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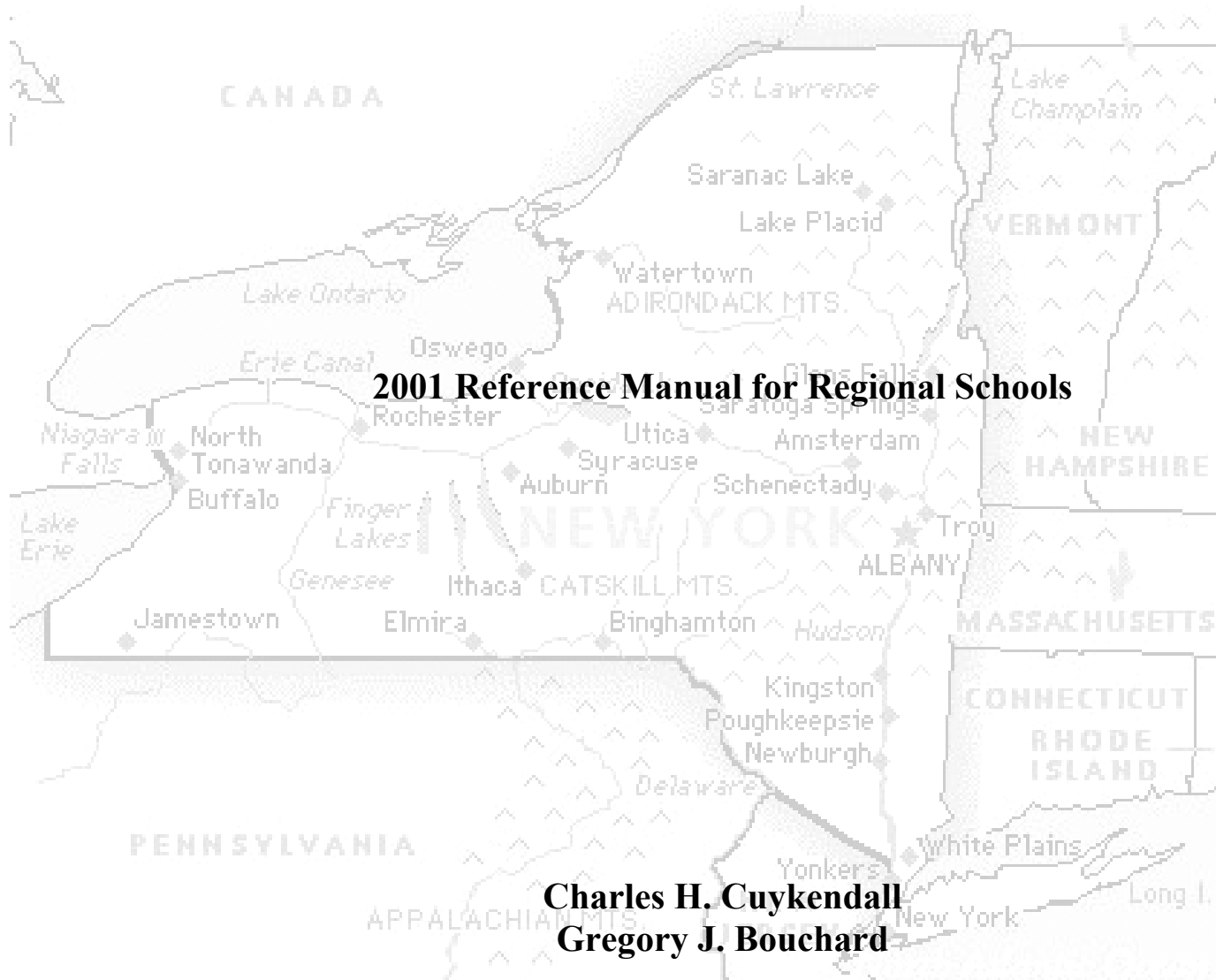
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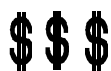
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INCOME TAX MANAGEMENT AND REPORTING FOR SMALL BUSINESSES AND FARMS



2001 Reference Manual for Regional Schools

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2001 TAX LEGISLATION AND FARM INCOME SITUATION*

What's New in Federal Legislation

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA 2001), hereafter referred to as the "2001 Act" has nearly 100 provisions and most may be beneficial to taxpayers. However, many of these benefits are phased in over the next ten years and then, unless changed, the provisions revert to the pre 2001 Act rules and regulations. This "sunset clause" which repeals all the 2001 Act at the end of 2010 will add a lot of uncertainty to tax planning in the next ten years.

- A new 10-percent bracket for individuals has been added for a portion of the taxable income currently taxed at 15 percent. This 10 percent bracket will not be in the tables but rather will be given through an advance refund check or a current credit on taxes due for the year 2001. Trusts and estates are not eligible for this bracket.
- Furthermore the other income tax brackets are lowered by one-half percent in 2001 followed by another one-half in 2002 and gradually lowering each existing bracket to 25%, 28%, 33% and 35% by the year 2006 and later.
- The 2001 Act increases the alternative minimum tax (AMT) exemption amount for married filing jointly and surviving spouses by \$4,000 and for other individuals by \$2,000. This change applies to the 2001-2004 tax years.
- The child tax credit is modified and increased starting in 2001 to \$600 per eligible child and reaching \$1,000 in the year 2010. The often difficult refund calculation of the child tax credit has taken on additional complexity but will no longer be reduced by AMT.
- There are changes in the adoption credit and employer-provided assistance exclusion starting in January 2002. The credit and the exclusion are increased to \$10,000 per eligible child.
- The 2001 Act extends the exclusion for employer-provided educational assistance to graduate education after December 31, 2001 and makes the provision permanent for both graduate and undergraduate courses.
- The 2001 Act increased the annual contributions limit to educational IRAs to \$2,000 per beneficiary after December 31, 2001 but still no deduction for the contribution. The qualified expenses have been expanded to include elementary and secondary school expenses. In addition the taxpayer can coordinate expenses with Hope, Lifetime Learning Credits, and Qualified Tuition programs, which was previously not allowed.
- A new above the line deduction for taxpayers with qualified higher education expenses paid during the years 2002-2005 is phasing in from \$3,000 to \$4,000 then stopping in the year 2006.
- Higher phase-out AGI ranges are allowed for student loan interest deductions after 2001. Also, no more counting months to see if the loan is in the first 60 months of repayment as the Act repeals the rules on number of months and voluntary payments will be deductible.

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- The Estate and Gift Tax applicable exclusion amounts have been accelerated and increased. For estates of decedents dying after 2001 the exclusion amount is increased to \$1 million and then steps up to \$3.5 million in 2009 before repeal of estate tax in 2010. The gift tax is uncoupled from the estate tax and the applicable exclusion will remain at \$1 million from 2002 to 2010. The Estate and Gift tax highest brackets are gradually reduced.
- Most retirement plan contribution limits were increased and special catch-ups above the annual limits are allowed for individuals aged 50 and over beginning in 2002.
- Corporate estimated taxes due September 17th, 2001 were delayed until October 1, 2001. Also the due date of 20 percent of the corporate estimated tax payments due on September 15th 2004 is similarly delayed until October 1, 2004.
- Previously a state death tax credit was allowed against Federal estate tax for taxes paid to any State for property included in a gross estate. NY imposed a “pick-up” tax, which was equal to the maximum federal credit allowed. Under the 2001 Act from 2002-2004 the State death tax credit is reduced by 25% per year until gone in 2005. NY will have to amend their estate tax in order to collect any revenues from this tax after 2004.

More 2001 Act Changes That Take Effect After the Year 2002

- Over a five-year period starting in 2006 the 2001 Act repeals the overall limitation on personal exemptions for taxpayers with AGIs over certain threshold amounts. In the year 2010 there are no phaseouts of personal exemptions regardless of AGI. Similarly, the phaseout of itemized deductions (other than medical, investment interest, casualty, theft, or wagering losses) will be repealed in steps from years 2006 to 2010. In the year 2010 there are no phaseouts of itemized deductions.
- The marriage penalty relief will gradually begin starting in 2005 and by 2008 the 15% bracket **only** will be twice that of the 15% bracket for a single individual. The 2001 Act gradually increases the amount of the standard deduction for married filing jointly starting in 2005. By the year 2009 the standard deduction for married filing jointly will be twice the size of the deduction for single filers.
- Beginning in 2010 the step-up in basis rules as of the date-of-death are replaced by rules that apply the carry-over basis to assets received from an estate. With the elimination of the estate tax, the carry-over basis rules require the gain on property received for a decedent’s estate to be carried over to the heir. However, there are a few exceptions to add to the required bookkeeping of basis from the decedent’s property. The estate executor can add some amounts to the basis of certain assets. For example, the executor may step-up basis by the sum of: a) \$1.3 million, b) unused capital losses and net operating losses from the decedent’s final tax form, c) any loss the decedent would have had from the sale of assets immediately before death. Property received by a surviving spouse will be entitled to an additional \$3 million step-up.

2001 Farm Income Tax Situation

New York farm gate milk prices received will be up in 2001, compared to 2000. The increase of nearly \$3.00 per hundredweight at the farm gate during the year 2001 will not likely be matched in 2002. We are not expecting 2002 to be a low milk price year but revenues may be down by as much as \$1.00 per hundredweight and some expenses, such as fuel and fertilizer, may be somewhat higher. Income tax strategies consistent with this scenario would include pre-buying inputs before the end of the 2001.

Apple production in NY increased by six percent over last year. Inventories of processing products were medium to low. Prices are stronger than a year ago, due to the smallest national crop in 10 years. Growers' incomes should rebound from last year's low levels. Drought affected most New York crops in 2001. Grape production is off by 15 percent from last year. The Concord crop in the Lake Erie region was especially hit. Higher prices for both wine and juice grapes will help to offset reduced tonnage. New York yields were lower for most vegetable crops. Onions yields were down by 14 percent, and processed snap beans and sweet corn yields were down by 11 percent each.

Tax management suggestions for farmers with 2001 net farm profits:

- Purchase quantities of feed and supplies before the year-end. These prepaid expenses may be claimed if they do not exceed 50% of other expenses on Sch. F.
- Buy needed machinery now. Take advantage of the Sec. 179 deduction as well as rapid depreciation.
- Pay additional wages to family members who actually work on the farm. Consider paying Christmas bonuses to regular employees.
- Purchase IRAs or other tax deferred retirement plans.

FEDERAL TAX PROVISIONS AFFECTING INDIVIDUALS

Standard Deduction

The standard deduction is indexed to inflation and is adjusted annually

Basic Federal Standard Deduction for 2001 and 2002

<u>Filing Status</u>	<u>2001</u>	<u>2002¹</u>
Married filing jointly; or qualifying widow(er)	\$7,600	\$7,850
Head of household	\$6,650	\$6,900
Single individuals	\$4,550	\$4,700
Married filing separately	\$3,800	\$3,925

¹ projected

Each taxpayer over age 65 or blind receives the regular standard deduction plus an additional \$900 deduction if married and filing a joint or separate return. The additional deduction is \$1,100 (\$1,150 for 2002) if single or head of household. The additional deductions are subject to the inflationary adjustment. A taxpayer that is both elderly and blind receives double the additional deduction. The additional deductions for age and blindness cannot be claimed for dependents.

Personal Exemption

The 2001 personal exemption allowed on the federal return is \$2,900 for the taxpayer, their spouse, and their dependents. The projected amount for 2002 is \$3,000. Taxpayers may not claim an exemption for themselves or any other person who can be claimed as a dependent on someone else's tax return.

There is a phaseout of the personal exemption for certain high-income individuals. For 2001, the benefit of the personal exemption is phased out for taxpayers with the following specific high levels of adjusted gross income (AGI). These threshold amounts are adjusted for inflation annually:

\$199,450 if married filing jointly or qualifying widow (er) with dependent child;
(exemptions completely lost at \$321,950 AGI)

\$166,200 if head of household; (exemptions completely lost at \$288,700 AGI)

\$132,950 if single (exemptions completely lost at \$255,450 AGI)

\$ 99,725 if married filing separately; (exemptions completely lost at \$160,975 AGI)

The phaseout in personal exemptions is 2% of the exemption amount for each \$2,500 increment (or any fraction thereof) by which AGI exceeds the appropriate threshold amount. A married taxpayer filing separately will lose 2% of his/her exemption for each \$1,250 increment above \$99,725. The personal exemption phaseout or reduction is calculated on a nine-line worksheet called the **Deduction for Exemptions Worksheet** included in the 1040 instructions. If adjusted gross income exceeds the threshold, complete the worksheet before claiming the personal exemption deduction on line 38 of Form 1040.

Full personal exemption is scheduled to be restored after the year 2009. The above phaseout will gradually be reduced after 2005.

Example: Mr. and Mrs. Dairy file jointly, have two children, and their 2001 AGI is \$259,550. They claim four personal exemptions and the standard deduction. Their reduction and net exemption are calculated as follows:

AGI \$259,550 - \$199,450 threshold = \$60,100 excess. $\$60,100 \text{ excess} \div \$2,500 = 24.04$ or 25 excess increments. Their reduction is $25 \times .02 (2\%) = .50 \times \$11,600 (4 @ \$2,900) = \$5,800$. Their net personal exemption is $\$11,600 - 5,800 = \$5,800$.

A way to evaluate the cost of the personal exemption phaseout to the taxpayer is to calculate the additional tax liability. In the example, Mr. and Mrs. Dairy are in the 35.5% taxable income bracket, where the \$5,800 of phased-out personal exemption will cost \$2,059 in additional taxes. In other words, their \$60,100 of excess AGI caused an additional tax liability of \$2,059 or added 2.9% to their tax liability.

Dependents

Taxpayers must report the social security numbers of all dependents. The penalty for failure to report this information is \$50. Apply for a social security number by filing Form SS-5 with the Social Security Administration or online from www.ssa.gov.

Taxpayers may not claim an exemption for a dependent that has gross income of \$2,900 or more unless it is for their child under age 19 or a full-time student child under age 24 at the end of the tax year. Nontaxable social security benefits and earnings from sheltered workshops are excluded. A full-time student must be enrolled in and attend a qualified school during some part of each of five calendar months. Individuals who can be claimed as dependents on another taxpayer's return may not claim a personal exemption on their own return.

The qualified child, student, or other qualified dependent's basic standard deduction allowable is limited to the smaller of the basic standard deduction or the larger of (1) \$750 or (2) the individual's earned income plus \$250.

Examples of Single Taxpayer's Standard Deduction

	Base Amount	Earned Income	Earned Income + \$250	Larger of the Two	Standard Deduction	Smaller of the Two
Case # 1	\$750	0	\$250	\$750	\$4550	\$750
Case # 2	\$750	\$4350	\$4600	\$4600	\$4550	\$4550

Investment or unearned income in excess of \$1,500 received by a dependent child under age 14 is taxed at the parent's marginal rate if greater than the income tax using the child rates. A three-step procedure is required to compute the tax on **Form 8615, Tax for Children Under Age 14 Who Have Investment Income of More than \$1,500**, where the excess over \$1,500 will be taxed at the parent's marginal rate and unearned income greater than \$750 but less than \$1,500 will be taxed at 15%.

The election to claim the child's unearned income on the parent's return with **Interest and Dividends**, is still available, and the adjusted \$1,500 base amount and \$750 tax exemption are indexed for inflation on Form 8814. This election cannot be made if the child has income other than interest and dividends or if estimated tax payments were made in the child's name, or the child's income is more than \$7,499.

2001 Tax Rates

All the tax brackets have been adjusted for inflation this year. Each tax bracket has been moved up approximately 3.0% from 2000, which results in many taxpayers with constant taxable incomes paying somewhat less income taxes in 2001. In addition many will benefit from the advance refund check or credit to be taken on the 2001 filing. In a recent clarification the tax cuts are also available to the following taxpayers when filing their 2001 returns: a) taxpayers who are eligible for the 2001 refundable child tax credit, b) taxpayers who were claimed as a dependent in 2001 and have a tax liability in 2001, c) taxpayers who were non-resident aliens in 2000 and have a tax liability in 2001.

Please note that in 2001 there will be no 10 percent bracket but rather on line 47 on Form 1040 will give the equivalent of a 10 percent bracket on a portion of the amount that would ordinarily be taxed at 15 percent unless an equivalent amount was received from the advance refund check. In the tax year 2002 and thereafter there will be a 10 percent bracket in each of the schedules. The 10 percent bracket will end at \$6,000 for singles and married filing separately, \$10,000 for heads of household, and \$12,000 for married filing jointly and qualifying surviving spouses.

2001 Tax Rate Schedules

Single Taxpayer				Married Filing Joint Return & Qualifying Widow(er)			
Taxable income		Tax		Taxable income		Tax	
\$ 0 – \$ 27,050		15%		\$ 0 – \$ 45,200		15%	
\$27,050 – 65,550	\$ 4,057.50	+ 27.5%	on excess*	\$ 45,200 – 109,250	\$ 6,780.00	+ 27.5%	on excess*
\$65,550 – 136,750	\$14,645.00	+ 30.5%	" "	\$109,250 – 166,500	\$24,393.75	+ 30.5%	" "
\$136,750 – 297,350	\$36,361.00	+ 35.5%	" "	\$166,500 – 297,350	\$41,855.00	+ 35.5%	" "
>\$297,350	\$93,374.00	+ 39.1%	" "	>\$297,350	\$88,306.75	+ 39.1%	" "
Head of Household				Married Filing Separate Returns			
Taxable income		Tax		Taxable income		Tax	
\$ 0 – \$ 36,250		15%		\$ 0 – \$ 22,600		15%	
\$ 36,250 – 93,650	\$ 5,437.50	+ 27.5%	on excess*	\$22,600 – 54,625	\$ 3,390.00	+ 27.5%	on excess*
\$ 93,650 – 151,650	\$21,222.50	+ 30.5%	" "	\$54,625 – 83,250	\$12,196.88	+ 30.5%	" "
\$151,650 – 297,350	\$38,912.50	+ 35.5%	" "	\$83,250 – 148,675	\$20,927.50	+ 35.5%	" "
>\$297,350	\$90,636.00	+ 39.1%	" "	>\$148,675	\$44,153.38	+ 39.1%	" "

* on excess over first number in bracket

The rates for head of household are most favorable. Single taxpayers that are maintaining a home for themselves and a dependent should qualify. Married taxpayers not living in the same household for the last six months of the year are treated as married filing separately but may qualify as head of household if he/she has a qualified dependent.

The 2001 Act reduced the percentage on each bracket above 15 percent by one-half percent in 2001. The one-half percent rather than a full percent as in other years was selected because of implementing the change at mid-year. In 2002, all brackets above 15 percent are reduced another one-half percentage point. In 2004 and 2006 all brackets above 15% are lowered by one percent in each of the two years with an extra 1.6% reduction in the highest bracket. At the end of the adjustment period the former 28%, 31%, 36% and 39.6% brackets will be reduced to 25%, 28%, 33%, and 35% over the period 2001 to 2006. For those people with the ability to delay income or accelerate expenses this is a tax management opportunity as tax rates are scheduled to be lower the following year.

Marriage Tax Penalty

The tax rates for married taxpayers continue to be higher than for single taxpayers. Relief of the marriage tax penalty will start in the year 2005. At that time the 15 percent rate bracket for married filing jointly will increase to 1.8 times the 15% tax bracket for an unmarried individual. Further increasing to 1.87 times in 2006, 1.93 times in 2007, and 2 times the tax bracket for unmarried individuals in 2008 and thereafter until 2011. Notice the 2001 Act only fixed the 15 percent bracket and not other brackets. So actually the act has not completely eliminated the marriage tax penalty.

The other part of the marriage tax penalty has to do with the comparison of standard deduction between singles and married filing jointly. Two singles are currently afforded a larger standard deduction than a couple married filing jointly ($\$4,550 \times 2 = \$9,100$ vs. $\$7,600$). The 2001 Act changes this deduction starting in the year 2005 so that the deduction for married filing jointly moves to 174 percent of the single taxpayer amount then finally reaches 200 percent in the year 2009. Inflationary adjustments will continue to be made.

Increasing the credit phaseout amounts for joint filers will provide marriage tax penalty relief for earned income credit calculations. This Act increases by \$1,000 in 2002, \$2,000 in 2005 and \$3,000 in 2008 both the beginning and ending of the earned income credit phaseout ranges. Married individuals must file a joint return in order to claim the earned income credit. The calculation of the couple's combined income previously penalized some couples who had a smaller earned income credit when married compared to unmarried.

Itemized Deductions (Schedule A)

Medical expenses that exceed 7.5% of AGI are itemized deductions not subject to the additional 2% AGI limit. "Medical expenses" are broadly defined to include payments made for nearly all medical and dental services, therapeutic devices and treatments, home modifications and additions made primarily for medical reasons, travel (auto mileage deduction for 2001 is \$.12 per mile) and lodging expenses associated with qualified medical care trips, legal fees required to obtain medical services, prescribed medicine and drugs, special schooling and institutional care, qualified health insurance premiums and the costs to acquire, train and maintain animals that assist individuals with physical disabilities. Most cosmetic surgery, general health maintenance, such as gym fees and weight loss programs, and well-baby care programs will not qualify. Remember that itemized medical expenses must be reduced by any reimbursement, including health insurance payments received.

Beginning in 1997, qualified long-term care (LTC) insurance contracts are generally treated as an accident and health insurance contract. Contract benefits are generally excludable from taxation like money received for personal injury and sickness. The 2001 excludable per-diem benefit limit is \$200 per day or \$73,000 annually. Benefits are reported to taxpayer on 1099-LTC and shown on Form 8853 Section B. This exclusion limit is ignored if the actual cost of the LTC is more than the per-diem payment or the taxpayer has been certified by a physician as terminally ill and death is expected within 24 months of certification.

Long-term Health Care premiums are deductible for 2001, by itemizers when combined with other premiums and medical expenses that exceed 7.5% of adjusted gross income. However, there are annual limits on the deductible premiums tied to age. Filers over 70 years old can include long term health care premiums of up to \$2,860 per year per person subject to the 7.5% exclusion. Those aged 61 to 70 years may include \$2,290 per person; 51 to 60 years \$860 per person; 41 to 50 years \$430 per person, 40 years and under \$230 per person.

Handicapped taxpayers' business expenses for impairment-related services at their place of employment are itemized deductions not subject to the 7.5% or 2% AGI limits. Handicapped taxpayers are individuals who have a physical or mental disability that is a functional limitation to employment.

Itemized deductions not subject to the 2% AGI limit include state income and property taxes, and personal casualty losses (list not complete).

Home mortgage interest (qualified residence interest) on the taxpayer's principal and second home is an itemized deduction on Schedule A providing the mortgage satisfies the following limitations:

1. Home Acquisition Loan. Mortgages obtained after October 13, 1987, to buy, build, or improve a main home or a second home, but only if throughout 2001 the total mortgage debt was \$1 million or less (\$500,000 or less if married filing separately). Note: This limit applies to the total debt on mortgages obtained after October 13, 1987, plus any prior "grandfathered debt".
2. Home Equity Loan. Mortgages obtained after October 13, 1987, other than to buy, build, or improve a home, but only if throughout 2001 this debt was \$100,000 or less (\$50,000 or less if married filing separately).

To be deductible both types of mortgages must be secured debt, and the mortgage must be recorded with the county recorder or otherwise perfected under state law.

Mortgage interest that exceeds these limits is nondeductible. However, an exception applies if the disallowed mortgage interest is deductible under another code section. Also there's a tax trap if you pay the mortgage on an ex-spouse's home, where only the ex-spouse resides after the divorce, there is no interest deductibility.

Investment interest expense is deductible but is limited to the amount of net investment income. Investment interest expense is interest paid on debt incurred to buy investment property. It does not include investments in passive activities or activities in which the taxpayer actively participates, including the rental of real estate. Net investment income is gross investment income (including investment interest, interest received from the IRS, dividends, taxable portion of annuities, and certain royalties) less investment expenses (excluding interest). Gross investment income was redefined by the 1993 Act to exclude net capital gain on the disposition of investment property. A taxpayer may elect to include net capital gain as investment income only if it is excluded from income qualifying for the long-term capital gain tax rate.

Form 4952, Investment Interest Expense Deduction, is designed to calculate the amount of carryover interest that may be deducted in the current tax year. The carryover interest deduction is

limited to the excess of current year's net investment income over investment interest expense, and no deduction is allowed in any year in which there is a net operating loss.

Personal interest is not deductible.

Charitable contributions are subject to substantiation and disclosure rules. One set of rules applies to separate contributions of \$250 or more. For separate cash contributions exceeding \$250, a taxpayer cannot rely solely on a canceled check but needs substantiation from the charity showing the amount and date the contribution was made. Acknowledgment must be obtained from the charity by the earlier of the filing date or the due date of the return, including extensions. For noncash contributions, the taxpayer must obtain from the charity a receipt that describes the donated property, a good-faith estimate of its value, and whether anything was given to the taxpayer in exchange. Taxpayers must use **Form 8283** to report total noncash charitable contributions over \$500.

For contributions exceeding \$75 where the taxpayer receives something in exchange (such as a dinner), the charity must provide a statement to the taxpayer that informs the donor that the value of the contribution that is deductible is the difference between the contribution and the value of the goods or services received by the taxpayer. Also, the charity must provide the donor with a good-faith estimate of the value of whatever the charity gave to the donor. The standard mileage rate for passenger car use for charitable causes is \$.14 per mile.

Moving expenses are no longer itemized deductions. Report qualified moving expenses on **Form 3903** and deduct them on line 26 of Form 1040.

Moving expenses are defined as the reasonable costs of (1) moving household goods and personal effects from the former residence to the new residence, and (2) travel, including lodging during the period of travel, from the former residence to the new place of residence. The standard mileage rate for passenger car use for moving is \$.12 per mile. Meal expenses are no longer included. The new place of work must be at least 50 miles farther from the taxpayer's former residence than was the old place of work. The deduction will be subtracted from gross income in arriving at AGI.

The following expenses, previously allowed as moving expenses, no longer qualify: selling and buying expenses on the old and new residences, meals while traveling or living in temporary quarters near the new place of work, cost of pre-move house hunting, and temporary living expenses for up to 30 days at the new job location.

Qualified moving expenses reimbursed by an employer are excludable from gross income to the extent they meet the requirements of qualified moving expense reimbursement.

Miscellaneous Deductions Subject To 2 Percent AGI Limit Include:

1. Unreimbursed employee business expenses including employment-related educational expenses, travel, meals and entertainment expenses (subject to 50 percent rule), lodging, work clothes, dues, fees, and small tools and supplies. Employee business expenses reimbursed under a nonaccountable plan are also subject to the 2% AGI limit.
2. Investment expenses, including legal, accounting, and tax counsel fees, clerical help and office rental, and custodial fees.
3. Job hunting expenses may be deductible if one is looking for employment. Job hunters expenses are deductible if incurred in looking for a new job in their present occupation. The job searching expenses are not deductible if looking for a job in a new occupation or looking for a first job. Factors to determine if the employment is in the same occupation include: job classification, job responsibility, and nature of employment. The following are expenses that may be deductible: cost

of typing, printing and mailing resumes; long distance phone calls and mailing; career counseling and agency fees; and travel or transportation expenses.

4. Other deductions: professional dues, books, journals and safe deposit box rental, hobby expenses not exceeding hobby income, office-in-the-home expenses, and indirect miscellaneous deductions passed through grants or trusts, partnerships and S corporations.

Meal expenses must be directly related to the active conduct of the taxpayer's trade or business (i.e. an organized business meeting or a meal at which business is discussed). A meal taken immediately preceding or following a business meeting will qualify if it is associated with the active conduct of the taxpayer's trade or business. The deductible portion of meal and entertainment expenses paid in connection with a trade or business is 50%. Self-employed individuals would claim this deduction on either Schedule C or F while employees would deduct 50% of any unreimbursed business meal on Schedule A. The deductible percentage of the cost of meals consumed by employees subject to DOT will gradually increase from 60% for 2001 to 80% in 2008. DOT employees include FAA employees (pilots, crews, etc.) railroad employees, and interstate truck and bus drivers under DOT regulations.

A taxpayer should itemize if total itemized deductions are greater than his or her standard deduction. The election to itemize can be made or revoked on a timely filed, amended return. The limitation for high-income taxpayers must be considered when comparing itemized deductions with the standard deduction. The itemized deduction 3%/80% reduction rule for married filing separately in 2001 begins at \$66,475 (AGI) and the limit for all other taxpayers starts at \$132,950 (AGI).

Taxpayers with a 2001 AGI in excess of the above limits must reduce all itemized deductions except medical expenses, investment interest, casualty losses, and wagering losses to the extent of wagering gains. The reduction equals the lesser of 3% of excess AGI or 80% of the applicable itemized deductions. Three percent of excess AGI will be the most common reduction and will not be a major additional tax burden unless AGI is very high and/or the applicable itemized deductions are relatively low. The 7.5% of AGI medical expense adjustment and 2% floor on miscellaneous itemized deductions must be applied before the high-income deduction.

Example: Fred and Ann Veryrich's 2001 AGI is \$152,950. Their itemized deductions total \$17,000 including \$12,000 of deductible medical expenses (after the 7.5% AGI deduction) and investment interest. They claim no casualty or wagering losses. They must reduce their itemized deductions as follows:

$\$152,950 \text{ AGI} - \$132,950 \text{ maximum} = \$20,000 \text{ excess} \times .03 = \600 . \$600 is less than \$4,000 (.80 x \$5,000 of applicable itemized deductions). They reduce itemized deductions by \$600; $\$17,000 - \$600 = \$16,400$ adjusted itemized deductions.

The above limitation on itemized deductions will be phased out starting in 2006 and completely eliminated after 2009. Starting in 2006 the otherwise applicable phaseout is reduced by one-third. Similarly in 2008 the phaseout is reduced by two-thirds. Then in 2010 there is no phaseout of itemized deductions. This is another tax planning management area for those that are subject to deduction phaseouts. If they can delay their itemized deductions from 2005 to 2006, and 2007 to 2008 and 2009 to 2010 they will pay less tax.

Earned Income Credit (EIC)

Basic earned income credit rates have been gradually increasing, and some low-income workers without qualifying children are eligible for earned income credit. Earned income includes wages, salaries, tips and net self-employment earnings but does not include interest, dividends, alimony and social security benefits.

Taxpayers with two or more qualifying children may claim up to \$4,008 of earned income credit if their modified AGI is between \$10,020 and 13,090. Use the table below to see if the taxpayer's earned income and number of qualified children meet the requirement for the credit and refer to the IRS tables for 2001 credit amount.

The definition of modified AGI for the phase-out disregards certain losses, including: a) losses from the sale or exchange of capital assets in excess of gains, b) net losses from trusts and estates and c) net losses from non-business rent and royalties. Seventy-five percent of net losses from trades or businesses (computed separately with respect to sole proprietorships, sole proprietorships in farming and other businesses) are excluded in determining modified AGI. In addition, modified AGI includes interest that is received or accrued that is exempt from federal income tax and amounts received as pensions or annuities or IRAs to the extent not included in gross income.

Earned Income Credit Rates, Income Ranges, and Phaseouts*

Qualifying Children	Credit rate	Earned income range		Phaseout rate	Maximum credit
		Maximum credit	Phaseout		
<u>For 2001</u>					
None	7.65%	\$ 4,760- 5,950	\$5,950-10,710	7.65%	\$364
One	34.00%	7,140-13,090	13,090-28,281	15.98%	2,428
Two or more	40.00%	10,020-13,090	13,090-32,121	21.06%	4,008

*This is not an official IRS table. Do not use these figures in tax preparation as numbers are adjusted annually for inflation and the amount of credit is normally determined by using EIC tables released by IRS.

It is possible for some low-income taxpayers to be eligible for EIC even though that taxpayer doesn't have a qualifying child. To be eligible, such a taxpayer must be age 25 or more, but under 65 years of age. A married taxpayer that does not meet the minimum age requirement may be eligible if his or her spouse meets the minimum age requirement. Other eligibility rules for the low-income taxpayer are: he or she cannot be claimed as a dependent or a "qualified child" on another person's tax return; his or her principal residence was in the USA for more than one-half of the tax year; the return must cover a 12-month period; the taxpayer cannot file a separate return if married, and cannot file Form 2555 or Form 2555-EZ. The credit percentage is much smaller (7.65%) for taxpayers with no qualifying children, and the credit is phased out over a lower income range.

To be eligible for the Earned Income Credit, any taxpayer must have all of the following:

- (1) earned income
- (2) earned income and adjusted gross income, each below the maximum earned income allowed
- (3) a return that covers 12 months (unless a short-year return is filed because of death)
- (4) a joint return if married (usually)
- (5) included income earned in foreign countries and not deducted or exclude a foreign housing amount
- (6) not be used as a qualifying child making another person eligible for the earned income credit.

The 1996 Act expanded "disqualified income" to include (among other income item net income". To disqualify more taxpayers, the law said gains from the sale of passive investments should be included as disqualified income. IRS originally said this included gain from sale of assets used in a trade or business. This interpretation included assets meeting the holding-period requirements of Sec. 1231, which are not subject to recapture rules of IRC Sec. 1245, 1250, 1252, etc. In Rev. Rul. 98-56 (November 1998), IRS announced they were reversing their position retroactively as follows:

Section 32 of the Internal Revenue Code allows an earned income credit to eligible individuals whose income does not exceed certain limits. Section 32(i) denies the earned income credit to an otherwise eligible individual if the individual's "disqualified income" exceeds a specified level for the taxable year for which the credit is claimed. Disqualified income is income specified in section 32(i)(2). Gain that is treated as long-term capital gain under section 1231(a)(1) is not disqualified income for purposes of section 32(i).

Therefore gain from the sale of equipment and livestock (sows, boars, beef cattle, horses, cull dairy cows) that are Sec. 1231 property are not disqualified income.

In 2001, the EIC is denied to all taxpayers with an excess of \$2,450 of taxable and nontaxable interest income, dividends, net capital gains (excluding those from Sec. 1231 assets) and net income from rents and royalties not derived in the ordinary course of business. All gains from the sale of business assets including ordinary gains (Form 4797 Part II) and gains recaptured as ordinary income (Form 4797 Part III) are not included in disqualified income.

There are three tests for a qualifying child: relationship, residency, and age.

To meet the relationship test, the child must be (1) the taxpayer's son or daughter or a descendant of the taxpayer's son or daughter, (2) the taxpayer's stepson or stepdaughter, (3) adopted child, (4) foster child. The definition of eligible foster child is:

- The child is your brother, sister, stepbrother, or stepsister, (or a descendant of one of the previously mentioned relationships) or has been placed with you by an authorized placement agency.
- You cared for the child as you would your own.
- The child lived with you for the whole year, except for temporary absences.

To meet the residency test, the child must live with the taxpayer in his or her main home for more than half the year (all year if a foster child), and the home must be in the U.S. However, a child that was born, or died, anytime during the tax year and lived in the taxpayer's home will meet the residency test.

To meet the age test, the child must be (1) under 19 at year-end, (2) a full-time student under 24 at year-end or, (3) permanently or totally disabled at any time during the tax year, regardless of age.

Individuals with qualifying children will not be allowed EIC if they fail to identify those children by name age and TIN on their returns.

There are many changes to the Earned Income Credit for 2002 and beyond.

- Earned income credit (EIC) phase out ranges (both beginning and ending) for married joint filers will be increased by \$1,000 starting in 2002, and reaching \$3,000 increase in 2008.
- The reference point for computing phaseout will be changed from modified adjusted gross income to adjusted gross income.
- In cases where a child may be claimed by two taxpayers the tiebreaker rule will be changed in 2002. Rather than the taxpayer with the highest modified AGI claiming the child, the claim will go to (1) his/her parent, or (2) if (1) doesn't apply then the taxpayer with the highest AGI.
- The definition of earned income for purposes of calculating the credit will include only compensation included in gross income and net self-employment income. Previously, as listed above it included compensation excluded from income.

- Effective in 2002 Earned Income Tax Credit will not be reduced by alternative minimum tax.
- The residency requirement for a foster child previously was had to live with the taxpayer for the entire year and in 2002 and beyond it will be changed to more than six months.

Earned Income Credit Reminders for Farmers

If earned income is negative, there is no credit. Therefore, a farmer with a negative Schedule F net farm profit would not get a credit unless there were wage and Schedule C income more than enough to offset the loss on F, or the optional method of reporting self-employment income is used. A farmer with a negative net farm profit may use the optional method of reporting up to \$1,600 of self-employment income to collect an EIC which would partially or wholly cover the self-employment tax and also provide **one** quarter of social security coverage, providing disqualified income (such as interest and dividends), earned income, and modified adjusted gross income are all less than the maximums allowed.

If modified AGI is greater than the maximum allowed there would be no credit even if earned income is below the maximum. Many dairy farmers could have a Schedule F profit in the EIC range, but not get a credit (or at least have it limited) because of gains from cattle sales on 4797 (or any other source of income that is not classified as “earned”), which would be included in AGI.

Before attempting to manage the net farm profit or self-employment income to result in an EIC with which to pay the SE tax and provide social security coverage, a farmer needs to understand the EIC rules and the interactions between EIC, SE tax and income tax.

The Earned Income Credit Advance Payment Certificate (Form W-5), may be used by any employee eligible for EIC to elect advanced payments from his or her employer. EIC payments made by an employer to his or her employee offset the employer’s liability for federal payroll taxes. Use IRS tables to determine advanced payments of EIC. Advanced payments are limited to the credit amount for one qualifying child, regardless of the total number of children a taxpayer may have. An employer’s failure to make required advanced EIC payments is subject to the same penalties as failure to pay FICA taxes. Employers of farm workers do not have to make advance EIC payments to farm workers paid on a daily basis (IRS Pub. 225).

Child Tax Credits

For the taxable year 2001 a \$600 credit is allowed for each qualifying child under 17 years of age. For taxpayers with adjusted gross income in excess of the applicable threshold amount, the credit is phased out. The phaseout rate is \$50 for each \$1,000 of modified adjusted gross income (or fraction thereof) in excess of the following threshold:

Child Tax Credit Phaseout Based on AGI

	Threshold Starting	Completely Gone
Married joint return	\$110,001	\$121,001
Single or head of household	\$75,001	\$86,001
Married separate return	\$55,001	\$66,001

Example. Jack and Jill have 2 eligible children and file a joint return. Their 2001 AGI is \$120,000, which exceeds the threshold by \$10,000. They must reduce their credit by \$50 for each \$1,000 over the threshold or \$50 times 10 equals \$500. Their child tax credit for 2001 is \$600 times 2 less \$500 or \$700.

The maximum tax credit per child increases from \$600 to \$1000 in 2010 in steps increasing in 2005, 2009 and 2010. The requirement necessary to make this credit refundable has changed for 2001. Prior law said the additional child credit was refundable to families with 3 or more qualifying children

only to the extent that taxpayer's SS tax exceeded earned income credit. The 2001 Act says child credit is refundable up to the greater of (1) 10% of earned income over \$10,000 (plus COLA after 2001) or (2) if there are 3 or more qualified children, to the extent the taxpayer's SS tax exceeds his/her income credit. This percentage is increased to 15 percent for the years 2005 and after.

Example. Mary has two eligible children and her earned income is \$21,000 for 2001. She has neither other nonrefundable credits nor other income. Her 2001 tax is calculated by subtracting \$6,650 standard deduction (HH) and three personal exemptions @ \$2,900 (\$8,700) resulting in \$5,650 taxable income. This is in the 15 percent bracket and she previously received her full advance refund check. $\$5,650 \times 15\% = \848 tax liability. Since her income is well below the threshold under the pre-act rules the non-refundable credit is $\$600 \times 2 = \$1,200$ limited to her tax liability of \$848. But as the act changed this Mary is allowed a **refundable** credit equal to the lesser of (1) \$1,200 ($2 \times \600) or (2) \$1,100 ($(\$21,000 - \$10,000) \times 10\%$). Mary's new child tax credit consists of \$1,100 refundable credit and \$100 nonrefundable credit.

The 2001 Act says that beginning in 2001, the refundable child tax credit is no longer reduced by the amount of the excess of taxpayer's minimum tax over their regular income tax.

Child and Dependent Care Credit

An individual taxpayer maintaining a household for a dependent in 2001 under 13 or a dependent or spouse who is physically or mentally incapable of caring for themselves may get a child and dependent care credit of up to 30 percent of employment-related expenses. Those care expenses can't exceed \$2,400 for one qualifying individual (\$4,800 for two or more). This credit is decreased by 1 percent for each \$2,000 (or fraction thereof) of AGI over \$10,000 but the percentage never goes below 20 percent. This means the credit rate is reduced to 20% for eligible taxpayers with AGIs over \$28,000. The maximum credit for individuals with AGIs under \$10,001 would be \$720 for one and \$1,440 for two qualifying individuals.

Example. Charlie Care has a 2001 AGI of \$34,000, employment-related dependent care expenses of \$3,000 and one qualifying dependent. Since his AGI exceed the limit of \$28,000 his percentage rate will be 20 percent. But his care expenses also exceed the limit of \$2,400, thus his credit is only \$480 ($\$2,400 \times 20\%$)

The 2001 Act increased the maximum percentage from 30% to 35% for tax years beginning after December 31, 2002. It also increased the AGI limit for taking the maximum credit to \$15,000 rather than \$10,000. This change means the credit is reduced to 20% for all eligible taxpayers with AGIs over \$43,000. Also the employment-related expense dollar limits were increased to \$3,000 for one and \$6,000 for two qualifying individuals thus maximizing the credit at \$1,050 for one and \$2,100 for two individuals.

Adoption Tax Benefits

A \$5,000 credit is allowed for qualified adoption expenses paid or incurred by a taxpayer. This credit is phased out ratably for taxpayers with modified AGI between \$75,000 and \$115,000. There is an extra \$1,000 credit for a special needs child that can not be returned to the birth parents or has a condition because of which the child can not be placed without adoption assistance. Eligible children are under 18 or are incapable of caring for themselves. There are several special rules on the timing of the credit in Code §§ 23 & 137. Both the amount of qualifying expense and the AGI phaseout limits have been increased by the 2001 Act.

In addition to the adoption credit, employer paid or reimbursed funds under an adoption assistance program are excludable. An employee may be eligible for both the credit and exclusion provided they

are not for the same expenses. The exclusion from gross income of employer adoption assistance can not happen until the year in which the adoption becomes final.

Summary of Adoption Credit and Exclusion for Adoption Employee-Paid Assistance

Amount of Credit or Exclusion	2001 Up to \$5,000 per child (plus \$1,000 for a special needs child) 2002 Up to \$10,000 per child (no addition for special needs child)
AGI Phaseout Range Regular or Special Needs	2001 \$75,000 to \$115,000 2002 \$150,000 to \$190,000 plus COLA after 2002
Allowed Against AMT	2001 No 2002 Yes

Education Incentive Opportunities

In the table below the benefits restrictions and limitations on several tax incentives for participants in higher education are presented.

Education Incentive Programs

	HOPE Credit	Lifetime Learning Credit
Tax Incentive	Per Student; 100% of first \$1,000 and 50% of second \$1,000 used for tuition and fees for higher education for at least ½time students incurring expenses the tax year	Per taxpayer; 20% of first \$5,000 (20% of first \$10,000 after 2002) for tuition and fees for any higher education including upgrading skills paid, on behalf of taxpayer, spouse, or dependent to whom taxpayer is allowed an exemption.
Restrictions	<ul style="list-style-type: none"> • Only for first two post secondary years. • May not be claimed in same year as an education IRA distribution. (Changed after 2001 if credits are not claimed for expenses used to generate IRA payouts.) • Maximum of two tax years. • Nonrefundable. • Not allowed for persons claimed as dependents on another taxpayer’s return. 	<ul style="list-style-type: none"> • Credit may not be claimed in the same tax year for the same person as claimed for the HOPE credit. • May not be claimed in same year as an education IRA distribution. (Changed after 2001 if credits are not claimed for expenses used to generate IRA payouts.) • Nonrefundable.
Modified Adjusted Gross Income Limits	Phaseout starts at \$40,000 and is gone at \$50,000 for singles; \$80,000 to \$100,000 for joint returns; the credit is not available to married filing separately.	Phaseout starts at \$40,000 and is gone at \$50,000 for singles; \$80,000 to \$100,000 for joint returns; the credit is not available to married filing separately.

Coverdell Education Savings Account (Education IRA)

Tax Incentive	Up to \$500 nondeductible contribution per beneficiary as a trust account for qualified higher education expenses for the withdrawal year. (After 2001 up to \$2,000 per beneficiary, liberalized expense items including elementary, secondary, special needs and technology purchases.) Caution: Any balance remaining after beneficiary reaches 30 or dies are deemed distributed within 30 days. (After 2001 the age 30-distribution rule does not apply to special-needs beneficiary.)
Restrictions	<ul style="list-style-type: none"> • Contributions must be made during calendar tax year. • 10% penalty plus tax on unqualified withdrawals. • Cash contributions only. • No contributions after account holder attains age 18. (After 2001 the age 18-contribution rule does not apply to special-needs beneficiary.)
Modified Adjusted Gross Income Limits	Phaseout starts at \$95,000 and is gone at \$110,000 for singles; \$150,000 to \$160,000 for joint returns; and the credit is not available to married filing separately. (2002 \$190,000-\$220,000 MFJ phaseout) (2002 Only individuals have phaseouts, corporations and other entities may contribute.)
Deadline for contribution	December 31, 2001 for the year 2001 (For the tax year after 2001 contribution deadline is April 15 of the following year and distributions won't be subject to additional tax if made on or before June 1 of the year following contribution.)
6% Excise tax on multiple contributions to IRA and qualified tuition program	Tax on contributions made in a year in which contribution is made to a qualified state tuition program for student. (After 2001 No excise tax on contributions made to both in same year for student.)

Student Loan Interest Deduction

Tax Incentive	An above the line adjustment to gross income rather than an itemized Schedule A deduction: up to \$2,500 for 2001 and after for interest paid on loans for higher education expenses while at least 1/2time student.
Restrictions	<ul style="list-style-type: none"> • Deduction is allowed only with respect to interest paid during the first 60 months in which interest payments are required. • No deduction if student is allowed as dependent on another taxpayer's return. • No double benefits, as in home equity loans. (2002 repeals the limit on number of months and interest on voluntary payments is deductible on qualifying loans)
Modified Adjusted Gross Income Limits	Phaseout starts at \$40,000 and is gone at \$55,000 for singles; \$60,000 to \$75,000 for joint returns. The deduction is not available to married filing separately. (2002 \$50,000-\$65,000 singles phaseout) (2002 \$100,000-\$130,000 MFJ phaseout)

Qualified Tuition Program			
Qualified Tuition Program	Sponsored by a State to purchase tuition credits or save for payment of higher education expenses. (2002 State sponsored or an educational institution meeting requirements.)		
Taxation of earnings used for higher education in state sponsored program	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">If used for qualified expense, the distributee is taxed on earnings. (2002 Distributee excludes earnings from taxation.)</td> <td style="width: 50%;">If not used for qualified expense, the distributee is taxed on earnings and a penalty on refund (some exceptions). (2002 If not used for qualified expense, the distributee is taxed on earnings and 10% penalty on refund (some exceptions)).</td> </tr> </table>	If used for qualified expense, the distributee is taxed on earnings. (2002 Distributee excludes earnings from taxation.)	If not used for qualified expense, the distributee is taxed on earnings and a penalty on refund (some exceptions). (2002 If not used for qualified expense, the distributee is taxed on earnings and 10% penalty on refund (some exceptions)).
If used for qualified expense, the distributee is taxed on earnings. (2002 Distributee excludes earnings from taxation.)	If not used for qualified expense, the distributee is taxed on earnings and a penalty on refund (some exceptions). (2002 If not used for qualified expense, the distributee is taxed on earnings and 10% penalty on refund (some exceptions)).		
Beneficiary Changes	Family members do not include first cousins. (2002 Family members do include first cousins).		
Coordination with Lifetime Learning and HOPE educational credits.	Education credits available even if funds from this program pay for qualified higher education expenses of the beneficiary. (2002 Taxpayer can claim credits and exclude from income earnings distributed from this program as long as the expenses claimed are not the same as those for which a credit was claimed).		

New 2002 Deduction of Higher Education Expenses (above the line benefits)	
Deductible Expenses	Qualified higher education expenses defined the same as for the HOPE credit.
Deductible Maximum	2002 & 2003 \$3,000 2004 & 2005 \$4,000 2004 & 2005 \$2,000 with AGIs over first limit but under second. 2006 none
Adjusted Gross Income Limits (once exceeded the deduction is eliminated).	\$ 65,000 for singles or head of household \$130,000 for married filing jointly taxpayers. In 2004 & 2005 taxpayers whose AGI do not exceed: \$ 80,000 for singles or head of household \$160,000 for married filing jointly taxpayers are entitled to a \$2,000 maximum.
Ineligible Taxpayers	Married filing separately, taxpayers that may be claimed by someone else, taxpayers that have claimed a HOPE or Lifetime Learning credit for the year for the same student.
Eligible Taxpayers	Those under the above AGI limits. Taxpayer may claim an exclusion of distributions from: a tuition plan, an educational IRA, or interest on educational savings bonds as long as not claimed using the same expenses.

Estimated Tax Rules

The minimum threshold after subtracting income tax withholding and credits for estimated tax payments was increased to \$1000 effective for tax years after 1998. To avoid underpayment of estimated tax, individuals with prior year AGI not exceeding \$150,000 (\$75,000 if married, filing separately), must make timely estimated payments at least equal to (1) 100% of last year's tax, or (2) 90% of the current year's tax liability. However, for individuals who exceed the \$150,000 (\$75,000 if married filing separately) prior year's AGI amount, the safe harbor increases from 100% to 110%. Similar rules apply to trusts and estates.

Farmers and fishermen who receive at least two-thirds of their total gross income from farming are exempt from estimated tax payments, providing they file and pay taxes by March 1. New York State officially follows the federal definition of gross income from farming.

The 2001 Act delays two specific corporate estimated tax payments. The payment that was to be due on September 17, 2001 was delayed until October 1st, 2001. Twenty percent of the corporate estimated tax payment that will be due on September 15, 2004 is delayed until October 1, 2004.

Retirement Plan Contributions¹

Limitations on Contributions

Year	IRAs	Simple	457	401(k) 403(b) SEP	Defined Contri- bution	Defined Benefit Plan*	Compen- sation Limit	Stock Bonus & Prof Shr.
2001	\$2,000	\$6,500	\$8,500	\$10,500	\$35,000	\$140,000	\$170,000	15%
2002	\$3,000	\$7,000	\$11,000	\$11,000	\$40,000	\$160,000	\$200,000	25%
2003	\$3,000	\$8,000	\$12,000	\$12,000	COLA**	COLA	COLA	25%

* Maximum annual benefit to be funded.

** Cost of living adjustment.

Additional Contributions

Catch up or additional contributions are made possible by the 2001 Act for individuals aged 50 and over to certain retirement plans. These contributions are additions to the above limits but total contributions still can not exceed his/her earnings. The IRA contributions are still subject to AGI phaseout limits. The catch-up contribution provision does not apply to after-tax employee contributions of section 457 plan participants in their last three years before retirement.

Catch-up Contribution Limits

Year	IRA	SIMPLE	401(k); 403(b); 457 and SEP
2002	\$ 500	\$ 500	\$ 1,000
2003	\$ 500	\$ 1,000	\$ 2,000
2004	\$ 500	\$ 1,500	\$ 3,000
2005	\$ 500	\$ 2,000	\$ 4,000
2006+	\$ 1,000	\$ 2,500	\$ 5,000

Credit for Elective Deferrals and IRA Contributions

Contributions to some IRAs and employer sponsored retirement plans are deductible or excludable from income. However, prior to the 2001 Act no income tax credit was allowed. The 2001 Act in 2002 to 2006 provides a nonrefundable tax credit for contributions made to qualified plans by eligible taxpayers. The amount of the credit depends on the taxpayer's modified AGI and the maximum annual contribution eligible for the credit is \$2,000. There are limits on modified AGI dependent upon the taxpayer's filing status. Modified AGI is determined without adjustments to AGI for § 911, § 931 and § 933 ("foreign" tax adjustments). Eligible individuals include those over 17 but not if they are full-time students or claimed as dependents on someone else's return. The credit is available on elective contributions to §401(k) plans, §403(b) annuity, or §457 plan (eligible deferred compensation arrangement of a State or local government), SIMPLE, of SEP, contributions to a traditional or Roth IRA, and voluntary after-tax employee contributions to a qualified retirement plan. The credit is reduced by amounts received, over a previous period as defined in the Act, by taxable distributions from any qualified retirement plan or savings arrangement listed above. There is an exception that excludes distributions from a Roth IRA.

¹ Adapted from selections in the 2001 Income Tax Workbook. Printed with permission of the Board of Trustees, University of Illinois.

Credit Rates Based on Modified Adjusted Gross Income 2002-2006

<u>Joint Return</u>		<u>Head of Household</u>		<u>All Other Filers</u>		<u>Credit</u>
Over	Not Over	Over	Not Over	Over	Not Over	<u>Percentage</u>
\$ 0	\$30,000	\$ 0	\$22,500	\$ 0	\$15,000	50
\$30,000	\$32,500	\$22,500	\$24,375	\$15,000	\$16,250	20
\$32,500	\$50,000	\$24,375	\$37,500	\$16,250	\$25,000	10
\$50,000		\$37,500		\$25,000		0

Employer-Provided Education Assistance

The exclusion for up to \$5,250 of employer-paid educational assistance for undergraduates has been extended and is available for courses beginning before January 1, 2011. The exclusion for employer-paid education exclusion for graduate studies will be effective in the years 2002 to 2010.

LONG TERM CAPITAL GAINS RATES

Capital gains taxation rates on some assets held over five years has changed in 2001 due to provisions of the 1997 Tax Act. The maximum tax rate on adjusted net capital gain has been reduced to 18% (8% for income in the 15% taxable income bracket) after 12/31/2000. To be eligible for this rate the asset needs to have been held five years. The 20% and 10% rates will still apply to assets held the regular holding period of 12 (or 24) months. For taxpayers in the 15% bracket, the holding period begins as normal with the date of acquisition. For taxpayers in a taxable income bracket in excess of 15%, only assets acquired after December 31, 2000 qualify so these higher bracket taxpayers will not benefit from the reduced rate until 2006 and then only on assets acquired after 12/31/00. However, these higher bracket taxpayers can elect to treat the asset as having been sold and reacquired for its fair market value on 1/1/2001 in order to be eligible for the 18% rate five years from that date. Gain must be recognized and taxes paid and losses are disallowed under this option. Taxpayers have until the extended due date of their 2001 return to make this election. Few taxpayers will benefit from this election. Marketable securities will use the closing market price on January 2, 2001 to determine market value and other capital assets will need to be supported by an appraisal or other form of documenting market value.

Some assets are excluded from adjusted net capital gains and are ineligible for the lowest long-term rates. Gain from the sale of Sec. 1250 property (general purpose buildings and other depreciable real estate) that would be ordinary income under Sec. 1245 depreciation recapture rules and which has not already been taxed as ordinary gain under Sec 1250, has a maximum tax rate of 25%. The maximum rate on net capital gain from the sale of collectibles and certain small business stock remains at 28%.

Cattle and horses (dairy, breeding, sport or draft) must be held 24 months to qualify for the 8/10/20% capital gain rates. The holding period for other Section 1231 assets, as well as capital assets, to qualify for these rates remains at 12 months. Short-term gains are still taxed as ordinary income.

A taxpayer receiving capital gains distribution dividends no longer reports this first on Schedule B but enters them directly on Schedule D. If the taxpayer otherwise would not be required to file a Schedule D, these distributions may be entered directly on Form 1040, check the box and calculate the alternative capital gains tax on the worksheet provided in the IRS instructions.

Installment sale payments are taxed under the ordinary or capital gain rates in effect for the year received and not those in effect in the year of the actual sale.

Adjusted Net Capital Gain Exclusions

Adjusted Net Capital Gain (ANCG) excludes unrecaptured gain from the sale of Sec. 1250 assets (general-purpose buildings), gain on collectibles and Sec. 1202 small business stock gain.

Computing Net Capital Gain

Remember that some or all of capital gain income can be taxed below its maximum rate if the taxpayer is in the 15% taxable income bracket. Non corporate taxpayers will compute their net capital gains tax by applying capital gain income to the 15% taxable income bracket in the following order:

1. Unrecaptured Sec. 1250 gain (25% maximum is reduced to 15%).
2. Collectibles and other 28% rate gain assets (28% maximum is reduced to 15%).
3. Adjusted net capital gain – property held over 5 years (20% maximum is reduced to 8%).
4. Adjusted net capital gain – remainder after #3 (20% maximum is reduced to 10%).
5. Adjusted net capital gain in excess of the 15% taxable income bracket is taxed at 20%.

Example: Mr. and Mrs. F. P. Moor, file a joint return and their 2001 15% taxable income tax bracket goes to \$45,200. Their taxable income after personal exemptions and itemized deductions is \$50,000 exceeding the 15% bracket by \$4,800. Their taxable income includes \$6,000 unrecaptured Sec. 1250 gain from the sale of a farm building, \$3,500 of capital gain from the sale of antiques, and \$10,000 of Adjusted Net Capital Gain (ANCG) from the sale of dairy cattle. Of this amount, \$2,000 is from cattle held over 5 years. The \$6,000 unrecaptured Sec.1250 gain and the \$3,500 capital gain on collectibles is all taxed at 15%. The \$4,800 of ANCG in excess of the 15% bracket is taxed at 20%. The \$2,000 of “5 year gain” is taxed at 8%, leaving \$3,200 of ANCG to be taxed at 10%.

6. Apply the 25% net capital gain tax to any unrecaptured Sec. 1250 gain exceeding the 15% bracket.
7. Apply the 28% net capital gain tax to any 28% rate gain assets exceeding the 15% bracket.

Netting Capital Gains and Losses

The following rules apply to the netting of capital gains and losses for tax years ending after May 6, 1997.

1. Short-term capital losses including carryovers are combined with short-term capital gains. Any net short-term capital loss is used to reduce long-term capital gains in the following order: 28% sale gain, unrecaptured Sec. 1250 gain (25%), and adjusted net capital gain (20%).
2. Gains and losses are netted within the three long-term capital gain groups to determine a net capital gain or loss for each group. There can be no net loss in the 25% group, which is limited to gain to the extent of straight-line depreciation.
3. A net loss from the 28% group (including long-term capital loss carryovers) is used to reduce gain in the 25% group, and then any net loss balance is carried to the 20% group.
4. A net loss from the 20% group is used to reduce gain from the 28% group and any remaining net loss is carried to the 25% group.

Note that long-term capital loss carryovers are used to reduce gains and/or increase loss in the 28% group regardless of the source of that carryover.

Net Capital Losses

A net capital loss results for the year if a taxpayer's capital losses on Schedule D exceed capital gains. Only a maximum of \$3,000 of any such net capital loss may be deducted in determining gross income of the current year (by transfer to page 1 of Form 1040). Any excess capital loss becomes a capital loss carryover to be used in future years (until used – no expiration). The capital loss carryover may be short-term, long-term, or a combination of the two depending on whether it arises from Schedule D Part I or Part II or both. In the year to which the loss is carried, the short-term capital loss carryover is entered in Part I, Schedule D; the long-term in Part II. In either event, they net against any other gains and losses arising in this carryover year. Again, if the net result is a loss, the loss deduction is limited to \$3,000 and any excess becomes a carryover to the following year. Short-term capital losses are considered used first in the event that only a portion of the capital losses of the year are deductible.

Inherited Property Rules

Recent year's legislation did not change the step-up in basis rule that gives decedent's property a new basis equal to its FMV on the date of death (or alternative valuation date). Only gain that occurs after that date will be subject to income tax. Inherited property (except for Sec. 1231 livestock) will automatically be considered held the required holding period for long term capital gains treatment. For Sec. 1231 livestock, the date acquired by the decedent is used to determine holding period.

Capital Gains and AMT, Flow-through Entities, and Small Business Stock

The new, lower long-term capital gains rates will be used to compute AMT (Form 6251, page 2).

Entities such as S corporations, partnerships, estates and trusts may pass through capital gains to their owners or beneficiaries and must make the determination of when a long-term capital gain is taken into account on its books. The gain from property held over five years must be separately stated by these flow-through entities.

On the sale or exchange of small business stock (Sec. 1202 stock), held for more than five years, 50% of the gain may be excluded from the taxpayer's gross income. The remaining capital gain is taxed at 28%. Gain eligible for the 50% exclusion may not exceed the greater of \$10 million or 10 times the taxpayer's basis in the stock. If such small business stock is sold before meeting the five year holding requirement, there is no exclusion and the gain will be taxed at the 20% maximum capital gains tax rate (if the required holding period has been met).

SALE OF TAXPAYERS PRINCIPAL RESIDENCE

The TRA of '97 increased the exclusion of gain from the sale of a principal residence to \$250,000 (\$500,000 for joint filers), on sales and exchanges made after May 6, 1997. The old rollover of gain provision (IRC Sec. 1034) and the \$125,000 of gain exclusion, including the 55 years of age requirement (old IRC Sec. 121), were repealed and replaced with a new exclusion (new IRC Sec. 121).

The new exclusion can be used by taxpayers of any age on each home they have owned and used as a principal residence for at least two years during the five-year period ending on the sale date. Use of the exclusion is limited to once every two years beginning May 7, 1997. Earlier sales do not count. Use of the old exclusion prior to May 7, 1997 does not affect the availability of the new exclusion. Married taxpayers filing joint returns get a \$500,000 exclusion if either spouse has owned the residence for at least two years, and both spouses have lived in it for at least two years, and neither spouse has used the new exclusion in the past two years.

Married spouses who qualify for the \$500,000 exclusion may elect to exclude \$250,000 of gain from the sale of each spouse's principal residence within a two-year period. Those married filing jointly but living apart also get the \$250,000 exclusion on the qualified sale of each spouse's principal residence. A recently married spouse does not lose eligibility for the \$250,000 exclusion by marrying a taxpayer that has used the exclusion within two years.

A partial exclusion may be claimed by taxpayers that have excluded the gain on the sale of another home sold after May 6, 1997 and within two-years of the current sale, if the current sale was due to a change in place of employment, health or unforeseen circumstances.

Example: Mr. and Mrs. Move sold and moved out of their first home March 1, 2001 due to a change in employment. They began renting and living in that home on June 28, 1999 but did not buy it until August 4, 1999. They lived in the home for 611 days but owned it for only 574 days. Their partial exclusion is based on the portion of the two-year (730 days) ownership requirement that they lived in the house (574 days), the shorter of the two requirements. Their partial exclusion for 2001 is \$393,150 ($574 \div 730 = .7863 \times \$500,000 = \$393,150$).

Gains from insurance proceeds and other reimbursements for homes destroyed or condemned after May 6, 1997 qualify for the exclusion. The sale of a remainder interest in a home to a person related to or entity owned by the taxpayer does not qualify. Gain equal to any depreciation allowed or allowable for the business use of a home after May 6, 1997, can not be included in the exclusion but would be recognized as gain from the sale of Sec. 1250 property.

Other specific rules: 1) affect transfers incident to a divorce, 2) define time of ownership for surviving spouses, and 3) define periods of use for taxpayer's transferred to nursing homes.

If any gain is to be recognized the sale of residence is reported directly on Schedule D. On the line directly below that used to report the total gain, the exclusion amount (if any) is listed as a loss with a description of "Section 121 exclusion". If no gain is to be recognized, no reporting is required, unless you have received a 1099-S.

A taxpayer that does not meet the two-year ownership test and/or the two-year use requirement will be eligible for a partial exclusion if the principal residence was in qualified use on August 5, 1997 and is sold before August 6, 1999. As illustrated above, the partial exclusion is based on the lesser of, days of qualified ownership or days of qualified use, during the five-year period ending on the sale date divided by 730 days.

INCOME AVERAGING FOR FARMERS

Individual taxpayers with certain farm income may elect to use a new three-year method of income averaging for tax years beginning on or after January 1, 1998. "Elected farm income" (EFI) is deducted from the current year's taxable income and, in effect, one-third of it is added to each of the three prior year's taxable income to be taxed at the rates of those prior years (referred to as "base years"). C corporations, estates and trust, may not use the election.

"Elected farm income" is taxable income attributed to any farming business and designated to be included in the election. This also includes an owner's share of net farm income from an S corporation (including wages), partnership, or limited liability company but not wages from a C corporation. Gains from the sale of farm business property (excluding land and timber) regularly used in farming for a substantial period, may be included in EFI. Farm net operating losses must also be included. A "farming business" includes nursery production, sod farming, the production of ornamental trees and plants as well as the production of fruit, nuts, vegetables, livestock, livestock and horticultural products, and field crops. However, gain from the sale of trees that are more than six years old when cut is not eligible farm income, as these trees are no longer classified as ornamental trees. The income, gain/loss from the sale of grazing nor development rights or other similar rights classified as attributable to a farming business are not electible for farm income.

The terms "regularly used" and "substantial period" are not defined in IRC or committee reports. Regulations (§1.1301-1) have clarified that if a taxpayer ceases farming and later sells farm business property (other than land) within a reasonable time after the cessation, the gains or losses from the sale will be considered farm income. If the sale is within one year, it will be deemed to be within a reasonable time. Sales beyond one year one will need to consider all facts and circumstances.

The tax imposed when income averaging is elected will be the current year's federal income tax liability without the EFI, plus the increase in the three prior years' tax liability caused by the addition of one-third of the EFI to each of the years. Farm income averaging does not affect either SE tax or AMT. Note that this provision may result in tax savings from income averaging being offset by increases in AMT.

Farm taxpayers who elect income averaging will be able to spread taxable farm income over a four-year period and designate how much (in equal amounts each base year) and what type of farm income (ordinary or capital gains) to include in EFI. Schedule J is used to compute and report the tax from income averaging.

Farm Income Averaging Example

Dairy farmers Mr. and Mrs. B & B Goodyear have a substantial increase in farm income in 2001. Receipts are up and costs are down. Mrs. Goodyear works off-farm. When Schedule F profits of \$38,000 and \$20,000 of gains from raised cow sales are combined with non-farm income and deductions, taxable income is \$69,200. They file a joint return. Their taxable income for 2001 and the previous three years is as follows (note that each year includes \$20,000 of raised cow sales):

<u>Year</u>	<u>Taxable Income</u>
2001	\$69,200
2000	27,900
1999	39,400
1998	25,200

The Goodyear's elect to income average in 2001. Their maximum EFI is \$58,000 (taxable income attributed to farming). Their optimum EFI may be taxable income that exceeds their 15% tax bracket or \$24,000 (\$69,200 – \$45,200). They decide to use \$24,000 of their Sch. F profit as EFI and tax \$8,000 at the tax rates in effect in each of the three base years.

Will all of the EFI be taxed at 15%? In 1999 their 15% tax bracket ended at \$43,050, their taxable income was \$39,400 leaving \$3,650 of the 15% rate bracket available for EFI from the current year. Therefore \$4,350 (\$8,000-\$3,650) added to the 1999 base year income will be taxed at 28%.

Should the Goodyears reduce EFI to avoid the 28% tax bracket in 1999? For each \$1 of EFI subject to the 28% tax rate in 1999, \$2 is taxed at 15% in the other base years. Therefore the marginal tax rate for the Goodyear's EFI is 19.33% $(.15 + .15 + .28) \div 3$. If they put less than \$24,000 in 2001 EFI their 2001 taxable income will exceed \$45,200 and their marginal tax rate will be 28%.

How much income tax will the Goodyears save by income averaging in 2001? They will save 13% (28% rate minus 15% rate) on the first \$10,950 (3 x \$3,650) or \$1,424, and 8.67% (28-19.33) on the remaining \$13,050 of EFI or \$1,131, for a total tax reduction of \$2,555.

Base Year Losses

A major change made by the IRS in late 2000 was to allow the use of negative taxable incomes in the base years when performing the income averaging calculation. This in effect allows such taxpayers to income average using 0% tax rates for the base years with eligible losses. However, there can be no double benefit from the negative taxable incomes already reflected in the NOL arising from that year.

Base Year Loss Example

Sam has a \$45,000 Schedule F loss in 1999. He and his wife file a joint return and claim 5 exemptions (including 3 children). Taxable income would therefore be

Schedule F	(\$45,000)
Standard deduction	(7,200)
<u>Exemptions</u>	<u>(13,750)</u>
Taxable income	(\$65,950)

Sam's NOL for 1999 would be \$45,000. This NOL must be removed from taxable income leaving (\$20,950) to be used as "base year income" for 1999 on Sam's Schedule J.

Questions and Answers

1. What taxpayers qualify for farm income tax averaging?

Sec. 1301 says, "individuals engaged in a farming business" qualify and specifically excludes estates and trusts. IRS instructions indicate that individual owners of partnerships, LLCs and S corporations qualify (farm income flows through the business and retains its character in the hands of the individual owner taxpayer). C corporations and their owners do not qualify for farm income averaging.

2. Does EFI retain its character as unused brackets are carried forward and may the taxpayer select the type of income to include in EFI?

Taxpayers will be allowed to carry forward the unused lower brackets as ordinary farm income and keep capital gains in current year taxable income, or select the best combination of ordinary farm income and qualified capital gains to meet their tax management objectives. When a combination of ordinary farm income and capital gains is included in EFI, the IRS indicates that an equal portion of

each type of income must be added to each base year. The taxpayer cannot add all of the capital gains to a single prior year.

Any capital gain that is added to base year income will be treated at the capital gains tax rate in effect for that prior year. Therefore 2001 farm business gains of a taxpayer in a 28% income tax bracket could be subject to a 10% tax rate if the taxpayer has a base year in the 15% income tax bracket and includes these gains in elected farm income.

3. Do farm owners who rent their farm or land for agricultural production qualify?

If the farm owner materially participates in the farming activity and properly reports the income on Sch. F, this income appears to qualify for income averaging. If the farm owner does not materially participate but receives share rental income this income is properly reported on Form 4835. IRS instructions do not include Form 4835 in its list of forms on which farm income and expense are typically reported. Therefore, non-materially participating landowner rental income is presumably not eligible for averaging. Cash rental income reported on Sch. E is not income attributable to a farming business.

4. How much farm use is required to meet the “regularly used” in farming rule that applies to gains from the sale of farm business property?

All sales reported on Sch. F are qualified. Sales of raised dairy and breeding livestock reported on Form 4797 qualify. Sales of farm property for which depreciation and Sec. 179 deductions are claimed also qualify. Therefore it appears as if all sales of farm machinery, buildings, livestock and other eligible Sec. 1231 property qualify as “regularly used”.

5. If Sec. 1231 gain is part of EFI, is it subject to recapture due to unrecaptured Sec 1231 losses in the base years?

IRS instructions indicate that any net capital gains shifted to a prior year that had a capital loss do not offset that loss. The loss remains as a capital loss carryover. Presumably this same approach would be applied to Sec. 1231 gains which would then be taxed as long-term capital gains in the prior year.

6. Can the election to income average be made on an amended return?

The election to use income averaging can be made up to the due date of the taxpayer’s return, including extensions. Treas. Regs. under § 301 provide for this six month election window even if the tax return was actually filed by its original due date. Thereafter, IRS Publication 553 says that an election can be made, changed or revoked only if there is another change on the tax return for the election year or a base year (by amendment or audit), or by consent of the IRS.

7. If a prior year return reflected an NOL carryover that was only partially applied, will additional NOL carryover be used in that prior year when one-third of this year's EFI is "carried to a base year"?

No, the amount of the NOL applied is not refigured to offset the EFI added to that prior year. Similarly, base year’s income, deductions and credits are not affected by the additional income allocated to that year (for example, the taxable portion of Social Security benefits or the allowable Schedule A Itemized Deductions). In essence, Schedule J uses the tax brackets of the base years without altering the tax returns originally filed for those base years.

8. Must a taxpayer use the same filing status in each year?

No, the tax will be computed based on the filing status in effect for each base year and the election year.

9. What tax rate will be used for the “Kiddie” Tax when income averaging has been used on the

The tax rate is the parents’ tax rate after farm income averaging has been applied.

10. Can a taxpayer use income averaging even though it provides no current year tax savings?

Yes, though you may have to override your tax preparation software in order to print the Schedule J. This technique may be used to shift income to the oldest base period year which will drop out of the calculations for the following year. This may allow the evening out of base period incomes (and marginal tax rates) in anticipation of income averaging in future years.

11. Can the use of income averaging create or increase AMT liability?

Yes, since income averaging does not affect the calculation of tentative AMT on Form 6251. AMT is the excess of tentative AMT over the regular income tax. Therefore, as income averaging reduces regular tax, the potential for an AMT tax liability increases.

12. Will any increased AMT resulting from income averaging be available as an AMT credit in future years?

AMT resulting from income averaging will not always give an AMT credit for future years. Only adjustments and preferences that are deferral items create an AMT credit. If there are no such deferral items, or such items have already been reflected in an AMT credit calculated before income averaging has been used, no additional AMT credit will be created.

Planning Guidelines and Information

Implement economically sound income tax management practices throughout the year rather than using income averaging as the only tax management strategy. Use tax management practices that reduce taxable income before income averaging is elected.

Tax Planning Note: If the taxable income in a base year, is less than the Adjusted Net Capital Gain of that year, elected ordinary farm income carried to that year will be taxed at the net capital gains rate until adjusted taxable income of that base year equals that year’s ANCG.

Income averaging should be used to transfer as much as possible of high bracket income from the election year, to low tax brackets in the base years. There will be cases where EFI used in a base year is not taxed in the lowest bracket but income averaging will still save taxes. A farm taxpayer needs the following information to determine if and how much 2001 farm income should be averaged:

1. 2001 adjusted gross income, ordinary income and capital gain attributed to farming, personal exemptions and the standard (or itemized) deduction.
2. Taxable income from his or her 1998, 1999 and 2000 tax returns.
3. Taxable income tax brackets for 2001 and the 3 prior years. (see chart provided)

Priority of Goals:

1. Elect farm income until marginal rate of the current year is not greater the average of the marginal rates at which the elected farm income is being taxed in the base years. Be sure to consider the effective rate if capital gains exist in the base year or are included in elected farm income.
2. Then load the oldest base year followed by an equal amount in the other base years.
3. Finally, elect additional income attempting to level the income of the current and prior two base years to prepare these years to be base years for next year's income averaging. Again, only to the extent this can be done without increasing tax.

Information for use with Schedule J Income Averaging

Personal Exemption Deduction and Standard Deduction

<u>Item</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Personal Exemption Deduction	2,700	2,750	2,800	2,900
Standard Deduction:				
Single	4,250	4,300	4,400	4,550
Married filing jointly	7,100	7,200	7,350	7,600
Head of household	6,250	6,350	6,450	6,650
Married filing separately	3,550	3,600	3,675	3,800

Top End of Taxable Income Tax Brackets

<u>Bracket</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Single				
15%	\$25,350	\$25,750	\$26,250	\$27,050
28%	61,400	62,450	63,550	65,550
31%	128,100	130,250	132,600	136,750
36%	278,450	283,150	288,350	297,300
Married filing jointly				
15%	42,350	43,050	43,850	45,200
28%	102,300	104,050	105,950	109,250
31%	155,950	158,550	161,450	166,450
36%	278,450	283,150	288,350	297,300
Head of household				
15%	33,950	34,550	35,150	36,250
28%	87,700	89,150	90,800	93,600
31%	142,000	144,400	147,050	151,600
36%	278,450	283,150	288,350	297,300
Married filing separately				
15%	21,175	21,525	21,925	22,600
28%	51,150	52,025	52,975	54,625
31%	77,975	79,275	80,725	83,225
36%	139,225	141,575	144,175	148,650

CCC COMMODITY LOANS AND LOAN DEFICIENCY PAYMENTS

Low commodity prices are causing farm producers to use government programs that have not been used as much in the past few years. As market prices for commodities fall below the marketing assistance loan rates offered by the Commodity Credit Corporation (CCC), producers may realize more income by taking advantage of one or more of the government options. Those options and the income tax consequences are as follows:

CCC Nonrecourse Marketing Assistance Loan

Instead of selling a commodity, producers can use the commodity as collateral for a nonrecourse loan from the CCC. This option puts cash in the producer's pocket at the time of harvest and lets the producer wait to see whether market prices improve.

I.R.C. §77 provides for a binding election to treat these loans as income in the year received.

If the producer has not made the I.R.C. §77 election, the CCC loan is treated the same as any other loan.

If market prices subsequently rise above the loan rate, producers will choose to repay the loan, with interest, and then sell the commodity for more than the loan.

The income tax consequences of the sale depend upon whether or not the I.R.C. §77 election has been made. In any event, the interest expense is deductible on Schedule F.

Typically, the I.R.C. §77 election has not been made so the producer has no basis in the commodity. Therefore, the full sale price must be reported as Schedule F income.

If the I.R.C. §77 election has been made, the producer has basis in the commodity equal to the amount of the loan. That basis is subtracted from the sale price to determine the gain on the sale (which is reported in the resale section of Schedule F).

If market prices do not rise above the loan rate, producers will choose to redeem the commodity by paying the posted county price (PCP) to the CCC. By making that payment, the producer is no longer obligated on the loan and can keep the difference between the original loan rate and the PCP. This option replaces the option of forfeiting the grain to the CCC under the old loan program.

A producer who redeems the commodity by paying the PCP will receive a Form CCC-1099-G from the CCC for the difference between the loan rate and the PCP. That amount must be reported as an Agricultural Program Payment on Schedule F.

However, if the producer made a §77 election, the difference between the loan rate and the PCP is not reported as taxable, since the full loan amount has already been reported on line 7a on Sch. F. Instead, this difference is subtracted from the producer's basis in the commodity so that the producer now has basis in the commodity only equal to the PCP.

Loan Deficiency Payment

If market prices are below loan rates, producers can simply claim a loan deficiency payment (LDP) for their crops rather than borrowing from CCC. That payment is equal to the difference between the loan rate and the PCP on the date the LDP is claimed. Producers get the same result as if they had taken the loan and paid the PCP rate on the date they claimed the LDP.

The LDP is reported as an Agricultural Program Payment.

Note: Reconciling taxpayer records to the amounts reported on Form CCC-1099-G can be challenging:

1. CCC loan activity is not reported on the 1099. Borrowings and program payments may be commingled in taxpayer records.
2. Often, advance government payments are made. Then if market conditions are better than expected, these advances must be repaid. Sometimes these payments are simply netted from subsequent government payments. Sometimes they are paid by taxpayer check and can be confused with PCP “purchase” payments or repayments of CCC loans.
3. Program payments are typically direct deposited to the producer’s bank account. Sometimes, these payments are applied directly to CCC loan payments.
4. Interest paid to CCC on loans is not reported to the taxpayer on a 1099.

PROVISIONS APPLYING PRIMARILY TO BUSINESS ACTIVITY

Business Record Keeping

Record keeping is probably one of the tasks that farmers and small business operators do not like to deal with. However as this reference manual indicates it is very important to the business. The tax laws covering farming and small businesses are very complicated.

The advantage of a good set of records is they will help the business do the following:

- Prepare a tax return
- Support receipts and deductible expenses on a tax return
- Prepare accurate financial statements
- Chart and monitor the progress of the business

The IRS indicates that you must keep these business records to prove the income or deductions on a tax return. The period of time varies dependent upon an individual business situation. The period of retention is never less than three years from the due date of the return and can be for lifetime. The taxpayer should always keep copies of their filed tax returns.

Keep Records for Income Tax Purposes

	In This Situation	Keep for This Length of Time
A.	You owe additional tax and situations B, C, and D below do not apply to you.	Three years
B.	You do not report income that you should report, and it is more than 25% of the gross income shown on your return	Six years
C.	You file a fraudulent income tax return	No limit
D.	You do not file a return	No limit
E.	You file a claim for credit or refund after you file your return	Later of: three years or two years after tax was paid
F.	Your claim is due to a bad debt deduction	Seven years
G.	Your claim is due to a loss from worthless securities	Seven years
H.	Keep records on an asset for the life of the asset or until you dispose of the asset and if by death or gift inform recipient of basis	No limit

Business Use of Home

Expenses associated with the business use of the home are deductible only if they can be attributed to a portion of the home or separate structure used exclusively and regularly as the taxpayer's principal place of business for any trade or business, or a place where the taxpayer meets or "deals with" customers or clients in the ordinary course of business. Because a farmer's principal place of business is the entire farm, and most farmers live in homes that are on the farm, an office in their home would be at their principal place of business (Pub. 225). A self-employed farmer who lives on the farm must still use the home office exclusively and regularly for farm business in order to deduct the applicable business use of home expenses.

"Exclusive use" means only for business. If a farmer uses the family den, dining room or his bedroom as an office, it does not qualify. "Regular use" means on a continuing basis and a regular pattern of use should be established. "Regular use" does not mean constant use. The office should be used regularly in the normal course of the taxpayer's business.

For tax years beginning after December 31, 1998 the home office rules are more relaxed. The definition of principal place of business was expanded. It allows a deduction for administration and management even though the work is performed elsewhere. IRC 280A(c)(1) indicates that a home office will qualify as the principal place of business if: 1) the office in the home is used for the administrative or management activities of the taxpayer's trade or business, and 2) there is no other fixed location where the taxpayer conducts substantial administrative or management activities of the trade or business. All other rules continue to apply. The space must be used exclusively and regularly for business. IRS Pub. 587 provides great examples that describe four situations in which a taxpayer's home office will qualify even if the use before 1999 did not qualify for the deduction.

Form 8829, Expenses for Business Use of Your Home, is not filed with Schedule F, but it may be used as a worksheet to help farmers determine the appropriate expenses to claim. Applicable expenses for business use of the home include a percentage of the interest, taxes, insurance, repairs, utilities and depreciation claimed.

Farmers who reside off the farm, crop consultants and sales representatives will be allowed home office deductions if they meet two additional rules. Home office activities must be equal to or of greater importance to their trade or business, than are non-office activities and time spent at the home office must be greater than that devoted to non-office activities.

Schedule C filers who claim expenses for business use of the home must file Form 8829. Form 4562 will be required if it is the first year the taxpayer claims such expenses. Limitations on use of home expenses as business deductions are calculated on Form 8829.

Caution: When a taxpayer sells a home on which expenses for business use have been claimed, tax consequences may occur. The portion used as business is reported as the sale of Sec. 1250 property.

Transportation Expenses. When a taxpayer has two established places of business, the cost of traveling between them is deductible as an ordinary and necessary business expense under Sec. 162, because the taxpayer generally travels between them for business reasons. However, when one business is located at or near the taxpayer's residence, the reason for travel can be questioned. In Rev. Rul. 94-47 IRS takes the position that transportation expenses incurred in travel from the residence are only deductible if the travel is undertaken in the same trade or business as the one that qualifies the taxpayer for a deductible home office.

Business trip expenses for a spouse, dependent or other individual are not deductible unless the person is an employee of the person paying or reimbursing the expenses, the travel is for a *bona fide* business purpose, and the expenses for the spouse, dependent or other individual would otherwise be deductible.

Self-employed Health Insurance Premiums

This tax provision allows self-employed taxpayers to deduct as an adjustment to income on 1040 a percentage of health insurance premiums paid. Also if you pay premiums on a qualified long-term care contract for yourself, your spouse, or your dependents you can include these premiums, subject to the annual limits stated previously. In 2001 the deduction is 60%, with the balance subject to the 7.5% rule for those who itemize. The deduction will be 70% for the tax year 2002 and fully deductible beginning in the year 2003. Self-employed taxpayers include sole proprietors, partners and more than 2% S corporation shareholders.

Qualified health insurance premiums are limited to health insurance coverage of the taxpayer and/or the taxpayer's spouse and dependents. The deduction may not exceed earned income. It does not reduce income subject to self-employment tax and that part may not be included in medical expenses claimed as itemized deductions. A taxpayer eligible for coverage in an employer's subsidized health insurance plan may not deduct insurance premiums he or she pays even if it is the taxpayer's spouse that is the employee. Eligibility is tested monthly.

Archer Medical Saving Program

The medical savings account (MSA) is a tax-exempt account with a financial institution in which employees of a small employer or self-employed taxpayers save money for future medical expenses. The program has been renamed as Archer MSAs and extended until December 31, 2002. For details on this program see *Medical Savings Accounts* in IRS Publication 969.

Employee Health and Accidental Insurance Plans

An employer can claim premiums paid on employee health and accident insurance plans as a business expense on Schedules F or C. The payments are not included in employee income (I.R.C. Sec. 105 (b)). Plans purchased from a third party (an insured plan) as well as self-insured plans qualify but the latter are subject to nondiscrimination rules.

Health insurance purchased for an employee's family qualifies, even if a member of that family is the employer. A taxpayer operating a business as a sole proprietorship can employ his or her spouse, provide health insurance that covers the spouse-employee and the family of the spouse-employee (including the employer), and deduct the cost as a business expense (Rev. Rul. 71-588).

A written plan is not required if it is purchased through a third-party insurer. Self-insured plans must have a written plan document that describes the expenses and benefits paid by the employer. A plan that reimburses an employee for health insurance premiums paid by the employee can work but direct payment of premiums by the employer is less complicated and is recommended.

The following rules apply when the taxpayer employs his or her spouse, pays the family health insurance premiums as a nontaxable employee benefit, and deducts them as a business expense:

1. The spouse must be a *bona fide* employee with specific duties and the salary and benefits received must be proportionate to the duties.
2. The employer must file all payroll reports, withhold income and FICA taxes and furnish a Form W-2 to the employee.

The advantages of paying the family health insurance premiums this way are a reduction of Schedule F or C net income, a reduction of combined taxable income, a potential reduction in self-employment income and a potential net tax savings. The disadvantages are additional bookkeeping, payroll tax deposits, a possible increase in social security taxes (if the employer's earnings are above the earnings base), and a potential reduction in social security benefits to the employer.

Business Use of Automobiles

Automobile expenses are deductible if incurred in a trade or business or in the production of income. Actual costs or the standard mileage rate method may be used. The 2001 standard mileage rate is 34.5 cents per mile for all business miles driven (leased as well as purchased vehicles). The standard mileage rate may not be used when the automobile has been depreciated using a method other than straight line, the car is used for hire or two or more cars are used at once. The use of Section 179, ACRS, or MACRS depreciation also causes disqualification from using the standard rate. When a taxpayer uses the standard rate on a vehicle in the first year it is used in the business, the taxpayer is making an election not to use MACRS depreciation or Section 179.

Cell Phones Used for Business

Lots of people and businesses will have cell phone expenses this year and many more in the years to come as they see the benefits of being in contact with the world. IRS has some very strict rules on the deductibility of cell phone expenses. They require detailed records of business use and deductions based on estimates are disallowed according to the Tax Court (TC Memo. 2001-165). Businesses must have a logbook or similar documentation for substantiation. Remember non-business incoming calls are classified as personal use.

Tax Credit for Child Care Expenses Provide by Businesses for their Employee's Children

The 2001 Act provides after December 31, 2001 business taxpayers may receive a credit equal to 25 percent of qualified expenses for employee child care plus 10 percent of child care referral and resource services up to a maximum of \$150,000 credit per year. Employer's expenditures are deductible as ordinary and necessary business expenses. Qualified child care expenses include costs to acquire, build, rehab or expand non-principal residence (within meaning of Code § 121) depreciable property. The fact that a child care facility is in a residence will not prevent it from being qualified if it meets all the other requirements in Code § 45F. The facility to be qualified must meet open enrollment, non-discrimination, and other regulations contained in Code §45F as well as applicable State and local laws. Credits taken for costs of building, purchasing, rehabilitating a facility are subject to recapture for the first 10 years after it is placed in service.

Pension Plan Credit for Startup Costs for Small Businesses

Starting in 2002, the 2001 Act offers a nonrefundable income tax credit for 50 percent of the first \$1,000 in administrative and retirement education costs for any small business that sets up a new qualified defined benefit or defined contribution plan. Eligible plans would also include a §401(k) plan, SIMPLE plan or SEP plan. A small business is one that did not employ in the preceding year more than 100 employees with compensation over \$5,000. Credit is for only the first three plan years and must include at least one non-highly compensated employee.

Return Preparers Have to Issue Privacy Policy Statements

Under regulation 16 CFR Part 313, effective July 1, 2001, all financial institutions, including accountants or other tax preparation services that are in the business of completing tax returns, must provide a privacy policy disclosure statement to customers. All existing customers on that date must be provided with the notice and all new customers from that point forward. All customers must also be provided with a copy at least annually. See the regulation for the specific information to be provided in the disclosure statement.

CORPORATE AND PARTNERSHIP PROVISIONS

Corporations

C or regular corporations are subject to federal income tax rates ranging from 15 to 39%. Capital gains are taxed at the regular corporate rates. A personal service corporation is taxed at a flat rate of 35%.

2001 Corporate Tax Rates For Small Businesses*

Taxable Income		Tax
\$0 to	\$50,000	15%
\$50,001 to	\$75,000	\$7,500 + 25% on amount over \$50,000
\$75,001 to	\$10,000,000	\$13,750 + 34% on amount over \$75,000 plus 5% on taxable income from \$100,000 to \$335,000

*Tax rates for corporations with more than \$10 million of taxable income average approximately 35%.

Salaries and qualified benefits paid to corporate officers and employees are deducted in computing corporate taxable income, but dividends paid to stockholders come from corporate profits that are taxed in the C corporation. Corporate dividends are also included in the stockholders taxable income.

If the estimated tax for the year is expected to be \$500 or more, a corporation is required to make estimated tax payments equal to the lesser of 100% of the tax shown on its return for the current year or on 100% of last year's tax (must be greater than \$0),

Corporations which have elected S status are not a tax paying entity but must file Form 1120S. S corporation shareholders will include their share of business income, deductions, losses and credits on their individual returns.

The alternative minimum tax has been repealed, effective January 1, 1998, for small corporations (less than \$15 million of total gross receipts from 1995 through 1997 and not more than \$22.5 million in any succeeding three-year period). The AMT rate remains at 20%, the exemption is \$40,000 and the exemption phase-out rules are unchanged.

Farm family corporations with annual gross receipts exceeding \$25 million in any year after 1985 must use accrual tax accounting. Non-family farm corporations with 3-year average annual gross receipts exceeding \$1 million in any year after 1976 must use accrual tax accounting. When farm corporations become subject to the gross receipt rule and are required to change to accrual accounting, an adjustment (IRC Sec. 481) resulting from the change is included in gross income over a 4-year period beginning with the year of the change.

Partnership Filing Rules and Issues

A partnership that fails to file a timely and complete return is subject to penalty unless it can show reasonable cause for not filing Form 1065. A family farm partnership with 10 or fewer partners will usually be considered to meet this requirement if it can show that all partners have fully reported their shares of all partnership items on their timely filed income tax returns. Each partner's proportionate share of each partnership item must be the same and there may be no foreign or corporate partners.

Schedules L, M-1 and M-2 on Form 1065 are to be completed on all partnership returns unless all three of the following apply: (1) the partnership's total receipts are less than \$250,000, (2) total partnership assets are less than \$600,000, and (3) Schedules K-1 are filed and furnished to the partners on or before the due date of the partnership return, including extensions.

Limited Liability Companies with more than one member file Form 1065 unless they elect to be taxed as corporations.

Premiums for health insurance paid by a partnership on behalf of a partner for services as a partner are treated as guaranteed payments. (Usually deductible on 1065 as a business expense listed on Schedules K and K-1 and reported as partner income on Sch. E). For 1999-2001, a partner who qualifies can deduct 60% of the health insurance premiums paid by the partnership on his or her behalf as an adjustment to income on Form 1040. According to IRS instructions, the health insurance may instead be treated as a distribution to the partner with the resulting effect on capital accounts.

Partnership tax returns may now be filed electronically. Paper Form 8453-P must still be filed by the partnership.

<p style="text-align: center;">INCOME TAX IMPLICATIONS OF CONSERVATION AND ENVIRONMENTAL PAYMENTS AND GRANTS RECEIVED BY FARMERS</p>

Farmers and participating landowners are receiving NYS and/or federal grants and payments for a number of different conservation and environmental programs. Here is a review of the income tax consequences associated with some of the programs.

Cost-Sharing Payments Under IRC Sec. 126

Cost-sharing payments that qualify under Sec. 126 may be excluded from income reported by farmers. Several federal and state programs have been certified under Sec. 126. They include the

Wetlands Reserve Program, NYS Agricultural Non-Point Pollution Grant Program, the NYC Watershed Agricultural Program and other watershed protection programs. To be excluded, the payment must be for capital expenditures such as concrete pads, storage tanks, tile drains, diversion ditches and manure storage. Payments for items that can be expensed on Sch. F, including soil and water conservation expenses, may not be excluded. A portion of a payment that increases annual gross receipts from the improved property more than 10% or \$2.50 times the number of effected acres may not be excludable. The depreciable basis of the improvement is reduced by the amount of payment excluded from gross income.

All excluded Sec. 126 payments are subject to recapture as ordinary income to the extent that there is gain upon sale of the property within 10 years of receiving the payment (IRC Sec. 1255). If the property is sold in more than 10 and less than 20 years, a declining percentage of the excluded payment is recaptured.

Conservation Reserve Payments (CRP)

Farmers enrolled in the CRP are compensated for converting erodible cropland to less intensive use. They receive annual CRP rental payments that are ordinary income. Whether the payments are Sch. F income subject to self-employment tax, or Sch. E or Form 4835 income not subject to self-employment tax depends on the following conditions:

- 1) If the taxpayer receiving CRP payments is materially participating in a farming business that includes the enrolled land, the CRP payments are Schedule F income. The 6th Circuit has reversed the Tax Court (Wuebker) case, which had treated the CRP payments as non-self-employment income to be reported on Schedule E.
- 2) If the taxpayer is a non-participating landlord and the taxpayer hires someone to manage the CRP acreage, the payments are Schedule E income.
- 3) If the taxpayer was and is a non-materially participating crop-share lessor, before and after entering the CRP, the payments are Form 4835 income.

The Wetlands Reserve Program (WRP)

Farmers and other landowners may be receiving permanent and/or non-permanent easement payments for enrolling land in the WRP where its use is limited to hunting, fishing, periodic grazing, haying, and managed timber production. Permanent easements may be a lump sum payment or range from 5 to 30 annual payments. Non-permanent easement payments must be extended over five or more years. Landowners participating in the WRP are also eligible for cost-sharing payments to restore the land to a healthy wetland condition.

Granting a permanent easement results in the same tax consequence as selling development rights. The taxpayer is allowed to reduce the entire basis in the underlying property before reporting gain from the easement (Rev. Rul. 77-414). If the land has been held for more than one-year, the gain is Sec. 1231 capital gain.

Example: True Wetland enrolls 100 acres under the WRP permanent easement option and receives \$500 per acre or \$50,000. The basis of the 100 acres, purchased in 1955, is \$20,000. True reduces the basis to \$0 and realizes a \$30,000 capital gain.

Permanent easement payments spread over more than the first year should be reported as installment sales. Since interest is not included in any current WRP contract it must be imputed and a portion of each payment allocated to interest. The grantor of a discounted or bargain sale permanent

easement may be able to claim a charitable deduction for the difference between its value and the price received.

Non-permanent easement payments are ordinary income unless the taxpayer accepts the position taken by the American Farmland Trust and reports them the same as perpetual or permanent easement payments. IRS and the tax court say the payments are ordinary income and if the taxpayer continues to use the land in an associated farming or timber activity, they are included in self-employment income.

Cost-sharing payments under the WRP are eligible to be excluded under Sec. 126. Otherwise, these restoration payments are reported as Sch. F income where they may be offset by the restoration costs. If the taxpayer continues to farm, some or all of the cost-sharing payments may be deducted as soil and water conservation expenses or depreciated as improvements. Income and expenses associated with managing and maintaining the WRP land are reported on Sch. F or C.

INCOME FROM CANCELLATION OF DEBT AND RECAPTURE AGREEMENTS

The tax code specifies that cancellation of debt, called **discharge of indebtedness income** (DII), is ordinary income to the borrower. In many situations, the DII does not result in taxable income. In return for not reporting the income, the taxpayer must reduce "tax attributes", such as investment credit, net operating losses and basis in assets which may result in tax liability for the taxpayer in future years.

Bankrupt and Insolvent Debtor Rules

For bankrupt or insolvent debtors, if canceled debt exceeds total tax attributes, the excess canceled debt is not reported as taxable income. However, if cancellation of debt outside of bankruptcy causes a taxpayer to become solvent, the solvent debtor rules must be applied to the DII equal to solvency.

Solvent Farmer Rules (debt discharged after 4-9-86)

Discharged debt (DD) must be "qualified farm indebtedness" which is debt incurred directly in connection with the operation of the farm business. Additional "qualified farm indebtedness" rules are: (1) 50% or more of the aggregate gross receipts of the farmer for the three previous years must have been attributable to farming and (2) the discharging creditor must be (a) in the business of lending money and (b) not related to the farmer, did not sell the property to the farmer and did not receive a fee for the farmer's investment in the property. These rules are quite restrictive and will prevent some solvent farmers from using tax attributes to offset DII.

Solvent farmers must reduce tax attributes in exchange for not reporting DII as income. The basis reduction for property owned by the solvent taxpayer must take place in the following order: (1) depreciable assets, (2) land held for use in farming and (3) other property. The general rule that basis may not be reduced below the amount of the taxpayer's remaining debt does not apply under these special solvent farmer rules. DII remaining after tax attributes have been reduced must be included in a solvent farmer's taxable income. If the DII exceeds the total tax attributes, all the tax attributes will be given up and the excess of DII over the tax attributes will be included in income and may cause a tax liability.

Solvent and insolvent farmers receive no relief from gain triggered on property transferred in settlement of debt. The difference between basis and FMV is gain regardless of the amount of DII. The FMV is ignored for non-recourse debt and the entire difference between the basis of property transferred and the debt canceled is gain or loss. Discharge of indebtedness is not includable in income if the transaction is a purchase price reduction (IRC Sec.108(c)(5)).

Farm Service Agency (FSA) Recapture of Previously Discharged Debt

Some farm owners were required to give the FSA a shared appreciation agreement or a recapture agreement in exchange for the discharge of debt. The agreement allows FSA (formerly FmHA) to recapture part of the debt that was previously discharged if the farm is sold for more than the appraised value at time of discharge. If the taxpayer treated the debt reduction as DII debt for tax purposes at the time of the workout, then a FSA recapture will trigger a tax consequence. A typical appreciation agreement would obligate the farmer to pay FSA the lesser of (1) the excess of the amount received when the farm is sold over the amount paid FSA under the agreement or, (2) the difference between the FMV of the farm at buyout and the amount paid under the agreement. When discharged debt is recaptured the tax treatment of some DII may need to be changed. The DII originally recognized as ordinary income now becomes a deduction against ordinary income. DD offset by a reduction in attributes is added back to the same attributes and DD not recognized under insolvency rules requires no adjustment.

LIKE-KIND TAX FREE (Deferred) EXCHANGES

Taxpayers may postpone recognition of gain on property they relinquish if they exchange that property for property that is "like-kind." The gain is postponed by not recognizing the gain realized on the relinquished property and reducing the basis in the acquired property. Both the relinquished property and the acquired property must be used in a trade or business or held for investment [I.R.C. Sec. 1031(a)(1)]. A summary of the rules [Reg. Sec. 1.1031(k)-1] follows:

Rules and Requirements

Generally, in order to have a deferred exchange, the transaction must be an exchange of qualifying property. A sale of property followed by a purchase of a like-kind does not qualify for non-recognition under Sec. 1031. Gain or loss is recognized if the taxpayer actually or constructively receives money or non-like-kind property before the taxpayer actually receives the like-kind replacement property. Property received by the taxpayer will be treated as property not of a like-kind if it is not "identified" before the end of the "identification period" **or** the identified replacement of property is not received before the end of the "exchange period".

The identification period begins the day the taxpayer transfers the relinquished property and ends at midnight **45 days** later. The exchange period begins on the day the taxpayer transfers the relinquished property and ends on the earlier of **180 days** later or the due date (including extensions) for the taxpayer's tax return. (If more than one property is relinquished, then the exchange period begins with the earliest transfer date.)

Deferral of tax is also possible with reverse like-kind swaps (in which the seller acquires replacement property before the original property is sold). Rev. Proc. 2000-37 outlines the very exacting requirements that must be met for such swaps to qualify as like-kind exchanges.

Replacement Property

Replacement property is identified only if it is designated as such in a written document signed by the taxpayer and is properly delivered before the end of the identification period to a person obligated to transfer the property to the taxpayer. Replacement property must be clearly described in a written document, (real property by legal description and street address, personal property by make, model, and year). In general, the taxpayer can identify from one to three properties as replacement property.

However, there can be any number of properties identified as long as their aggregate FMV at the end of the identification period does not exceed 200% of the aggregate FMV of all the relinquished properties (the 200% rule). Identification of replacement property can be revoked in a signed written document properly delivered at any time before the end of the identification period.

Identified replacement property is received before the end of the exchange period if the taxpayer actually receives it before the end of the exchange period and the replacement property received is substantially the same property as that identified. A transfer of property in a deferred exchange will not fail to qualify for non-recognition of gain merely because the replacement property is not in existence or is being produced at the time it is identified.

If the taxpayer is in actual or constructive receipt of money or other property before receiving the replacement property, the transaction is a sale and not a deferred exchange. The determination of whether the taxpayer is in actual or constructive receipt of money or replacement property is made without regard to certain arrangements made to ensure that the other party carries out its obligation to transfer the replacement property. These arrangements include replacement property secured or guaranteed by a mortgage, deed of trust, or other security interest in property; by a standby letter of credit as defined in the regulations; or a guarantee of a third party. It is also made without regard to the fact that the transferee is secured by cash, if the cash is held in a qualified escrow account or trust.

Qualified Escrow Account and Intermediary

A qualified escrow account or trust is one in which the escrow holder or trustee is not the taxpayer or a disqualified person, and the taxpayer's right to receive, pledge, borrow, or otherwise obtain the benefits of the cash are limited until the transaction is closed.

A qualified intermediary (Q/I) is a person who is not the taxpayer or a disqualified person and acts to facilitate the deferred exchange by entering into an agreement with the taxpayer for the exchange of properties. A Q/I enters into a written agreement with the taxpayer, acquires the relinquished property from the taxpayer, and transfers the relinquished property and the replacement property.

The taxpayer's agent at the time of the transaction is a disqualified person. An agent is a person, other than the taxpayer, who is a partner, officer, director, agent, employee, independent contractor, attorney, accountant, investment banker or broker, or real estate agent or broker within the two-year period ending on the date of the transfer of the first of the relinquished properties.

Real Property

For real property, "like-kind" is interpreted very broadly. Any real estate can be exchanged for any other real estate and qualify for I.R.C. Sec. 1031 so long as the relinquished property was, and the acquired property is, used in a trade or business or held for investment. Consequently, a farm can be exchanged for city real estate and improved real estate can be exchanged for unimproved real estate.

Farm Business Personal Property

"Like-kind" is interpreted to mean, "like-class" for personal property. "Like-class", means that both the relinquished and replaced properties are in the same general asset class or same product class.

Most personal property used in a farm business is included in product class 3523 Farm Machinery and Equipment. Farmers will generally qualify for I.R.C. Sec. 1031 treatment when they exchange farm equipment for farm equipment. However, automobiles, general-purpose trucks, heavy general-purpose trucks, information systems and other office equipment are all assigned to separate general asset classes. Livestock of different sexes are not property of a like-kind but exchanges of same sex livestock have qualified as tax free exchanges.

IRS Announcement 2000-4 requires that, for property placed in service after January 2, 2000, the basis of the traded item continues to be depreciated over the remaining recovery period of the old property, using the same method and convention. Accumulated depreciation of the old asset would carryover and potentially be subject to recapture upon the sale of the newly acquired asset under Sec. 1245 depreciation recapture rules. Any additional cost basis would be treated as newly acquired property. This provision applies to all MACRS property, but taxpayers that did not calculate depreciation in accordance with this Announcement, prior to January 3, 2000 are not required to change depreciation calculations. If they wish to change prior depreciation calculations, the procedure described in the instructions for Form 3115 should be followed.

Example A. Under rules prior to Notice 2000-4

- Farmer Pat paid \$100,000 for a combine in 1996.
- Pat depreciated it as 7-year property using MACRS 150% declining balance.
- In 1999 Pat traded the combine and \$40,000 cash for a tractor.
- Calculation of the basis in the new tractor is:

Beginning combine basis		\$100,000
96 depreciation	\$100,000 x 10.71%	-10,710
97 depreciation	\$100,000 x 19.13%	-19,130
98 depreciation	\$100,000 x 15.03%	-15,030
99 depreciation	\$100,000 x 12.25% x 1/2	-6,125
Ending basis		<u>49,005</u>
Boot cash for the tractor		40,000
Basis in new tractor		<u>\$89,005</u>

- Calculation of Pat's total 1999 depreciation on these 2 assets

Combine from above		\$ 6,125
Tractor	\$89,005 x 10.71%	9,532
		<u>\$15,657</u>

Example B. Under Notice 2000-4 which requires Pat to continue depreciating the carried-over basis over the remaining life of the combine continuing with the same depreciation rate.

- Farmer Pat paid \$100,000 for combine in 1998.
- Pat depreciated it as 7-year property using MACRS 150% declining balance.
- In 2001 Pat traded the combine and \$40,000 cash for a tractor.
- Calculation of the total 2001 depreciation on these 2 assets is:

2001 (4th year depreciation) on combine that was sold and has left the farm:

$$\$100,000 \times 12.25\% = \$12,250$$

2001 (1st year depreciation) on tractor that is on the farm

$$\$40,000 \times 10.71\% = \underline{\$ 4,284}$$

$$\underline{\$16,534}$$

The result is a first year greater depreciation for Pat than under pre 2000 rules (\$16,534 vs. \$15,657). The advantage of this methodology is where the trade-in has not been depreciated to zero the new method yields a faster recovery than would be available if the remaining basis was added to the basis of the new property and depreciated accordingly. Next year, if Pat trades that new tractor in for baler, Pat will have a three line calculation of depreciation, but only one piece of equipment left on the farm.

Bookkeeping: Pat's depreciation schedule will need some notes to keep track of what machinery is gone, remaining on the farm, and which was traded for which. Notice 2000-4 does not give any guidance in this area. Pat should keep the traded property on the depreciation schedule with a note as to which piece it was traded for, and the basis of the new equipment, which will be just the boot price. If Pat is a frequent trader it may take several lines to support his depreciation and basis in the traded and acquired property. If Pat's software can not handle this, this year Pat may have to go back to the paper and pencil method until his software gets updated.

Other Deferred Exchange Rules and Requirements

IRS Form 8824 is used as a supporting statement for like-kind exchanges reported on other forms, including Form 4797 (Sale of Business Property) and Schedule D (Capital Gains and Losses). A separate Form 8824 should be attached to Form 1040 for each exchange. Form 8824 should be filed for the tax year in which the seller (exchanger) transferred property to the other party in the exchange.

If the relinquished property is subject to depreciation recapture under I.R.C. Sec. 1245, 1250, 1252, 1254, and or 1255; part or all of the recapture may have to be recognized in the year of the like-kind exchange. Any recapture potential not recognized in the year of the exchange will carryover as an attribute of the asset received in the exchange.

Like-kind exchanges between related parties can result in recognition of gain if either party disposes of the property within two-years after the exchange.

DEPRECIATION AND COST RECOVERY

The standard depreciation rules for regular income tax have not changed except for the clarification of MACRS calculations for items acquired with a trade-in (see previous section on Like-Kind Exchanges, IRS Announcement 2000-4). AMT depreciation rules were modified in 1998 and will reduce the depreciation adjustment for 1999 and years following. This reference is for practitioners and taxpayers that want to apply depreciation rules to maximize after tax income. The modified accelerated cost recovery system (MACRS) provides for eight classes of recovery property, two of which may be depreciated only with straight line. MACRS applies to property placed in service after 1986. Pre-MACRS property continues to be depreciated under the ACRS or pre-ACRS rules. Most taxpayers will be using MACRS, ACRS, and the depreciation rules that apply to property acquired before 1981. This manual concentrates on the MACRS rules but some ACRS information is included. Additional information on ACRS and pre-ACRS rules can be found in the *Farmer's Tax Guide*.

Depreciable Assets

A taxpayer is allowed cost recovery or depreciation on purchased machinery, equipment, buildings, and on purchased livestock acquired for dairy, breeding, draft, and sporting purposes unless reporting on the accrual basis and such livestock are included in inventories. Depreciation must be claimed by the taxpayer that owns the asset. A taxpayer cannot depreciate property that he or she is renting or leasing from others. The costs of most capital improvements made to leased property may be depreciated by the owner of the leasehold improvements under the same rules that apply to owners of regular depreciable property. A lessor cannot depreciate improvements made by the lessee.

Depreciation or cost recovery is not optional. It should be claimed each year on all depreciable property including temporarily idle assets. An owner who neglects to take depreciation when it is due now has two opportunities to recover the lost depreciation. It may be recovered by filing an amended return or by following a procedure for automatic change to a permissible accounting method for depreciable property, Rev. Proc. 97-37. A correction procedure is also available to taxpayers whose depreciation or amortization deduction claimed is more than the allowable amount (Rev. Proc. 97-27). Form 3115 (Application for Change in Accounting Method) must be filed with the IRS by the end of the tax year and a copy attached to the taxpayer's return for the tax year that the correction in depreciation is made. A fee is required when too much depreciation has been claimed. Procedures 99-27 & 98-60 carry detailed, line-by-line instructions on how to complete Form 3115.

Expensing the purchase of "small assets" is not an option according to the Tax Court (TCM 2001-149). If the item has a useful life greater than 1 year, it is to be depreciated. The only exception stated is that if the aggregate total of all such items for the tax year is less than 1% of operating expenses and net income, the expense would be allowed. [Don't rely on unused Sec. 179 deduction to bail you out upon audit since this election to expense is only allowed on a timely filed tax return.]

MACRS Classes

The MACRS class life depends on the asset depreciation range (ADR) midpoint life of the property.

<u>MACRS Class</u>	<u>ADR Midpoint Life</u>
3-year	4 years or less
5-year	More than 4 but less than 10 years
7-year	10 or more but less than 16 “
10-year	16 or more but less than 20 “
15-year	20 or more but less than 25 “
20-year	25 or more other than 1250 property with an ADR life of 27.5 years or more
27.5-year	Residential rental property
39-year (31.5 if acquired before 5/13/93)	Nonresidential real property

Assets are placed in one of the eight MACRS classes regardless of the useful life of the property in the taxpayer's business. Examples of the types of farm assets included in each MACRS class are shown below.

Three-year property:

1. Section 1245 property with an ADR class life of four years or less. This includes over-the-road tractors and hogs held for breeding purposes. It does not include cattle, goats or sheep held for dairy or breeding purposes because the ADR class life of these animals is greater than four years.
2. Section 1245 property used in connection with research and experimentation. Few farmers will have this type of property.
3. Race horses more than two years old when placed in service and all other horses more than 12 years old when placed in service.

Five-year property:

1. All purchased dairy and breeding livestock (except hogs and horses included in the 3 or 7-year classes).
2. Automobiles, light trucks (under 13,000 lbs. unladen), and heavy-duty trucks.
3. Computers and peripheral equipment, typewriters, copiers and adding machines.
4. Logging machinery and equipment.

Seven-year property:

1. All farm machinery and equipment.
2. Silos, grain storage bins, fences, and paved barnyards.
3. Breeding or work horses (12 years old or less).

Ten-year property includes single purpose livestock and horticultural structures (seven-year property if placed in service before 1989) and orchards and vineyards (15-year property if placed in service before 1989).

Fifteen-year property:

1. Depreciable land improvements such as sidewalks, roads, bridges, water wells, drainage facilities and fences other than farm fences (which are in the 7-year class). Does not include land improvements that are explicitly included in any other class, or buildings or structural components.
2. Orchards, groves, and vineyards when they reach the production stage if they were placed in service before 1989.

Twenty-year property includes farm buildings such as general-purpose barns, machine sheds, and many storage buildings.

27.5-year property includes residential rental property.

39-year (31.5 if acquired before 5/13/93) property includes nonresidential real property.

**ACRS, MACRS and MACRS Alternative Depreciation System (ADS)
Recovery Periods for Common Farm Assets**

Asset	Recovery Period (Years)		
	ACRS	MACRS	ADS
Airplane	5	5	6
Auto (farm share)	3	5	5
Calculators, copiers & typewriters	5	5	6
Cattle (dairy or breeding)	5	5	7
Citrus groves	5	15	20
Communication Equipment	5	7	10
Computer and peripheral equipment	5	5	5
Cotton ginning assets	5	7	12
Farm buildings (general purpose)	19	20	25
Farm equipment and machinery	5	7	10
Fences (agricultural)	5	7	10
Goats (breeding or milk)	3	5	5
Grain bin	5	7	10
Greenhouse (single purpose structure)	5	10**	15
Helicopter (agricultural use)	5	5	6
Hogs (breeding)	3	3	3
Horses (nonrace, less than 12 years of age)	5	7	10
Horses (nonrace, 12 years of age or older)	3	3	10
Logging equipment	5	5	6
Machinery (farm)	5	7	10
Mobile homes on permanent foundations (for farm labor housing)	19	20	25
Office equipment (other than calculators, copiers or typewriters) & furniture	5	7	10
Orchards	5	10***	20
Paved lots	5	15	20
Property with no class life	5	7	12
Rental property (nonresidential real estate)	19	39****	40
Rental property (residential)	19	27.5	40
Research property	5	5	12*
Sheep (breeding)	3	5	5
Silos	5	7	12*
Single purpose livestock structure (housing, feeding, storage and milking facilities)	5	10**	15
Single purpose horticultural structure	5	10**	15
Solar property	5	5	12*
Storage (apple, onion, potato)	5	20	25
Tile (drainage)	5	15	20
Tractor units for use over-the-road	3	3	4
Trailer for use over-the-road	5	5	6
Truck (heavy duty, general purpose)	5	5	6
Truck (light, less the 13,000 lbs.)	3	5	5
Vineyard	5	10***	20
Water well	5	15	20
Wind energy property	5	5	12*

*No class life specified. Therefore, 12-year life assigned.

**7 if placed in service before 1989.

***15 if placed in service before 1989.

****31.5 if placed in service before 5/13/93.

Cost Recovery Methods and Options

Accelerated cost recovery methods for MACRS property are shown below. Depreciation on farm property placed in service after 1988 is limited to 150% declining balance (DB) rather than the 200 % available for nonfarm property. There are two straight-line (SL) options for the classes eligible for rapid recovery. SL may be taken over the MACRS class life or the MACRS alternative depreciation system (ADS) life. A fourth option is 150 % DB over the ADR midpoint life. The changes in depreciation required for alternative minimum tax purposes are discussed in this section under Additional Rules and in the Alternative Minimum Tax section.

Orchards and vineyards placed in service after 1988 are not eligible for rapid depreciation. They are in the 10-year class and depreciation is limited to straight line.

<u>Class</u>	<u>Most Rapid MACRS Method Available</u>
3, 5, 7 and 10-year	Farm assets: 150 % DB if placed in service after 1988.* 200 % if placed in service 1987 through 1988.* *(See exception for orchards and vineyards above.)
	Nonfarm assets: 200 % DB with cross-over to SL
15 and 20-year	150 % DB with cross-over to SL
27.5 and 39(31.5)-year	Straight line <u>only</u>

The MACRS law does not provide for standard percentage recovery figures for each year. However, IRS and several of the tax services have made tables available.

Annual Recovery (Percent of Original Depreciable Basis)

(The 150% DB percentages are for 3, 5, 7 and 10-year class farm property placed in service after 1988.)

Recovery Year	<u>3-Year Class</u>		<u>5-Year Class</u>		<u>7-Year Class</u>		<u>10-Year Class</u>		<u>15-Yr.</u>	<u>20-Yr.</u>
	200% DB	150% DB	200% DB	150% DB	200% DB	150% DB	200% DB	150% DB	150% DB	150% DB ¹
1	33.33	25.00	20.00	15.00	14.29	10.71	10.00	7.50	5.00	3.75
2	44.45	37.50	32.00	25.50	24.49	19.13	18.00	13.88	9.50	7.22
3	14.81	25.00	19.20	17.85	17.49	15.03	14.40	11.79	8.55	6.68
4	7.41	12.50	11.52	16.66	12.49	12.25	11.52	10.02	7.70	6.18
5			11.52	16.66	8.93	12.25	9.22	8.74	6.93	5.71
6			5.76	8.33	8.92	12.25	7.37	8.74	6.23	5.29
7					8.93	12.25	6.55	8.74	5.90	4.89
8					4.46	6.13	6.55	8.74	5.90	4.52
9							6.56	8.74	5.91	4.46
10							6.55	8.74	5.90	4.46
11							3.28	4.37	5.91	4.46
12-15									5.90 ²	4.46
16									2.95	4.46
17-20										4.46
21										2.24

¹ Rounded to two decimals, see Pub. 946 for more precise 20-yr. class rates.

² 5.90 in years 12 & 14, 5.91 in years 13 & 15.

Half-Year and Mid-Month Conventions

MACRS provides for a half-year convention in the year placed in service regardless of the recovery option chosen. A half-year of recovery may be taken in the year of disposal. No depreciation is allowed on property acquired and disposed of in the same year. Property in the 27.5 and 39-year classes is subject to a mid-month convention in the year placed in service.

Mid-Quarter Convention

If more than 40% of the year's depreciable assets (other than 27.5 and 39-year property) are placed in service in the last quarter, **all** of the assets placed in service during that year must be depreciated using a mid-quarter convention. Assets placed in service during the first, second, third and fourth quarters will receive 87.5, 62.5, 37.5 and 12.5% of the year's depreciation, respectively. The amount expensed under Sec. 179 is not considered in applying the 40% rule. In other words, the amount expensed under Sec. 179 can be taken on property acquired in the last quarter, which may help avoid the mid-quarter convention rule.

Example: V. Sharp placed \$106,000 worth of 7-year MACRS property in service. He could expense \$24,000 and claim \$8,782 of depreciation ($\$106,000 - 24,000 = \$82,000 \times .1071 = \$8,782$) under the half-year convention. If \$56,000 of Sharp's property was placed in service in the last quarter and the \$24,000 Sec. 179 election is applied to this \$56,000, \$32,000 is left to be used in the 40% test. Thus, $\$32,000 \div (\$106,000 - 24,000) = .39$, which is less than 40%, so Sharp avoids the mid-quarter rules. However, if his depreciable items had totaled \$100,500 and \$56,000 was placed in service in the last quarter, he would be caught by the 40% rule, even if he applied the \$24,000 Sec. 179 to the items placed in service in the last quarter. That is, $\$32,000 \div (\$100,500 - 24,000) = .42$, and all the depreciation items would be subject to the mid-quarter convention.

If the 40% rule is triggered, the depreciation on property acquired in the first and second quarters actually increases. Taxpayers are not allowed to use the mid-quarter rules voluntarily. However, choice of property to expense under Sec. 179 could work to the advantage of a taxpayer that wanted to become subject to the rules. If third quarter property could be expensed and thereby have the 40% rule triggered, the depreciation on first and second quarter property would be increased. Whether this increases total depreciation for the year would depend on the proportion placed in service in each quarter.

MACRS Alternative Depreciation

The MACRS alternative depreciation system (ADS) is required for some property and is an option for the rest. It is a straight line system based on the alternative MACRS recovery period (ADR midpoint lives). Farmers who are subject to capitalization of pre-productive expenses, discussed later, may elect to avoid capitalization, but if they do so, they must use the ADS life on all property.

Election to Expense Depreciable Property

The Section 179 expense deduction is \$24,000 for property placed in service in 2001. It was \$20,000 for 2000. It increases to \$25,000 in 2003. The expense deduction is phased out dollar for dollar for any taxpayer that places over \$200,000 of property in service in any year, with complete phaseout at \$224,000. Eligible property is defined as Sec. 1245 property to which Sec. 168 (accelerated cost recovery) applies. Property must be used more than 50% of the time in the business to qualify. General purpose buildings, property acquired from a related person, and certain property leased by non-corporate lessors do not qualify. Excluded is property used outside the U.S., property used by tax exempt organizations, property used with furnished lodging, property used by governments and foreigners, and air conditioning and heating units. When property is acquired by trade, Sec. 179 deductions may not be claimed on the basis of the trade-in.

In the case of partnerships, the \$24,000 limit applies to the partnership and also to each partner as an individual taxpayer. A partner who has Sec. 179 allocations from several sources could be in a situation where only \$24,000 may be expensed because of the \$24,000 limitation. Any allocations in excess of \$24,000 are lost forever, (which is a different result from the limitation discussed below). The same concept applies to S corporations.

The amount of the Sec. 179 expense deduction is limited to the amount of taxable income of the taxpayer that is derived from the **active** conduct of all trades or businesses of the taxpayer during the year. Taxable income for the purpose of this rule is computed excluding the Sec. 179 deduction. Any disallowed Sec. 179 deductions due to this taxable income limitation are carried forward to succeeding years. The deduction of current plus carryover amounts is then limited to \$24,000 in 2001.

Section 179 regulations provide that wage and salary income qualifies as income from a trade or business. Therefore, such income can be combined with income (or loss) from Schedules C or F in determining income from the "active conduct of a trade or business" when calculating the allowable deduction. Section 1231 gains and losses from a business actively conducted by the taxpayer are also included.

Gains from the sale of Sec. 179 assets are treated like Sec. 1245 gains. The amounts expensed are recaptured as ordinary income in the year of sale. The Sec. 179 expense deduction is combined with depreciation allowed in determining the amount of gain to report as ordinary income on Part III of Form 4797.

If post-1986 property is converted to personal use or if business use drops to 50% or less, Sec. 179 expense recapture is invoked no matter how long the property was held for business use. The amount recaptured is the excess of the Sec. 179 deduction over the amount that would have been deducted as depreciation. The recapture is reported on Part IV of Form 4797 and then on Schedule F.

Every business owner who has purchased MACRS property should consider the Sec. 179 expense deduction because only New York investment tax credit will be lost when it is used. It should not be used to reduce AGI below standard (or itemized) deductions plus exemptions, unless an additional reduction in self-employment tax is worth more than depreciation in a future tax year. Also, the taxpayer must be sure not to use more Sec. 179 deduction than the amount of taxable income from the "active conduct of a trade or business."

MACRS Property Class Rules

For 3, 5, 7, and 10-year MACRS property, the same recovery option must be used for all the property acquired in a given year that belongs in the same MACRS class.

Example: A farmer purchased a tractor, harvester and combine in 2001. All belong in the 7-year property class. The farmer may not recover the tractor over seven years with rapid recovery (150% DB) and the other items over seven or ten years with SL. However, a taxpayer may choose a different recovery option for property in the same MACRS class acquired in a subsequent year. For example, a farmer could have chosen SL 10-year recovery for equipment purchased in 1999 (7-year property), 150% DB for seven years for equipment purchased in 2000, and could now select SL 7-year recovery for all machinery purchased in 2001.

A taxpayer may select different recovery options for different MACRS classes established for the same year. For example, a taxpayer could select fast recovery on 5-year property, straight line over seven years on 7-year property, and straight line over 15 years on most 10-year property.

Some Special Rules on Autos and Listed Property

There are special rules for depreciation on vehicles and other "listed property". If used less than 100% in the business, the maximum allowance is reduced, and if used 50% or less, the Sec. 179 deduction is not allowed and depreciation is limited to SL. The maximum depreciation and Sec. 179 expense allowance for four-wheeled vehicles called "luxury cars" (6000 lbs. or less) placed in service in 2001 remains at \$3,060 for the first year, \$4,900 for the 2nd year, \$2,950 for the 3rd year and \$1,775 for each succeeding year. If the business use percentage is less than 100%, these limits are reduced accordingly. Cellular telephones acquired after 1989 are listed property. Computers are listed property unless they are used only for business.

AMT Depreciation

For Sec. 1245 property placed in service after 1998, if the 200% DB MACRS method is used for regular tax purposes, depreciation must be recalculated for AMT purposes using 150% DB MACRS. The difference between regular depreciation and this re-determined amount is an income adjustment subject to inclusion in alternative minimum taxable income. For all other property placed in service after 1998, the depreciation method is the same for regular tax and AMT purposes. Therefore, farm property placed in service after 1998 is depreciated using the same method for AMT purposes. [Note: There could still be an AMT adjustment on such property if it was acquired using a trade-in which has a different basis for AMT purposed due to prior year ruled discussed below.] An adjustment remains for non-farm property depreciated using 200% DB MACRS as well as for other property placed in service prior to 1999.

For Sec. 1245 property placed in service after 1986 and before 1999, depreciation must be recalculated for AMT purposes using the following table:

Sec 1245 Property Placed in Service Prior to 1999	
Used for Regular Tax Purposes	Must Use for AMT Purposes
150 DB MACRS	150 DB, ADS life
200 DB MACRS	150 DB, ADS life
SL MACRS	SL, ADS life
ADS	ADS

The AMT depreciation adjustment for Sec. 1250 property placed in service after 1986 and before 1999 is the difference between what was claimed for regular income tax and that allowed under MACRS ADS straight-line depreciation.

Additional Rules

MACRS rules allow half a year's depreciation in the year of disposition if using the half-year convention. If the mid-quarter convention applies, depreciation is allowed for the quarters held in the year of disposition. For 27.5 and 39-year property depreciation is claimed in the year of disposition based on the months held in that year.

When assets are sold, gain to the extent of all prior depreciation on all Sec. 1245; 3, 5, 7, 10 and 15-year MACRS property is ordinary income. There is no recapture of depreciation on property in the 20-year class if straight line recovery is used (see the section, *A Review of Farm Business Property Sales*).

Property placed in service during a short tax year is subject to special allocation rules that vary with the applicable convention used. Details are provided in Pub. 946 *How to Depreciate Property*.

Choosing Recovery Options

Taxpayers will maximize after-tax income by using Sec. 179 and rapid recovery on 3, 5, 7, 10, and 15-year MACRS property, assuming the deductions can be used to reduce taxable income and do not create an AMT adjustment that results in AMT liability. The taxpayer that will not be able to use all the deductions in the early years may want to consider one of the straight-line options. A taxpayer in a low tax bracket may wish to forego the Sec. 179 deduction to save tax deductions for future years if higher tax brackets are expected.

Using straight line rather than 150% declining balance on 20-year property will preserve capital gain treatment (at a 25% maximum rate), at the time of disposal since the amount of depreciation in excess of straight-line is treated as ordinary income at the time such Sec. 1250 property is sold. However, the tax savings will be realized many years from now and if the asset is fully depreciated at the time of sale there is no “excess” depreciation to be recaptured as ordinary income. For most taxpayers, the choice of the best recovery option for 20-year MACRS property should be based on the value of concentrating depreciation in early years versus spreading it out – that is, using 150% DB MACRS. The time value of money makes current year depreciation more valuable than that used in later years. However, depreciation claimed to reduce taxable income below zero is wasted.

Reporting Depreciation and Cost Recovery

Form 4562 is used to report the Section 179 expense election, depreciation of recovery property, depreciation of non-recovery property, amortization, and specific information concerning automobiles and other listed property. Depreciation, cost recovery, and Sec. 179 expenses are combined on Form 4562 and entered on Schedule F. However, partnerships and S corporations will transfer the Sec. 179 expense election to Sch. K, rather than combining it with other items on Form 4562. Furthermore, Sec. 179 is excluded when calculating net earnings for self-employment at the partnership level on Sch. K and K-1. Therefore, Sec. 179 must be included as an adjustment on the partner’s Sch. SE if the partner meets the test for the Sec. 179 deduction to be taken (i.e. business income limitation and overall \$24,000 limit).

Uniform Capitalization Rules for Fruit Growers and Nurserymen

Plants subject to uniform capitalization rules include fruit trees, vines, ornamental trees and shrubs, and sod providing the pre-productive period is 24 months or more. The pre-productive period begins when the plant or seed is first planted or acquired by the taxpayer. It ends when the plant becomes productive in marketable quantities or when the plant is reasonably expected to be sold or otherwise disposed of. An evergreen tree, which is more than six years old when, harvested, (severed from the roots), is not an ornamental tree subject to capitalization rules. Timber is also exempt. If trees and vines bearing edible crops for human consumption are lost or damaged by natural causes, the non-depreciable costs of replacing trees and vines do not have to be capitalized.

In Notice 2000-45, IRS has now provided the following list of commercially grown plants with nationwide weighted average pre-productive periods in excess of two years: almonds, apples, apricots, avocados, blackberries, blueberries, cherries, chestnuts, coffee beans, currants, dates, figs, grapefruit, grapes, guavas, kiwifruit, kumquats, lemons, limes, macadamia nuts, mangoes, nectarines, olives, oranges, papayas, peaches, pears, pecans, persimmons, pistachio nuts, plums, pomegranates, prunes, raspberries, tangelos, tangerines, tangors, and walnuts.

This is not an all-inclusive list. For other plants grown in commercial quantities in the U.S., the nationwide weighted average pre-productive period must be determined based on available statistical data.

Fruit growers who choose to capitalize will need to establish reasonable estimates of the preproductive costs of trees and vines. Nurserymen could use the farm-price method to establish their preproductive costs of growing trees, vines, and ornamentals. Capitalization requires the recovery of orchards, vineyard, and ornamental tree pre-productive period expenses over 10 years, straight-line.

If growers elect not to capitalize, they must use ADS to recover the costs of trees and vines (20-year straight line) and all other depreciable assets placed in service. Only the pre-productive period growing costs may be expensed.

Accurate Records Needed

Accurate and complete depreciation records are basic to reliable farm income tax reporting and good tax management. Depreciation and cost recovery must be reported on Form 4562. A complete depreciation and cost recovery record is needed to supplement Form 4562. It is not necessary to file the complete list of items included in the taxpayer's depreciation and cost recovery schedules.

GENERAL BUSINESS CREDIT

The General Business Credit is a combination of investment tax credit, work opportunity credit, welfare-to-work credit, research credit, low-income housing credit, disabled access credit, plus others (see following page). Form 3800 is used to claim the credit for the current year, to apply carryforward from prior years, and claim carryback from later years. The credit allowable cannot reduce regular tax below tentative AMT. It is also limited to \$25,000 plus 75% of net regular tax liability above \$25,000. Special limits apply to married persons filing separate returns, controlled corporate groups, estates and trusts, and certain investment companies and institutions (Sec. 46(e)(i)). TRA '97 changed the carryback period to one-year and the carryforward period to 20 years beginning in 1998. The three-year carryback and 15-year carryforward rules remain for all credits earned before 1998.

Review of Federal Investment Credit

Federal investment tax credit (ITC) was repealed for most property placed in service after 12/31/85. ITC may still be earned on rehabilitated buildings, qualified reforestation expenses, and certain business energy investments. ITC (Sec. 45(a)(1)) is 10% of the amount of qualified investment with more liberal allowances for some rehabilitated historic buildings. ITC is a direct reduction against income tax liability. If it cannot be used in the year it is earned, it can be carried back and carried forward to offset tax liability in other years. Unused investment credit from 1986 and earlier years, reduced by 35% may be carried forward 15 years. Thus, the year 2000 was the last year to use carryforward ITC credits from assets placed in service in 1985. The 1997 act extended the carryforward period to 20 years for unused business tax credits, but the existing credits carryovers were not extended. The basis of qualified I.R.C. §196 property was reduced by 50% of the ITC (unless an 8% ITC rate was used) and consequently the taxpayer is eligible for a tax deduction in the year following the end of the carryover period if the credit is still unused. For investment tax credit this 50 percent of the unused credit becomes a business deduction on Schedules F or C. Taxpayers with expired 1985 ITC may deduct 1/2 of the unused amount as a business deduction on their 2001 return.

If property is disposed of before ITC claimed is fully earned, the credit must be re-computed to determine the amount to recapture. Recapture rules apply when there is early disposition of rehabilitated buildings, business energy property and/or reforested land for which investment credit has been claimed.

The amount of recapture is 100% during the first year of service and declines to zero after five full years of service. Form 3468 is used for computing ITC, Form 4255 is used to recapture ITC.

Rehabilitated buildings (expenditures) credit is 10% for a qualified rehabilitated building and 20% for a certified historic structure. The building (other than a certified historic structure) must have been first placed in service before 1936. Expenditures for the interior or exterior renovation, restoration or reconstruction of the building qualify for the credit. Costs for acquiring or completing a building, or for the replacement or enlargement of a building, do not qualify. The credit is available for all types of buildings that are used in a business. Buildings that are used for residential purposes do not qualify unless they are certified historic structures that are used for residential purposes. The use of a building is determined based on its use when placed in service after rehabilitation. Thus, rehabilitation of an apartment building for use as an office building would render the expenditure eligible for credit. The basis for depreciation must be reduced by 100% of the investment credit claimed. Expenditures must exceed the greater of the adjusted basis of the property or \$5,000.

Qualified reforestation expenses consist of up to \$10,000 (\$5,000 if married filing separately) of the direct expenses of planting or replanting a forest or woodlot held for timber or wood production. Direct expenses include site preparation, seedlings, labor, and depreciation of equipment used. These are the same expenses that qualify for amortization. Deductible operating costs, all costs reimbursed through government cost-sharing programs, and all costs associated with planting Christmas trees are excluded. The basis of any depreciable reforestation expense must be reduced by 50% of ITC claimed.

Business energy investment credit is equal to 10% of the basis of qualified solar and geothermal energy equipment placed in service during the tax year. Active solar devices for either space heating or water heating would qualify under the solar category if put to original use by the taxpayer. The basis of any qualifying equipment must be reduced by 50% of ITC claimed.

Other General Business Credits

Work opportunity credit (extended through December 31, 2009) is available to employers on first year employee wages paid. First year wages paid targeted group employees with 120 to 400 hours of service earn 25% credit. The credit increases to 40% when an eligible employee reaches or exceeds 400 hours. There are eight targeted groups including qualified SSI recipients, recipients of aid to families with dependent children, (IV-A recipients), certain food stamp recipients, high risk youth living in empowerment zones, economically disadvantaged ex-felons, and certain disabled workers and veterans. Qualification rules were modified for IV-A recipients and veterans. The above rules include changes effective for workers employed after September 1997.

Welfare-to-Work Credit is available to employers on qualified wages paid to long-term family assistance recipients prior to January 1, 2002. The credit is 35% on qualified first year wages and 50% on qualified second year wages. The credit applies to the first \$10,000 of an eligible employees wage each year for a maximum credit of \$8,500 over two years. Wages include the value of benefits, health insurance benefits and employer contributions, educational assistance and dependent care expenses.

In general, to qualify as long-term family assistance recipients, members of a family must have been receiving family assistance for at least 18 months before the hiring date. The recipient must be certified by a designated local agency as being a member of a family receiving assistance under a IV-A program. Employers cannot get work opportunity credit and welfare-to-work credit on the same employee.

Research & Development Credit has a five-year extension to June 30, 2004, but July 1, 1999 to September 30, 2000 credits cannot be used until October 2000. Credits from October 2000 to September 2001 are delayed until October 2001.

Disabled access credit may be claimed by an eligible small business that incurs expenses for providing access to persons with disabilities. The credit is 50% of eligible expenses that exceed \$250 but do not exceed \$10,250. An eligible business is one that for the preceding year did not have more than 30 full-time employees or did not have more than \$1 million in gross receipts. An employee is considered full-time if employed at least 30 hours per week for 20 or more calendar weeks in the tax year.

Other general business credits: Low-income housing credit, alcohol fuels credit, enhanced oil recovery credit, renewable electricity production credit, empowerment zone credit, Indian employment credit and employer FICA tax credit on tips

A REVIEW OF FARM BUSINESS PROPERTY SALES

The reduction in the regular marginal income tax rate decreases the spread between those rates and the capital gain rate for individual taxpayers. Since farm taxpayers are also affected by the capital gain rates and income averaging, tax planning and management of farm property sales has increased in importance. The first step in tax planning is making the distinction amongst gains from sales of property used in the farm business that are eligible for capital gain treatment, gains subject to recapture of depreciation, and Schedule F income.

The reporting of gains and losses on the disposition of property held for use in the farm business continues to be a complicated but an important phase of farm tax reporting. Form 4797 must be used to report gains and losses on sales of farm business property. Schedule D is used to accumulate capital gains and losses. The treatment of gains and losses on disposition of property used in the farm business can be better understood after a review of IRS classifications for such property.

1. Section 1231 - Includes gains and losses on the sale or exchange of business assets meeting a holding period requirement. See discussion below explaining that livestock must be held for dairy, breeding, sport or draft to qualify as Sec. 1231 property. The required holding period is 24 months for cattle and horses, 12 months for all other business assets including unharvested crops sold with farmland which was held at least one year. There are instances, however, when gain on livestock, equipment, land, buildings, and other improvements is treated specifically under Section 1245, 1250, 1252, and 1255 (resulting in a portion of these gains being treated as ordinary income).

Under Sec. 1231, net gains are treated as long-term capital gains but net losses are fully deductible ordinary losses.

Note: Net Sec. 1231 gains are treated as ordinary income to the extent of unrecaptured net Sec. 1231 losses for the five most recent prior years. A taxpayer that claimed a net Sec. 1231 loss on the 1996, 1997, 1998, 1999 or 2000 return and has a net Sec. 1231 gain for 2001 must recapture the losses on the 2001 return (if they have not already been used against Sec. 1231 gains in earlier years). Losses are to be recaptured in the order in which they occurred. Any current year Sec. 1231 gains in excess of these prior year losses would still receive long-term capital gains treatment.

2. Section 1245 - One of the depreciation recapture sections. Farm machinery, purchased dairy, breeding, sport and draft livestock, held for the required period, and sold at a gain are reported under this section. Gain will be ordinary income to the extent of depreciation and Sec. 179 expense deductions. Gain to the extent of depreciation claimed on capitalized pre-production costs is also reported here. Even if a taxpayer elects out of Uniform Capitalization Rules (UCR) and instead uses the ADS method of depreciation, the pre-production costs that would have otherwise been capitalized must be recaptured as ordinary income.

Single-purpose livestock and horticultural structures (placed in service after 1980) are Sec. 1245 property. Nonresidential 15, 18, and 19-year ACRS property becomes Sec. 1245 property if fast recovery (regular ACRS) has been used. Other tangible real property including silos, storage structures, fences, paved barnyards, orchards and vineyards is Sec. 1245 property.

3. Section 1250 - Farm buildings and other depreciable real property held over one-year and sold at a gain are reported in this section unless the assets are Sec. 1245 property. If other than straight line depreciation was used, the gain to the extent of depreciation claimed after 1969 that exceeds what would have been allowed under straight line depreciation is recaptured as ordinary income. No recapture takes place when only straight line depreciation has been used. A taxpayer may shift such real property to straight line depreciation without special consent.

In addition, gain to the extent of SL depreciation on Sec. 1250 assets sold after May 6, 1997, is called unrecaptured Sec. 1250 gain and is taxed at a maximum rate of 25%.

General purpose farm buildings (including house provided rent-free to employees) placed in service after 1986 are MACRS 20-year property eligible for 150% DB depreciation. Depreciation claimed that exceeds straight line must be recaptured as ordinary income when the buildings are sold. A different MACRS option may be used on a substantial improvement to the original building. If fast recovery has been used on either the building or a substantial improvement to it, gain will be recaptured on the entire building to the extent of fast recovery. Any remaining gain will be capital gain. For residential rental real estate, gain will be recaptured only to the extent that fast recovery deductions exceed straight line on ACRS 15, 18, and 19-year property.

An illustration of taxation of gain on Sec. 1250 property. A general purpose farm building was purchased in 1999 for \$20,000. Regular MACRS was used until the building was sold for \$23,000 in 2001. Accumulated depreciation totaled \$2,861. Total gain was therefore \$5,861. SL depreciation would have been \$2,000 so excess depreciation of \$861 would be recaptured as ordinary income. The gain due to SL depreciation would be taxed at a maximum rate of 25%. The \$3,000 of gain resulting from the sale price exceeding the original cost would be subject to long term capital gains rates (10% or 20%).

4. Section 1252 - Gain on the sale of land held less than 10 years will be part ordinary and part capital gain when soil and water conservation expenditures have been expensed. If the land was held five years or less, all soil and water or land clearing expenses taken will be "recaptured" as ordinary gain. If the land was held more than five and less than 10 years, part of the soil and water expenses will be recaptured. The percentages of soil and water conservation expenses subject to recapture during this time period are: 6th year after acquisition of the land, 80%; 7th year, 60%; 8th year, 40%; and 9th year, 20%.

Here is an illustration:

Farmland acquired, April 1, 1995 cost	\$100,000
Soil and water expenses deducted on 1996 tax return	\$ 8,000
Land was sold May 15, 2001 for	\$130,000

During the time the land was owned, no capital improvements were made other than the soil and water expenses, so the adjusted tax basis at time of sale was \$100,000. The gain of \$30,000 would normally be all capital gain. The land was held for six years, so the gain is divided; $\$8,000 \times .80 = \$6,400$ is ordinary gain and $\$30,000 - \$6,400 = \$23,600$ qualifies for capital gains treatment.

5. Section 1255 - If government cost sharing payments for conservation have been excluded from gross income under the provisions of Sec. 126, the land improved with the payments will come under Sec. 1255 when sold. All the excluded income will be recaptured as ordinary income if the land has been held less than 10 years after the last government payment had been excluded. Between 10 and 20 years, the recapture is reduced 10% for each additional year the land is held. There is no recapture after 20 years.

Use of Form 4797 and Schedule D by Farmers

All sales of farm business properties are reported on Form 4797 to separate Sec. 1231 gain and loss from recapture as ordinary gain such items as depreciation, Section 179 expense deduction and basis reduction (due to business credits). Casualty and theft gains and losses are reported on Form 4684 and transferred to Form 4797.

If the Sec. 1231 gains and losses reported on Form 4797 result in a net gain, net Sec. 1231 losses reported in the prior five years must be recaptured as ordinary income by transferring Sec. 1231 gain equal to the non-recaptured losses to Part II. Any remaining gain is transferred to Schedule D and combined with capital gain or loss, if any, from disposition of capital assets. If the Sec. 1231 items result in a net loss, the loss is combined with ordinary gains and losses on Form 4797 Part II and then transferred to Form 1040.

Livestock Sales

The majority of livestock sales from Northeast farms are animals that have been held for dairy, breeding or sporting purposes. Income from such sales is always reported on Form 4797. Dairy cows culled from the herd and cows held for dairy or breeding purposes are the most common of these sales. Sales of horses and other livestock held for breeding, draft or sporting purposes also go on Form 4797.

Income from livestock held primarily for sale is reported on Schedule F. Receipts from the sale of "bob" veal calves, feeder livestock, slaughter livestock, and dairy heifers raised for sale are entered on Schedule F, line 4. Sales of livestock purchased for resale are entered on line 1 of Schedule F, and for a cash basis farmer the purchase price is recovered in the year of sale on line 2. The intent of holding livestock is a key issue in determining if sales are reported on 4797 or Schedule F.

Dairy, Breeding, Sport or Draft Livestock

Dairy cattle raised or purchased to replace or add to the taxpayer's herd are held for dairy purposes. Dairy cattle that are raised or purchased and developed as breeding stock to be sold to other farmers are held for sale. Livestock held for dairy, breeding, sport or draft purposes are classified into two groups according to length of holding periods:

1. Cattle and horses held two years or more, and other breeding livestock held one-year or more. Animals in this group are Sec. 1231 livestock and these holding periods were not changed by recent Acts. Emus and ostriches are currently excluded from the IRS definition of Sec. 1231.

2. Cattle and horses held less than two years and other breeding livestock held less than one-year. These sales do not meet holding period requirements.

Most dairy animals will meet the two-year holding period requirement. Major exceptions are raised young stock sold with a herd dispersal and the sale of cows that were purchased less than two years prior to sale. The age of raised animals sold will determine the length of the holding period. The date of purchase is needed to determine how long purchased animals are held. The holding period begins the day after the animal is born or purchased and ends on the date of disposition.

Reporting Sales of Sec. 1231 Livestock

Sales of Sec. 1231 livestock are entered in Part I or Part III of Form 4797. Since Part III is for recapture, purchased Sec. 1231 livestock that produce a gain when sold are entered in Part III where they are taxed as Sec. 1245 property. Sales of raised animals on which costs were capitalized are also reported in Part III, as are animals on which pre-productive costs would have been capitalized if the taxpayer had not “elected out” during the years when livestock were required to be capitalized (1987-1988). Sales of raised Sec. 1231 livestock not subjected to the capitalization rules that are held for dairy, breeding, sport or draft purposes are entered in Part I. All purchased Sec. 1231 livestock (held the required holding period) that result in a loss when sold is also entered in Part I.

Reporting Sales of Livestock Not Meeting Holding Period Requirements

Dairy, breeding, sport or draft livestock that are not held for the required period whether sold for a gain or loss will be entered in Part II of 4797. This will include raised cattle that are held for dairy or breeding but sold before they reach two years of age and purchased cattle held for dairy or breeding but held for less than two years.

Summary of Reporting Most Common Farm Business Property Sales

<u>Type of Farm Property</u>	<u>Tax Form and Section</u>
1. Cattle and horses held for dairy, breeding, sport or draft purposes & held for 2 years or more; plus other breeding or sporting livestock held for at least one-year:	
a) Raised, pre-productive costs not subject to capitalization rules (1231 Property)	4797, Part I
b) Purchased (and raised subject to capitalization rules), sale results in gain (1245 Property)	4797, Part III
c) Purchased (and raised subject to capitalization rules), sale results in loss (1231 Property)	4797, Part I
2. Livestock held for dairy, breeding, sport & draft, purposes but not held for the required period.	4797, Part II
3. Livestock held for sale.	Schedule F, Part I
4. Machinery held over one year:	
a) Sale results in gain	4797, Part III
b) Sale results in loss	4797, Part I
5. Buildings, structures & other depreciable real property held over one year:	
a) Sale results in gain	4797, Part III
b) Sale results in loss	4797, Part I

6. Farmland, held over one year sold at a gain:
 - a) Soil & water expenses were deducted or cost sharing payments excluded 4797, Part III
 - b) If 6a does not apply 4797, Part I
7. Machinery, buildings, other depreciable real property
& farmland held for one year or less. 4797, Part II

INSTALLMENT SALES

The installment method of reporting may be used by taxpayers (who are non-dealers) for the sale of real property or personal property (except for the gain caused by depreciation recapture). Note that accrual basis taxpayers are eligible to use the installment method after Congress passed a prohibition against such use in 1999 but then repealed that prohibition in 2000. Installment sales continue to be a practical and useful method used in transferring farms to the next generation. The installment method is required when qualified property is sold and at least one payment is received in the following tax year unless the seller elects to report all the sale proceeds in the year of disposition.

Taxable income from installment sales is computed by multiplying the amount of principal received in any year by the gross profit ratio. The gross profit ratio is gross profit (selling price minus the total of adjusted tax basis and recapture gains ineligible for installment reporting) divided by contract price (selling price less mortgage assumed by buyer plus any mortgage assumed in excess of adjusted tax basis). Form 6252 is used to report installment sales income. Interest must be charged on the outstanding balance at the published Applicable Federal Rate (AFR), or higher; otherwise it will be imputed by the IRS. *IRS Pub. 225* contains a chapter on installment sales.

Depreciation Recapture

Recaptured depreciation does not qualify for installment sale reporting. That portion of the gain attributed to recaptured depreciation of Sec. 1245, 1250 and 1252 property must be excluded from installment sale reporting. Sec. 179 expenses and capitalized expenditures also are subject to Sec. 1245 recapture. The full amount of recaptured depreciation is reported as ordinary income in the year of sale regardless of when the payments are received.

Example: Frank Farmer sells his raised dairy cows, machinery and equipment to son, Hank, for \$180,000. The cows are valued at \$80,000, the machinery at \$100,000. Hank will pay \$30,000 down and \$30,000 plus interest for five years. Frank's machinery and equipment has an adjusted basis of \$45,000; its original basis was \$125,000. The raised cows have zero basis. Frank's gain on the sale of machinery and equipment is \$55,000 (\$100,000 - \$45,000). The full \$55,000 is recaptured depreciation since prior depreciation, \$80,000, is greater. Frank must report \$55,000 received from machinery in the year of sale. He will report the \$80,000 cattle sales gain on the installment method.

When the sale of Sec. 1245 and Sec. 1250 property produces gain in addition to that which is recaptured, the amount of recaptured depreciation reported in the year of sale is added to the property's basis to compute the correct gross profit ratio. This adjustment must be made to avoid double taxation of the recapture amount as payments are received.

Related Party Rules (IRC Sec. 453)

The installment sale/resale rules should be reviewed before farmers or other taxpayers agree to a sales contract. Gain will be triggered for the initial seller when there is a disposition by the initial buyer, and the initial seller and buyer are closely related. (Closely related persons would include spouse, parent, children, and grandchildren, but not brothers and sisters.) The amount of gain accelerated is the

excess of the amount realized on the resale over the payments made on the installment sale. Except for marketable securities, the resale recapture rule will not generally apply if the second sale occurs two or more years after the first sale and it can be shown that the transaction was not done for the avoidance of federal income taxes. The two-year period will be extended if the original purchaser's risk of loss was lessened by holding an option of another person to buy the property.

In no instance will the resale rule apply if the second sale is also an installment sale where payments extend to or beyond the original installment sale payments. Also exempt from the resale rule are dispositions (1) after the death of either the installment seller or buyer, (2) resulting from involuntary conversions of the property (if initial sale occurred before threat or imminence), (3) non-liquidating sales of stock to an issuing corporation.

An additional resale rule prevents the use of the installment method for sales of depreciable property between a taxpayer and his or her partnership or corporation (50% ownership), and a taxpayer and a trust of which he or she (or spouse) is a beneficiary. All payments from such a sale must be reported as received in the first year and all gains are ordinary income (IRC §453(g) and 1239).

AMT Issues

Farmers may use the installment method of accounting for AMTI from the disposition of property used or produced in farming (see Alternative Minimum Tax). Manufacturers of tangible personal property are not able to use the installment method to report income from sales to their dealers in tax years beginning after August 5, 1998.

General Rules Still in Effect

Losses cannot be reported on an installment sale. A partnership may use the installment sale method of reporting gain on the sale of partnership property even though an individual partner may have a loss and recognize it in the year of sale.

The capital gains rules in effect when an installment payment is received and reported determines how the income is treated. However, a change or increase in the capital gain holding period requirement during an installment sale would not move a long-term gain to a short-term gain.

A sale or exchange of an installment sale contract results in a gain or a loss. The gain or loss is the difference between the "amount realized" and the "basis" of the contract. The "amount realized" is the amount received by the seller, including fair market value of property received instead of cash. The "basis" of the contract is the same as the remaining basis of the underlying property.

A cancellation of all or part of an installment obligation is treated like a sale or other disposition of the obligation except gain or loss is calculated as the difference between the fair market value and the "basis" of the obligation if the parties are unrelated (IRC Sections 453B(f)(1) and 453B(a)(2)).

Grain and other farm inventory property, including livestock held for sale, may be included in a cash basis taxpayer's installment sale and it no longer requires an AMT adjustment in the year of sale.

Unstated and Imputed Interest Rules

If the installment sale contract interest rate does not provide at least the Applicable Federal Rate, part of the principal payment must be treated as interest income by the seller and an interest deduction by the buyer. The amount of interest that must be recognized is called imputed interest. The imputed interest rule applies even if the seller elects out of the installment method or has a loss on the sale. When recharacterization of the loan is required, the seller's interest income increases and capital gain decreases.

Imputed interest rules applicable to certain debt instruments including installment sales are covered under IRC Section 1274 and Section 483. There are several special rules and numerous exceptions that complicate the understanding and application of imputed interest rules. Of special interest are the following:

1. All sales and exchanges where seller financing does not exceed \$4,085,900 (indexed) must have an interest rate of the lesser of 100% of the applicable federal rate (AFR) or 9% (compounded semiannually).
2. All sale-leaseback transactions are subject to rates equal to 110% of AFR.
3. The sale or exchange of the first \$500,000 of land between related persons, (brothers, sisters, spouse, ancestors or lineal descendants) in one calendar year, must have the lesser of a stated rate of 6% compounded semiannually or the AFR.
4. The imputed interest rules do not apply to the sale of personal use property, annuities, patents, and any other sale that does not exceed \$3,000.
5. Imputed as well as stated interest may be accounted for on the cash accounting method on sales of farms not exceeding \$1 million and any other installment sale not exceeding \$250,000.
6. The AFR can be the current month's rate or the lower of the two precedi

Recent Applicable Federal Rates (AFR)

Term	Compounding Period	Sept. '01	Oct. '01	Nov. '01*
Short-term (<3 yrs.)	Annual	3.82%	3.58%	
	Monthly	3.75%	3.52%	
Mid-term (3-9 yrs.)	Annual	4.82%	4.59%	
	Monthly	4.71%	4.50%	
Long-term (>9 yrs.)	Annual	5.57%	5.39%	
	Monthly	5.43%	5.26%	

Source: http://www.irs.ustreas.gov/prod/ind_info/index.html

* Not available at press time

LEASING OF LAND AND OTHER FARM ASSETS

Production Flexibility Contract (PFC) Payments on Leased Land

The 1996 Farm Bill provides PFC payments to landowners and tenants based on the crop acreage base for the leased land. In general, these PFC payments are divided between the landowner and the lessee according to their respective share of the crop produced. This may induce landowners to shift from a cash rent arrangement to a share lease, to be able to share in the government payments. If the landowner begins to materially participate, then it will affect the landowner's self-employment taxes and social security benefits, as the income would be reported on Schedule F. If the landowner does not meet any one of the material participation tests (*Farmers Tax Guide*, Pub. 225) then they can report their share of the crop on Form 4835 rather than as cash rent on Sch. E and still not be subject to SE taxes.

Rental Income and Deductions (IRC Sec. 1402(a)(1))

Generally, rental income from real estate and from personal property leased with the real estate (including crop share rents) is reported on Sch. E and not included in net earnings from self-employment. Crop and livestock share rents are reported on Form 4835 and flow through to Sch. E. However, there are two exceptions, the second of which is very important to farm operators:

1. Rentals received in the course of the trade or business of a real estate dealer are included in net earnings from self-employment.
2. Production of agricultural or horticultural commodities. Income derived by the owner or tenant of land is included in net earnings from self-employment if:
 - a. There is an arrangement between the taxpayer and another person under which the other person produces agricultural or horticultural commodities on the land and the taxpayer is required to participate materially in the production or the management of the production of such commodities, and/or
 - b. There is material participation by the taxpayer with respect to the agricultural or horticultural commodity.

The IRS (with support from the Tax Court) has taken the position that rent received by a taxpayer for land rented to a partnership or corporation in which the taxpayer materially participates is subject to self-employment tax. (That is, the material participation of the entity arrangement is “wrapped into” the lease arrangement.) Working for wages as an employee of the farm operation has also been considered as part of the overall “arrangement”, making the rental payments paid to the employee/landowner subject to self-employment tax. However, in December 2000, the 8th Circuit Court of Appeals indicated that “fair rental amounts” would not be subject to self-employment tax since there would then be no indication that what would otherwise be compensation was being shifted to rental income. For taxpayers outside the 8th Circuit, the IRS is not bound by this decision. However, the 8th Circuit decision could be cited as substantial authority and thereby avoiding imposition of the 20% penalty for the intentional disregard of IRS rules.

The language of this IRC §1402 appears to exclude rents paid on farm buildings and improvements, from self-employment tax even if there is an overall arrangement found to be providing for material participation.

Income and expenses from the rental of personal property (not leased with real estate) is reported on Schedule C or C-EZ. Net profit from Schedule C is included in self-employment income. Material participation is not a factor in classifying income from the rental of personal property that is not leased with real estate.

Paying Rent to a Spouse It is common for husbands and wives to own farm real estate as joint tenants, for one to operate the farm as the sole proprietor and to pay self-employment tax on the entire farm "net profit." Paying rent to a spouse for use of the property he or she owns might reduce self-employment tax.

Although Rev. Rul. 74-209, 1974-1 allows an operator to deduct rent paid to a spouse as a joint owner of business property equal to one-half its fair rental value, more recent IRS rulings and opinion have qualified that ruling. IRS indicated the deduction for spousal rent is allowable only if there is a *bona fide* landlord-tenant relationship and that substance rather than form governs. Note also the issue discussed above, which could cause the rental income to be subject of self-employment tax if the spouse

is an employee of the farm and the arrangement can be construed collectively as providing for material participation.

Strategy If a sole proprietor deducts rental payments made to a spouse for use of his or her jointly owned property, or a farm entity pays land rent to one of its owners, the following precautions are suggested:

- (1) make sure there is a formal, written, signed, rental agreement and a fair market value rental rate for buildings separate from farm land, with at least annual payments;
- (2) deduct the taxes, interest, and insurance on the rented property on the owner's Schedule E;
- (3) if a spouse, the spouse should deposit the rental income in a separate account and pay his or her tax and interest payments from the account;
- (4) the farm operator must file Form 1099 for all rent payments made in excess of \$600;
- (5) the landowner must avoid material participation.

Note: An IRS determination that land rent is self-employment income due to material participation from an overall arrangement would not only cause additional self-employment tax to be paid but could also affect eligibility for Social Security benefits of those landowners collecting benefits prior to age 65.

The farm operator's spouse cannot avoid material participation for purposes of the passive activity rules. The participation by a spouse (operator) is treated as participation by the taxpayer. Consequently, any income derived from the property in which he or she materially participates is not treated as passive activity income.

Valid Tax Lease or Conditional Sales Contract

To determine if an agreement is a lease or a sales contract, one needs to look at the intent, based upon the facts and circumstances in the agreement. Generally, an agreement will be a conditional sales contract rather than a lease for tax purposes if any of the following are true:

- a) The agreement applies part of each payment toward an equity interest.
- b) The lessee gets title to the property upon payment of a stated amount under the contract.
- c) The amount the lessee pays for a short period of time is nearly the amount that would have to be paid to buy the property.
- d) The lessee pays much more than the current fair rental value of the property.
- e) The lessee can purchase the property at a nominal price compared to the value of the property at the time of purchase.
- f) The lessee has the option to buy the property at a nominal price compared to the total amount the lessee has to pay under the lease.
- g) The lease designates part of the payments as interest or part of the payments is easy to recognize as interest.

The most common lease arrangement today is the leverage lease of newly purchased equipment where a large portion of the purchase price is financed with a loan that is fully amortized by lease payments from the lessee. These leases are used for automobiles, trucks, computers, equipment, etc. IRS will accept these transactions as a valid lease if all the following conditions are met.

- 1) When the lessee places the property in use, the investment of the lessor must be at least 20% of the cost of the property.
- 2) The lease term includes all renewal or extension periods at fair rental value at the time of the renewal or extension.
- 3) No lessee may purchase the property at a price less than its fair market value when exercised.
- 4) Lessee may furnish none of the cost of the property.
- 5) The lessee may not lend to the lessor any of the money or guarantee indebtedness to acquire the property.
- 6) The lessor must expect to receive a profit from the transaction.

For cash method taxpayers, the allowable deduction for prepaid lease payments, as a general rule, is limited to the taxable year for the months expired. In the case of *Zaninovich vs. Comm.* the Court of Appeals ruled that if an expenditure results in the creation of an asset having a useful life that extends substantially beyond the close of the tax year, then that expenditure may not be deductible or may be deductible only in part, for the taxable year made. The Court of Appeals adopted the “one-year rule” which treats an expenditure as a capital expenditure (buildings, machinery and equipment) if it creates an asset or secures a like advantage to the taxpayer and has a useful life in excess of one-year. On the other hand, an expenditure can be deducted in full if the benefit of the payment does not exceed one-year e.g. cash rent.

ALTERNATIVE MINIMUM TAX (AMT)

The AMT is a separate but parallel tax system. Its purpose is to impose a minimum tax on high-income taxpayers with so many deductions, exemptions, and credits that their regular income tax is very low or zero. However more taxpayers may be subject to AMT as personal deductions and non-refundable credits increase. AMT may be created by adding back certain deductions and exemptions used to compute the regular tax, and by disallowing most tax credits.

Cash basis farmers may use the installment method for reporting sales of inventory or property held primarily for sale to customers in the ordinary course of business in computing alternative minimum tax income (AMT). This provision is retroactively effective for tax year’s beginning after 1987. Therefore, qualified farmers are eligible to use the installment sale method for deferred payment contracts in computing AMT and regular income tax. Deferred payment contracts must avoid constructive receipts to defer income to the following year.

Corporations with three-year average annual gross receipts of less than \$7.5 million are currently exempt from AMT.

AMT depreciation for pollution control facilities placed in service after December 31, 1998 may be computed using MACRS class lives and the SL method (for regular tax purposes these facilities qualify for 5-year amortization). Prior to TRA '97, longer ADS lives were required.

AMT Rate and Exemption Phaseout

The AMT has a two-tiered 26 and 28% rate system for non-corporate taxpayers. The 26% rate applies to the first \$175,000 of AMTI (\$87,500 for married filing separately) in excess of the exemption. The 28% rate begins at \$175,000 of AMTI. Effective for tax years ending after May 6, 1997 the lower

capital gain rates used when computing regular taxes are also used to compute AMT on net capital gains. The exemptions are not indexed. However, 2001 tax legislation increased the exemption amount by \$4,000 for married taxpayers filing jointly and surviving spouses, and increased it by \$2,000 of other individuals (but not trusts). The exemption is phased out at a rate of 25% of AMT income exceeding specific levels, as shown in the table below. If the taxpayer's AMTI exceeds the exemption, he or she will have a calculated AMT but will pay AMT only if it exceeds the regular tax.

Alternative Minimum Tax Exemption and Phaseout

<u>Filing Status</u>	<u>Maximum Exemption</u>	<u>AMTI Exemption Phaseout Threshold</u>
Joint & qualifying widow(er)	\$49,000	\$150,000
Single & heads of household	35,750	112,500
Married filing separately	24,500	75,000

The AMT exemption for children under age 14 has been increased to the child's earned income plus \$5,350 for 2001. This amount is indexed for inflation. The annual exemption can not exceed \$35,750.

Alternative Minimum Taxable Income (AMTI)

AMTI is calculated on Form 6251 by starting with Form 1040 taxable income before subtracting personal exemptions. Any NOL carryforward used in calculating the regular tax is added and itemized deductions disallowed on Schedule A for higher income taxpayers are now allowed.

Adjustments and Preferences. The first category below contains adjustments treated as "exclusions". AMT due to exclusion items is not eligible for a credit against the following year's regular tax. The remaining adjustments are deferral items and are used in computing AMT credit in future years.

- 1) Exclusion items: Standard deduction or certain itemized deductions from Schedule A, including most medical deductions, miscellaneous deductions subject to the 2% rule, state and local taxes, and interest adjustments. Interest adjustments include the difference between qualified housing interest and qualified residence interest, interest income on private activity bonds that are exempt from regular tax, and a net investment interest adjustment that could be either positive or negative. Preferences treated as exclusion items include certain carryovers of charitable contributions, tax-exempt interest from specified private activity bonds and excess tax depletion allowances.
- 2) The depreciation adjustment is the net difference between accelerated MACRS depreciation and that allowed for AMT. The Sec.179 deduction is allowed in calculating AMTI. This continues to be a major adjustment item on farm tax returns. See discussion of this topic in the Depreciation and Cost Recovery Section.
- 3) Adjusted gain or loss from dispositions reported in Forms 4797, Sch. D and 4684 that have a different basis for AMT than for regular tax (due to the accumulated depreciation adjustment).
- 4) Incentive stock option adjustments, passive activity adjustments, AMTI from estates and trusts, tax-exempt interest from private activity bonds.
- 5) Accelerated depreciation on real and leased property and amortization of certified pollution control facilities placed in service before 1987.
- 6) Other adjustments may be required for intangible drilling costs, long-term contracts, certain loss limitations, mining costs, patron's distributions, pollution control facilities, research and experimental costs and tax shelter farm activities.

Related Adjustments. Any item of income or deduction for a regular tax purpose that is based on income (e.g., earned income, AGI, modified AGI or taxable income from a business) must be recalculated based on alternative tax AGI.

Alternative Tax Net Operating Loss Deduction (ATNOLD)

The deduction of ATNOLD is the last step in calculating alternative minimum taxable income. The alternate tax net operating loss is limited to 90% of AMTI and is calculated and deducted after all adjustments and preferences have been added in. The ATNOLD is calculated the same as the regular NOL except:

1. The regular tax NOL is adjusted to reflect the adjustments required by the AMT rules.
2. The ATNOLD is reduced by the preference items that increased the regular tax NOL.

Form 1045 (Application for Tentative Refund) can be used to calculate the ATNOLD providing the above adjustments are made.

Tentative Minimum Tax

The minimum tax exemption reduced by the 25% phaseout is subtracted from AMTI before the 26% and 28% rates are applied. Taxpayers with net capital gains from Sch. D apply the appropriate capital gains rates by completing Part IV of Form 6251. Then the AMT foreign tax credit is subtracted to arrive at tentative minimum tax. A taxpayer who has regular foreign tax credit will compute AMT foreign tax credit in much the same manner, using a separate Form 1116 (Foreign Tax Credit).

Alternative Minimum Tax and Credits

Tentative minimum tax less the regular income tax equals AMT. Regular income tax excludes several miscellaneous taxes, such as the tax on lump-sum distributions. Regular income tax is reduced by the foreign tax credit (but not business tax credits) before it is entered on Form 6251. The general business credit limitation is calculated on Form 3800, not on Form 6251.

Foreign tax credit is allowed in the calculation of AMT. The Ticket to Work and Work Incentives Act of 1999 provided some relief to taxpayers for tax years beginning in 2000 and 2001, by permitting the personal nonrefundable credits (such as the education credits) to offset both the regular tax and the minimum tax. The 2001 Tax Relief Act has made permanent the ability to offset AMT by both the Child Tax Credit and the Earned Income Credit in 2002.

The other credits, including investment credit, can be carried forward to the extent they do not provide a current year tax benefit because of the AMT.

Who Must File Test

More taxpayers are required to file Form 6251 than have an AMT liability. Form 6251 must be filed if the tax on AMTI reduced by the exemption amount exceeds the taxpayer's regular tax. If the total of preference items is negative, Form 6251 should be filed to show the IRS that the taxpayer is not liable for AMT. Also, if any credits are limited by tentative AMT, Form 6251 must be filed.

The AMT Credit

The AMT credit allows a taxpayer to reduce regular income tax to the extent that deferral adjustments and preferences created AMT liability in previous years. The AMT credit also includes any credit for producing fuel from a non-conventional source that was disallowed in an earlier year due to AMT. The credit means that the taxpayer, in the long run, will not pay AMT on the deferral items.

Part I of Form 8801 (Credit for Prior Year Minimum Tax) is used to compute the AMT that would have been paid in the previous year on the exclusion items if there had been no deferral items. This requires the computation of a minimum tax credit net operating loss deduction, which is calculated like the ATNOLD except that only the exclusion adjustments and preferences are included. It also requires computation of the minimum tax foreign tax credit on the exclusion items.

Part II of Form 8801 is used to compute the allowable minimum tax credit and the AMT credit carryforward. The computation includes unallowed credit for producing fuel from a non-conventional source, orphan drug, and electric vehicle credit.

INFORMATIONAL RETURNS

Informational Forms (often issued or received by farmers)

1099-MISC - Must be filed by any person engaged in a trade or business, on each non-employee paid \$600 or more for services performed during the year. Rental payments, prizes, awards, and fish purchases for cash must also be reported when one individual receives \$600 or more and royalties at \$10 or more. Payments made for non-business services and to corporations are excluded. When payments of \$600 or more are made to the same individual for independent services and merchandise, payments for the merchandise can be excluded only if the contract and bill show that a determinable amount was for the merchandise.

1099-INT- Statement for Recipients of Interest Income is filed by bankers and financial institutions when interest paid or credited to individual taxpayers is \$10 or more, and by any taxpayer if in the course of a trade or business \$600 or more of interest is paid to a non-corporate recipient.

8300 - Recipient reports cash transactions of over \$10,000 received in the course of a trade or business, within one year in one lump sum or in separate payments, from the same buyer or agent, in a single or related transaction. Cash includes all currency and specific monetary instruments with a value of less than \$10,000 (cashier's checks, bank drafts, traveler's checks, and money orders). The report must be filed within 15 days after receiving \$10,000.

Filing Dates and Penalties

The 1099's must be furnished to the person named on the return on or before January 31 and to the IRS with Form 1096 (Annual Summary and Transmittal) on or before February 28. There is a failure to file timely returns, single penalty of \$15 per information return, if filed by March 30th (30 days late) with a \$25,000 cap for small businesses. This penalty increases to \$30 per return if filed between March 30th and August 1st with a \$50,000 cap for small businesses. Returns filed after August 1st or never filed have a \$50 penalty per return and a \$100,000 cap for small businesses. The penalties are waived if the taxpayer can demonstrate that the Form 1099 error or late filing was due to reasonable cause, and not to willful neglect.

There is a mandatory requirement to use magnetic media or electronic filing if the client has 250 or more informational returns. Taxpayers who ignore this requirement face a \$50 penalty per informational return. Waivers for this requirement must be requested on Form 8508, 45 days in advance of the due date of the return.

SOCIAL SECURITY TAX AND MANAGEMENT SITUATION, AND OTHER PAYROLL TAXES

Annual increases in the earnings subject to social security (FICA) and self-employment taxes continue to place a high priority on exploring opportunities to reduce the burden of these taxes through wise tax management.

The Current Social Security Tax

The social security earnings base increased to \$80,400 for 2001. There is no cap on the amount of earnings subject to Medicare tax. FICA and self-employment tax percentage rates remain the same as in 2000. The total rate is divided into two components representing the social security and Medicare tax. The maximum 2001 social security tax is \$4,984.80 (employer's share), up \$260.40 from 2000.

Social Security Tax Table

Year	Earnings Base		FICA Rate % ¹		Self-Employment Rate %	
	Soc. Sec.	Medicare	Soc. Sec.	Medicare	Soc. Sec.	Medicare
2000	\$76,200	Unlimited	6.20	1.45	12.40	2.90
2001	\$80,400	Unlimited	6.20	1.45	12.40	2.90
2002	\$84,900 ²	Unlimited	6.20	1.45	12.40	2.90

¹ Paid by both employer and employee.

² Projected

Employers use separate social security and Medicare tax withholding tables. Forms 941 and 943 require social security and Medicare taxes to be reported separately. The self-employment tax on long Schedule SE is also computed separately.

Two Deductions for Self-Employed

1. Self-employed taxpayers deduct from taxable income, on line 27 Form 1040, one-half of self-employment taxes that can be attributed to a trade or business. The rationale for this tax deduction is that employees do not pay income taxes on the one-half of FICA taxes paid by their employer.
2. Self-employed taxpayers deduct 7.65% from self-employment income when computing net earnings from self-employment. This is achieved by multiplying total profit from Schedules C and/or F by 0.9235 on Schedule SE. This adjustment is made before applying the social security and Medicare tax earnings base. Taxpayers reporting less than \$80,400 of self-employment income will receive the greatest benefit from the deduction. This adjustment is allowed because employees do not pay social security tax on the value of their employer's share of FICA tax.

Farmer's Optional Method

The optional method allows taxpayers to pay SE tax on two-thirds of gross farm income if gross is below \$2,400. Taxpayers with gross farm income in excess of \$2,400 may use this optional method and report \$1,600 of self-employment income when net farm income is less than \$1,733. Self-employed non-farmers have a similar option. Self-employed workers should give serious consideration to using the optional method if they are not currently insured under the social security system. To be eligible for social security disability benefits, a worker who is 31 or older to be; fully insured must have 40 quarters

of coverage or; be currently insured with 20 quarters in the 10 years immediately before disability or death. The earnings required to receive one quarter of credit increased to \$830 in 2001 and \$870 for the year 2002. Thus, the optional method will yield only **one** quarter of coverage. This is an important negative change in the coverage for farmers trying to be currently insured under the social security system. Earning \$3,320 any time during 2001 will provide four quarters of coverage.

Example: Ima Cow has \$2,800 of 2001 gross farm income netting only \$1,300 of net farm income. He would pay SE tax of $\$1,300 \times .9235 \times .153 = \$ 184.00$. The optional method would result in $\$1,600 \times .153 = \245 of self-employment and still earning only 1 quarter of coverage. Ima may have an additional benefit using this method and paying the SE tax that being to increase income for earned income credit.

Wages Paid to Spouse, Children and Farm Workers

Farm employers must pay FICA taxes and withhold income taxes on their employees if they pay wages of more than \$2,500 to all agricultural labor during the year. Any employee receiving \$150 or more of wages is subject to FICA and tax withholding even if the employer's total annual payroll is less than \$2,500. All employees are covered if the annual payroll exceeds \$2,500. Seasonal farm piece work labor is exempt from the \$2,500 rule providing the employee is a hand harvester, commutes to the job daily from a permanent residence, and was employed in agriculture for less than 13 weeks in the prior year. Seasonal farm piecework labor is subject to the \$150 rule. The \$150 test is applied separately by each employee.

Wages earned by a person employed in a trade or business by his or her spouse and wages paid to individuals 18 years old and over working for their parent(s) in a trade or business are subject to FICA taxes and income tax withholding. Children under age 18 working for a parent's partnership, corporation, or estate also are covered by social security. Sole proprietors and husband-wife partnerships that hire their children less than 18 years old needn't pay social security tax on them nor FUTA if under 21. Wages paid by a parent to a child for domestic service in the home are not covered until the child reaches 21.

Taxation of Social Security Benefits

Social security recipients are potentially subject to two sets of rules on taxation of social security benefits. Disability benefits are treated the same way as other social security benefits. The rules that tax 50% of social security benefits have been in effect for several years. The rules that tax up to 85% of social security benefits for higher-income taxpayers became effective in 1994. Under an U.S. and Canadian agreement signed in 1997 and retroactive to January 1, 1996, U.S. or Canadian SS benefits are taxed exclusively in the country where the recipient resides. This will result in a higher tax for some recipients and refunds for others.

The 85 Percent rules apply to single taxpayers, HH, and married filing separately with provisional incomes above \$34,000 and married taxpayers filing jointly with provisional incomes above \$44,000. Provisional income is modified AGI plus 50% of social security benefits. Modified AGI is AGI plus tax-exempt interest and certain foreign source income.

For taxpayers with provisional incomes above these thresholds, gross income includes the lesser of:

1. 85% of the taxpayer's social security benefit, or
2. the sum of 85% of the excess of the taxpayer's provisional income above the applicable threshold amount plus the smaller of:
 - a. the amount of social security benefit included under previous law or

b. \$4,500 (\$6,000 for married taxpayers filing jointly).

For married taxpayers filing separately, gross income will include the lesser of 85% of social security benefits or 85% of provisional income. (In other words, the threshold is \$0.)

The 50 percent rules apply to single taxpayers with provisional incomes between \$25,000 and \$34,000 and married persons filing jointly with provisional incomes between \$32,000 and \$44,000. For taxpayers in these ranges, the inclusion is still limited to the lesser of (1) one-half of the benefits received, or (2) one-half of the excess of the sum of the taxpayer's adjusted gross income, interest on tax-exempt obligations, and half of the social security benefits over the base amount. (\$32,000 for persons filing jointly, \$0 for married persons filing separately but living together, and \$25,000 for all others.) Medicare payments are excluded from gross income.

Reduction of Benefits

When a person's wage and self-employment earnings exceed the earnings limit, social security benefits of the working beneficiary and dependents are reduced by a percentage of the excess earnings. In 2001 the annual earnings limit for those less than age 65 is \$10,680, and for those age 65 to 70 earnings are now unlimited due to 2000 legislation. For those aged 70 and older there are also no reductions. The reduction of benefits is one-half of excess earnings when less than age 65. The 2001 cost of living increase in benefits was 3.5%.

Retirement Planning Considerations

Although the earnings cap for those workers over 65 that are getting social security benefits was eliminated as of January 2000, those under 65 still have to stay under \$10,680 in earnings in 2001 to not have a reduction benefits due to earnings. Usually work done prior to drawing benefits, but paid later does not affect benefits. Commissions, sick pay, vacation pay, bonuses and carry over crops might fall in to the category to not be counted in earned income for social security, but are taxable for federal tax purposes. Carry over grain sales made by retiring farmers are excluded from reducing social security benefits if both 1) the grain was produced and in storage before or during the first month of benefits, 2) the grain is sold in the first year after beginning to draw benefits. Remember that this carry over grain sale must be reported on Schedule F and Schedule SE.

"Nanny Tax" Social Security Domestic Employment Act

This act allows the payment of employment taxes for domestic workers (baby-sitters, yard workers, house cleaners) to be reported on the employer's income tax return. The wage threshold for reporting and paying social security taxes was raised to \$1,300 annually. During 2001, you can give your employee as much as \$65 a month for expenses to commute to your home by public transportation or \$180 a month qualified parking expense allocation without the repayment counting as cash wages.

Household employers use Schedule H (Form 1040) to report and pay social security, Medicare, FUTA (threshold still \$1,000), and withheld income taxes. The quarterly return Form 942 is no longer used. Farmers may treat wages paid to domestic workers under the new \$1,300 annually threshold rules rather than the \$150 and \$2,500 agricultural wage thresholds, by filing Schedule H.

Household employers must include an employer identification number (EIN) on forms they file for their employees, like Forms W-2 and Sch. H. An EIN can be obtained by completing and filing Form SS-4, Application for Employer Identification Number. Order Form SS-4 by calling 800-TAX-FORM or online at www.irs.gov.

The 1995 law exempted household workers under the age of 18 from any social security and Medicare taxes unless household employment is the worker's principal occupation.

Preparers Election for Alternative Identification Numbers

As an alternative to preparers including their own social security number on prepared returns, they may use a preparer ID number (PTIN) (obtained by filing Form W-7P). The number, when issued, will begin with a "P" followed by 8 digits with no dashes. New York State also allows use of the PTIN.

Rules for Depositing FICA and Federal Income Taxes

Effective January 1, 2001 many small businesses can pay employment taxes less frequently due to an increase to \$2,500 in the amount that can be paid when the employment tax return is filed. Employers of agricultural labor with less than the this amount of payroll tax liability for the year need not make deposits but may instead make payment when Form 943, Employer's Annual Tax Return for Agricultural Employees is filed. Employers of non-agricultural labor that have less than \$2,500 in quarterly employment taxes can pay the tax with Form 941, Employer's Quarterly Federal Tax Return.. For further information see, Publication 15, Circular E, Employer's Tax Guide or Publication 51, Circular A, Agricultural Employer's tax Guide. Both Circulars are on the web at www.irs.gov.

Reminder, employers must use the electronic Federal Tax Payment System (EFTPS) to make electronic deposits of all depository tax liabilities incurred in 2002 and thereafter if they deposited more than \$200,000 in federal depository taxes in 2000 or had to use EFTPS in 2001. If required to comply a taxpayer should use Form 9779 to enroll in EFTPS and at least a 14-week lead-time is required. Further information can be found in Pub. 15 Circular E.

Federal Unemployment Tax (FUTA)

As farm businesses grow in size and employ more workers, more farm employers become subject to FUTA. and New York unemployment insurance (UI). A farm employer must pay UI if (1) cash wages of \$20,000 or more were paid to farm employees in any calendar quarter during the current or preceding calendar year, or (2) employ ten or more farm workers on at least some part of one day during any of 20 or more different weeks during that year or the preceding calendar year, or (3) as of the first day of the calendar quarter in which they pay any remuneration to agricultural labor if they are also liable under FUTA for the same. IRS Pub. 51 Circular A and NYS-50, contain useful information on how FUTA applies to an individual farm employer.

The Federal Unemployment Tax Act exemption for alien agricultural workers has been made permanent for alien agricultural workers admitted to the U.S. to do agricultural work.

The employer must pay unemployment taxes; they may not be deducted or withheld from employee wages. The FUTA rate is 6.2% on the first \$7,000 of cash wages paid to each employee. The NYSUI rates range from 0 to 8.9% on the first \$8,500 of each employee's total earnings. The standard and maximum basic rate is 5.4%. The "new employer" rate is 4.4%. Employers may receive a credit of up to 5.4% for NYSUI taxes paid on their FUTA liability even when their NYS experience rate is less than 5.4%. A farmer subject to the NYSUI may pay a FUTA rate as low as 0.8%.

The FUTA tax deposit rule is different from those for other payroll taxes. When the amount subject to deposit reaches \$100, it must be deposited within one month following the close of the current calendar quarter. Form 940 (or 940-EZ) is the annual FUTA return to be filed by January 31. Exception: FUTA taxes for household employees are deposited with FICA and income taxes (\$1,300 threshold) on Schedule H (Form 1040).

NEW YORK STATE INCOME TAX

The 2001 New York State “Basic” Budget Bill was passed in August, 2001. The following income tax changes came from the prior year’s bill and are effective for the tax year 2001.

- The marriage penalty is reduced by gradually raising the standard personal income tax deduction for married couples filing jointly or a surviving spouse from \$13,000 to \$14,600. Beginning in 2001, the standard deduction is \$13,400 and gradually increasing to \$14,600 for taxable years beginning after 2002.
- A New York personal income tax college tuition deduction or credit will be phased in for college tuition expenses up to \$10,000 annually. Starting in 2001, 25% of such expenses may be deducted. The full deduction will be available in tax year 2004 and thereafter. For taxpayers who do not itemize there will be a refundable personal income tax credit phased in.
- Effective for the tax year 2002, a new long-term care insurance credit is available for ten percent of the cost of long term care. The current subtraction modification will no longer be available.
- Effective for tax years 2001 and 2002, a taxpayer will be allowed a credit for the removal, permanent closure or installation of a new, below-ground or above-ground residential fuel oil tank. The credit cannot exceed \$250 on oil tanks used to provide heating fuel for single to four-family residences in New York State.

Farm Property School Tax Credit

This tax relief program has been in effect since 1997 and has been enhanced periodically since then. For the 2001 tax year, NY taxpayers whose federal gross income from farming equals at least two-thirds of excess federal gross income, will be allowed a credit against personal income tax or corporation franchise tax equal to school property taxes paid on certain agricultural property (personal residence excluded). The allocation between personal residence plus other nonqualified property and agricultural property should be made based upon taxable value. Your local assessor may be willing to provide this information for you. Gross income from farming includes gross farm income from Sch. F, gross farm rents Form 4835 and gains from livestock Form 4797. It also includes gross income from farming from a partnership, S corporation, estate or trust. The NY tax credit limitation is based on school taxes paid on qualified agricultural property plus 50% above the base acreage. The 2001 base acreage is 250 acres. If a taxpayer’s farmland acreage exceeds the base acreage, the school taxes paid credit is scaled back in proportion to the sum of the base acreage and 50% of the acreage in excess of the base.

The credit is claimed against NY State personal income tax, corporate franchise tax, S corp or LLC income tax liabilities. Refunds can be claimed or carried over. Qualified agricultural property is land located in New York State, which is used for agricultural production. The credit is not allowed for the lessee, as the operator must be the owner of the leased land. Lessors of farmland may or may not qualify dependent upon their qualifications as farm taxpayers. If agricultural property is converted to non-qualified use, no credit is allowed that year and recapture is triggered for the previous two taxable years.

Subsequent budget bills made some changes in definitions that made more farmers eligible. Effective after the 1997 tax year, NY taxpayers whose federal gross income from farming equals at least two-thirds of excess federal gross income will be allowed the school property tax credit. Excess federal gross income is federal gross income from all sources for the taxable year in excess of a special \$30,000 subtraction. The special \$30,000 subtraction can be earned income (wages, salaries, tips and items of

gross income included in computation of net earnings from self employment), pension payments (SS), interest and dividends. For 1998 and thereafter, the federal gross income of a corporation may, likewise, be reduced by up to \$30,000 for the special subtraction. A special ruling, for this section of law, includes gross income from the production of maple syrup and cider, and from the sale of wine from a licensed farm winery, in the term federal gross income from farming.

If the modified New York adjusted gross income of the taxpayer exceeds \$100,000 the credit is phased out and completely lost at \$150,000. Modified NY adjusted gross income is the NY gross income for the taxable year reduced by the principal paid on farm indebtedness during the tax year. Farm indebtedness is the debt incurred or refinanced that is secured by farm property, where the proceeds of the debt are used for expenditures incurred in the business of farming.

Effective for taxable years on or after January 1, 1999, the Farmer's School tax credit was expanded to farmers who pay school taxes under a "land sales contract". This means an eligible farmer, under a land sales contract will be treated as the owner of the property if:

- The buyer is obligated under the contract to pay the school property taxes on the land, and
- The buyer is entitled to deduct these taxes as a tax expense for federal income tax purposes.

If the buyer is treated like the owner under these provisions, the seller may not claim the credit for the property. An arrangement for a "lease with an option to purchase" is not a land sales contract.

For tax years beginning on or after January 1, 2001, the definition of qualified agricultural property has been expanded to include set aside or retired acres under a federal supply management or soil conservation program. (Note: this amendment confirms existing Tax Department policy.) In addition, for the same tax years stated above the "base acreage" for computing the credit may be increased by acreage enrolled or participating in an acreage reserve program pursuant to title three of the Federal Agricultural Improvement and Reform act of 1996.

The Federal Tax Benefit Rule is "if you recover an amount that you deducted or took a credit for in an earlier year, include the recovery in your income only to the extent the deduction or credit reduced your tax in the earlier year" (Pub 525 Taxable and Nontaxable Income). Many questions are asked about what to do with the Farmers School Tax Credit when IT-201, line 21 additions, explanation A22, tells taxpayers to include the amount of the credit claimed for the prior year and use it as an addition to income. Most taxpayers had already included it as other income on Schedule F and now were faced with the same amount being taxed twice on the state form. Research on the federal taxability of Farmers School Tax Credit indicated it was covered under the benefit rule. Letter Ruling 8435055 states under sect 111 of the code, gross income for Federal income tax purposes includes recoveries of previously deducted prior taxes to the extent that prior deductions resulted in an income benefit for the year of the deduction. The term "prior taxes" includes previously deducted state or local property and/or income taxes. Further rulings include Letter Ruling 8813029, Revenue Ruling 78-194, Letter Ruling 9853018, and memorandum dated 9/28/84.

New York State Department of Taxation and Finance instructions now indicate "do not make this modification if you were required to report the amount of the credit (farmers school tax) as income on your 2001 Federal Return".

New York State School Tax Relief (STAR)

This program provides a partial exemption from school property taxes for owner-occupied primary residences. Senior citizen property owners must be 65 years of age or older, as of December 31, 2002 (advancing one-year annually) provide their latest available federal or state income tax return not to exceed \$60,000 adjusted gross income reduced by any distributions from an IRA or individual

retirement annuity. The “enhanced” STAR senior citizen exemption is a \$50,000 exemption from the full value of their property. The eligible senior citizen must apply with the local assessor for the “enhanced” STAR exemption by March 1, 2002 in most towns. This is the “taxable status date” but deadlines vary so most taxpayers should apply earlier.

The “basic” STAR program is available to all primary residence homeowners regardless of age. The full value assessment exemption is \$30,000 in the school year 2001-02. To be eligible an owner must own and live in a one, two or three-family residence, mobile home, condominium, cooperative apartment or farmhouse. Under recent legislation the exemption, for persons with disabilities and limited incomes, is subtracted from assessed value before subtracting the STAR exemption.

NY Tuition Savings Program

A taxpayer may contribute up to \$5,000 per year exempt from New York personal income tax to a family tuition account to be used for higher education expenses at qualified institutions. Married individuals can each contribute up to \$5,000 each year. These contributions are subtracted from a taxpayers federal adjusted gross income in calculating the New York adjusted gross income. The interest earned receives tax-exempt treatment for NYS purposes and should receive deferred tax treatment for federal income tax purposes, thus taxed when used. The account must have been open for at least three calendar years before a qualified withdrawal can be made. Non-qualified withdrawals are subject to a NYS income tax and a 10% penalty. Investment income is subject to federal income tax on the investment income. Contributions to all accounts for any beneficiary on subject to a lifetime maximum of \$100,000.

Standard Deductions and Exemptions

<u>Standard Deduction</u>	<u>2001</u>
Tax Status: Joint/(surviving spouse)	\$13,400
Head of household	\$10,500
Single	\$7,500
Married filing separately	\$6,500
Dependent filers	\$3,000
Exemption	\$1,000

A New York State exemption is not counted for either the filer or the spouse.

Itemized Deductions

Taxpayers, who file joint federal returns and separate N.Y. returns, must divide itemized deductions between them as if their federal taxable incomes had been determined separately. Taxpayers who do not itemize deductions on their federal returns may not itemize on their NYS returns. Itemized deductions of higher-income taxpayers are subject to limitations and are reduced by the sum of two percentages. The first percentage becomes effective at NYAGI levels dependent on the taxpayer’s filing status, and the second becomes effective at NYAGI levels above \$475,000.

Supplemental Tax for Taxpayers with NYAGI Exceeding \$100,000

Taxpayers with New York adjusted gross incomes exceeding \$100,000 pay a special tax computed on a worksheet. The purpose of this tax is to remove the benefits of the lower tax brackets (the "tax table benefit"). Between NYAGI of \$100,000 to \$150,000, the benefits of the rates below the top rate are completely phased out.

Rates

There are three separate rate tables for (1) married filing jointly and qualifying widow(er), (2) single, married filing separately, and estates and trusts and (3) head of household. Filing status conforms to federal status except that when the New York resident status of spouses differs, separate returns must be filed.

New York State Income Tax Table:

Married Filing Jointly and Qualifying Widow(er)*

<u>Over</u>	<u>Not Over</u>	<u>Tax</u>				
\$ 0	\$16,000	4.00% of the excess over				\$ 0
16,000	22,000	\$ 640 plus 4.50%	"	"	"	16,000
22,000	26,000	910 plus 5.25%	"	"	"	22,000
26,000	40,000	1,120 plus 5.90%	"	"	"	26,000
40,000		1,946 plus 6.85%	"	"	"	40,000

Head of Household

<u>Over</u>	<u>Not Over</u>	<u>Tax</u>				
\$ 0	\$ 11,000	4.00% of the excess over				\$ 0
11,000	15,000	\$ 440 plus 4.50%	"	"	"	11,000
15,000	17,000	620 plus 5.25%	"	"	"	15,000
17,000	30,000	725 plus 5.90%	"	"	"	17,000
30,000		1,492 plus 6.85%	"	"	"	30,000

* Single, Married Filing Separately and Estates and Trusts rates are the same but brackets are exactly half of the above numbers.

Earned Income Tax Credit (NY EIC)

An earned income credit is allowed against New York personal income tax. The NY EIC is 25% of the federal EIC for taxable years beginning in 2001. However, the credit percentage may return to the 20% rate if the federal government takes certain actions related to funds used to support the increase in EIC. The EIC must be reduced by the taxpayer's household credit. Therefore, a taxpayer will not receive the benefits of both the NY EIC and the household credit.

Credit for Child and Dependent Care (CDC)

For tax years beginning in 2001, taxpayers with NYAGI of \$25,000 or less will be allowed a NY CDC credit of 110% of the federal child and dependent care credit. This refundable credit is gradually phased down from 110% to 20% of the federal CDC credit for taxpayers with NYAGIs between \$25,000 and \$65,000. At \$65,000 and over NYAGI the rate remains at 20% of the federal credit. However, these increased percentage will return to 1999 applicable percentage if the federal government takes certain actions related to funds used to support the increase in the child care credit.

Gross Receipts Tax Credit

For tax years ending after January 1, 2000 owners, beneficiaries (estates and trusts) that are owners, partners, or NY S-Corp shareholders of an industrial or manufacturing business (IMB) are allowed a credit against the tax imposed under Article 22 of the Tax Law. The credit is equal of the sum of the taxes imposed under §§ 186-a, 186-c, 189, and 189-a of Article 9 of the Tax Law for gas, electricity, water and refrigeration used or consumed in New York State, for which taxes were paid or passed through to the IMB during the year. NY State Farmers can claim "gross receipts" taxes paid to their energy suppliers on NYS DTF-623 tax form. This is a refundable tax credit on taxable years 2000 and 2001 and thereafter until 2006. Farmers must contact their electric, natural gas, steam, water or refrigeration suppliers to get the amount of NY gross receipt's tax paid over the current tax year. With their account number in hand the business operator should contact their utility suppliers to determine the amount of gross receipts tax paid. Farmers then can claim the Industrial or Manufacturing Business Credit (IMB) on their state return as a credit or refund. The credit can not be carried over (why would one want to?). The credit amount transfers from DTF-623 to the appropriate lines on their state return depending on the type of business entity filing. The tax credit is about 2.35% of the electricity expense paid and a little less for natural gas used on the farm. The one page form and instructions can be downloaded at http://www.tax.state.ny.us/pdf/2000/misc/df623_2000.pdf. For further information see New York State Office of Tax Policy Technical Services Division Bulletin TSB-M-00(3)I

College Tuition Credit and Deduction

Beginning on or after January 1, 2001 a full-year resident taxpayer may choose between a refundable credit or an itemized deduction for qualified college tuition expenses. Other taxpayers may be entitled to an itemized deduction for these qualified expenses. Qualified expenses are tuition required for a taxpayer, spouse, or dependent thereof to attend an institution of higher learning. The maximum amount of qualified tuition allowed in computing the deduction or credit is \$10,000. For taxpayers with qualified expense of less than \$5,000 the credit is equal to the lesser of 25% (in 2001) of the tuition expenses or \$200. For taxpayers with allowable expenses of \$5,000 or more the credit is computed by multiplying the expense by 25% and then multiplying that result by 4%. The itemized deduction is computed by multiplying the expense by 25% for 2001. See Tax Law §606(t) and 615(d)(4) for further details.

Empire Zone Credits

The Empire Zone Program Act changed the term *economic development zone* to *empire zone*. At the beginning of the year NY had 52 Empire Zones located throughout New York State. The Act provides certain new businesses with two new tax credits beginning on or after January 1, 2001: The qualified empire zone enterprises (QEZE) for credit on real property taxes and the QEZE tax reduction credit. See NY Tax Law § 14, 15, 16, 606(I)(1), 606(bb), and 606(cc). For information on the zone locations and boundaries call 800-782-8369 or on the web at www.empire.state.ny.us, or information in Publications 26 and 30. In addition certain taxpayers may be eligible for the QEZE sales and use tax exemption, see NY memo TSM-M-00(6)S.

Green Buildings Credit

This credit provides incentives after January 1, 2001 for the construction, rehabilitation and maintenance of buildings with high-energy efficiency and high-environmental standards. Taxpayers must apply to the Department of Environmental Conservation for a credit certificate. In addition the taxpayer will have to obtain an eligibility certificate issued by a licensed architect or engineer certifying the project meets certain green building standards. In addition to the building component the credit is based on costs paid for fuel cells, photovoltaic modules and air conditioning equipment with approved refrigerants used in the building.

Payments for NY State Income Tax

Effective on March 1, 2001 the NY Tax Department started accepting credit cards for payment of personal income tax liabilities. Starting in May 2001 estimated tax payments could be made through certain plastic card vendors. The taxpayers pay the convenience fees for this service.

New York State Investment Credit (NYIC)

The credit for individuals is 4% on qualified tangible personal property (and other tangible property used in production, including buildings and structural components) acquired, constructed, reconstructed or erected on or after January 1, 1987. For corporations, the rate is 5% on the first \$350,000,000 of investment credit base and 4% on any excess.

MACRS property placed in service after December 31, 1986 qualifies for NYIC. This means that farm property in the ACRS or MACRS 3-year class should qualify. There is no reduction in the amount of credit allowed for 3-year property, and if kept in use for three years it will earn 4% NYIC. Highway use motor vehicles are ineligible for NYIC.

All ACRS and MACRS property that qualifies for NYIC and is placed in a 5-year or longer life class earns full credit after 5 years even if a longer straight line option is elected. The same is true of 7, 10, 15, and 20-year MACRS property. Non-ACRS/MACRS properties that qualify for NYIC must still be held 12 years.

Excess or unused credit may be carried over to future tax years but the carryforward period is limited to 10 years. In no event may the credit claimed prior to 1990 be carried over to taxable years beginning on or after 2000. The 1997 bill expanded general business corporations carry forward period for unused investment tax credits from 10 to 15 years. There is no provision for carryback of NYIC. Unused NYIC claimed by a **new business** is refundable. The election to claim a refund of unused credit can be made only once in one of the first four years. A business is new during its first four years in New York State. Only proprietorships and partnerships qualify. This refundable credit is not an additional credit for new businesses. A business that is substantially similar in operation and ownership to another business that has operated in the state will not qualify.

If property on which the NYIC was taken is disposed of or removed from qualified use before its useful life or specified holding period ends, the difference between the credit taken and the credit allowed for actual use must be added to the taxpayer's tax liability in the year of disposition. However, there is no recapture once the property has been in qualified use for 12 consecutive years.

Use IT-212 to claim New York investment credit, retail enterprise credit and to report early disposition of qualified property.

Employment incentive tax credit (EITC) is available to regular corporations that qualify for NYIC and increase employees at least 1% during the year. The credit is 1.5% of the investment credit base if the employment increases less than 2%, 2% if the increase is between 2 and 3%, and 2.5% if the increase is 3% or more for each of the two years following the taxable year in which NYIC was allowed. The additional credit is available to newly formed as well as continuing corporations. The credit may not be used to reduce tax to less than the minimum taxable income base or the fixed dollar minimum, whichever is higher. Any remaining unused credit may be carried forward to the next seven taxable years.

The employment incentive credit and economic development zone credit that applies to C corporations was expanded to sole proprietorship, partners of partnerships, shareholders of S corporations and beneficiaries of estates and trusts. The credits are available to those entities that

make investments eligible for the investment tax credit and in the years following the investment increase their employee numbers.

Rehabilitation Credit for Historic Barns

NY Taxpayers are allowed a credit (as defined in IRC Sec. 47) of 25% of their qualified rehabilitation expenses to restore barns originally constructed on or before 1936. The New York State requirements for this credit follow the federal regulations, which were covered earlier in this workbook.

For newly constructed or reconstructed agricultural structures, New York's real property tax law Sec. 483 allows a 10-year property tax exemption from any increase in the property's assessed value resulting from the improvement. See the local assessor or board of assessors to determine eligibility and file an application for exemption. In addition, for those rehabilitated historic barns, which do not qualify for the 10-year exemption, there is a district exemption that requires the approval of the local taxing authorities and school district. Again contact the local assessor for qualification rules and application. The owner cannot receive both the 10-year exemption and this new assessment reduction.

New York State Minimum Tax

Federal items of tax preference after New York modifications and deductions are subject to the New York State minimum tax rate of 6%. The specific deduction is \$5,000 (\$2,500 for a married taxpayer filing separately). A farmer who has over \$5,000 of preference items must complete Form IT-220 but may not be subject to minimum tax. New York personal income tax (less credits) and carry-over of net operating losses are used to reduce minimum taxable income. NYIC cannot be used to reduce the minimum income tax.

New York State SingleFile

NYS Department of Taxation and Finance and Department of Labor jointly developed a SingleFile program to simplify reporting requirements for employers. It combines: Quarterly Unemployment Insurance Report (Form IA-5) and Quarterly Combined Withholding and Wage Return Reporting (Form NYS-4), enabling employers and their agents to report state withholding tax, wage reporting and unemployment information on a single form. The form is NYS-45 and NYS-45-ATT in place of IA-5, NYS-4 and NYS-4-ATT. The filing and payment rules for making withholding tax payment have not changed. For further details see NYS-50 available on the New York website. (www.tax.state.ny.us)

New Hire Reporting

To facilitate the accurate and prompt determination of child support obligations, Chapter 81 of the law requires all employers to report to New York State Department of Taxation and Finance identifying information about each newly hired or rehired employee in New York State. Employers have 20 calendar days from the hiring date to provide the employee and employer name, address, and ID numbers. (see NYS Notice 97-10) The Immigration and Naturalization Service (INS) Form I-9 is available from 800-870-3676 or www.ins.gov. Form W-4, new for 2002, for income tax withholding is also available from the IRS or online at www.irs.gov.

Estimated Tax Rules

New York residents with New York source income are required to make payments of estimated tax if they expect to owe, after withholding and credits, at least \$300 of New York tax (per jurisdiction) and withholding and credits are expected to be less than the smaller of (1) 90% of the tax for the year, or (2) 100% of the tax on the prior year's return (provided a return was filed and the taxable year consisted of 12 months).

For individuals, estates and trusts (except farmers and fishermen) whose New York adjusted gross income in the prior year is more than \$150,000 (\$75,000 if married filing separately) they must pay 110% of the prior year's state, and if applicable, city resident or nonresident tax, or 90% of the current year's tax, to avoid a penalty for underpayment of estimated tax.

Farmers and fishermen may use the preceding year's tax as a method of determining the required annual payment without regard to the above limitation. The definition of farmers and fishermen for estimated tax purposes was changed so that Federal Gross Income rather than New York Adjusted Gross Income is used in determining whether at least two-thirds of the person's income is from farming.

Cornell Income Tax Website

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