.

The Notice also provides guidance about how to change the method of reporting deferred contract commodity sales for AMT purposes. Taxpayers who follow that guidance will receive audit protection with regard to the AMT issue for all open years unless they are currently under audit for this issue.

The way deferred contract commodity sales are reported for the AMT is a "method of accounting" for tax purposes. The law provides that the method of accounting a taxpayer uses for tax purposes, even if it is not the correct method, cannot be changed without the prior consent of the Commissioner.

The Service will issue automatic consent procedures for taxpayers to follow to change from the accounting method they currently use. This change must be made on a taxpayer's federal income tax return for the 1997 tax year. Thus, taxpayers do not need to change how they report deferred contract commodity sales until filing their 1997 returns.

I hope this information is helpful to you. Please let me know if you have any questions.

Sincerely,

MARGARET MILNER RICHARDSON.

PART III—ADMINISTRATIVE, PROCEDURAL, AND MISCELLANEOUS

Notice of intent to issue guidance allowing farmers to expeditiously change their method of accounting for deferred payment sales contracts in computing alternative minimum tax.

NOTICE 97-13

Summary: The Internal Revenue Service intends to provide approval for taxpayers engaged in the business of farming to change their method of accounting for the income from certain deferred payment sales contracts for purposes of computing their alternative minimum tax (AMT). Farmers will be allowed to change to a permissible method of accounting for this income, effective for taxable years beginning after December 31, 1996, by attaching Form 3115 to their 1997 federal income tax returns to be filed during 1998. Farmers who change their method of accounting in accordance with this procedure will then receive audit protection with respect to the use of an impermissible method of accounting for all taxable years prior to the change, in accordance with generally applicable rules.

Background: The Service has received numerous inquiries on the proper treatment, for AMT purposes, of income from the sale of products raised by farmers or other inventory property sold in the ordinary course of the farming business under deferred payment sales contracts. A deferred payment sales contract is one where at least one payment is to be received after the close of the taxable year in which the product is sold.

Section 56(a)(6) of the Code provides that, in computing alternative minimum taxable income (AMTI), income from the disposition of property such as farm products is determined without regard to the installment method under §453. Thus, a farmer using the cash method, who sells farm products under a deferred payment sales contract and does not elect out of the installment method of

reporting, must include in AMTI in the year of the sale both the cash received and the fair market value (or the issue price) of the deferred payment obligation. Otherwise, the farmer is using an impermissible method of accounting. If the farmer elects not to apply the installment method to the sale, and reports the income in the year of the sale, there is no AMTI adjustment with respect to the sale.

Section 446(e) generally provides that a taxpayer that changes its method of accounting must secure the Commissioner's consent before computing income using the new method. In general, taxpayers who wish to change their method of accounting must file Form 3115, Application for Change in Accounting Method, with the Commissioner within the first 180 days of the taxable year in which the taxpayer desires to make the change, and must pay a user fee (ranging from \$500 to \$900). Treas. Reg. §1.446-1(e)(3)(i). In addition, §1.446-1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms and conditions necessary to obtain consent to change a method of accounting.

Automatic change in method of accounting: The Service will issue guidance that will allow farmers currently using an impermissible method of accounting for income from the sale of farm products under deferred payment sales contracts for AMT purposes to automatically change to a permissible method of accounting. Under the forthcoming guidance, farmers will be allowed to request the method change by attaching Form 3115 to their timely filed 1997 federal income tax return (due in 1998). No user fee will be required.

The method change will be effective for taxable years beginning after December 31, 1996. In addition, the method change will result in audit protection for all prior taxable years with respect to the impermissible method of accounting (*i.e.*, the examining agent will not propose that a farmer change the impermissible method of accounting for any prior taxable year) in accordance with generally applicable rules. See Rev. Proc. 92-20, Section 10.12, 1992-1 C.B. 685. Farmers currently using an impermissible method of accounting for such sales should continue to use that method in computing AMT for taxable years ending prior to January 1, 1997.

The automatic method change procedure will not be available to farmers who have received written notification from an examining agent (*e.g.*, by examination plan, information document request, notification of proposed adjustments or income tax examination changes) prior to January 28, 1997, specifically citing as an issue under consideration the farmer's method of accounting for income from sales of farm products under deferred payment sales contracts for AMT purposes. In addition, the guidance will not apply if the farmer's method of accounting for such income for AMT purposes is an issue under consideration by an appeals office or a federal court.

Drafting information: The principal author of this notice is William A. Jackson of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Jonathan Strum at (202) 622-4960 (not a toll-free call).

Mr. GRASSLEY. Mr. President, I ask unanimous consent for another 5 minutes on another issue.

The PRESIDING OFFICER (Mr. BURNS). The Senator has that right.