



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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The Honorable Geoff Davis
U.S. House of Representatives
Washington, DC 20515

Attention: Justin Brasell

Dear Mr. Davis:

Thank you for your letter dated April 5, 2005, on the payments made to tobacco quota holders under the Fair and Equitable Tobacco Reform Act of 2004 (FETRA). You asked that we treat these payments similarly to the payments made under the peanut quota buyout program in 2002.

Notice 2002-67, 2002-2 C.B. 715, provides guidance on the federal tax treatment of payments made under the peanut quota buyout program. If a holder of a peanut quota used the quota in the trade or business of farming and held the quota for more than one year, the gain or loss qualified as gain or loss reportable under section 1231 of the Internal Revenue Code (the Code). The holder combined the gain or loss from the quota with the gain or loss from any other transactions reportable under section 1231, and generally reported the net result as either long-term capital gain or ordinary loss. If a holder held a peanut quota for investment purposes, the gain or loss was a capital gain or loss.

Under section 1031 of the Code a taxpayer defers recognition of gain or loss on the exchange of property held for productive use in a trade or business or for investment if the property is exchanged solely for property of a like kind that the taxpayer holds for productive use in a trade or business or for investment.

We expect to publish guidance on the federal tax treatment of FETRA payments in the near future. In developing that guidance, we are considering Notice 2002-67 and the issue of whether the termination of the tobacco quotas under FETRA can qualify for like-kind exchange treatment.

I appreciate your comments and hope this information is helpful. If you have any further questions, please call me or _____, Identification Number _____, at (202) 622-4920.

Sincerely,

Michael J. Montemurro
Acting Branch Chief
Office of Associate Chief Counsel
(Income Tax and Accounting)