

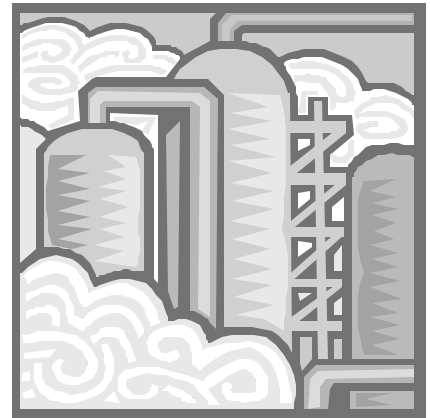
New Gen. Co-op Member Tax Issues

UNIVERSITY OF MISSOURI
 Extension

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New Generation Cooperative (NGC)

- How they differ from traditional cooperative:
 - Large up-front investment by members
 - Delivery rights (obligations) are frequently utilized
 - Limited (closed) membership





(NGC) – Member Tax Issues

- Purchase of “units”
- MO NGC Incentive Tax Credit
- Commodity delivery rights (obligation)
- Patronage distribution
- Special credits (small ethanol producer tax credit)
- Sale of “units”

Capital Asset?

All assets are capital assets other than for specific exceptions:

1. Inventory
2. Property held primarily for sale in ordinary course of trade or business
3. Depreciable property used in trade or business
4. Real property used in trade or business
5. Copyrights
6. U.S. Government publications

Purchase of “Units”

- **Investor Owned Entity**

Capital asset (Section 1221)

- **Producer Owned Cooperative**

Capital asset (Section 1221)

Missouri NGC Incentive Tax Credit

- MO Agricultural and Small Business Development Authority
- Induce producer member investment
- Entities that will process MO agricultural commodities or products into value-added goods, benefit producers, and create jobs.

Missouri NGC Incentive Tax Credit

- Inducement for **producer** member:
 - Prorated share of credit up to lesser of 50% of member's investment or \$15,000
- “Large Capital Project” – total credit for project limited to \$1,500,000
- “Employee Qualified Capital Project” – total credit for project limited to \$3,000,000
- Definitions – Requirements – Limitations
<http://www.moga.mo.gov/statutes/C300-399/3480000432.HTM>

Missouri NGC Incentive Tax Credit

- Claimed year of investment made, then back 3 years and forward 5 years
 - Except corp. franchise tax – within 2 years from the time the tax was paid
- May be assigned, transferred, sold, or otherwise conveyed

Missouri NGC Incentive Tax Credit

- Tax attribute of NGC Incentive Tax Credit:
 - Basis equals “zero”
 - If sold – reported as “Other income” on line 21

**“user gets the mine –
seller gets the shaft”**



NGC Incentive Tax Credit Sale is Taxable Because:

- **Credit is Transferable**

Remediation tax credit retains its character as a reduction or potential reduction in state tax liability, unless and until it is actually sold to a third party.

- **Section 1012 – Basis of Property**

Taxpayer paid nothing for the credit, thus taxpayer has no “tax cost basis”

NGC Incentive Tax Credit Sale Taxable Because

- Not considered “property” within meaning of Sections 1221 and 1231
- Original issuance was not treated for federal tax purposes as a transfer of property includable in the recipient’s income
- Accordingly, sale results in ordinary income



NGC Incentive Tax Credit “Tool Kit”

http://www.mda.mo.gov/AgBusiness/tk/tk_main.htm

NGC Incentive Tax Credit

Google **“sale of missouri tax credits”**

- use quotation marks

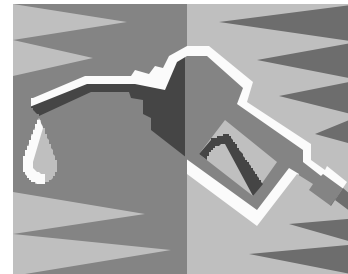
**“CCA 200211042 – IRC Section 61
Gross Income Defined”**

Six page opinion with excellent reference to Code and case law.

Released March 15, 2002

Small Ethanol Producer Tax Credit

- Sec. 40 (b)(3) – allows eligible small ethanol producers a federal income tax credit equal to \$.10 per gallon produced up to 15 million gallons --- \$1,500,000
- Eligible producer – production and/or productive capacity of less than 60 million gallons annually.



Small Ethanol Producer Tax Credit

- Extended through 12-31-2010
- Coop allowed to allocate credit to members
- Will offset AMT for years beginning after 12-31-2004 (American Jobs Act of 2004)
however
- AMT cannot be reduced below 25% of amount by which regular income tax exceeds \$25,000
(Form 6478)

Small Ethanol Producer Tax Credit

- If character of investment is passive, then credit limited to offset income tax from passive income Sec. 469 (c)(1)
- Credit is subject to Section 87 income add back provision – by “small ethanol producer”
- Section 87 add back increases unit holders’ income tax basis

Small Ethanol Producer Tax Credit

Unused SEPTC:

- Carryback – 1 year
- Carryforward – up to 3 years after current expiration date of 12-31-2010
- Unused credit after expiration will be deductible