

Taxation Tidbits

Tax Regulations are Encouraging Written Leases

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Farm management specialists have encouraged landlords and tenants to document their rental arrangement in written agreements. Now the IRS is also encouraging written farm lease agreements - if the landlord wants to be considered in the trade or business of farming. IRS Regulations carry a lot of weight, so I expect numerous oral rental arrangements to be put into written form before the next cropping season begins.

In drafting the final Regulations for income averaging, the IRS indicates: "A landlord is engaged in a farming business for purposes of Code Section 1301 (*income averaging*) with respect to rental income that is based on a share of production from a tenant's farming business and, with respect to amounts received on or after January 1, 2003, is determined under a written agreement entered into before the tenant begins significant activities on the land." It is interesting to note that with regard to the income averaging regulations, whether the landlord materially participates in the farming business is not considered as relevant.

While this IRS Regulation is specific to Code Section 1031 (income averaging), I would expect the IRS to attempt utilizing this logic and definition as to what constitutes a trade or business of farming relative to share-crop landlords in areas of tax law.