

[Exhibit 514.82a](#)

**Section 126.--Certain Cost-Sharing Payments**

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

Certain cost-sharing payments. The Wetlands Reserve Program, the Environmental Quality Incentives Program, and the Wildlife Habitat Incentives Program are substantially similar to the type of programs described in section 126(a)(1) through (8) of the Code so that cost-share payments made under such programs and in connection with small watersheds are within the scope of section 126(a)(9) and, thereby, cost-share payments received under the programs are eligible for exclusion from gross income to the extent permitted by section 126.

**Rev. Rul. 97-55**

ISSUE

Are the Wetlands Reserve Program, the Environmental Quality Incentives Program, and the Wildlife Habitat Incentives Program substantially similar to the type of programs described in § 126(a)(1) through (8) of the Internal Revenue Code so that cost-share payments made under such programs and in connection with small watersheds are within the scope of § 126(a)(9) and, thereby, cost-share payments received under the programs are eligible for exclusion from gross income to the extent permitted by § 126?

FACTS

The Wetlands Reserve Program (WRP), authorized by Title XII of the Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1504, reauthorized by the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Farm Act), Public Law 104-127, 110 Stat. 995, is a voluntary wetlands conservation program to restore and protect wetlands on private property. Landowners who participate in the WRP may sell a conservation easement or enter into a restoration cost-share agreement with the Department of Agriculture to restore and protect wetlands. Under a restoration cost-share agreement, a landowner agrees to undertake approved conservation-related improvements on the property in return for a cost-share payment, generally between 75 and 100 percent of the costs for restoring the wetland. A conservation easement and a restoration cost-share agreement may be combined in one agreement with the Department of Agriculture, but separate payments are made for the easement and for the cost-share agreement.

The 1996 Farm Act also establishes the Environmental Quality Incentives Program (EQIP) and the Wildlife Habitat Incentives Program (WHIP). EQIP and WHIP are administered by the Department of Agriculture. EQIP combines the functions of the Agricultural Conservation Program (ACP), the Great Plains Conservation Program (GPCP), the Water Quality Incentives Program (WQIP), and the Colorado River Basin Salinity Control Program (CRBSCP). ACP and GPCP are programs enumerated in § 126(a)(1) through (8) and the Commissioner determined in § 16A.126-1(d)(1)(D) that CRBSCP was within the scope of § 126(a)(9). WQIP was funded through and administered under ACP.

WHIP was established to help participants develop habitat for upland wildlife, wetland wildlife, threatened and endangered species, fish, and other types of wildlife. Under WHIP, landowners enter into wildlife habitat development cost-share contracts for a minimum of 10 years.

The Secretary of Agriculture has made the requisite determinations under § 126(b)(1)(A) that cost-share payments made under WRP, EQIP, and WHIP are primarily for purposes of conservation.

LAW AND ANALYSIS

Under § 126(a), gross income does not include the excludable portion of payments made to taxpayers by Federal and State governments for a share of the cost of improvements to property under certain conservation programs set forth in § 126(a)(1) through (8). Under § 126(a)(9), programs affecting small watersheds are eligible for § 126 treatment if they are administered by the Secretary of Agriculture and are determined by the Secretary of the Treasury or the Secretary's delegate to be substantially similar to the type of programs described in § 126(a)(1) through (8). Even if the Secretary of the Treasury determines that a particular program is within the scope of § 126(a)(9), not all cost-share payments under such program will qualify for the exclusion under § 126. In addition to the determination requirement, the specific project must be with respect to a small watershed and then only the "excludable portion" of any payment can qualify for exclusion. See §§ 126(b)(1), 16A.126-1(b)(5) and 16A.126-1(d)(3) for the definitions of "excludable portion" and "small watershed."

#### HOLDING

The Commissioner has determined that WRP, EQIP, and WHIP are substantially similar to the type of programs described in § 126(a)(1) through (8) so that cost-share payments made under such programs and in connection with small watersheds are within the scope of § 126(a)(9) and, thereby, cost-share payments received under the programs are eligible for exclusion from gross income to the extent permitted by § 126. See § 16A.126-1 to determine what portion, if any, of the cost-share payments are excludable from gross income under § 126.

#### DRAFTING INFORMATION

The principal authors of this revenue ruling are Leslie Finlow and Lisa Shuman of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Ms. Shuman at (202) 622-3120 (not a toll-free call).