

Olson Ag Law Update

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2012 No. 2



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Farm Bill news is front and center in this issue of the Olson Ag Law Update, but there is also some interesting information about **federal estate taxes, IC-DISC corporations, and changes to the Georgia conservation easement tax credit law**. Also don't forget to sign up for the DCP program by **June 1**.



FARM BILL

The Senate Agriculture Committee passed its version of the 2012 Farm Bill last week. It is far too soon to say what the Farm Bill will actually look like until after the full Senate, the House Agriculture Committee, the full House, a Conference Committee and the President have their say. However, the following major changes to the current Farm Bill, with many details yet to be determined, seem increasingly likely:

- Future farm program spending to be reduced by \$23 to 25 billion over 10 years.
- Direct, countercyclical and ACRE programs will be eliminated.
- A new “shallow loss” revenue program will be adopted with “deep losses” to be covered by beefed up crop insurance products.
- Cotton will get its own STAX revenue protection program, effectively a crop insurance type product.
- Loan deficiency payments and marketing loan gains will be retained.
- Payment limitations will be tightened significantly, including AGI limits and actively engaged in farming requirements.
- Conservation programs will be consolidated into fewer programs and funding reduced.

Debate on these changes will continue, and the devil will be in the details. Of particular interest will be exactly how the shallow loss and STAX programs will work and what level of payments they will provide under different scenarios.

CONSERVATION EASEMENT TAX CREDITS

The Georgia General Assembly has passed legislation making it far more difficult to qualify a donated conservation easement for state income tax credits. This legislation does not go into effect until 2013 so anyone planning on giving a conservation easement on their land should consider doing so this year. And, donors must move quickly if they are to obtain DNR certification of their tax credits before the year ends.

SIGN UP DEADLINE FOR 2012 FARM PROGRAMS

The deadline for signing up for 2012 direct and countercyclical payments at your County FSA Office is June 1. **Do not miss** this deadline because no extensions are permitted under the current law.

ESTATE TAX LAWS LIKELY TO CHANGE IN 2013

Current law allows each decedent to exempt \$5 million of property from the federal estate tax. It also allows the estate of the second spouse to die to use any portion of the personal exemption not used by the first spouse to die (the “portability” provision). There is also an unlimited marital deduction for property left to a spouse. Together these provisions allow couples to avoid estate taxes on \$10 million of their combined estates.

However, unless Congress acts this year, the current estate tax provisions will expire, the personal exemption amount will be reduced to \$1 million, and “portability” will be eliminated. If Congress does act, it could vote to keep the current provisions or to establish personal exemption amounts that are greater than or less than \$5 million. It could vote to keep portability or not. This uncertainty makes it crucial that farmers with large estates review their wills and other estate planning documents to make sure that they address 2013 tax law changes, whatever they may be.

IC-DISC CORPORATIONS

Farmers may use an Internal Revenue Code approved mechanism called an IC-DISC corporation (Interest Charged – Domestic International Sales Corporation) to reduce the amount of federal income tax they pay on the portion of their crops that is exported from the country. In general terms, an IC-DISC corporation allows a farmer to pay taxes on approximately one-half of his or her exports at the 15% dividend rate rather than at the higher ordinary income rate. This can result in substantial savings.

To utilize this provision, the farmer (or anyone who sells virtually any type of goods abroad) must set up a corporation that meets the requirements of the Code and then pay the corporation a commission for acting as the farmer’s “broker” of the export crops. The corporation then distributes the commission back to the farmer as a dividend. Please note that the corporation does not have to perform any actual brokerage activities. The corporation is used simply as an accounting mechanism. Also, the farmer does not have to sell the commodities directly to a foreign buyer. They may pass through any number of intermediaries as long as they eventually end up overseas. It is important that the farmer obtain records showing where the crops were finally delivered. Please also note that the ownership of the corporation should be the same as the ownership of the underlying farming operation to avoid losing farm program payments.

In Georgia, a high percentage of the cotton and pecan crops are exported. Any farmer growing any significant amount of these or any other export crop should use an IC-DISC corporation to reduce their tax obligations as long as dividends are taxed at a significantly lower rate than ordinary income. New tax laws in 2013 could possibly change this, but it would still be worthwhile to create an IC-DISC corporation to obtain tax savings on 2012 sales.

OLSON AG LAW HAPPENINGS

Allen returned to his old stomping grounds of Fayetteville, Arkansas in February to teach a one week course on federal farm programs and crop insurance at the University of Arkansas

Law School. The University of Arkansas Law School has the only Graduate Program in Agricultural and Food Law in the country. The students in the program are lawyers who are seeking an LL.M. degree (Master's) in this area of the law. This year's class was particularly accomplished and very interested in learning about the practice of ag law in farm county. Allen is a graduate of the program himself and taught full time in the program for three years in the 1990's. Susan Schneider is the very able director of the program. For more information on the program, please go to its website at <http://law.uark.edu/prospective/llm-program.html> or contact Professor Schneider at sschneid@uark.edu or at 479-575-4334.

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:

- **Water Law**
- **Crop insurance arbitration and litigation.**
- **Conservation easement planning and drafting.**
- **Perishable Agricultural Commodities Act litigation.**
- **Farm finance planning and litigation.**
- **Chapter 12 farm bankruptcies.**
- **Farm transition (estate) planning.**
- **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.