

**DESCRIPTION OF H.R. 3957,
THE “EMERGENCY CITRUS DISEASE RESPONSE ACT”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on September 14, 2016

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 3957, the “Emergency Citrus Disease Response Act,” on September 14, 2016. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 3957, the “Emergency Citrus Disease Response Act”* (JCX-70-16), September 13, 2016. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended, unless otherwise stated.

A. Expensing of Certain Costs of Replanting Citrus Plants Lost by Reason of Casualty

Present Law

In general

The uniform capitalization (“UNICAP”) rules, which were enacted as part of the Tax Reform Act of 1986,² require certain direct and indirect costs allocable to real or tangible personal property produced by the taxpayer to be either capitalized into the basis of such property or included in inventory, as applicable.³ For real or personal property acquired by the taxpayer for resale, section 263A generally requires certain direct and indirect costs allocable to such property to be either capitalized into the basis of such property or included in inventory, as applicable.

Section 263A generally requires the capitalization of the direct and indirect costs allocable to the production of any property in a farming business, including animals and plants without regard to the length of their preproductive period.⁴ The costs of a plant generally required to be capitalized under section 263(a) include preparatory costs incurred so that the plant’s growing process may begin, such as the acquisition costs of the seed, seedling, or plant. Under section 263A, the costs of producing a plant generally required to be capitalized also include the preproductive period costs of planting, cultivating, maintaining, and developing the plant during the preproductive period.⁵ Preproductive period costs may include management, irrigation, pruning, soil and water conservation, fertilizing, frost protection, spraying, harvesting, storage and handling, upkeep, electricity, tax depreciation and repairs on buildings and equipment used in raising the plants, farm overhead, taxes, and interest, as applicable.⁶

Special rules for plant farmers

Section 263A provides an exception to the general capitalization requirements for taxpayers who raise, harvest, or grow trees.⁷ Under this exception, section 263A does not apply to trees raised, harvested, or grown by the taxpayer (other than trees bearing fruit, nuts, or other crops, or ornamental trees) and any real property underlying such trees. Similarly, the UNICAP rules do not apply to any plant having a preproductive period of two years or less, which is produced by a taxpayer in a farming business (unless the taxpayer is required to use an accrual

² Sec. 803(a) of Pub. L. No. 99-514 (1986).

³ Sec. 263A.

⁴ Treas. Reg. sec. 1.263A-4(b)(1).

⁵ Treas. Reg. sec. 1.263A-4(b)(1)(i).

⁶ *Ibid.*

⁷ Sec. 263A(c)(5).

method of accounting under section 447 or 448(a)(3)).⁸ Hence, in general, the UNICAP rules apply to the production of plants that have a preproductive period of more than two years, and to taxpayers required to use an accrual method of accounting.

Plant farmers otherwise required to capitalize preproductive period costs may elect to deduct such costs currently, provided the alternative depreciation system described in section 168(g)(2) is used on all farm assets and the preproductive period costs are recaptured upon disposition of the product.⁹ The election is not available to taxpayers required to use the accrual method of accounting. Moreover, the election is not available with respect to certain costs attributable to planting, cultivating, maintaining, or developing citrus or almond groves.

Section 263A does not apply to costs incurred in replanting edible crops for human consumption following loss or damage due to freezing temperatures, disease, drought, pests, or casualty.¹⁰ The same type of crop as the lost or damaged crop must be replanted. However, the exception to capitalization still applies if the replanting occurs on a parcel of land other than the land on which the damage occurred provided the acreage of the new land does not exceed that of the land to which the damage occurred and the new land is located in the United States. This exception may also apply to costs incurred by persons other than the taxpayer who incurred the loss or damage, provided (1) the taxpayer who incurred the loss or damage retains an equity interest of more than 50 percent in the property on which the loss or damage occurred at all times during the taxable year in which the replanting costs are paid or incurred, and (2) the person holding a minority equity interest and claiming the deduction materially participates in the planting, maintenance, cultivation, or development of the property during the taxable year in which the replanting costs are paid or incurred.¹¹

Description of Proposal

The proposal modifies the special rule for costs incurred by persons other than the taxpayer in connection with replanting an edible crop for human consumption following loss or damage due to casualty. Under the proposal, with respect to replanting costs paid or incurred before January 1, 2026, for citrus plants lost or damaged due to casualty, such costs may also be deducted by a person other than the taxpayer if (1) the taxpayer has an equity interest of not less than 50 percent in the replanted citrus plants at all times during the taxable year in which the replanting costs are paid or incurred and such other person holds any part of the remaining equity

⁸ Sec. 263A(d).

⁹ Sec. 263A(d)(3), (e)(1), and (e)(2).

¹⁰ Sec. 263A(d)(2). Such replanting costs generally include costs attributable to the replanting, cultivating, maintaining, and developing of the plants that were lost or damaged that are incurred during the preproductive period. Treas. Reg. sec. 1.263A-4(e)(1). The acquisition costs of the replacement trees or seedlings must still be capitalized under section 263(a) (see, e.g., T.D. 8897, 65 FR 50638, Treas. Reg. sec. 1.263A-4(e)(3), Examples 1 - 3, and TAM 9547002 (July 18, 1995)), potentially subject to the special bonus depreciation deduction in the year of planting under section 168(k)(5).

¹¹ Sec. 263A(d)(2)(B). Material participation for this purpose is determined in a similar manner as under section 2032A(e)(6) (relating to qualified use valuation of farm property upon death of the taxpayer).

interest, or (2) such other person acquires all of the taxpayer's equity interest in the land on which the lost or damaged citrus plants were located at the time of such loss or damage, and the replanting is on such land.

Effective Date

The proposal is effective for costs paid or incurred after the date of enactment.

B. Estimated Revenue Effect

Fiscal Years											
[Millions of Dollars]											
<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2017-21</u>	<u>2017-26</u>
-2	-4	-5	-5	-4	-3	-2	-2	-2	-1	-20	-30
