



NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

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February 13, 2008

The Honorable Richard Lugar
306 Hart Senate Office Building
Washington DC, 20510

Dear Senator Lugar:

As the Farm bill (H.R. 2419) goes to conference, the NATIONAL ASSOCIATION OF REALTORS® wishes to bring to your attention two elements included in the Senate-passed tax title of H.R. 2419. One is very punitive, the other very useful. We seek elimination of the punitive like-kind exchange provision and inclusion of the conservation provisions of the tax provisions in Title XII of the Senate-passed version of H.R. 2419.

Punitive Provision: Section 12504 of the Senate Farm Bill punishes certain farmers and ranchers by curtailing the use of the like-kind exchange technique (Internal Revenue Code Sec. 1031). The proposed new limitation on like-kind exchanges would undermine some transactions that involve land that benefits from agriculture payments or crop loans. The provision appears to be a misguided effort to use the tax system to curtail these payments and guarantees. We have no expertise and hence no position on the myriad farm payment programs. We do, however, strongly believe that the rules of Internal Revenue Code Section 1031 are a very clumsy tool for trying to eliminate some farm payments. *We urge you to delete Section 12504 from any conference report.*

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 exchange 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 1031 exchange technique to acquire farm land for the purpose of receiving crop payments. Our concern is that the provision, as drafted, creates a harsh penalty on *farmers and ranchers who are presently on the land*. 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 or loan guarantees associated with it. No other category of property owner is effectively barred from reinvesting exchange proceeds in whatever property best suits his objectives.

For example, a farmer who wishes to retire from farming (or ranching) and use the exchange technique to acquire less labor-intensive income-producing real estate would have no option other than to pay the tax. Some have said that the farmer could simply “retire” the land from crop payments 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, a farmer is effectively barred from utilizing the exchange technique. The farmer seeking an exit strategy will receive less value than under current law because the farmer is forced to either pay the tax or undermine the value of the property, thus reducing his proceeds.

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 storage facility in an exchange to acquire additional farm land that is eligible for crop payments or loans. He will be in the same position as the farmer seeking an exit strategy because the proposed legislation would curtail his opportunity to acquire farm land that is eligible for the payments or guarantees.

We believe that it is inappropriate to single out any particular 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 believe that this provision, if enacted, will impose burdensome taxes on farmers that would not apply to any other group of property owners.

Useful Provisions: We do believe that the various conservation incentives in Title XII of the Farm Bill are useful tools for shoring up the Endangered Species Act and for assuring the preservation of open space. NAR fully supports these incentives and remains hopeful that they can be included in final legislation.

We look forward to working with you and the conferees to eliminate the 1031 exchange provision and to assure passage of the conservation incentives.

Sincerely,

A handwritten signature in black ink that reads "Dick Gaylord". The signature is written in a cursive, flowing style.

Richard F. Gaylord, CIPS, CRB, CRS, GRI
2008 President, National Association of REALTORS®