Olson Ag Law Update

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Happy New Year! Olson Ag Law Update resumes publication after a hiatus of about a year. We will try to get this newsletter out to you more regularly in 2016. This issue discusses two provisions of the new tax act and one new FSA farm program regulation that will be of interest to farmers. It also discusses limiting liability in farm partnerships.

Section 179 and Bonus Depreciation

The Protecting Americans From Tax Hikes Act (PATH) creates a permanent deduction under Section 179 of the Internal Revenue Code for new and used farm equipment and other property purchased in 2015 and subsequent years. The maximum amount that may be deducted in any year is $500,000, and the deduction is phased out dollar for dollar to the extent assets placed in service exceed $2 million. Both of these amounts are indexed for inflation. In addition, the Act extends the deduction for bonus first-year depreciation until Dec. 31, 2019. These provisions should make it easier for farmers to plan equipment purchases in the future. There will be no more waiting to the last minute to know the amount of allowable deductions.

Conservation Easement Tax Provisions

Congress has finally made permanent the temporary conservation easement charitable deduction rules that we have had on again, off again over the past eight years. Beginning in 2015, the value of a conservation easement may be deducted up to 100% of Adjusted Gross Income for farmers (50% of AGI for non-farmers) and any unused deduction carried forward for an additional 15 years beyond the year of the easement gift. Again, this should make it easier for farmers to plan for easement donations. Easements may now be given in years when it makes the most tax sense for farmers rather than in years when temporary rules are about to expire.

New FSA Active Personal Management Regulation for Payment Limitations

The USDA Farm Service Agency published its final rule on active personal management on December 16, 2015. This rule was mandated by Congress in the 2014 Farm Bill. Beginning in 2016, the rule applies to farming operations set up as partnerships, joint ventures or other legal entities **except** 1) operations whose partners, members or shareholders are all members of the same family, and 2) operations that seek to qualify only one partner for a payment limit based on his or her active personal management or a combination of active personal management and active personal labor. These exceptions also apply to partnerships where the partners are limited liability companies or corporations as long as all members or shareholders of those partner entities are family members or only one member or shareholder is engaged in management.

Farming operations that do not qualify for one of the two exceptions will be subject to much more stringent rules on active personal management than in the past. Failure to comply with the rules will render one or more partners ineligible for farm program payments.

The new rules limit the operation to one person qualifying for a payment limit based on management activities or two such persons if the operation is 2,500 acres or more in size. In certain cases, a farming operation determined by FSA to be both large and “complex” may qualify three persons for payment limits based on management activities.

Under the rules, each management partner must contribute at least 25% of the total annual management required for the operation or contribute a total of 500 hours of management activity per year. To qualify, management activities must be of the type specified in the regulation and must be contemporaneously documented in written logs.

The new regulation contains more detail than can be provided in this summary. Operations with non-family partners should study the regulation in detail and consult FSA or legal counsel if they have any questions.

Limiting Liability in Family Farming Partnerships

Last year many farmers created new partnerships or added new partners to existing partnerships to capture additional farm program dollars available under the 2014 Farm Bill. In most cases, the new partnership operations consisted solely of family members. However, in order to utilize the "family exception" to the "substantive change" rules, the partners were added in their individual capacities and not as single member limited liability companies. Without the family exception, the operation would have been required to have farmed 20% more base acres than the year before for each new partner added.

Unfortunately, all partners of a general partnership are jointly and severally liable for the debts and other liabilities of the partnership. If the partners are individuals rather than limited liability companies, the partners' personal assets will be available to satisfy judgments against the partnership. If the partners are limited liability companies (or corporations), the liability will stop at the limited liability companies and not pass on to their members.

FSA does not consider a family member in a limited liability company to be a family member for purposes of its substantive change regulation. However, after a partnership has farmed with individual partners for one year, FSA rules allow the partnership to move the individual partners into limited liability companies that will then become the partners in place of the individuals. This can be done without proving substantive change and without loss of payment limits.

Farmers should always be concerned about massive tort liability such as when a hired hand runs into a school bus creating personal injury or wrongful death claims exceeding the operation's insurance coverage. That liability can destroy the operation and the individual partners as well. Partnerships should seriously consider moving individual partners into limited liability companies.

Please read further on next page

OLSON AG LAW PRACTICE AREAS

Most of you know that I do a lot of work on farm program matters including payment limitations planning, USDA administrative appeals and federal litigation. You may not know that my practice also includes the following:

- **Farm transition (estate) planning.**
- **Water Law**
- **Crop insurance arbitration and litigation.**
- **Conservation easement planning and drafting.**
- **Perishable Agricultural Commodities Act litigation.**
- **Farm finance planning and litigation.**
- **Representation of farmers in commercial disputes including landlord tenant matters.**
- **Advice and representation on other specialized areas of agricultural law.**

Please give me a call if you think I may be able to help you with any of these matters.