

HEARTLAND, HABITAT, HARVEST & HORTICULTURE ACT OF 2008

By John Waymire, CPA

The recently enacted 2008 Farm Bill (“Heartland, Habitat, Harvest, and Horticulture Act of 2008”) contains a package of tax changes including specialized tax breaks for the farming industry and new and modified credits related to the production of certain fuels, among other things. These tax breaks and credits were offset by a new limitation on farm losses. Here’s a summary of the key tax provisions in the 2008 Farm Bill that directly affect farmers:

- 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 tax credit is created for security related to agricultural chemicals. The new law provides tax credits to retailers of agricultural products and chemicals, in addition to manufacturers, formulators, or distributors of certain pesticides. These taxpayers will receive a business tax credit for 30% of costs for the protection from misuse 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 January 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.
- The Commodity Credit Corporation (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.

The most significant tax law change is the new limitation of farming losses, which will take effect for tax years beginning after December 31, 2009.

- The amount of farming losses (other than those losses 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 \$300,000 (\$150,000 in the case of a married person filing a separate return), or the taxpayer’s total net farm income for the prior five tax years. Applicable subsidies are 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 any CCC loan. Total net farm income is an aggregation of all income and loss from farming businesses for the prior five tax years.

The most significant tax law change is the new limitation of farming losses, which will take affect for tax years beginning after December 31, 2009. The new law was designed to impose penalties for taxpayers who structure their farming operations into multiple entities where there is a “farm- ing entity” that conducts farming operations and rents land and/or equipment owned by related non-farm entities. Under pre-2008 Farm Bill law, the taxpayer was able to offset losses from farming entities against income from non-farm entities without limitation. The 2008 Farm Bill limits the de- duction of farming losses to the greater of \$300,000 or the taxpayer’s total net farm income for the prior five tax years. Problems arise from these restrictions when there is one year of significant farm losses or multiple years of farm operation losses. Take, for example, a taxpayer with the following income:



	Farm Income	Non-farm Income	Total Income
Year 1	\$ 200,000	\$ 50,000	\$ 250,000
Year 2	200,000	50,000	250,000
Year 3	200,000	50,000	250,000
Year 4	200,000	50,000	250,000
Year 5	<u>200,000</u>	<u>50,000</u>	<u>250,000</u>
Five Year Total	<u>\$ 1,000,000</u>	<u>\$ 250,000</u>	<u>\$1,250,000</u>

The 2008 Farm Bill limits the deduction of farming losses to the greater of \$300,000 or the taxpayer’s total net farm income for the prior five tax years.

If the taxpayer incurs a farm loss of \$600,000 in year 6, the full amount would be allowed to be carried back and applied against total income since the total farm income for the previous five years was greater than the amount of the loss. The new law limitations are not a problem in this case. If the taxpayer has a farm loss in the following tax year, the taxpayer could potentially face limits on the deductibility.

Moving ahead one year, the following is the determination of the five previous years of income for year 7:

	Farm Income	Non-farm Income	Total Income
Year 2	\$ 200,000	\$ 50,000	\$ 250,000
Year 3	200,000	50,000	250,000
Year 4	200,000	50,000	250,000
Year 5	200,000	50,000	250,000
Year 6	<u>(600,000)</u>	<u>-</u>	<u>(600,000)</u>
Five Year Total	<u>\$ 200,000</u>	<u>\$ 200,000</u>	<u>\$ 400,000</u>

If the taxpayer incurs a farm loss of \$400,000 in year 7, the taxpayer would face limits on the amount of loss it can carry back and deduct. The new law states that the taxpayer must limit farm-



Ag Business Award

2008

The Baker, Peterson & Franklin Ag Business Award honors an organization whose achievements and impact have significantly contributed to the ag industry and the community.

Criteria

- Any for-profit agribusiness or farming entity based in the central San Joaquin Valley is eligible.
- Prior Baker, Peterson & Franklin Ag Business Award winners are not eligible.
- Self-nominations are encouraged.
- The award is bestowed annually at the Ag Awards Luncheon with the Greater Fresno Area Chamber of Commerce.
- Award recipient is selected by a committee of representatives from the BP&F Ag Department and local agribusiness community.
- Nominations submitted each year are considered in all following years.

Complete the form on the reverse side and mail or fax by September 12, 2008.
For further information, please call:

Baker, Peterson, & Franklin, CPA, LLP

Julie Maldonado

Ag Business Award Selection Committee

970 W. Alluvial, Suite 101

Fresno, CA 93711

Phone: (559) 432-2346 • FAX: (559) 432-5831

mail@bpfcpa.com



BAKER, PETERSON &
FRANKLIN, CPA, LLP

CONSULTING & FINANCIAL
SERVICES

BPF
Ag Business
Award
2008

Application

Name of organization: _____

Mailing address: _____

City: _____ Zip: _____ County: _____

Street address (if different from above): _____

City: _____ Zip: _____ County: _____

Phone: _____ Fax: _____

Chief Executive: _____ Title: _____

Contact person: _____ Title: _____

Contact person email: _____ Year established: _____

Brief description of the company and its products or services: _____

You may use one sheet of paper to answer the following questions; attach the sheet to this application.
(Please be specific, list accomplishments, etc.)

1. Describe the organization's growth and success.
2. What are the contributions of the organization to the agricultural industry and our community?

Nominated by: (Optional)

Name: _____ Title: _____

Email address: _____

Name of organization: _____

Address: _____

City: _____ Zip: _____

Phone: _____ Fax: _____

Only the application form and your one-page response to the above questions will be judged.

Deadline September 12, 2008.

TAX TIDBITS

By Dennis Veeh, CPA

As a result of Congressional changes, the Extraterritorial Income Exclusion (EIE) is no longer available to be claimed as a tax deduction for profits earned from foreign sales. Many agricultural taxpayers that recognized profits from foreign sales were able to exclude up to 15% of the net profit. Unfortunately, for 2007 and future years, the EIE has been repealed.

However, there is another export incentive that remains in place that may be beneficial because of the lower tax rates on dividends. It is known as the "Interest Charge-Domestic International Sales Corporation" (IC-DISC). Deriving tax benefits from this type of strategy is

Heartland, Habitat... – continued

ing losses to the greater of \$300,000 or the previous five years of farm income. Applying the new limitations, the taxpayer would only be allowed to carry back \$300,000 of the year 7 to apply against total income. The remaining \$100,000 of year 7 loss that was not allowed to be carried back will be carried forward and treated as a deduction attributable to farming income in year 8.

As a result of the changes made by the 2008 Farm Bill, farmers who utilize multiple entities in their business should evaluate their operations to ensure they minimize the amount of farm losses that would be disallowed under the new law.

If you have any questions about any of these changes or opportunities, please contact us at (559) 432-2346.

slightly more complicated than the EIE because of the need to form a separate domestic corporation with a separate bank account and set of books. It requires a minimum capitalization of \$2,500. The IC-DISC also must file an annual U.S. income tax return even though it pays no U.S. income taxes.

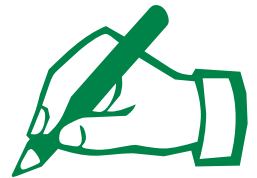
The primary tax strategy involves the U.S. exporter paying a tax deductible commission on its export sales to the IC-DISC. The allowable commission rate can be as high as 50% of the export net income. The U.S. exporter obtains a tax deduction (as high as a 35% tax rate) for the commission paid. The commission income is

***The difference in tax rates
can provide a tax benefit as
high as 20%.***

accumulated and untaxed in the IC-DISC. The accumulated commission can then be paid out to the shareholders of the IC-DISC as a dividend, currently taxed at the 15% dividend tax rate. The difference in tax rates can provide a tax benefit as high as 20%.

The IC-DISC pays no U.S. income taxes, but is required to pay interest to the IRS on the accumulated but untaxed income. The interest rate is based upon the 1-year Treasury rate.

This export incentive may be more limited; however, contact us at (559) 432-2346 and we can discuss with you whether its application may benefit you.



FOOD FOR THOUGHT

By Nancy Ervin, Business Consultant

The best time to make a bold change is when you are at the top of your game.



I recently attended a continuing education program on business valuations. As an Accredited Valuation Analyst (AVA), I am required to receive professional education on a regular basis in order to maintain my credential. I look forward to attending these classes, some with ominous names like “Discounted Cash Flow Valuations of Intangible Assets” and “The Butler Pinkerton Model – Empirical Support for Company Specific Risk.”

But the class title that really caught my eye was one called “If it Ain’t Broke... BREAK IT!”

I’m game. But what does it mean?

The speaker, Robert Kriegel, Ph.D., started the class talking about a high jumper named Dick Fosbury. He explained how, prior to 1968, all high jumpers approached the obstacle much like a hurdler...legs first. But at the 1968 Olympics, Fosbury shocked the crowd by throwing himself at the high jump head first, and upside down. Fosbury changed the rules. He literally raised the bar for all future high jumpers. Although I had heard this story before, what I hadn’t realized was, at the time he changed his approach to the high hurdle, Joe wasn’t an unknown competitor trying to make a name for himself. He was the NCAA champion. He was already at the top of his game. So why did he do it? Why did he risk his reputation as well as his standing in the sport in order to try a new approach? Because he knew that the best time to make a bold change is when you are at the top of your game, not when you are struggling to survive or in a position where you have to change just to keep up.

Why do I bring this up NOW, some of you may be asking? Gas prices are ridiculous, real estate is foundering, salmonella is playing havoc with the fresh tomato farmers and our governor just declared the state was officially in a drought and brought with that declaration an arsenal of ex-

ecutive orders. Who among us are “at the top of our game” and in a position to risk bold changes?

Well I hate to be a pessimist, but I suggest that now IS the time...because it could get worse.

Although the price of oil may be inflated because of speculation, and will most likely see a correction sometime in the future, some experts predict oil as high as \$200 per barrel or \$6 to \$7 per gallon at the pump before the oil bubble bursts. Even then, the “corrected” price will most likely be somewhere near the \$4 level.

The water situation is just as tenuous. As the population grows, even a “normal” rain year may not be enough to supply both the urban and agricultural water needs.

So even if you don’t feel like you are at the top of your game right now, there is no time like the present to look for ways to improve your operations. Dr. Kriegel suggests that, “If you keep doing things the same way simply because everyone else does it that way, the best you can ever hope for is to just keep up.”

Take Wal-Mart, for example. Sam Walton opened his first store in 1950. Like any retailer, Walton was always looking for deals from suppliers. Typically, though, a retailer who managed to get a bargain from a wholesaler would leave his store prices unchanged and pocket the extra money. Walton, by contrast, realized he could do better by passing on the savings to his customers and earning his profits through volume. By 1980, Sam Walton was the richest man in the United States. Sam Walton looked at the obstacles before him, and jumped head first, and upside down.

The class ended with a challenge. Dr. Kriegel asked us to get into the habit of breaking habits. He said that you should try one thing every day that you are afraid of, one thing that makes you uncomfortable. I guess that is what he means by saying, “if it ain’t broke...break it.” He wants us to get out of our comfort zone and start looking for new cheese. But that’s another story for another day.

CALIFORNIA ENTERPRISE ZONES TAX CREDITS AND INCENTIVES

By Linda Chin, CPA

California Enterprise Zones (EZ) have been designated to help attract new business, retain and expand existing business and industry, and to create jobs for certain economically depressed areas. Fresno County Regional EZ includes the cities of Orange Cove, Reedley, Sanger, Fowler, Selma, and Parlier on the East Side and the cities of Kerman, San Joaquin, Mendota, Firebaugh, Huron, Coalinga, and Kingsburg plus eight unincorporated communities on the West Side. An application is under way to add the City of Clovis. Since its effective date of June 27, 2007, the Fresno County Regional EZ has positively impacted the region. A San Francisco company has chosen west Fresno County for a massive solar facility because of the availability of EZ tax incentives. A producer of food products from the West Side found over \$500,000 of EZ hiring tax credits in one tax year. Also, the City of Fresno EZ was renewed and expanded on October 15, 2006. Over 240 City of Fresno businesses picked up an estimated \$72 million in EZ hiring tax credits alone in 2007.

Tax Credits and Incentives of EZ

Sales & Use Tax Credit

Businesses conducting business inside an EZ may claim credit for the sales or use tax paid or incurred on the purchase of certain qualified machinery or equipment on their state tax returns. Qualified machinery must be used to:

- Manufacture, process, combine, or otherwise fabricate a product
- Produce renewable energy resources
- Control air or water pollution

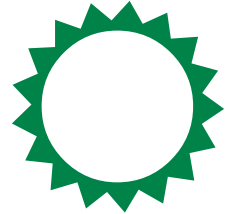
Qualified machinery also includes data handling or communications equipment (computers, telephones, faxes, etc.)

The Hiring Tax Credit

Employers conducting business inside an EZ may claim the hiring credit on their state tax returns for wages paid to a qualified employee who, immediately preceding employment:

- received subsidized employment, training or services under the terms of the Federal Workforce Investment Act
- was a member of a targeted group as defined in the federal Work Opportunity Tax Credit (WOTC)
- was an economically disadvantaged individual 14 years of age or older
- was a qualified *dislocated* worker
- was a disabled individual enrolled in, or who completed, a state rehabilitation plan
- was a veteran of the Vietnam Era, a service connected disabled veteran, or a veteran who recently separated from military service
- was an ex-offender
- was a person receiving various forms of public assistance such as: SSI, AFDC, Food Stamps or State and local public assistance
- was a Native American
- was a resident of a *Targeted Employment Area* (TEA)

The amount of credit is based on a percentage of the employees' wages over a 5-year period. Fifty-percent of an employee's wages may be claimed as a credit in the first year of employment, 40% in year 2, 30% in year 3, 20% in year 4, and 10% in year 5. The credit calculation limits the wage rate to the lesser of the



A San Francisco company has chosen west Fresno County for a massive solar facility because of the availability of EZ tax incentives.

continued on page 3

actual hourly wage paid or 150% of the minimum hourly wage. Overtime hours can also be used to generate credits.

Hiring Credit Example: An employee hired 1/1/08 works 2,080 hours per year. Wages paid at a rate of 150% of minimum wage would generate the following credit amounts over the 5-year period:

Year of Employment	Hours Worked	150% Min. Wage	Credit Rate	Tax Credit
1	2,080	12.00	50%	\$ 12,480
2	2,080	12.00	40%	\$ 9,984
3	2,080	12.00	30%	\$ 7,488
4	2,080	12.00	20%	\$ 4,992
5	2,080	12.00	10%	\$ 2,496
Total 5-year Credit				<u>\$ 37,440</u>



Business Expense Deduction

Businesses conducting business within an EZ may elect to treat 40% of the cost of qualified property as a business expense, on their state tax returns, in the first year the property is placed in service.

- The definition of “qualified property” includes, but is not limited to, tangible personal property (excluding buildings) acquired by purchase for exclusive use within a zone.
- The amount of the deduction is limited:
 - 1st and 2nd year, \$40,000 (\$100,000 @ 40%)
 - 3rd and 4th year after EZ designation, \$30,000 (\$75,000 @ 40%)
 - thereafter, \$20,000 (\$50,000 @ 40%)

Net Operating Loss Carryover

One hundred percent (compared to the other rules) of the state net operating loss of individuals or corporations doing business in an EZ may be carried over to future years to reduce the amount of taxable income derived within the zone or area.

Net Interest Deduction for Lenders

A deduction from state income is allowed for the amount of “net interest” received from loans made to a trade or business located in an EZ. The lender is not required to be located within the zone.

Is your business located inside one of the EZ? How can you benefit from the EZ credits and incentives? The Baker, Peterson & Franklin tax incentive team can help you find and utilize the EZ credits, as well as any other **federal, state or local tax incentives** available to your business. Contact Bill Fink or Linda Chin at 432-2346, bill@bpfcpa.com or linda@bpfcpa.com.

STAFF NEWS

BP&F offers congratulations on the following promotions:



Sally Cook to Manager



John Waymire to Senior II accountant



Jennifer Brandon to Senior 1 accountant



Lisa Graham to Senior 1 accountant



Jennifer Vogt to Senior 1 accountant

BP&F AG BUSINESS AWARD CALL FOR NOMINATIONS

We are pleased to announce our thirteenth annual BP&F Ag Business Award. Any for-profit service or product-related agribusiness or farming entity headquartered in the San Joaquin Valley is eligible. The criteria are the organization's growth and success, and its contributions to the agricultural industry and our community. We encourage you to nominate your organization or other ag businesses you feel are worthy. Deadline for submission is September 12, 2008. An application is enclosed in this issue.

Both the BP&F Ag Business Award and the Fresno Chamber of Commerce Agriculturist of the Year recipients will be honored at an Ag Awards Luncheon on November 5 at the Radisson Conference Center in downtown Fresno.

Previous recipients of the Ag Business Award are:

Borba Farms of Riverdale (2007)

National Raisin Co. of Fowler (2006)

Ballantine Produce Co. of Sanger (2005)

Woolf Enterprises of Fresno (2004)

Producers Dairy Foods of Fresno (2003)

P-R Farms of Clovis (2002)

J&L Vineyards of Fresno (2001)

Fowler Packing Company (2000)

Joseph Gallo Farms of Atwater (1999)

Wawona Frozen Foods of Clovis (1998)

Wilbur-Ellis Western Division (1997)

Zacky Farms of Fresno (1996)

BP&F
Ag Business Award
2008

CALENDAR

- June 25** The 20th Annual Salute to Ag Event, hosted by the California Grape & Tree Fruit League, at The Vintage Press, Visalia, CA. For information, contact Jaclyn Pack, 559-226-6330.
- July 4** Independence Day. BP&F office closed.
- August 12** Fresno State Grape Day, California State University, Fresno, Viticulture & Enology Research Center. For additional information, please contact VERC at 559-278-2011.
- September 7** The 31st annual Ag Boosters BBQ, Rancho Vista Del Rio, Madera. 4:00 pm Grounds open, 5:30 pm Dinner and Program. For information contact Ag One at 559-278-4266.
- November 2-4** Irrigation Show 2008, Anaheim Convention Center, Anaheim, CA. For more information contact the Irrigation Association at (703) 536-7080 or visit their website www.irrigation.org.

Agriculture Department Staff:

Dennis M. Veeh, Partner
Karen E. Morais, Partner
Toni M. Porter, Partner
Nancy S. Ervin, Partner
John Waymire

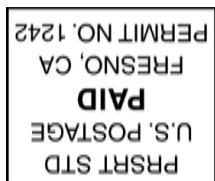
Published by:

Baker, Peterson &
Franklin, CPA, LLP

970 W. Alluvial, Suite 101
Fresno, CA 93711
(559) 432-2346
FAX (559) 432-5831

www.bpfcpa.com
E-Mail: mail@bpfcpa.com

HEARTLAND, HABITAT, HARVEST & HORTICULTURE ACT OF 2008 • TAX TIDBITS • FOOD FOR
THOUGHT • CALIFORNIA ENTERPRISE ZONES • STAFF NEWS • AG BUSINESS AWARD
RETURN SERVICE REQUESTED



Baker, Peterson & Franklin, CPA, LLP
970 West Alluvial, Suite 101
Fresno, CA 93711

