

The Heartland, Habitat, Harvest, & Horticulture Act of 2007

October 4, 2007

Supplemental Agricultural Disaster Assistance

Agricultural Disaster Relief Trust Fund. Currently, farmers and ranchers may have to wait years to receive assistance from Congress for agricultural disasters. Farmers and ranchers need a dependable safety net when weather related disasters strike. The proposal creates a trust fund for agriculture disaster relief that would cover a portion of the “shallow losses” not covered by crop insurance. “Shallow losses” are crop losses below normal yield, but not large enough for crop insurance to provide assistance. To receive benefits from the trust fund, farmers and ranchers must: 1) carry crop insurance; and 2) be located in a Secretarial declared disaster county or a contiguous county, or show proof of an individual loss of at least 50%. Farmers carrying higher levels of insurance will be eligible for higher payments. The trust fund will also provide funds for pest detection and disease prevention for specialty crops and assistance to specialty crop producers who lose vines and trees to natural disasters. The proposal requires farmers and ranchers to purchase crop insurance in order to be eligible for disaster assistance. The trust fund will be funded through an allocation of tariffs. The transfer of funds to the trust fund will sunset September 30, 2012. Payments could be made for crop years after 2007. *The proposal is estimated to cost \$5.1 billion over five years and \$5.1 billion over ten years.*

Conservation Provisions

Conservation Reserve Program Tax Credits. Currently, participants in the Department of Agriculture’s Conservation Reserve Program (CRP) receive cash payments. The proposal will allow a participant in CRP the option to choose between the regular cash payment and a tax credit. The tax credit will be equal to 100% of the value of the cash payment the participant would have otherwise received, and the credit will be excludable from both income and therefore self-employment taxes. The proposal sets a limitation of \$750 million for each of fiscal years 2009 through 2012. The proposal is effective on the date of enactment. *The proposal is estimated to cost \$3.771 billion over five years and \$3.771 billion over ten years.*

Exclusion of Conservation Reserve Program Payments to Retired or Disabled Individuals from Self-Employment Taxes. Farmers enrolling their land in CRP receive payments for refraining from farming their property and for engaging in certain conservation practices mandated by the Department of Agriculture. These payments are described in the contract with the Department of Agriculture as “rental payments.” On December 18, 2006, the IRS released Notice 2006-108, which sets forth a proposed revenue ruling concerning self-employment tax on CRP payments. In the Notice, IRS

holds that all CRP payments are not excluded from net income under the rental payments exception and are therefore subject to self-employment taxes regardless of whether or not the taxpayer is actively farming. This proposal provides that CRP payments to retired or disabled individuals are to be treated as rental payments for tax purposes and are therefore excluded from self-employment taxes. The proposal is effective for payments made after December 31, 2007. *The proposal is estimated to cost \$87 million over five years and \$206 million over ten years.*

Rural Heritage Conservation Extension. The Pension Protection Act of 2006 (PPA), Public Law 109-432, included an enhanced tax deduction for conservation easements. Prior to enactment of the enhanced deduction, unlike the 50% adjusted gross income (AGI) limitation on most contributions taxpayers were limited to deducting up to 30% of their AGI for donations of conservation easements to qualified conservation organizations (501(c)(3) conservation groups) or state or local governments. Taxpayers were allowed to carry-forward their deduction for up to 5 years. However, taxpayers were often unable to yield the maximum benefit from their easement donations. The provision in the Pension Act allowed all taxpayers to deduct up to 50% of their AGI for donations of conservation easements and carry forward the deduction for up to 15 years. Under the provision there is a bonus that allows ranchers and farmers to deduct up to 100% of their AGI for donations of conservation easements. The provision is set to expire at the end of 2007, but this proposal would extend permanently the charitable contribution for conservation easements. The proposal is effective for contributions made in taxable years beginning after December 31, 2007. *The proposal is estimated to cost \$291 million over five years and \$761 million over ten years.*

Endangered Species Recovery Act. Present law does not provide an income tax credit for endangered species recovery expenditures. This proposal would establish two new tax credits for taxpayers who take voluntary measures to aid in the recovery of species that are either listed as threatened or endangered under the Endangered Species Act (ESA) or deemed by the Secretary of Interior or Commerce to be warranted for protection under the ESA ("qualified species"). The habitat protection easement tax credit would provide a tax credit for a percentage of the property value difference for taxpayers who enter into an agreement with a governmental entity to protect the habitat of a qualified species by placing an easement on private land. The habitat restoration tax credit for restoration costs paid or incurred would be available to taxpayers who enter into an agreement with a governmental entity to protect the habitat of a qualified species for a specified period of time. The proposal would also establish a tax deduction for the cost of actions to implement recovery plans under the ESA, and an exclusion from income tax for payments received under various cost-share conservation programs. The tax credit proposal is effective for taxable years beginning after December 31, 2007. The tax deduction proposal is effective for expenditures paid or incurred after the date of enactment. The exclusion from income provision is effective for payments received after the date of enactment. *The proposals are estimated to cost \$819 million over five years and \$1.832 billion over ten years.*

Wetlands Reserve Program and Working Grasslands Protection Program Tax

Credits. Currently, participants in the Wetlands Reserve Program and Working Grasslands Protection Program receive cash payments for easements they sell to the government. The proposal will allow a participant in the Wetlands Reserve Program or the Working Grasslands Protection Program the option to choose between the cash payment for the easement or a tax credit. The tax credit will be equal to the value of the payment they would have received after taxes were paid on the payment. The proposal is effective for easements granted after September 30, 2007, in taxable years ending after such date. *The proposal is estimated to cost \$75 million over five years and \$75 million over ten years.*

Forest Conservation Bonds. This proposal establishes a national program allowing the issuance of \$1.5 billion tax-exempt timber conservation bonds. The bonds must be issued by a non-profit organization whose holdings consist primarily of forests and forest lands and whose board of directors includes specified representation of public officials and conservation organizations. Proceeds from the sale of bonds must be used for the acquisition of forest and forest lands that are subject to a conservation restriction, which is defined as a perpetual restriction that achieves specified conservation goals. The proposal is effective for obligations issued on or after the date that is 180 days after the date of enactment. *The proposal is estimated to cost \$92 million over five years and \$257 million over ten years.*

Deduction for Qualified Timber Gain and Timber REIT Provisions. Under current law gains on timber sales are eligible for capital gains tax treatment. This proposal provides an election to deduct from gross income 60% of qualified timber gain. Qualified timber gain is gain from the sale or exchange of timber held for more than one year. In addition, the proposal provides for modernization of timber real estate investment trusts (REIT) rules for timber property, including: (1) clarifying that gains from the sale of timber held for less than one year is qualifying income; (2) providing that mineral royalty income is qualifying income; (3) changing the taxable REIT subsidiary asset test for timber REITs from 20% to 25%; and (4) making changes to the safe harbors for timber property sales. The proposal applies to taxable years beginning after the date of enactment and before December 1, 2008. *The proposal is estimated to cost \$318 million over five years and \$332 million over ten years.*

Energy Provisions

Residential Wind Credit. The proposal creates a new 30% investment tax credit (capped at \$4,000 per year) for qualified residential and commercial applications of small wind energy property, not to exceed 100 kilowatts. The credit is allowed for expenditures after December 31, 2007 for property placed in service prior to January 1, 2009. *The proposal is estimated to cost \$5 million over five years and \$5 million over ten years.*

Transmission Pole Payment Exemption. Easement payments generally must be included in a taxpayer's income for federal income tax purposes. The proposal allows taxpayers who locate an electricity transmission pole on a line of 230 kilovolts or more to exempt from gross income easement payments received from the electric utility or electric transmission company. The proposal is effective for payments received after the date of enactment. *The proposal is estimated to cost \$74 million over five years and \$179 million over ten years.*

Small Producer Credit for Cellulosic Alcohol. The proposal creates a new production tax credit of 67¢ per gallon (in addition to the current 51¢ per gallon ethanol credit and the 10¢ per gallon credit for small producers) for cellulosic alcohol. The credit is available through the first quarter of 2015. *The proposal is estimated to cost \$282 million over five years and \$1.079 billion over ten years.*

Extension of Small Ethanol Producer Credit. The proposal extends for two years (through December 31, 2012) the 10¢ per gallon tax credit on the first 15 million gallons of ethanol production for producers with annual capacity of not more than 60 million gallons. The proposal is effective on the date of enactment. *The proposal is estimated to cost \$57 million over five years and \$172 million over ten years.*

Extension of Biodiesel Tax Credits. The proposal extends for two years (through December 31, 2010) the \$1.00 and 50¢ production tax credits for biodiesel and extends for four years (through December 31, 2012) the 10¢ per-gallon tax credit on the first 15 million gallons of biodiesel production by small producers (defined as those with annual capacity of not more than 60 million gallons per year). The proposal is effective on the date of enactment. *The proposal is estimated to cost \$264 million over five years and \$267 million over ten years.*

Fossil-Free Alcohol Production Credit. The proposal creates a new small producer alcohol credit of 25¢ per-gallon for facilities that produce ethanol through a process that does not use a fossil-based resource. The credit would be available through December 31, 2012. The proposal is effective after December 31, 2007. *The proposal is estimated to cost \$242 million over five years and \$278 million over ten years.*

Expansion of Special Depreciation Allowance for Cellulosic Ethanol Facilities. The proposal expands the eligible property qualifying for the 50% expensing to include

alcohol produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis. The proposal is effective for property placed in service after the date of enactment in taxable years ending after the date of enactment. *The proposal is estimated to cost \$4 million over five years and \$1 million over ten years.*

Extension of Renewable Diesel Incentives. The proposal extends for two years (through December 31, 2010) the \$1 tax credit for diesel created through a thermal depolymerization process. The proposal also caps, on a per-facility basis, the \$1 credit at 60 million gallons per year of co-produced fuel, and is effective for fuel sold or used after the date of enactment. *The proposal is estimated to cost \$211 million over five years and \$211 million over ten years.*

Extension and Modification of Alternative Fuels Credit. The proposal extends the alternative fuel excise tax credit under Section 6426 of the Code through December 31, 2010, for all fuels except for hydrogen (which maintains its current-law expiration date of September 30, 2014). Upon date of enactment, for liquid fuel derived from coal through the Fischer-Tropsch process ("coal-to-liquids"), to qualify as an alternative fuel, the fuel must be produced at a facility that separates and sequesters at least 50% of its CO² emissions. The sequestration requirement increases to 75% on December 31, 2010. This 75% standard may be implemented prior to December 31, 2010, subject to certification of feasibility. The proposal further provides that biomass gas versions of liquefied petroleum gas and liquefied or compressed natural gas, and aviation fuels qualify for the credit. *The proposal is estimated to cost \$332 million over five years and \$332 million over ten years.*

Extension of Alternative Fuel Refueling Property Installation Credit. The proposal extends the 30% investment tax credit for refueling property (capped at \$30,000) for non-hydrogen property for one year (through December 31, 2010). The proposal is effective for property placed in service after the date of enactment. *The proposal is estimated to cost \$107 million over five years and \$119 million over ten years.*

Extension of Tariff on Ethanol. The proposal extends the tariff on imported ethanol for two years (through December 31, 2010). The proposal is effective on the date of enactment. *The proposal is estimated to raise \$25 million over five years and \$25 million over ten years.*

Duty Drawback on Imported Ethanol. Present law allows duties paid upon import to be reclaimed at a later date if the same or similar product is exported. Current law treats ethanol blended with gasoline the same as jet fuel. The proposal terminates that treatment. Any drawback for ethanol or ethanol blended with gasoline is still allowed. *The proposal is estimated to raise \$8 million over five years and \$10 million over ten years. (Estimate subject to change by the Congressional Budget Office.)*

Modification of the Incentives Relating to Alcohol Fuels (Volumetric Ethanol Excise Tax Credit). The proposal reduces the 51-cent-per-gallon tax credit for ethanol by 5 cents beginning with the first calendar year after the year in which 7.5 billion gallons of

ethanol (including cellulosic ethanol) have been produced. The proposal is effective on the date of enactment. *The proposal is estimated to raise \$854 million over five years and \$854 million over ten years.*

Treatment of Alcohol and Biodiesel Fuel Mixtures. The proposal adds qualified alcohol fuel mixtures and qualified biodiesel fuel mixtures to the definition of taxable fuel. In addition, the proposal requires additional reporting by the registered blender and documentation of the ASTM standard. The proposal is effective for fuels removed, entered, or sold after December 31, 2007. *The proposal is estimated to raise \$8 million over five years and \$2 million over ten years.*

Exclusion of Denaturant from Alcohol Fuels Credit. The proposal excludes the volume of denaturant (a substance used to render alcohol toxic or undrinkable) in the fuel for purposes of calculating the volume of alcohol eligible for the alcohol fuels credit. The proposal is effective January 1, 2008. *The proposal is estimated to raise \$284 million over five years and \$284 million over ten years.*

Modify Treatment of Certain USDA Energy Grant/Loans Used for Renewable Power Facilities. Present law requires a reduction in the Section 45 production tax credit for renewable electricity for grants, tax-exempt bonds, subsidized energy financing and other credits. The proposal provides an exception to this general rule for any financing to farmers, ranchers, or rural small businesses issued by the Secretary of Agriculture under authority granted by section 9006 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171). The proposal is effective for facilities placed into service after date of enactment. *The proposal is estimated to cost \$6 million over five years and \$14 million over ten years.*

Agricultural Provisions

Agricultural Bond Improvements. Agricultural Bonds (Aggie Bonds) are tax-exempt bonds issued by State and local governments to provide low interest loans for first-time ranchers and farmers. A first-time rancher or farmer is any individual who has never had a direct ownership interest in substantial farmland. Substantial farmland means a parcel of land that is larger than 30% of the median size of a farm in the county in which such parcel is located and that has a fair market value greater than \$125,000. Aggie Bonds have not been improved in over 26 years. The proposal improves Aggie Bonds by: (1) increasing the loan limit from \$250,000 to \$450,000 and indexing such limit amount for inflation; and (2) eliminating the dollar limitation in the definition of substantial farmland. The proposal is effective for bonds issued after the date of enactment. *The proposal is estimated to cost \$4 million over five years and \$19 million over ten years.*

Installment Sale Modification for Single-Purpose Agricultural Property. Single-purpose agricultural or horticultural property (as defined in section 168(i)(13), such as chicken barns, pig barns, or greenhouses) or any tree or vine bearing fruit or nuts (as defined in section 168(e)(3)(D)) may be depreciated more quickly than other real estate,

but this depreciation is subject to a recapture provision when the property is sold. This means that a taxpayer who has taken significant amounts of accelerated depreciation on single-purpose agricultural property may be reluctant or unable to sell or exchange the agricultural property due to the large amount of ordinary income tax due at the time of the sale or exchange. The proposal allows a taxpayer to recapture depreciation taken on single-purpose agricultural property as ordinary income ratably over the term of an installment obligation rather than all at once in the year of the sale. The proposal is effective for installment sales after the date of enactment. *The proposal is estimated to cost \$125 million over five years and \$246 million over ten years.*

Section 1031 Eligibility for Mutual Ditch, Reservoir, or Irrigation Company Stock.

In general, section 1031 does not apply to any exchange of stock. Colorado uses mutual ditch, reservoir, and irrigation companies to manage joint water distribution rights, and the stock of such companies are recognized as real property. This provision will clarify that the exchange of mutual ditch, reservoir, or irrigation company stock is effectively an exchange of real property and therefore qualifies for section 1031. The proposal is effective for transfers after the date of enactment. *The proposal is estimated to cost \$1 million over five years and \$2 million over ten years.*

Rural Renaissance Bonds. This proposal creates a new category of tax credit bonds with a total allocation of \$400 million for projects such as rural electric, distance learning and telemedicine programs, rural telephone, broadband access, and rural community facility programs. The proposal is effective for bonds issued after the date of enactment. *The proposal is estimated to cost \$89 million over five years and \$168 million over ten years.*

Agricultural Business Security Tax Credit. Present law does not provide a credit for agricultural business security. This proposal provides a retailer of agricultural products and chemicals or a manufacturer, formulator, or distributor of certain pesticides a business tax credit for 30% of costs for the protection of such chemicals or pesticides, including employee security training and background checks, installation of security equipment, and computer network safeguards. The proposal sets a \$2 million annual limit on such credit and a per facility limitation of \$100,000 (reduced by credits received for the five prior taxable years). The proposal is effective for expenses paid or incurred after the date of enactment. *The proposal is estimated to cost \$14 million over five years and \$14 million over ten years.*

Credit for Drug Safety and Effectiveness Testing for Minor Species. To help make more medications available to veterinarians and owners of minor species (such as sheep, goats, aquaculture) this proposal provides a 50% credit for safety and effectiveness testing expenses for new animal drugs intended for these species. The proposal is effective for expenses incurred after the date of enactment. *The proposal is estimated to*

cost \$41 million over five years and \$121 million over ten years.

Reduce the Recovery Period for Certain Farming Machinery and Equipment. A taxpayer generally may not deduct the cost of property used in a trade or business immediately, but must recover the cost over time through depreciation. Currently, the cost of farm machinery and equipment must be recovered over seven years. The proposal shortens the recovery period for certain farming business machinery and equipment to five years. The proposal is effective for property placed in service after the date of enactment and sunsets December 31, 2009. *The proposal is estimated to cost \$1.477 billion over five years and a negligible revenue effect over ten years.*

Broadband Technology and Infrastructure Tax Incentives. The proposal creates a two-tiered tax incentive to stimulate new investment in broadband infrastructure: 50% expensing for investment in “current-generation” broadband infrastructure (5 megabits per second download, 1 megabit per second upload) in rural and underserved areas; and full expensing for “next generation” broadband investments (100 megabits per second download, 20 megabits per second upload) in rural, underserved and other residential areas. The proposal is effective on the date of enactment and applies to expenditures incurred after the date of enactment and on or before first December 31 that is three years after such date. *The proposal is estimated to cost \$399 million over five years and \$72 million over ten years.*

Energy Efficient Motors Tax Credit. The proposal provides for a tax credit for the purchase of qualified energy efficient motors that meet or exceed certain energy efficiency standards, subject to limitations. A qualified energy efficient motor is a general- or definite-purpose electric motor of 500 horsepower or less that meets or exceeds the efficiency levels specified in Tables 12-12 or 12-13 of the National Electrical Manufacturers Association MG-1 (2006), the original use that begins with the taxpayer, and that is placed in service in the United States. Purchasers of qualified energy efficient motors would be allowed a credit in an amount equal to \$15 per horsepower of qualified energy efficient motors placed in service by the taxpayer during the taxable year. The tax credit would be part of the general business credit and the aggregate amount of credit that a taxpayer may claim for any taxable year shall not exceed \$1,250,000. *The proposal is estimated to cost \$132 million over five years and \$129 million over ten years.*

Revenue Raising Provisions

Limitation on Schedule F Losses. Except for passive activity rules in section 469, the amount of Schedule F (agricultural) losses that a taxpayer may use to reduce income is not limited. The proposal would limit the amount of Schedule F losses that a taxpayer

may use to offset income to \$200,000 if the taxpayer receives Agriculture Program Payments or Commodity Credit Corporation loans. Losses that are limited in a particular year may be carried forward to subsequent years. The proposal is effective for taxable years beginning after December 31, 2007. *The proposal is estimated to raise \$279 million over five years and \$456 million over ten years.*

Optional Self-Employment Tax. Qualifying for Social Security benefits can be difficult for self-employed farmers and ranchers because they do not always have a steady income stream. When there are no earnings, no Social Security taxes are paid and no quarters are accrued. Through farm optional methods, farmers and ranchers may voluntarily pay Social Security taxes in order to earn quarters so that they can receive Social Security benefits. However, the payment thresholds are outdated and no longer allow farmers and ranchers to earn four quarters of credit per year. The proposal modifies the farm optional method so that electing taxpayers may be eligible to secure four credits of Social Security benefit coverage each taxable year. The proposal makes a similar modification to the nonfarm optional method. The proposal is effective for taxable years beginning after December 31, 2007. *The proposal is estimated to raise \$46 million over five years and \$110 million over ten years.*

Information Reporting for Commodity Credit Corporation Transactions. The Commodity Credit Corporation (CCC) may make market assistance loans to farmers of eligible commodities. A farmer receiving a CCC loan can use cash to repay such a loan, purchase CCC certificates for use in repayment of the loan, or deliver the pledged collateral as full payment for the loan at maturity. If a farmer uses cash instead of certificates to repay the loan, the farmer will receive a Form CCC-1099-G Information Return showing the market gain realized. For transactions prior to January 1, 2001, however, if a farmer uses CCC certificates to facilitate repayment of a CCC loan, the farmer will not receive an information return. For transactions after January 1, 2001, IRS Notice 2007-63 provides that the CCC must use Form 1099-G to report market gain associated with the repayment of a CCC loan whether the taxpayer repays the loan with cash or uses CCC certificates in repayment of the loan. The proposal codifies the requirement of IRS Notice 2007-63. The proposal is effective for loans repaid on or after January 1, 2007. *The proposal is estimated to have no revenue effect.*

Modification of Section 1031 Treatment for Certain Real Estate. An exchange of property, like a sale, generally is a taxable event. However, no gain or loss is recognized if property held for productive use in a trade or business is exchanged for property of a “like kind.” For purposes of section 1031, the determination of “like kind” relates to the nature or character of the property and not grade or quality. Therefore, improved real estate and unimproved real estate are generally considered to be property of a “like kind” as this distinction relates to the grade or quality of the real estate. The proposal modifies section 1031 to disallow nonrecognition treatment exchanges of improved real estate for unimproved real estate for which the owner is receiving Agriculture Program Payments or CCC loans. The proposal is effective for transfers after the date of enactment. *The proposal is estimated to raise \$12 million over five years and \$27 million over ten years.*

Sale-In/Lease-Out (SILO) – Foreign. The provision disallows future losses on foreign tax exempt use property for leases entered into on or before March 12, 2004. A provision in the American Jobs Creation Act applied to leases entered into after March 12, 2004. In a foreign SILO transaction, a foreign government or other foreign entity that doesn't pay U.S. tax "sells" property, such as a subway or sewer, to a U.S. taxable investor and then "leases" the property back for use. The effect is to transfer depreciation deductions from the tax-exempt entity, which cannot use the deductions, to a taxable entity that can, with little economic risk. The proposal is effective for taxable years beginning after December 31, 2006. *The proposal is estimated to raise \$4.561 billion over five years and \$3.235 billion over ten years.*

Disallowance of "Like Kind" Exchange Treatment of Collectibles. An exchange of property, like a sale, generally is a taxable event. However, no gain or loss is recognized if property held for productive use in a trade or business is exchanged for property of a "like kind." This proposal would prevent "like kind" exchange treatment of collectibles, as defined by section 408(m)(2) (such as works of art, antique rugs, gems, stamps, coins, or bottles of wine). The proposal would be effective for exchanges on or after the date of enactment. *The proposal is estimated to raise \$79 million over five years and \$175 million over ten years.*

Denial of Deduction for Certain Fines, Penalties, and Other Amounts. This provision clarifies that amounts paid or incurred in connection with civil settlements to or at the direction of a government for the violation of any law or the potential violation of law are not deductible for Federal income tax purposes. Amounts for restitution or remediation are deductible. Government agencies are required to notify the IRS of settlements. The provision would be effective for amounts paid or incurred on or after the date of enactment unless paid under a binding order or agreement entered before that date. *The proposal is estimated to raise \$137 million over five years and \$210 million over ten years.*

Clarification of the Economic Substance Doctrine and Penalty for Understatements Attributable to Transactions Lacking Economic Substance. This provision clarifies the application of the economic substance doctrine but does not change current-law standards used by courts in determining when to utilize an economic substance analysis. Under the provision, in any case in which a court determines that the economic substance doctrine is relevant to a transaction, the economic substance doctrine would be satisfied only if (1) the transaction changes in a meaningful way (apart from federal income tax consequences) the taxpayer's economic position, and (2) the taxpayer has a substantial non-Federal tax purpose for entering into such transaction. The provision also imposes a 30% penalty on understatements attributable to a non-economic substance transaction (unless the transaction was disclosed, in which case the penalty is 20%). This proposal is effective for transactions entered into after the date of enactment. *The proposal is estimated to raise \$3.684 billion over five years and \$10.012 billion over ten years.*

Denial of Deduction for Interest on Underpayments Attributable to Non-Economic Substance Transactions. This provision denies any deduction for interest on unpaid taxes attributable to any non-economic substance transaction understatement. This proposal is effective for transactions entered into after the date of enactment. *The proposal is estimated to raise \$8 million over five years and \$43 million over ten years.*