



NATIONAL ASSOCIATION OF REALTORS®

*The Voice For Real Estate®*

500 New Jersey Avenue, N.W.  
Washington, DC 20001-2020  
202.383.1194 Fax 202.383.7580  
[www.realtors.org/governmentaffairs](http://www.realtors.org/governmentaffairs)

Pat Vredevoogd Combs  
ABR, CRS, GRI, PMN  
President

Dale A. Stinton  
CAE, CPA, CMA, RCE  
EVP/CEO

GOVERNMENT AFFAIRS  
Jerry Giovaniello, Senior Vice President  
Walter J. Witek, Jr., Vice President  
Gary Weaver, Vice President

November 8, 2007

United States Senate  
Washington, DC 20510

Dear Senator:

The NATIONAL ASSOCIATION OF REALTORS® has followed with great interest the tax and revenue provisions in Title XII of H.R. 2419, known as the Farm Bill. NAR has participated in several broad-based coalitions and supported many of the conservation and Endangered Species tax incentives in the bill. We are hopeful that many of those incentives can be enacted.

We do, however, have a number of concerns about Section 12504 of the bill that relates to the use of the like-kind exchange technique for some transactions that involve land that receives agriculture payments or crop loans. We have no expertise and hence no position on the myriad farm payment programs. We do, however, believe that the rules of Internal Revenue Code Section 1031 are a very clumsy tool for trying to eliminate some farm payments.

Section 1031 is a remarkably flexible tool for individuals who own, invest in, manage or operate real property. Section 1031 allows owners of this most illiquid of all assets to periodically reconfigure their real property holdings, so long as they remain engaged in real estate investment and operations. There is no precedent in Section 1031 for limiting the exchanges of real estate because of certain attributes (like farm payments) that can be transferred with the land.

We understand the policy objective for this change is (a) to reduce reliance on specified payments and (b) to assure that *non-farmers* cannot use the exchange technique to acquire farm land for the purpose of receiving crop payments. Our concern is that the provision, as drafted, would put a harsh penalty on *farmers and ranchers who are presently on the land*. Unlike any other category of property owners, a farmer who is on the land and receiving crop payments would have no opportunity to use the exchange technique to acquire any property other than land that has crop payments associated with it.

For example, a farmer who wishes to retire from farming and use the exchange technique to acquire less labor-intensive income-producing real estate would have no option other than to pay the tax. That restriction is forced on no other type of property or property owners. Some have said that the farmer could simply “retire” the land from crop payments the day before the sale of the land closes. Experts in farmland sales believe that this would significantly reduce the value

of the land to a potential purchaser. So whether he pays the tax or retires the crop payments, the farmer is effectively barred from utilizing the exchange technique. The farmer seeking an exit strategy will receive less value than under current law, either because of the tax or because of retiring the land and reducing its price.

Similarly, an individual on the land and engaged in farming business may also own, for example, a storage facility on other land. He may wish to sell that facility to acquire additional farm land. He will be in the same position as the farmer seeking an exit strategy.

We believe that it is inappropriate to single out any class of real estate assets to make them ineligible for exchange treatment. Such a change will create a lock-in effect that applies in no other circumstance we can identify.

We look forward to working with Senators to eliminate this lock-in effect.

Sincerely,

A handwritten signature in cursive script that reads "Pat V. Combs". The signature is written in black ink and is positioned below the word "Sincerely,".

Pat V. Combs, ABR, CRS, GRI, PMN  
2007 President, National Association of REALTORS®