ACCOUNTING

USDA regulations on 2008 Farm Bill published

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USDA has released its interim rule revising regulations as required by the 2008 Farm Bill. The new rule and regulations were published in the Federal Register, Vol. 73, No. 249, Monday, December 29, 2008. According to the release, the effective date of this rule is December 23, 2008. There is also a comment date of January 28, 2009, so it appears the regulations, as released, may be modified in the future in response to comments received.

Although there had been some training sessions prior to release of the regulations, local FSA offices have not been fully trained on the new rule and are still in a wait and see mode concerning how some of the issues will be interpreted. It appears that a major reorganization of many farm operations will be required under the new rule, but no reorganization can be accomplished before the local FSA offices are trained on the regulations and can advise farmers how the regulations will be interpreted.

This puts farmers in a bind since they are already in the process of working with their bankers on a 2009 crop loan, trying to decide on which crops to plant, preparing their 2008 income tax returns, trying to decide on any new equipment requirements, trying to decide on labor requirements, and signing lease agreements on farmland.

If some of the regulations are interpreted as the local FSA office thinks, farmers could be in for a long, expensive, and complicated reorganization of their farming operation. The most troublesome interpretation deals with where if one spouse is determined to be actively engaged in farming, the other spouse is credited for the purposes of payment eligibility with making a significant contributions of active personal labor or active personal management to the farming operation.

Under this interpretation, a spouse (usually the wife) will be treated differently depending on whether her/his interest in the farming operation is as an individual partner or as a 100% owner in a corporation. If the spouse is a individual partner in a farming partnership, the spouse's requirement to be actively engaged in farming could be met by her husband, but if her ownership interest in the partnership is as a corporate owner where she owns 100% of the corporate interest, then she has to meet the actively engaged requirement based solely on her own contribution of management or labor.

The easiest way to solve this dilemma would be for USDA to allow one spouse to qualify the other spouse as to the actively engaged in farming requirement regardless of the entity choice. That way the existing general farming partnerships now in existence could be used by gifting interest in the corporate partners to a husband and wife and liquidating any partner entities no longer needed. This would continue to allow farm families the liability and estate planning benefits afforded by operating in a corporate form.

Most farm operations had to be reorganized back when the original farm bill (I think around 1986) was implemented that required setting up corporations in order to draw the full government payment. Contrary to public perception, this was not a windfall profit to farmers. Without the full government payment the majority of farms in the Mississippi Delta could not have survived. The original reorganization was costly to farmers, but provided some side benefits such as creditor protection and estate and family planning opportunities afforded by the use of corporations as partners in general farm partnerships. Because of the assets acquired in these entities, the liquidation of many of these entities, as required by the new farm bill, will be very costly and time consuming.

Perhaps the best thing that could happen would be for USDA to delay implementation of the entity rules and spend the summer and fall educating farmers what type of reorganization will be required. This would allow farmers time to plan and provide a more orderly transition to the new regulations.

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