

## ISSUE

Is the Soil and Water Conservation Assistance (SWCA) program substantially similar to the type of programs described in § 126(a)(1) through (8) of the Internal Revenue Code, so that the SWCA program is within the scope of § 126(a)(9) and, thereby, cost-share payments received under the SWCA program are eligible for exclusion from gross income to the extent permitted by § 126?

## FACTS

The SWCA program, authorized under the provisions of Title II of the Agricultural Risk Protection Act of 2000, Pub. L. No. 106-224, 114 Stat. 358, is a voluntary program that provides payments to farmers and ranchers to implement measures needed to conserve and improve soil, water, and related natural resources and to comply with federal and state environmental laws. A farmer or rancher who participates in the SWCA program enters into a 5 to 10 year cost-share agreement with the Department of Agriculture pursuant to which the farmer or rancher agrees to implement specific eligible conservation practices in return for cost-share payments in the amount of 75 percent of the cost of an eligible practice. The total maximum payment per participant cannot exceed \$50,000.

The Secretary of Agriculture has determined that cost-share payments under the SWCA program are primarily for the purpose of conservation.

## LAW AND ANALYSIS

Under § 126(a), gross income does not include the excludable portion of payments received under certain conservation programs set forth in § 126(a)(1) through (8). Under § 126(a)(9), a program affecting “small watersheds” that is administered by the Secretary of Agriculture also is eligible for § 126 treatment if the Commissioner determines that the program is substantially similar to the type of pro-

grams described in §§ 126(a)(1) through (8). See § 16A.126-1(d)(3) of the temporary Income Tax Regulations for the definition of “small watershed.”

Once the Commissioner has determined that a program is substantially similar to the types of programs described in § 126(a)(1) through (8), taxpayers receiving cost-share payments under that program must determine what portion of the cost-share payments is excludable from gross income under § 126. See § 126(b)(1), and § 16A.126-1 relating to the partial exclusion for certain cost-share payments to determine what portion of the cost-share payments is excludable from gross income under § 126.

## HOLDING

The SWCA program is substantially similar to the type of programs described in §§ 126(a)(1) through (8) within the meaning of § 126(a)(9). All or a portion of cost-share payments received under the SWCA program is eligible for exclusion from gross income to the extent permitted by § 126. See § 126(b)(1) and § 16A.126-1 to determine what portion, if any, of the cost-share payments is excludable from gross income under § 126.

## DRAFTING INFORMATION

The principal author of this revenue ruling is Nicole R. Cimino of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Ms. Cimino at (202) 622-3120 (not a toll-free call).

## Section 126.—Certain Cost-Sharing Payments

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

**Cost-share payments; SWCA.** The Soil and Water Conservation Assistance Program (SWCA) is substantially similar to the type of programs described in sections 126(a)(1) through (8) within the meaning of section 126(a)(9) of the Code. All or a portion of cost-share payments received under the SWCA program is eligible for exclusion from gross income to the extent permitted by section 126.