Olson Ag Law Update

Allen H. Olson, Attorney at Law

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Allen H. Olson, Attorney at Law
415 Pine Ave., Suite 101,
P.O. Box 1745, Albany, Georgia 31702
229-436-8707
allen@olsonaglaw.com
www.olsonaglaw.com

This issue of Olson Ag Law Update looks at some key provisions of the American Taxpayer Relief Act of 2012 of particular interest to farmers.

Farmers and the American Taxpayer Relief Act of 2012

Farm Bill Extension

The American Taxpayer Relief Act of 2012 (alias the fiscal cliff legislation) affects farmers more than most other taxpayers. In addition to setting new federal tax rates, the Act also extended the 2008 Farm Bill for one year. That year is the federal fiscal year so the extension expires on September 30, 2013. This means that unless Congress enacts a new 5 year farm bill prior to September 30 and that new farm bill takes away the extended payments authorized by the Act for 2013, farmers should receive one more year of direct and countercyclical payments and most other payments under 2008 Farm Bill programs. Please note that some of the smaller Farm Bill programs will only pay benefits during the extension if Congress appropriates additional monies. Further appropriation of funds, however, is not required for the DCP program. Given the current climate in Congress, it is unlikely that Congress will pass a new farm bill by September 30 and even less likely they would take away the 2013 DCP payments.

Tax provisions

The following is a summary of some of the tax provisions of the Act that may be of particular interest to farmers and a couple of comments about how these may affect farm financial and estate planning. This list is not meant to be exclusive. There is much more in the Act.

Income tax provisions

The ordinary income tax rates are retained except that a new 39.6% rate is created for individuals with taxable income over $400,000 and couples with taxable income over $450,000.

Payroll taxes

The 2% reduction in Social Security tax rates expires. Farmers should remember to adjust the withholding amounts on their employees' wages to reflect this change.

Capital gains taxes

Taxpayers in the 25% through 35% tax brackets will have a 15% tax rate on long-term capital gains while taxpayers in the 39.6% bracket will pay 20%. For most farmers this means that capital gains rates remain unchanged from the prior law.

Taxes on dividends

The qualified dividend tax rate is retained at 15% for taxpayers in the 25% through 35% brackets but increased to 20% for those in the 39.6% bracket. There was concern prior to passage of the Act that dividend rates would end up much closer to the ordinary income rates. However, as it turns out, the spread between the two has been retained. This means that farmers who export large portions of their crops, particularly cotton and pecan growers in Georgia, will still save taxes by setting up IC-DISC corporations. IC-DISC corporations can, if used properly, allow approximately one-half of profits from foreign sales to be taxed at dividend rather than ordinary income rates. These savings can be substantial. IC-DISC corporations have been authorized by the Internal Revenue Code since the 1970's but have only caught on with Georgia farmers in the last couple of years.

Estate taxes

The Act retained the $5,000,000 personal exemption from estate taxes and authorizes that amount to be adjusted upward for inflation. However, estate and gift tax rates have been increased on amounts above the exemption from 35% to 40%. Retaining

these high exemption amounts is an important first step in preserving family farming operations. But, this doesn't eliminate the need for good estate planning. Wills, trusts, family limited partnerships, life insurance and other planning tools are still absolutely essential if a farmer or rancher wants to assure that no or little tax is paid at his or her death and, just as importantly, that his or her property ends up going to the appropriate heirs in the appropriate amounts.

Section 179 deduction

The Act extends the $500,000 Section 179 expense deduction into 2013, but the deduction will drop back to $25,000 in 2014. Accordingly, 2013 may be a good year to purchase needed farm equipment. Similarly, the 50% bonus depreciation provisions have been extended to include 2013.

Conservation easement tax deduction

The enhanced conservation easement charitable gift deduction that was in effect for six years prior to 2012 has been restored for 2012 and 2013. Farmers donating permanent conservation easements over their land may now deduct the value of those easements up to 100% of their Adjusted Gross Income and may carry forward unused portions of the deduction for up to an additional 15 years. Non-farmers may deduct easement gifts up to 50% of AGI with a 15 year carry forward. The value of an easement deduction is calculated by subtracting the value of the land immediately after the easement is given from the value of the land immediately before the donation. The easement must prohibit most commercial and residential uses of the property but specifically preserves the right to use the property for agricultural, forestry and recreational purposes. No public access to

the property is granted, and the property may be sold or left to heirs, subject, however, to the terms of the easement.

<u>OLSON AG LAW PRACTICE AREAS</u>

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.