Farm and Small Business Expensing Tax Relief Act

Introduced by Senators Hoeven and Cantwell

Background: On September 19, 2013 the IRS issued a final regulation (TD 9636) on the treatment of amounts paid to acquire, produce or improve tangible property. The regulations created new, complex rules for small business owners and farmers, such as:

- Setting out a new elective \$500 (per invoice or item) safe harbor for expensing any amount paid to acquire or produce tangible property for those without an applicable financial statement; and
- Setting out a new elective \$5,000 safe harbor that can only be utilized if a business:
 - Establishes written accounting procedures for expensing such amounts (i.e. a written capitalization policy) that it follows in its books and records; and
 - Has an applicable financial statement that includes:
 - Audited financial statements, financial statements filed with the U.S.
 Securities and Exchange Commission, or
 - Financial statements required to be provided to a governmental agency (other than the SEC or the IRS).

Under the new regulations, any cost exceeding the safe harbor limit must pass a sophisticated 3-part legal test in order to be expensed: the amount paid shall not constitute an improvement under either the 1) adaptation, 2) restoration, or 3) betterment standards, as set forth by the IRS regulations.

Any cost exceeding the safe harbor limit that constitutes an improvement must be capitalized, rather than deducted, over the applicable number of years.

Problem: These highly complex regulations bring substantial negative consequences for owners of small businesses and family farms. The unreasonably low, \$500 safe harbor limit does not reflect the real world costs of everyday repairs, and requires that these entities navigate a burdensome maze of legal tests to expense standard repairs. The criteria required to take advantage of the more favorable \$5,000 expensing safe harbor limit is reasonable for large corporations, but is discriminating and unworkable for any small, family operation.

Small businesses and family farmers simply do not have the time and money to devote to complying with these new rules. It is an anti-small business set of rules and needs to be fixed.

Solution – The Farm and Small Business Expensing Tax Relief Act sets out the following:

- Eliminates the \$500safe harbor limit for tangible property costs and establishes a \$5,000 safe harbor election, to more closely reflect the actual cost of items;
- Eliminates the onerous applicable financial statement criteria; and
- Sets out a current IRS definition of small business as \$10 million or less in gross receipts.

Small business owners and family farmers will be able to expense the same per item costs of tangible assets as larger businesses without facing complex IRS expensing rules.