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Agricultural Law Update

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2014 FARM BILL OPPORTUNITIES FOR YOUNG AND BEGINNING FARMERS

-Allison M. Collins

Only six percent of farm operators nationwide are under 35 years old, and as the age of the average American farmer continues to increase, so does the need for a new generation of farmers to replace retirees and carry forward the agricultural industry. The 2014 Farm Bill recognized the need to assist and encourage the next generation of farmers by expanding financing programs available to beginning and young farmers. The new Farm Bill will invest $444 million over the next ten years in beginning and socially disadvantaged farmers to help them overcome the biggest challenges new farmers face: a lack of available farm land and a lack of capital to fund operational costs until harvest. Below is a summary of some of the opportunities available to famers that have owned a farm or ranch for less than 10 years or who qualify as a socially disadvantaged farmer.

EXPANDED FINANCING OPTIONS

The Farm Service Agency offers beginning farmers Farm Ownership loans to purchase farmland as well as Operating loans. Beginning farmers can obtain a Farm Ownership loan or Operating loan directly from FSA for up to $300,000 with no down payment. Beginning farmers can also obtain a loan from a commercial lender and have up to $1,392,000 of the loan guaranteed by FSA. This makes it much more likely that a commercial lender will be willing to extend a loan to a beginning farmer.

In addition to FSA direct and guaranteed Ownership or Operating loans, beginning farmers also have the option of a down payment loan to finance the purchase of farmland. Under this program, a beginning farmer can finance a property valued at up to $667,000 with a five percent down payment. The remainder of the financing is a hybrid between an FSA direct and guaranteed loan: up to 45 percent of the financing comes directly from FSA, and then FSA will guarantee up to 95 percent of the value of the loan obtained from a commercial or private lender for the remainder of the purchase. FSA only charges 1.5 percent interest on the FSA portion of the loan, and will waive the normal fee charged to guarantee the commercial lender portion of the loan.

Another available FSA financing tool is a joint financing loan. A joint financing loan can be used for any authorized farm operation purpose. FSA will provide up to 50 percent of the loan amount directly, and the rest of the funding is obtained from a commercial or private lender. The interest rate on the FSA portion of the loan is two percent less than the FSA direct farm operating loan rate, and can be for a term up to 40 years.

Beginning farmers can also have a land contract guaranteed by FSA. Depending on the seller's preference, FSA can provide either a guaranteed prompt payment of up to three annual contract payments plus costs, or can guarantee 90 percent of the outstanding principal balance under the land contract if the purchase price is less than $500,000 or for the market value of the property. The beginning farmer must provide at least a five percent down payment, but this FSA option can help facilitate the transition of farmland from retiring farmers to the next generation.

The most recent expansion of FSA financing options was the October 2014 announcement that the microloan program increased the maximum loan amount from $35,000 to

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$50,000. Microloans are available to cover operating costs for small or beginning farmers and can be repaid over a period of up to seven years.

FSA also has options available to beginning farmers interested in conservation planning or making the transition to organic agriculture. For beginning farmers implementing conservation plans approved by the National Resources Conservation Service, FSA will guarantee up to 90 percent of conservation loans obtained from a commercial lender.

Beginning Farmers can also take advantage of the Advanced Payment Option for Environmental Quality Incentives Program (EQIP) funds. EQIP funds allow farmers to make on-farm conservation improvements, such as updating conservation plans, improving pasture, or installing fencing to keep cattle out of waterways. Traditionally, EQIP required the farmer to entirely fund the conservation project, and they would receive the EQIP funds once the improvements were completed. The Advanced Payment Option allows beginning and socially disadvantaged farmers to receive up to half of their EQIP funding up front, making conservation plans and improvements less fiscally burdensome.

Under the National Organic Certification Cost Share Program, a young (under 35) or beginning farmer interested in obtaining organic certification can be reimbursed for up to 75 percent of the cost for organic certification or up to $750 per certification category per year per farm. The farmer receives reimbursement after the farm is certified.

LITIGATION CORNER

- Liza C. Moore

WHAT'S AN INTERROGATORY?

We've all seen plenty of procedural dramas on television where a suspect is led into a room to be "interrogated." But I don't think I've ever seen a television program explain what an "interrogatory" is in the civil (meaning not criminal) litigation process. "Interrogatories" are not an in-person "interrogation;" they are a way to learn information from the other side in writing. Both the state court and federal court rules that control what actions attorneys and parties can take in litigation allow for the service of interrogatories during the discovery period. Discovery is the time in litigation when parties "discover" the facts of the case by obtaining information, documents, and things from witnesses and the other parties. An interrogatory is a written question that a plaintiff can serve on a defendant, or vice versa. Often parties serve "sets" (meaning a document that has several numbered, written questions) of interrogatories on the other party. Once a plaintiff or defendant has received an interrogatory or set of interrogatories, the receiving party must answer or object to those interrogatories within the time allowed by the court rules. The actual party (not just the party's attorney) must sign answers to interrogatories under oath. Answers and objections must be in writing. Failure to answer within the time allowed by the rules can result in waiver of important objections, a motion to compel being filed by the party that served the interrogatories, and possibly sanctions. Answers must be carefully written, since the party that served the interrogatories will be using the answers in the litigation. Attorneys will need to object to interrogatories that are improper, including those that are overly broad or unduly burdensome, or seek information protected by privilege. Interrogatories are just one of the tools that an attorney representing you in litigation would use to help your case.

UNDERSTANDING ASSET DISPOSITIONS UNDER THE TANGIBLE PROPERTY REGULATIONS

Guest Author: Andy Rose, Rehmann Group

The IRS issued final regulations regarding the proper tax treatment of dispositions of tangible depreciable property under the Modified Accelerated Cost Recovery System (MACRS). The regs largely complete the IRS's overhaul of the federal tax regulations addressing the proper treatment of expenditures incurred in acquiring, producing or improving tangible assets. The final regs affect all taxpayers who dispose of MACRS property.

"The final regs apply to tax years beginning this year, 2014," said Andy Rose, a tax principal with Rehmann. "This is a very big deal – one of the biggest, tax-wise, to come down the pike in a few years."

Rose recommends a very proactive approach for taxpayers on repair regs.

"In many ways, the new rules are more liberal than the old rules, so some items that were previously capitalized must now be expensed. This will result in tax deductions for many taxpayers – and in some cases, these could be significant," he said. "Meeting with your tax advisor as soon as possible will help them help you fully leverage the new regs."

BACKGROUND

For most tangible business assets with a useful life of more than one year, taxpayers generally must depreciate the capitalized cost, or basis, over a specified period of years. The number of years — typically three, five or seven — depends on the asset class. In most cases, the MACRS is preferable to the straight-line depreciation method because it provides larger deductions in the early years of an asset's life.

But when an asset is disposed of before it's been fully depreciated under MACRS, what's the tax impact? Temporary regulations issued in 2011 addressed this situation. The final regs retain most of the temporary regs' provisions but make a few changes.

DEFINING "DISPOSITION"

Under the final regs, a disposition of an MACRS asset occurs when ownership is transferred or the asset is permanently withdrawn from use. It includes an asset's:

- Sale
- Exchange
- Retirement
- Physical abandonment
- Destruction

It also includes the retirement of a building's structural components (or a portion thereof, such as a roof) to which the partial disposition rule applies.

The partial disposition rule allows taxpayers to claim a loss on the disposition of a component (structural or otherwise) of an asset without having identified the component as an asset before the disposition. The rule reduces the number of cases where an original part and any subsequent replacements of that part must be capitalized and depreciated simultaneously.

The partial disposition rule generally is elective. But it's mandatory in certain circumstances, including for dispositions that result from a casualty event (for example, a fire or storm) or a like-kind exchange.

The final regs also include a special partial disposition rule for situations where the IRS disallows a taxpayer's repair deduction for the amount paid or incurred for the replacement of a portion of an asset and requires capitalization of that amount. In such cases, the taxpayer can make the partial disposition election for the disposition of the portion by filing an application for change in accounting method, as long as the taxpayer owns the larger asset at the beginning of the year of change.

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Generally, the specific facts and circumstances of each disposition are considered when determining the disposed asset for tax purposes. But the final regs make clear that the asset may not consist of items placed in service by the taxpayer on different dates.

Further, the unit of property as determined under Treasury Regulations Sec. 1.263(a)-3(e) (the rules regarding the proper tax treatment — capitalization or expensing — of amounts paid to improve tangible property) doesn't apply for purposes of determining the appropriate disposed asset.

The final regs provide special rules for certain types of properties. For example, each building (including its structural components) is the disposed asset unless:

- More than one building is treated as the asset
- An existing building has an improvement or addition (the improvement or addition is then a separate asset)
- The building includes two or more condo or cooperative units (each unit is a separate asset)

Similarly, if the taxpayer places in service an improvement or addition to a non-building asset after the asset was placed in service, the improvement or addition is a separate asset.

DETERMINING GAIN OR LOSS

If an asset is disposed of by sale, exchange or involuntary conversion, then gain or loss is recognized under the applicable section of the Internal Revenue Code. When an asset is disposed of by physical abandonment, on the other hand, loss is usually recognized in the amount of the asset's adjusted depreciable basis at the time of the abandonment. If the abandoned asset is subject to nonrecourse indebtedness, the asset is treated as a sale.

When an asset is disposed of in some manner other than abandonment, sale, exchange, involuntary conversion or conversion to personal use (for example, when the asset is moved to a supplies or scrap account), gain isn't recognized. Loss is recognized in the amount that the asset's adjusted depreciable basis exceeds its fair market value at the time of disposition.

DETERMINING BASIS

When a disposed asset is in a multiple-asset account and it's impracticable from the taxpayer's records to determine the asset's unadjusted depreciable basis, the final regs allow the taxpayer to use "any reasonable method" to determine the basis. The method must, however, be consistently applied to all assets in the same multiple-asset account. According to the final regs, reasonable methods include:

- Discounting the cost of the replacement asset to its placed-in-service year cost using the Producer Price Index for Finished Goods, the Producer Price Index for Final Demand or any other designated index
- A pro rata allocation of the unadjusted depreciable basis of the multiple asset account based on the replacement cost of the disposed asset and the replacement cost of all of the account's assets
- A study allocating the asset's cost to its individual components (for example, a cost segregation study)

A taxpayer can also use a reasonable method when the partial disposition rule applies and it's impracticable to determine unadjusted depreciable basis from the taxpayer's records.

Taxpayers generally must use the specific identification method to determine a disposed asset's placed-in-service year (the year a taxpayer can begin claiming depreciation on the asset). Under the method, if an asset is in a multiple-asset account and it's impracticable from records to determine the year, the taxpayer can use a first-in, first-out (FIFO), modified FIFO or other designated method (but not a last-in, first-out method).

The same methods can be used when the partial disposition rule applies and it's impracticable from records to determine the year.

USE OF GENERAL-ASSET ACCOUNTS

The final regs allow taxpayers to maintain general-asset accounts for MACRS property. When an asset in such an

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DEBT FORGIVENESS OPPORTUNITIES FOR FARMERS FACING DISABILITIES

- Laura J. Genovich

An unexpected disability, whether from injury or illness, presents unique hardships for farmers, whose livelihoods often depend on their ability to undertake manual labor and their capacity to manage a business. A disability can also bring significant financial hardship, as a farmer can lose all income potential and still be saddled with substantial debt service obligations.

Under certain circumstances, a farmer who faces a disability or incompetency, including mental incapacity, can apply for forgiveness of debt owed to the U.S. Department of Agriculture's Farm Service Agency. Under FSA's debt settlement provisions, a farmer can apply for cancellation of a debt, and the debt "may" be cancelled if three requirements are met:

1. The Agency employee in charge of the account furnishes a report and favorable recommendation concerning the cancellation.
2. There is no known security for the debt and the debtor has no other assets from which the debt could be collected.
3. The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so.

This option is available only for "nonjudgment" debts (i.e., FSA has not sued the farmer and obtained a judgment in court). If the farmer is unable to act, then the application may be made by a guardian, executor, or administrator. The application should be supported by documentation of the disability or incompetency. Also, as noted in the requirements above, any collateral securing the debt must be liquidated before the balance can be cancelled. Even if all of the requirements are met, cancellation remains in the discretion of the FSA.

If you or someone you know might benefit from this debt forgiveness option, please contact an attorney to determine whether the debt is eligible for cancellation and to obtain assistance in making an application to the FSA.

Laura J. Genovich practices bankruptcy and creditors' rights law in the Grand Rapids office. Laura has represented farmers in bankruptcy cases and also serves as the Chapter 12 (Farm and Family Fisherman) Bankruptcy Trustee for the Western District of Michigan.

UPCOMING AG EVENTS

Jan. 12-14, 2015 MABA Winter Conference & Trade Show - Attorneys Melissa Jackson, John Mashni and Liza Moore will be speaking at the conference, Lansing, MI - http://bit.ly/11CX5BQ

Jan. 13, 2015 Why Export? Seminar - Join Food Export – Midwest and the Michigan Department of Agriculture & Rural Development for education topics on the importance and benefits of exporting, Detroit, MI - http://bit.ly/1r5fSN2





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account is disposed of, the proceeds are generally treated as ordinary income.

The regulations also include rules for establishing, depreciating and disposing of assets in general-asset accounts, as well as how to determine basis and placed-in-service year. Each general-asset account is treated as the asset.

WHAT TO DO NEXT

According to Rose, getting moving won't take too much. He broke it down as follows:

1. Up first: meet with your advisor to review the effect of these new regulations on your business.
2. From there, your advisor's goal will be to begin to determine which accounting method changes are needed to get you in compliance.
3. When your tax advisor completes the project for you, it will include computing any tax deductions that result from adopting the regulations. Also up for discussion: annual elections created by the new regulations that may be beneficial for you to make on your future tax returns.

"But you have to make that important call to your advisor," he said, "if they haven't already reached out to you."

Rehmann advisors recently underwent extensive training on the new regulations. To learn how they can help you immediately, contact Rehmann at 866.799.9580 or visit rehmann.com.

For more information: http://www.rehmann.com/services/cpas-consultants/tax/tangible-property-repair-regulations

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GREAT LAKES CROP SUMMIT

Liza Moore will speak on "Manage Your Farm's Legal Liability" and Dirk Beckwith will speak on "Best Transportation Practices for Agriculture" at the 2015 Great Lakes Crop Summit January 28-29 at the Soaring Eagle Casino and Resort in Mt. Pleasant, MI. Learn more: http://www.greatlakescropsummit.com/

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