

Olson Ag Law Update

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This edition of Olson Ag Law Update provides information on a couple of farm program matters and looks forward to the end of harvest and planning for the New Year.

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Farm Program Updates

- Near and dear to most South Georgia farmers' hearts these days is the PLC peanut payment. On September 6th, USDA announced the National Average Market Price for 2015 peanuts at \$386 per ton. This results in a \$149/ton PLC payment to be sent out sometime in October.
- Cotton farmers should have already received their payments under the new, one time Cotton Gin Cost Sharing Program.
- Many farmers have added family members to their farming partnerships since the enactment of the 2014 Farm Bill. Partnerships composed of limited liability company partners owned by family members have been frustrated by the FSA definition of a family member, which has excluded family members in the form of LLCs. This meant that to add a family member to the partnership under the family member exception to the substantive change rule, all partners had to be individuals rather than LLCs for a period of one year. At the end of the year, the family members could go back into the LLCs. Not only did this result in substantial legal and accounting expense, it also exposed the family members to unlimited liability for claims against the partnership. FSA has finally changed this rule. Now family members automatically include family members who farm as LLC or corporation partners of a farming partnership. There is no longer the need to farm as individual partners for one year in order to qualify new family member partners for farm program payments.
- On the other hand, FSA has tightened up the requirements for farming partnerships containing non-family member partners. These partnerships must meet new, more stringent requirements concerning "active personal management" by the partners. These requirements are set out in the Payment Limitations Handbook (5-PL).
- FSA has recently notified a number of Georgia farmers that they will be audited for farm program eligibility and compliance for crop year 2014. FSA's audit letters require the farmers to produce substantial documentation showing that their operations meet the rules set forth in 7 CFR Part 1400 for payment eligibility. At least one farmer in another Southern state is being criminally prosecuted for farm program fraud.

Planning for 2017 and Beyond

Later this fall and winter, farmers will have an opportunity to catch their breath, calculate profits and losses, work on their income taxes and think about next year's crops and the future of their operation. Good planning, both short and long term, is essential for the continued viability of any farming operation. Here are some things to consider:

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- Do you need or want to add new partners to your operation for 2017? Start work on this now so that the partners can be added effective January 1. This will make bookkeeping and accounting much easier for you and your CPA next year. Also check to be sure you are in compliance with all payment limitation rules. Giving back program payments after an audit is never fun.
- Do you want to reduce your tax burden? Start talking to your accountant now. You may want to consider setting up an IC-DISC corporation to reduce the taxes on your export profits. You may also want to consider donating a conservation easement on your farmland in order to preserve this land and reduce taxes in 2017 and subsequent years. There may be other things you can do to reduce taxes but be careful. Buying new equipment using the Section 179 deduction and rolling over crops until next year merely defer taxes to a later time. They do not eliminate them. You will eventually have to pay when you retire or otherwise go out of business.
- Examine your risk for personal injury and wrongful death claims. Make sure your liability insurance is up to date and that your coverage limits are adequate. \$2,000,000 is the absolute minimum in my opinion. \$5,000,000 is much better. Also consider using limited liability companies to shield partners from liability for claims against the partnership. Put each partner into an LLC and make these LLCs the partners of your operation rather than the individuals.
- Avoid employee problems. Are you employing any illegal aliens who may eventually get you into trouble with the INS? Also make sure that you are in compliance with the federal Fair Labor Standards Act. Agricultural employees are exempt from overtime pay requirements, but the definition of an agricultural employee is fairly narrow. For example, employees at a gin, peanut facility, or packing shed that processes commodities for more than one farming operation will generally not be exempt. Consider purchasing optional workers compensation insurance to protect your employees and to prevent them from suing you for job related personal injury claims.
- Study your crop insurance carefully and talk to your agent at length. Make sure you are getting the most coverage for your premiums and that you understand what is covered and what is not. Check into some of the new insurance products that were authorized by the 2014 Farm Bill and see whether they might provide advantages to your operation.
- Start planning for your retirement and for the future of your operation and assets after you are gone. If you have already done estate planning, review that plan. Is it up to date or have things changed? You may need to revise your will and other planning documents. Most farmers are woefully under planned. The consequences of not planning can be disastrous for the survival of the farm and the wellbeing of those you leave behind. Don't put it off. Do it now. You are not getting any younger.

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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.

Disclaimer: All of the information provided in this Update is of a general nature and may not be applicable to your farming operation, transaction or dispute. This information should not be substituted for advice from a competent attorney who is familiar with the specific facts of your case, transaction or situation.