

Olson Ag Law Update

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WARNING – IC-DISC CORPORATIONS MAY MAKE YOU INELIGIBLE FOR FARM PROGRAM PAYMENTS

Many farmers are considering setting up IC-DISC corporations to obtain substantial tax savings on the sale of commodities that are exported to foreign countries. Using this type of corporation will result in the profits from overseas sales being taxed at a lower rate than U.S. sales. These profits are then distributed to the shareholders of the corporation.

However, if the IC-DISC profits are distributed to shareholders who are not partners or members of the farming operation that produced the commodities, or if the profits are distributed to just some of those partners or members, or if the profits are distributed to the partners or members in amounts that do not correspond to the ownership interests of the partners or members in the farming operation, the farming operation will not be eligible to receive farm program payments.

FSA's commensurate interest rules require that each partner's or member's share of the profits or losses of a farming operation must be commensurate with his or her contributions to the farming operation. For example, if a farming partnership has four partners, each of whom has a 25% interest in the partnership, each partner must receive 25% of the partnership profits. If each partner is also a 25% shareholder of an IC-DISC corporation, and the corporation's profits are distributed equally to the shareholders, the farming operation will comply with the commensurate interest rule. If instead the partnership profits flow through an IC-DISC corporation that pays all of those profits to just one partner who is the sole shareholder of the corporation, the commensurate interest rule will have been violated and the operation rendered ineligible to receive virtually all types of farm program payments.

Please let me know if I can help you review your IC-DISC corporation to make sure it does not violate farm program rules.

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