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E. REAL OR PERSONAL INCOME-PRODUCING PROPERTY

The Social Security Act provides for the exclusion from resources of certain real and personal property if essential to an individual's means of self-support.

The income generated by income-producing property is not excluded under this provision. Income is either earned or unearned, depending on the type of income producing property that is involved.

The different types of income-producing property include:

- Property Essential to Self-Support,
- Property Used to Produce Goods or Services,
- Nonbusiness Income Producing Property, and
- Liberalized Income Producing Property

Each of these types of property and its use and applicable exclusions are discussed below.

1. Current Use Requirement

Property must be in current use in the type of activity that qualifies it as income-producing in order to be excluded. Current use is evaluated on a monthly basis. Property <u>not</u> in current use can be excluded only if:

- it has been in use; and
- there is expectation that the use will resume.

Resumption of use must be expected within 12 months of last use. This 12 month period can be extended for an additional 12 months if nonuse is due to a disabling condition:

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a. If property is not in current use, obtain the client or spouse's statement as to:

- the date of last use;
- the reason(s) the property is not in use; and
- when the individual expects to resume the self-support activity, if at all.

Explain that property can be excluded for up to 12 months if resumption of the self-support activity can reasonably be expected to occur within that time.

If the individual does not intend to resume the self-support activity, the property is a countable resource for the month after the month of last use.

If, after property has been excluded because an individual intends to resume self-support activity, the individual decides not to resume such activity, the exclusion ceases to apply as of the date of the change of intent. Thus, unless excluded under another provision, the property is a resource for the following month:

b. If an individual alleges that self-support property is not in current use because of a disabling condition, obtain the individual's signed statement as to:

- the nature of the condition;
- the date he or she ceased the self-support activity; and
- when he or she intends to resume the activity, if at all.

Prepare a special determination as to whether up to an additional 12 months will be allowed for resuming use of the property.

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2. Property Essential to Self-Support Exclusion Applies to All MAO Coverage Groups

The properties described in a., b., and c., below are excluded as essential to self-support regardless of value or rate of return. However, they must be in current use or, if not in use for reasons beyond the individual's control, there must be a reasonable expectation that the required use will resume.

a. Trade or Business Property

This includes the necessary capital and operating assets of a business, e.g., real property, buildings, inventory, equipment, machinery, livestock, motor vehicles. Effective May 1, 1990, any and all property that is used in a trade or business is excluded as a resource, regardless of value. Prior to 05/01/90, the $6000/6% rule, as outlined in "Limits on Income Producing Property," must be met for trade or business property.

When a client or spouse owns a trade or business, document the following information:

- a description of the trade or business;
- a description of the assets of the trade or business;
- the number of years it has been operating;
- the identity of any co-owners;
- the estimated gross and net earnings of the trade or business for the current tax year.

Obtain a copy of the business tax return (i.e., Form 1040 and the appropriate schedules) for the tax year prior to the application or redetermination. Use the return to determine the net earnings from self-employment and validity of the trade or business. The following can be particularly helpful:

- Schedule C, Profit or Loss from Business or Profession;
- Schedule SE, Computation of Social Security Self-Employment;
- Schedule F, Farm Income and Expenses;
- Form 4562, Depreciation and Amortization; and
- Form 1065, U. S. Partnership Return of Income.

If the current tax return is not available, obtain a copy of the latest tax return available.

b. <u>Government Permits</u>

Government permits represent authority granted by a government agency to engage in income producing activity. Examples are commercial fishing permits granted by a State Commerce Commission and tobacco crop allotments issued by the U. S. Department of Agriculture.

If a client or spouse owns government license, permit, or other property that represents government authority to engage in an income producing activity, and that has value as a resource, document the following information:

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- the type of license, permit or other property;
- the name of the issuing agency, if appropriate;
- whether the law requires such license, permit, or property for engaging in the income producing activity at issue; and
- how the license, permit, or other property is being used; or
- if it is not being used, why not.

c. Personal Property Used By An Employee

Personal property used by an employee for work is excluded from resources beginning May 1, 1990. For periods before that date such items were excluded if they were required by the individual's employer. Excluded items include tools, safety equipment, uniforms, etc.

If a client or spouse owning items that are used in his or work as an employee; or, for months of eligibility before May 1, 1990, that his or her employer required he or she provide as a condition or employment, obtain his or her statement to include:

- the name, address, and telephone number of the employer;
- a general description of the items;
- a general description of his or her duties; and
- whether the items are currently being used.

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3. Property Used To Produce Goods/ Services (SSI Policy)

For MAO Coverage Groups subject to SSI policy, up to $6,000 of the equity value of nonbusiness property used to produce goods or services essential to daily activities is excluded from resources.

There is no requirement that the property produce a certain rate of return. The property must be in current use or, if it is not in use for reasons beyond the individual's control, there must be a reasonable expectation that the required use will resume.

Any portion of the property's equity value in excess of $6,000 is not excluded under this provision.

Nonbusiness property essential to self-support can be real or personal property but not cash or bank accounts. It produces goods or services essential to daily activities if, for example, it is used to:

- grow produce or livestock solely for personal consumption in the individual's household; or
- perform activities essential to the production of food solely for home consumption.

NOTE: While this category of property may encompass a vehicle used solely in a nonbusiness self-support activity (e.g., a garden tractor, or a boat used for subsistence fishing), it does not include any vehicle that qualifies as an automobile.

When a client or spouse owns property that he or she uses to produce goods or services necessary for daily activities, document the following:

- a description of the property;
- how it is used; and
- an estimate of its CMV and any encumbrances on it.

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4. Nonbusiness Income-Producing Property (SSI Policy)

Up to $6,000 of the equity value of nonbusiness income producing property (and business income producing property for months of eligibility before May 1, 1990) can be excluded from resources if the property produces a net annual return equal to at least 6% of the excluded equity.

Any portion of the property's equity value in excess of $6,000 is not excluded under this provision.

If the property produces less than a 6% return, the exclusion can apply only if:

- the lower return is for reasons beyond the individual's control (e.g., crop failure or illness); and

- there is a reasonable expectation that the property will again produce a 6% return.

Otherwise, none of the EV is excluded under this provision.

If an individual owns more than one piece of income producing property:

- the 6% return requirement applies individually to each; and

- the $6,000 EV limit applies to the total EV exceeds $6,000 that portion of the total EV in excess of $6,000 is not excluded under this provision.

a. <u>Nonbusiness Income-Property Defined</u>

Property includes land which produces rents or other land-use fees (e.g., nonliquid notes or mortgages, ownership or timber rights, mineral or oil exploration) or other nonliquid property which provides rental or other income, but is not used as part of a trade or business.

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b. Verification Required

When a client or spouse owns nonbusiness property which produces income, document the following:

- The number of years the individual has owned the property;
- The owner and/or co-owners of the property;
- A description of the property and how it is used;
- The estimated CMV of the property and any encumbrances on the property; and
- The estimated net and gross income for the current tax year.

Nonbusiness property is generally reported on Schedule E (Supplemental Income Schedule) of Form 1040. Obtain a copy of the tax return for the year prior to filing the application or redetermination. The Schedule E provides income information, a description of the property, use of the property, and the value of the property.

When no tax returns are available, obtain other evidence from the individual which establishes that the property is producing income. For example, if an individual is leasing land for mineral or oil exploration, he/she should have a copy of the lease agreement for the period in question.

c. Development When Rate of Return is Less Than 6%

When income from income producing property has declined below 6%, document the file with the following:

- Obtain an explanation for the decline in earnings for the year in question;

- Obtain evidence of prior years' earnings (e.g., tax returns for at least 2 years prior to the current taxable year) to establish whether the activity has produced a 6 percent rate of return before;

- If evidence establishes that the earnings decline is for reasons beyond the individual's control, allow up to 24 months from the end of the tax year in which the earnings went below 6% to meet the 6% requirement;

- Set up a 12-month tickler to check on the individual's progress with the business. The individual can have the additional 12 months to achieve the 6% rate of return if he/she is actively pursuing the activity. If, at the 12-month interval, the individual has ceased to actively pursue the activity the value of the property counts as a resource the month following the month of review; and

- If the property is still not producing at least a 6 percent return at the end of the 24-month period, discontinue the exclusion. The value of property counts as a resource the month following the month the 24-month period expires.

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5. Liberalized Income-Producing Property Policy

For MAO Coverage Groups subject to liberalized resource policy, effective 10-01-89, the $6000 resource cap for income producing property is lifted. Property can be considered income-producing if it produces a net annual return of at least 6% of the Equity Value (EV) of the property.

- Property essential to Self-Support, as defined in policy, is excluded regardless of value or rate of return so the 6% of EV rule does not apply,

- Property used to produce goods or services as defined in policy, is not required to have a rate of return so the 6% of EV rule does not apply. Property that qualifies as used to produce goods or services can therefore be excluded regardless of value or rate of return, and

- Nonbusiness income-producing property must produce a net annual return of 6% of the EV for each property. If multiple properties are involved, each must be evaluated under the 6% of EV rule.

Refer to the discussion of each type of property exclusion for the verification requirements that apply to SSI and liberalized policies.

NOTE: Property that a client sells via a property agreement must meet the 6% net annual return criteria and the agreement must be actuarially sound in order to avoid a possible transfer of resources penalty. Refer to the discussion of "Promissory Notes, Loans & Property Agreements" later in this subsection.