

September 19, 2019

The Honorable Chuck Grassley  
Chairman  
Committee on Finance  
U.S. Senate  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Richard Neal  
Chairman  
Committee on Ways and Means  
U.S. House of Representatives  
1102 Longworth HOB  
Washington, DC 20515

The Honorable Ron Wyden  
Ranking Member  
Committee on Finance  
U.S. Senate  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Kevin Brady  
Ranking Member  
Committee on Ways and Means  
U.S. House of Representatives  
1102 Longworth HOB  
Washington, DC 20515

Dear Chairman Grassley, Ranking Member Wyden, Chairman Neal, and Ranking Member Brady:

We are writing today to ask that you protect American farmers' and ranchers' ability to continue to use the cash method of accounting. The vast majority of American farm and ranch businesses use cash accounting to level out the highs and lows of commodity prices and input costs. Cash accounting assures that a farm or ranch business will not be taxed for a sale of agricultural products for which they have not been paid.

Unfortunately, the IRS has placed into question whether American farmers and ranchers who own their businesses through S corporations, trusts, and certain limited liability companies will be able to continue to use the cash method of accounting or whether the IRS will penalize them and require them to pay back taxes for having relied on this method of accounting.

In February of 2017, the IRS issued an Action on Decision letter ("AOD") in response to the IRS' loss in the 5<sup>th</sup> Circuit Court of Appeals in *Burnett Ranches, Ltd. v. U.S.* (5<sup>th</sup> Cir. 2014). AOD 2017-17 places a cloud over thousands of legitimate agricultural businesses and threatens the livelihoods of American farm and ranch families. It does so by calling into question the accounting methods traditionally used by agriculture and exposing farmers and ranchers to needless litigation with the IRS.

Under the Internal Revenue Code, a farm or ranch may be declared a "farming syndicate" and lose its ability to use the cash method of accounting if less than 65% of ownership is held by "active" farmers.<sup>1</sup>

In *Burnett Ranches*, the IRS argued that a multi-generational rancher who managed her ranch was not an "active" farmer because she had structured her ranch such that her interest in the ranch was held by an S Corporation that she owned. The IRS reasoned that the IRC section exempting active farmers only applies to individuals and, since the owner in *Burnett Ranches* held her interest through an intermediary S corporation, she could not avail herself of the active farming exceptions.

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<sup>1</sup> More specifically, the IRC states that a farm or ranch may be declared a farming syndicate if more than 35% of the farm's losses are allocable to "limited partners or limited entrepreneurs."

This reasoning by the IRS ignores the clear intent of Congress that active farmers should not be declared farming syndicates. This reasoning also ignores the fact that many agricultural operations are structured as S Corporations, trusts, and limited liability companies for a myriad of reasons, including liability protection and inheritance and succession planning. For the thousands of farms and ranches structured in this manner, the consequences of being declared a farming syndicate would be devastating.

Thankfully, both the district court and the 5<sup>th</sup> Circuit Court of Appeals in *Burnett Ranches* rejected the IRS's interpretation of the farming syndicate provisions in the IRC. Nonetheless, in AOD 2017-17, the IRS indicated that it intends to ignore these rulings outside of the 5<sup>th</sup> Circuit and may seek back taxes and penalties from farmers and ranchers in other states. In the AOD, the IRS stated: "We . . . will continue to litigate our position in cases in other circuits."

This AOD presents a real threat to farmers and ranchers across the country who have structured their businesses using S corporations, trusts, and certain limited liability companies and who could be forced to defend themselves against costly and time-consuming challenges from the IRS.

To protect farmers and their ability to continue to use the cash method of accounting, we ask that you write to the IRS and request that the IRS formally reverse AOD 2017-17.

We also ask that you explore legislative options to revise the farming syndicate provisions of the IRC. As the 5<sup>th</sup> Circuit noted in *Burnett Ranches*, the farming syndicate rule "*is less than pellucid on first reading, as it contains many cross-references, is structured with convoluted syntax, and is anything but 'simple and direct' . . .*". By revising this section of the IRC, Congress can maintain the protections against tax shelters while making it clear that active farms and ranches should not be penalized for using the cash method of accounting if they elect to structure their farm and ranch operations using regarded entities such as S corporations.

We appreciate your consideration of these issues and hope that you will work with us to protect American farm and ranch families and their ability to continue to use the cash method of accounting.

Sincerely,

American Farm Bureau Federation  
American Soybean Association  
California Farm Bureau Federation  
CliftonLarsonAllen, LLP  
CoBank  
Farm Credit Council  
Farmers for Tax Fairness  
Illinois Farm Bureau  
Indiana Corn Growers Association  
Indiana Soybean Alliance  
Iowa Corn Growers Association  
Iowa Farm Bureau Federation  
Kansas Farm Bureau  
Kansas Livestock Association

K·Coe Isom, LLP  
Minnesota AgriGrowth  
Minnesota Farm Bureau Federation  
Missouri Farm Bureau  
Moss Adams, LLP  
National Cattlemen's Beef Association  
National Corn Growers Association  
National Council of Farmer Cooperatives  
National Federation of Independent Businesses  
National Milk Producers Federation  
National Pork Producers Council  
Ohio Farm Bureau Federation  
United Fresh Produce Association  
Wisconsin Farm Bureau Federation  
Wyoming Stock Growers Association