

The New \$100,000 Agricultural Retailer and Distributor Industry Tax Credit

By Charles Goulding, Jacob Goldman and Taylor Goulding

The Food, Conservation and Energy Act of 2008, or Farm Bill, that was recently enacted created Section 450¹ of the Internal Revenue Code which provides a substantial new \$100,000 agricultural chemicals security tax credit per facility for the agricultural chemical industry that specifically includes agricultural retailer and distribution facilities. Recognizing that the ag fertilizer and chemical industry is subject to an increasing number of legally mandated and recommended federal, state and local and security improvements, this new law provides a substantial tax credit to offset some of the economic costs of creating and improving new and improved security plans².

The potential credit amount is \$100,000 per facility up to \$2,000,000 per year and a maximum \$10,000,000 over 5 years. The ag tax credit is available for expenditures occurring as of May 22nd, 2008.

The new law¹ defines an eligible agricultural business to include retailers of fertilizer and ag chemicals to farmers and ranchers and those that manufacture, formulate, distribute or aerially apply fertilizer and/or ag chemicals.

The Legislative Conference Committee describing the provisions intent stated the following: "The Conference Committee believes that a security tax credit would help the agricultural industry to properly safeguard agricultural pesticides and fertilizers from the threat of terrorists, drug dealers and other criminals. This credit will help ease the substantial increase in production costs faced by agriculture related to installing improved security measures that will better protect the American public from the potential threat of terrorism or other illegal activities."

Under Section 450 "Qualified Chemical Security Expenditures" are amounts paid for:

- (1) Employee security training and background checks;

¹ This Legislation was initiated by the ARA and received strong support from Senator Pat Roberts of Kansas

² The need for a written security plan for tax documentation is a recommendation being made by the authors. Normally, tax credits are documented with in a context, which in this case, could be a written security plan. For example, required documentation for the EPAct tax benefits, also described in this article, utilizes a written energy plan.

- (2) Limitation and prevention of access to controls of specified agricultural chemicals stored at a facility;
- (3) Tagging, locking tank valves, and chemical additives to prevent the theft of specified agricultural chemicals or to render such chemicals unfit for illegal use;
- (4) Protection of the perimeter of specified agricultural chemicals;
- (5) Installation of security lighting, cameras, recording equipment and intrusion detection sensors;
- (6) Implementation of measures to increase computer or computer network security;
- (7) Conducting security vulnerability assessments;
- (8) Implementing a site security plan; and
- (9) Other measures provided for by regulation.

How to Approach this Tax Credit:

In order to best use this credit, retailer and distributor aviation facility operators need to integrate facility security expertise with facilities' tax experts who understand facility security plans and know how to apply the tax law and calculate the proper tax credit.

Energy Tax Savers, Inc., has developed software that tracks existing, qualifying, security measures, integrates the qualifying Ag security credit measures and creates the resulting required Ag chemical security plan.

Security Plans:

To obtain a credit requires a facility to complete a security plan. Many of the new security regulations now impacting the ag chemical industry are “risk based” recognizing that each ag chemical facility is unique and will need to tailor its security plan to its unique circumstances and existing security measures.

As a first step, the ag chemical facility should identify all the existing security measures that fall into the enumerated security categories. It is crucial to identify all of the existing and ongoing credit measures since the 30% credit is based on the annual combined existing and proposed new measures. For example, a large chemical facility may already have major commitments for employee verification software that integrates into its enterprise and HR system. Those facilities, that already have preliminary security plans on file with other government federal and government agencies, should use the existing plans as a tax credit road map. The next step is to conduct a security vulnerability assessment to identify measures needed.

In order to best use this credit, Ag fertilizer and chemical facility operators need to integrate facility security expertise with facilities tax experts who understand facility security plans and know how to apply the tax law and calculate the proper tax credit.

Higher Risk Facilities -Learning from the Larger Facilities:

Certain upstream facilities that may be part of the agricultural distribution and retail supply chain and fit certain higher risk profiles, are required to complete top-screen-risk profiles, and may be obligated to provide the Department of Homeland Security with Vulnerability and Site Security Plans. In these situations, the Vulnerability Plan presents the actual facility vulnerabilities, and the Security Plan is expected to address those vulnerabilities. Accordingly, in these situations, the Vulnerability Plan is actually an excellent tax planning tool, since presumably; the organization will be making the expenditures necessary to address weaknesses. (Note: For security reasons, the security officer may not be able to give the tax adviser complete access to the security plan but should be able to summarize the expenditures necessary to become compliant for tax evaluation). On Thursday, December 28th, 2006 in Part II of the Federal Register, the Department of Homeland Security

indicated that for higher risk facilities, the security plan should address the checklist items described in the attached exhibit.

Improving Existing Security:

Although many ag tax credit chemical facilities already have perimeter fencing, there are many intrusion and access enhancements that can improve security.

Certain security technologies such as access security, intrusion security, infrared security cameras and chemical sensors have greatly improved in recent years, and are likely expenditure candidates for this new tax credit.

Infrared Based Camera Security Systems:

The ag security tax specifically includes security cameras in the eligible expenditure category. Because all objects generate heat, infrared thermal cameras operate as well at night as they do during the day. Major improvements in infrared technology are spurring a widespread introduction of infrared camera-based-security systems for both security perimeter protection and leak detection. Infrared cameras are particularly well suited for aviation perimeter applications because thermal energy penetrates through smoke, dust, modest foliage and light fog. Thermal images can discern the characteristics of an environment that is not normally apparent, such as open windows or recently parked vehicles.

Using an infrared camera systems network and connectivity options as a tax example, we can analyze how the ag tax credit can be used as economic support for a multi-component investment in a comprehensive security system.

The infrared camera system can be integrated with middleware software to provide video analytics utilizing thermal and multi-sensor cameras. Basic sensors can be configured with a variety of optional sensors including digital magnetic (DMC), laser rangefinder (LRF) and ground positioning systems (GPS) that provide precise threat geo-location information.

Accordingly, a computer networked infrared security camera system would be covered by 3 expenditure categories listed in the Section 450 Ag Security Tax Credit as follows:

Qualified Security Expenditure (Section 450 Paragraph references)

The Ag Tax Credit security plan should incorporate all of the facilities qualified investments related to applicable security resolutions including the Chemical Facility And Terrorism Resolutions (CFATS) and the Asmark Institute's Security Vulnerability Assessment (SVA).

- (4) Protection of the perimeter
- (5) Installment of...cameras...and intrusion detector sensors
- (6) Implementation of measures to increase computer or network security

Calculating Tax Benefits:

Example 1:

Presume an Ag chemical retailer or distributor facility operator invests \$100,000 in an infrared security system and has no other eligible expense for the year.

In this case, the Ag Security Tax Credit will be \$30,000 (30% of \$100,000)

Example 2:

Presume that before investing in the same camera system, the same retailer or distributor had already invested \$100,000 in eligible perimeter fencing and other security measures in the same tax year.

In this case, the combined new \$100,000 camera system and the previous investment would result in a \$60,000 Tax Credit (30% of \$200,000)

Additional Facility Tax benefits for the Ag Chemical Aviation Industry:

The Ag retail and distributor industry is also eligible for Energy Policy Act (EPAct) tax benefits for installing energy efficient building hanger and office lighting. Qualified energy

efficient lighting is entitled to an immediate tax deduction ranging from 30 cents per square foot to 60 cents per square foot. This provision is currently effective for the period January 1st, 2006 thru December 31st, 2008.

Example 3:

Presume a 100,000 square foot facility installs:

- (1) \$100,000 worth of energy efficient interior lighting including \$20,000 worth of energy efficient interior security lighting, and
- (2) The \$100,000 infrared camera based security system described above

The combined first year tax incentive results will be as follows:

Investment Category	Ag Security Credit	EPAct Tax Deduction
Interior Lighting (EPAct)	\$6,000	\$60,000
Infrared Camera Security	30,000	--
Total First year Tax Incentives	\$36,000	\$60,000

Please note that tax credits are more valuable than tax deductions. Using the 40% combined federal and state tax rate, the \$60,000 EPAct tax deduction is worth \$24,000. Note, however, that the energy efficient lighting investment has an important added economic benefit in that it will result in a perpetual savings in lighting electrical costs worth thousands per year.

Conclusion:

The ag security tax credit is expected to drive tremendous investment in ag chemical facilities security equipment. Many companies will use the new opportunity to improve security and meet current and anticipated regulatory requirements.

Ancillary benefits from an improved security plan should be reduced theft, reduced vandalism and the benefits of reduced risk profile.

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Energy Tax Savers, Inc. is an interdisciplinary tax and engineering firm that specializes in the energy efficient aspects of buildings and ag tax credits.

Sidebar

Security Plan Measures Checklist

This is a checklist of the measures and type of expenditures that the Federal Government listed as of December 28, 2006 in the Federal Register as appropriate for a security plan.

Secure and monitor the perimeter of the facility	
Secure and monitor restricted areas or potentially critical targets within the facility;	
Control access to the facility and to restricted areas within the facility by screening and/or inspecting individuals, deliveries, and vehicles as they enter; including, <ul style="list-style-type: none"> ▪ Measures to deter the unauthorized introduction of dangerous substances and devices that may facilitate an attack or actions having serious negative consequences for the population surrounding the facility; and ▪ Measures implementing a regularly updated identification system that checks the identification of facility personnel and other persons seeking access to the facility and that discourages abuse through established disciplinary measures; 	
Deter vehicles from ~penetrating the facility perimeter, gaining unauthorized access to restricted areas or otherwise presenting a hazard to potentially critical targets;	
Secure and monitor the shipping and receipt of hazardous materials from the facility;	
Deter theft or diversion of potentially dangerous chemicals;	
Deter insider sabotage;	
Deter cyber sabotage, including by preventing unauthorized onsite or remote access to critical process controls, Supervisory Control And Data Acquisition (SCADA) systems, and other sensitive computerized systems;	
Develop and exercise an emergency plan to respond to security incidents internally and with assistance of local law enforcement and first responders;	
Maintain effective monitoring, communications and warning systems, including, <ul style="list-style-type: none"> ▪ Measures designed to ensure that security systems and equipment are in good working order and inspected, tested, calibrated, and otherwise maintained; ▪ Measures designed to regularly test security systems, note deficiencies, correct for detected deficiencies, and record results so that they are available for inspection by the Department; and ▪ Measures to allow the facility to promptly identify and respond to security system and equipment failures or malfunctions; 	
Ensure proper security training, exercises, and drills of facility personnel;	
Perform appropriate background checks on and ensure approximate credentials for facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or potentially critical targets;	
Escalate the level of protective measures for periods of elevated threat;	
Address specific threats, vulnerabilities, or risks identified by the Assistant Secretary for the particular facility at issue;	
Report significant security incidents to the Department;	
Identify, investigate, report, and maintain records of significant security incidents and suspicious activities in or near the site;	
Establish official(s) and an organization responsible for security and for compliance with these standards	
Maintain appropriate records; and	
Address any additional performance standards the government may specify	