



#### Highlights:

- ✓ \$1.7 Billion in Farm Tax Relief and Incentives
- ✓ New Cellulosic Biofuel Producer Tax Credit
- ✓ More Than \$2 Billion in Revenue Raisers
- ✓ New Limits on Farm Losses
- ✓ Acceleration of Large-Corporation Estimated Tax
- ✓ \$1.3 Billion in Revenue Raised by Military Bill
- ✓ Mark-to-Market Regime for Expatriates

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## Congress Enacts Farm Bill Overriding Bush Veto; Passes Military Tax Relief

**T**he Food, Conservation and Energy Act of 2008 (P.L. 110-234), also known as the Farm Bill, has finally been enacted into law. The Senate on May 22 successfully overrode President Bush's May 21 veto of the bill by a convincing 82-13 vote. The House overrode the veto the day earlier by a lopsided margin of 316-108.

**Impact** The Farm Act's tax title provides significant benefits to farmers, ranchers and timber producers, while raising revenue from certain gentlemen farmers, ethanol producers and large corporations. The environment and the nation's food supply, however, may prove to be the biggest winners.

**Comment** The enactment of the Farm Act was delayed several hours when it was discovered that the president had veto a version of the bill containing only 14 of its 15 conference-approved titles. To correct the error, Congress voted again to override. The tax title was not missing in the original procedural mix up in any event and most experts believe judicial challenge unlikely.

**The Heroes Earnings Assistance and Relief Tax Act (H.R. 6081)**, also known as the Military Tax Relief Bill, is also headed into law. Having been unanimously passed by the Senate on May 22 after House approval on May 20, this legislation is expected to be signed by the president when it reaches his desk.

**Impact** The Military Tax Relief Bill includes tax breaks for members of the military who are receiving combat pay, saving for retirement or purchasing their own homes. The bill helps civilian employers of servicemen and women keep jobs available for reservists who are called to active duty. It also raises revenues by penalizing expatriates and tightening rules for government contractors using offshore shell companies, among other provisions.

**More to Come:** Lawmakers are also scrambling to finish work on a number of other important tax bills. The House has already passed and the Senate is expected to consider:

- An extenders bill (H.R. 6049) that would extend a host of popular but temporary tax breaks, such as the state and local sales tax deduction, the research tax credit and residential/commercial energy efficiency tax incentives;
- A housing bill (H.R. 3221) that would give a tax credit to qualifying first-time homebuyers, among other relief;
- A preparer penalty bill (H.R. 5719) that would end the uproar over a dual standard of care for preparers and their clients; and
- A supplemental war spending bill (H.R. 2642) that would impose a surtax on very wealthy individuals to pay for GI education benefits.

**Impact** Passage of the Farm Act and Military Tax Relief Act is hoped to have a domino effect

*on pending tax legislation once Congress returns from its Memorial Day recess.*

## FARM TAX TITLE

The *Heartland, Habitat, Harvest, and Horticultural Act of 2008* (the Tax and Trade Title), provides \$1.7 billion in tax relief and incentives. Retired farmers and farmers on disability who participate in land conservation reserve programs can exclude the payments from self-employment income, avoiding self-employment tax and preventing reductions in Social Security or disability benefits. New deductions and credits include a deduction for endangered species recovery expenditures and a credit for securing pesticides and fertilizers. Other pro-taxpayer provisions include a two-year extension of the enhanced conservation charitable deduction.

The principal offsetting revenue comes from a reduction in the ethanol credit. The bill raises additional revenue by limiting the ability of taxpayers to offset farming losses against non-farming business income, reducing denaturant amounts used to calculate the alcohol fuels credit and permitting farmers to pay additional optional self-employment tax to secure Social Security. Large corporations are once again tapped to accelerate certain estimated tax payments.

## TAX INCENTIVES

### Enhanced Like-Kind Exchanges

*P.L. 110-234* amends the like-kind exchange rules under Code Sec. 1031 to permit the exchange of water rights in the form of mutual ditch, reservoir and irrigation company stock. The new like-kind exchange treatment would apply to exchanges completed after the date of enactment.

**Impact** *This provision creates an exception to the general rule that stock is not property for like-kind exchange treatment and could*

*open the door to future changes to the strict like-kind exchange rules. For the time being, however, this provision narrowly applies to certain stock representing a holding of water rights that is recognized as real property under state law.*

### Tax Credit for Protecting Agricultural Chemicals

Manufacturers, retailers and distributors of agricultural fertilizers and pesticides will be eligible for a tax credit of 30 percent of their costs of protecting these dangerous products. The credit is allowed as part of the general business credit. Congress imposed several limits, including a \$2 million cap with respect to any taxpayer for any tax year.

**“Passage of the Farm Act and Military Tax Relief Act is hoped to have a domino effect on pending tax legislation”**

**Impact** *Qualifying costs not only include the cost of measures to protect the chemicals but also costs for employee training and background checks.*

### Enhanced Depreciation for Race Horses

*P.L. 110-234* creates a uniform depreciation period of three years for all race horses regardless of age. The new treatment generally applies to property placed in service after December 31, 2008, and before January 1, 2014, with an exception for horses more than two years of age placed in service after December 31, 2013.

### Conservation Reserve Program Payments

*P.L. 110-234* excludes from self-employment income any Conservation Reserve Program (CRP) payments made to retired or disabled farmers. These payments, which would otherwise

reduce Social Security benefits, will be treated as rental payments for federal tax purposes effective retroactively for payments made after December 31, 2007.

**Impact** *The IRS announced in Notice 2006-108 that it intended to treat all CRP payments, including payments to disabled and retired farmers, as subject to self-employment tax. The proposal sparked an immediate outcry from lawmakers in farm states who succeeded in reversing the IRS' plans, as reflected in P.L. 110-234.*

### Conservation Easements

The *Pension Protection Act of 2006 (PPA)* created new opportunities for, and imposed new requirements on, charitable contributions of real property for conservation purposes. Individuals could take an immediate deduction for the donation of conservation property up to 50 percent of their “contribution base,” rather than being restricted to the normal 20 percent limit. *PPA* wanted to encourage farmers and ranchers even more, allowing them charitable contribution deductions of up to 100 percent of their contribution base for contributions of qualified conservation property. This special treatment, both for individuals, in general, and for farmers and ranchers, expired at the end of 2007. *P.L. 110-234* extends this treatment through December 31, 2009.

**Impact** *This two-year extension applies retroactively both to the general public and to farmers and ranchers with limitations. Many individuals with vacation home properties have found the donation of conservation easements especially valuable. The donation enhances what they considered valuable about the property while allowing them a large charitable donation all in the year of donation, as well as often getting a permanent reduction of their local property taxes. These donations can continue for another two years, allowing the*

*Farm Bill to benefit many more than farmers and ranchers.*

### Forestry Conservation Bonds

*P.L. 110-234* authorizes the issuance of new forestry conservation tax-credit bonds to acquire forests for conservation purposes. Some portion of the land must be adjacent to U.S. Forest Service land and at least half of the land must be transferred to the U.S. Forest Service at no net cost to the U.S.

### Timber-Related Provisions

*P.L. 110-234* includes a number of timber-specific tax provisions, such as temporarily reducing the rate of tax on qualified timber gain of C corporations, loosening the rules governing the treatment of timber gains to fit timber property held for less than one year (landholdings) within the rules for qualifying real estate investment trusts (REITs) and favorably modifying the taxable REIT subsidiary asset test for timber REITs.

### Credit for Production of Cellulosic Biofuel

Cellulosic biofuels are made by releasing the sugars locked in the cell structure of plants, wood, grasses, dedicated energy crops, and agricultural waste and fermenting that sugar into fuel, or by converting the biomass into a synthetic gas which can be converted to liquid fuels or used to generate electricity. *P.L. 110-234* generally provides a temporary cellulosic biofuel producer tax credit of \$1.01 per gallon (with some restrictions). The non-refundable credit applies to cellulosic biofuel produced after December 31, 2008, through December 31, 2012. Congress also directed the Treasury Department and other government agencies to produce a comprehensive study on biofuels.

### Temporary Tax Relief for Kansas Disaster Area

In 2007, Greensburg, Kansas was devastated by a catastrophic tornado. Now, Congress has given qualifying taxpayers in the "Kansas Disaster Area" special tax relief, including enhanced Code Sec. 179

expensing, extended net operating loss (NOL) carrybacks and an employee-retention tax credit.

**Comment** This relief, modeled after previous Hurricane Katrina provisions, is in addition to the regular disaster-area designation relief available under Code Sec. 165 (modified to suspend the \$100 threshold and AGI limitation).

### Deduction for Endangered Species Recovery Expenditures

Farmers that incur expenditures to achieve site-specific management actions recommended in recovery plans under the *Endangered Species Act of 1973* will be eligible for a tax deduction that can offset up to 25 percent of gross farming income for any particular year. This provision applies to expenditures paid or incurred after December 31, 2008.

### Agricultural Bonds

*P.L. 110-234* increases the caps on loans made to first-time farmers from the proceeds of tax-exempt agricultural bonds (so-called "Aggie Bonds"). The maximum loan amount rises to \$450,000 and is indexed for inflation. Lawmakers also removed the fair market value test from the definition of substantial farmland.

## OFFSETS

On balance, the tax provisions in the *Farm Bill* raise revenue for the government, according to revenue estimates provided by the Joint Committee on Taxation. While tax breaks in the new law cost \$1.7 billion over 10 years, offsets are predicted to generate \$2 billion over the same time frame.

### Excess Farm Losses

The new law limits the amount of farming losses that a taxpayer receiving certain subsidies may use to offset non-farming business income. These limits on Schedule F losses will be set at the greater of \$300,000 or the net

farm income the taxpayer has received over the last five years. Losses that are limited in a particular year may be carried forward to subsequent years. This provision only applies to taxpayers who are not C corporations and who receive any direct or counter-cyclical payments under Title I of the *Food, Conservation, and Energy Act of 2008*, or Commodity Credit Corporation loans. This anti-tax shelter measure is effective for tax years beginning after December 31, 2009.

**Impact** *P.L. 110-234 expands the Code Sec. 263A(e)(4) definition of farming business to include the processing of commodities without regard to whether the processing is incidental to the growing, raising or harvesting of the commodity.*

**Comment** In the case of partnerships and S corporations, this treatment will be applied at the partner or shareholder level and the share of items of income, gain or deduction for each partner or shareholder will be taken into account within the year in which the S corp's or partnership's tax year ends.

**Comment** The \$300,000 amount is reduced to \$150,000 for married couples filing separately.

### Ethanol

Recognizing that farmers and others now need fewer incentives to get on the ethanol bandwagon, *P.L. 110-234* reduces the current tax credit for ethanol production from \$0.51 per gallon to \$0.45 per gallon for 2009 and beyond. However, the reduction will be delayed if the Treasury Department determines that less than 7.5 billion gallons of ethanol were produced in (or imported into) the U.S. during 2008. The bill also extends the tariff on imported ethanol through December 31, 2010, phases-out refund claims for exported jet fuel on the basis of ethanol import duties paid, and reduces the

## FARM BILL BUDGET SCORECARD (Over 10-Years)

### Tax Incentives and Relief

**\$1.7 billion: Total Cost**

• Cellulosic Biofuels Credit . . . . .	\$403 million
• Endangered Species Deduction . . . . .	\$283 million
• Forest Conservation Bonds . . . . .	\$250 million
• Timber Gain/REIT Provisions . . . . .	\$218 million
• CRP Exclusion . . . . .	\$192 million
• Racehorse Depreciation . . . . .	\$126 million
• Conservation Easements Deductions . . . . .	\$105 million
• Other . . . . .	\$123 million

### Revenue Raisers

**\$2 billion: Total Raised**

• Ethanol Excise Tax Credit Reduction . . . . .	\$1.203 billion
• Limitation on Farming Losses . . . . .	\$479 million
• Alcohol for Fuel Credits . . . . .	\$124 million
• Optional Self-Employment Tax . . . . .	\$105 million
• Other (approximate) . . . . .	\$89 million
• Corporate Tax Payments over Five Years . . . . .	\$4.5 billion

amount of “denaturants” in alcohol for the alcohol fuels credit.

### Corporate Estimated Tax Payments

Large corporations (corporations with assets of \$1 billion or more) will be required to make higher estimated tax payments in July, August and September of 2012. Payments due at these times will be accelerated by 7.75 percent on top of the already higher accelerated payments authorized by the *Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA)*.

**Impact** *Called a “budgetary gimmick” by opponents, this provision accelerates, by some estimates, an additional \$4.5 billion into the first five-year revenue period for the overall Farm Bill, “paying” for a substantial portion of the front-end costs of the overall legislation.*

### Information Reporting

*P.L. 110-234* codifies IRS Notice 2007-63, which requires information reporting for certain Commodity Credit Corporation (CCC) transactions. The

requirement applies to loans repaid on or after January 1, 2007.

**Comment** In Notice 2007-63, IRS Chief Counsel reminded taxpayers participating in the program that, should they include the CCC loan proceeds in their income under Code Sec. 77, they also must reduce their basis in those crops by the amount of any market gain they experience. Should they not make this election, they must report market gain as ordinary income. Either way, the CCC will report any market gain associated with the repayment of a CCC loan to the taxpayer on Form 1099-G, Certain Government Payments.

### Self-Employment Tax

Farmers who have low net earnings or losses often use the “farm optional method” to report self-employment earnings. *P.L. 110-234* modifies the farm optional method of computing net earnings from self-employment so farmers can secure four credits of Social Security benefit coverage for each tax year. The change is retroactive to tax years beginning after December 31, 2007.

**Impact** *P.L. 110-234 also modifies the non-farm optional method of computing net earnings from self-employment to allow any self-employed individual to more easily secure Social Security credits in a year of low net earnings.*

## Military Tax Relief

The \$1.2 billion in tax benefits in the *Heroes Earnings Assistance and Relief Tax Bill of 2008 (H.R. 6081)* are targeted to members of the U.S. Armed Forces (active and reserve) and their families. The new law also clarifies the tax treatment of state and local benefits provided to volunteer fire fighters and emergency medical responders. To pay for these provisions, the new law changes the tax treatment of

certain government contractors and individuals who expatriate as well as raises the failure to file penalty and extends the mental health parity excise tax.

### TAX RELIEF

#### Economic Stimulus Payments

An estimated 8,000 to 10,000 military personnel (regular and reserve) are mar-

ried to spouses who do not have a valid Social Security number. Under current law, they will not receive an economic stimulus payment if they file a joint return. *H.R. 6081* allows these couples to file jointly and receive an economic stimulus payment so long as one spouse has a valid Social Security number.

**Comment** *H.R. 6081* also treats Adoption Taxpayer Identification Numbers



(ATINs) as valid identification numbers for purposes of the economic stimulus payments allocable to dependent children. Under current law, the IRS will not issue the \$300 child payment portion of the economic stimulus payment unless the child has a valid Social Security number.

### Combat Pay as Earned Income

The *Working Families Tax Relief Act of 2004* and subsequent legislation temporarily allowed military personnel to treat tax-free combat pay as earned income solely for purposes of maximizing their Earned Income Credit. *H.R. 6081* makes this temporary treatment permanent.

### Retirement Plan Withdrawals

The *Pension Protection Act of 2006 (PPA)* allowed military reservists called to active duty for more than a short tour to make penalty-free withdrawals from IRAs, 401(k)s and other arrangements. Under the PPA, reservist must have been called to active duty after September 11, 2001 and before December 31, 2007. *H.R. 6081* makes this treatment permanent.

**Planning tip.** Reservists on active duty would still be subject to income tax on the withdrawals; however, reservists have up to two years to repay these withdrawn contributions.

### Flexible Spending Accounts

*H.R. 6081* allows reservists called to active duty penalty-free access to unused amounts from flexible spending arrangements (FSAs) sponsored by their employer. These FSA withdrawals are permitted for any purpose, not just for medical or child care expenses. The provision applies to withdrawals made after the date of enactment.

### Disabled Veterans

If a veteran qualifies for retroactive disability compensation, the taxable retiree pay that he or she received is designated as nontaxable disability compensation and the veteran is eligible for a refund of taxes paid. Generally, refund claims are limited to the prior three years. *H.R. 6081*

creates an exception to the IRS' statute of limitations for these disabled veterans.

### Qualified Plan Survivor Benefits

*H.R. 6081* also enhances survivor benefits of military personnel covered by employer-sponsored qualified plans. Qualified plans now must be amended to entitle survivors to any additional benefits under the plan as if the participant had returned to work and then died. The bill also fine-tunes the deemed re-hired rules.

**Impact** *Many plans provide for ancillary life insurance benefits, or other survivor benefits, contingent on a participant's termination of employment on account of death. Under H.R. 6081, these plans must be amended to pay the participant's beneficiary should the participant die while performing military service.*

### Roth IRAs and Coverdell ESAs

Roth IRAs are subject to annual contribution dollar limits. *H.R. 6081* allows individuals receiving military death benefits to disregard the Roth IRA dollar amount limitations and start a Roth IRA with the full amount of these death benefits. The same treatment would generally apply to contributions of military death benefits to Coverdell Educational Savings Accounts (ESAs).

### Differential Pay

Differential wage payments are made voluntarily by an employer to represent the difference between the employee's regular salary and his or her military pay. *H.R. 6081* amends the definition of differential wage payments to treat them as wages for withholding, IRA contribution, and in-service qualified retirement plan distribution purposes. The wage-withholding provision applies to payments made after 2008; the other changes apply for tax years beginning after 2008.

**Comment** Social Security retirement benefits are based on an individual's total earnings history. Because dif-

ferential pay is not subject to FICA, an individual's Social Security retirement benefits otherwise might be reduced.

### Employer Tax Credit

Small employers will be eligible for a temporary differential pay tax credit under *H.R. 6081*. The credit equals 20 percent of the sum of the eligible differential wage payments (up to \$20,000) for each of the qualified employees on active military duty during the tax year. The credit may be taken for amounts paid after the date of enactment and before 2010. The amount taken as a credit by the employer may not also be taken as deductible compensation.

**Comment** A small business for purposes of the credit would generally employ fewer than 50 employees. Businesses under common control would be counted together to determine if a taxpayer is an eligible small business employer.

### Veterans Bonuses and Payments

Some states pay bonuses ("veterans bonuses") to military personnel serving in a combat zone or to military personnel who have returned from a combat zone. *H.R. 6081* clarifies that these state bonuses and similar payments are excludable from the recipient's gross income.

### Mortgage Bonds

To help veterans buy homes, Congress already authorized Alaska, California, Oregon, Texas, and Wisconsin to issue qualified veterans' mortgage bonds under which interest payments are tax exempt. *H.R. 6081* increases the bond limitation amounts for Alaska, Oregon and Wisconsin to \$100 million. For bonds issued in California or Texas, *H.R. 6081* removes certain dates for the completion of military service before 1977 and reduces the eligibility period from 30 to 25 years after separation from service. The first-time homebuyer requirement is dropped entirely. Most

changes would apply retroactively to bonds issued after December 31, 2007.

### Volunteer Fire Fighters

Included in *H.R. 6081* is tax relief for volunteer fire fighters and emergency medical responders. Some states and localities provide benefits to these volunteers to recruit and retain qualified professionals (for example, reimbursement of some expenses up to \$30/month, length of service award programs and some tax and fee reductions). The *Mortgage Debt Forgiveness Act of 2007* excluded these payments from recipients' gross income for federal income tax purposes. *H.R. 6081* now exempts these payments from FICA and FUTA as well, retroactively as if enacted as part of the *Mortgage Debt Forgiveness Act of 2007*.

### More Benefits

*H.R. 6081* also:

- Clarifies the home sale exclusion for members of the intelligence community and Peace Corps volunteers.
- Permanently extends the authority of the IRS to disclose return information for certain veterans programs of the U.S. Department of Veterans Affairs.
- Enhances Supplemental Security Income (SSI) for veterans and AmeriCorps volunteers.

## MILITARY RELIEF OFFSETS

To pay for tax relief, the military bill treats certain domestically controlled foreign persons performing services un-

der contract with the U.S. government as U.S. employees. The new law also raises the minimum penalty on anyone for failure to file a federal tax return, extends the current excise tax on employers for failing to comply with the mental health parity requirements and overhauls the tax regime imposed on expatriates.

### Government Contractors

*H.R. 6081* terminates the practice of some U.S. government contractors using offshore shell companies to avoid paying Social Security, Medicare and unemployment taxes.

The bill treats foreign subsidiaries of U.S. companies performing service under contract with the U.S. government as U.S. employers for purposes of federal payroll taxes. This offset is estimated to raise more than \$800 million over 10 years.

### Failure to File Penalty

Code Sec. 6651 imposes a minimum penalty of \$100 or 100 percent of the amount of tax required to be shown on the return if a taxpayer fails to file a return. *H.R. 6081* increases the monetary amount to \$135. The change is estimated to raise \$83 million over 10 years.

**Impact** *The change would apply to returns required to be filed after December 31, 2008.*

### Mental Health Parity

Group health plans that fail to satisfy mental health parity requirements were

subject to an excise tax of \$100 per day for each day of noncompliance. This excise tax expired after December 31, 2007. *H.R. 6081* extends the excise tax through December 31, 2008.

### Expatriation

Wealthy individuals (generally individuals with a net worth of \$2 million or more) who relinquish their U.S. citizenship will be subject to new expatriation rules based on mark-to-market principles. All property, with some exceptions, of expatriates will be treated as sold on the day before the expatriation date for fair market value. The new expatriate regime is estimated to raise more than \$400 billion over 10 years.

**Comment** An expatriate may be a U.S. citizen who relinquishes his or her citizenship or any long-term resident of the U.S. who ceases to be a lawful permanent resident of the U.S.

Any gain arising from the sale would be taken into account for the tax year of the sale and any loss would be taken into account for the tax year of the sale to the extent otherwise provided in the Tax Code. However, the Code Sec. 1091 wash sale rules would not apply. *H.R. 6081* would provide a general inflation-adjusted exclusion of \$600,000, as well as excluding some types of property, such as deferred compensation, interests in nongrantor trusts, and certain tax deferred accounts.

## PENDING TAX RELIEF

Besides the *Farm Bill* and *Military Tax Relief*, lawmakers are busy with several other tax bills, including a housing bill, legislation to extend temporary tax incentives, proposals to equalize the preparer and taxpayer penalty standards, and a possible surtax on very wealthy individuals.

### HOUSING BILL

The House overwhelmingly passed a housing bill to revamp government regulation of mortgage lending on May 14. The bill, the *American Housing Rescue and Foreclosure Prevention Act of 2008* (*H.R. 3221*), also includes some tax incentives.

### Homebuyers Tax Credit

Low and moderate income first-time homebuyers would be eligible for a refundable tax credit of 10 percent of the purchase price of their home with a cap of \$7,500 (\$3,750 for married couples filing separately). Recipients would

be required to repay the amounts they receive over 15 years.

### New Standard Property Tax Deduction

*H.R. 3221* would allow single non-itemizers to deduct up to \$350 in real property taxes and married filing jointly non-itemizers up to \$700 in real property taxes. The deduction would be available for 2008 only.

### Low-Income Housing Credit

*H.R. 3221* would simplify the low-income housing credit and authorize a temporary increase in the volume cap of the credit.

### Mortgage Revenue Bonds

The bill would authorize an additional \$10 billion of tax-exempt bonds to, in part, help homeowners refinance subprime loans.

**Impact** *H.R. 3221 would pay for these incentives by requiring basis reporting on securities sales.*

## WAR FUNDING BILL

*H.R. 2642*, a supplemental war spending bill, would impose a surtax of approximately \$500 on married couples filing jointly with more than \$1 million of modified AGI (\$250 on single filers with more than \$500,000 of modified AGI) to fund scholarships and educational opportunities for veterans. The permanent surtax would apply to tax years beginning after December 31, 2008. The Senate version of the war funding bill does not include this surtax.

**Comment** President Bush has indicated he will veto the House-passed housing and war spending bills.

## TAXPAYER ASSISTANCE ACT

Currently, two private tax collection agencies are under contract with the IRS. The *Taxpayer Assistance and Simplifi-*

*cation Act of 2008 (H.R. 5719)*, which passed the House on April 15, would revoke the IRS' authority to outsource tax collection. The bill would also equalize the preparer and taxpayer penalty standards at substantial authority.

## EXTENDERS BILL

The House approved on May 21 by a 263-160 vote the *Energy and Tax Extenders Act of 2008, H.R. 6049*, which extends many popular but temporary tax incentives, including:

- State and local sales tax deduction;
- Research tax credit;
- Teachers' classroom expense deduction; and
- Higher education tuition deduction.

Some popular energy incentives, like rewarding homeowners and businesses for installing energy efficient property, would also be extended. Additionally, *H.R. 6049* would equalize the preparer and taxpayer penalty standards at substantial authority.

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