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Payment limitations in the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill)*

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This article will provide a summary of a few of the major payment limitation provisions in the new 2008 farm bill.

Payment Limitations

Limitation on payments

The limit on direct payments under the Act is \$40,000 per person (for those not participating in the “average crop revenue election” program). The limit on counter-cyclical payments is \$65,000, again for those not participating in the ACRE program. There is no longer a limit on marketing assistance benefits. Act § 1603(b), amending 7 U.S.C. § 1308.

Meaning of “person”

The 2008 Act changes the definition of “person” to mean a natural person and does not include a legal entity. All payments are deemed attributed to a natural person, taking into account direct and indirect ownership interests. Payments to a legal entity are to be attributed to those persons who have a direct or indirect ownership interest in the legal entity.

Payments made to a joint venture or general partnership cannot exceed the amount determined by multiplying the maximum payment amount by the number of persons and legal entities comprising the ownership of the joint venture or general partnership. Thus, those joint ventures and general partnerships are not subject to the attribution rules applicable to other types of entities.

The attribution of ownership in other types of legal entities is traced through four levels of ownership.

For marketing cooperatives, the attribution rules do not apply to the cooperative association of producers but apply to the producers as persons.

Payments made to children under the age of 18 are attributed to the parents of the child.

Revocable trusts are considered to be the same person as the grantor of the trust. For irrevocable trusts and estates, the Secretary is to administer the rules in a manner that will “. . . ensure the fair and equitable treatment of the beneficiaries of the trusts and estates.” Act § 1603(b), amending 7 U.S.C. § 1308(a)(4)

Cash rent tenants

The payment limitation rules define a cash rent tenant as a person or legal entity that rents land for cash or “. . . for a crop share guaranteed as to the amount of the commodity to be paid in rent.” The provision goes on to state that a “. . . cash rent tenant who makes a significant contribution of active personal management, but not of personal labor, with respect to a farming operation shall be eligible to receive a payment . . . only if the tenant makes a significant contribution of equipment to the farming operation.” Act § 1603(b).

Federal agencies

The legislation states that a “Federal agency” is not eligible to receive any payment, benefit, or loan under Title I (commodity programs) or Title XII (crop insurance and disaster assistance) of the 2008 farm bill. However, a lessee of land owned by a Federal agency may receive payments. Act § 1603(b).

State and local governments

Under the Act, “a State or local government, or political subdivision or agency of the government, shall not be eligible to receive any payment, benefit, or loan . . .” under Title I (commodity programs) or Title XII (crop insurance and disaster assistance) of the 2008 farm bill. Again, a lessee of land owned by a State or local government or political subdivision or agency of the government may receive payments. Act § 1603(b).

Changes in farming operations

Changes will not be approved in a farming operation unless the changes are “bona fide and substantive.” The addition of a family member to a farming operation is considered a bona fide and substantive change.

If an ownership interest in land or a commodity is transferred as the result of the death of a program participant, the new owner may, if eligible to participate, succeed to the contract of the prior owner and receive payments without regard to the payments received by the new owner. However, payments may not exceed the amount the prior owner was entitled to receive under the terms of the contract at the time of death of the prior owner. Act § 1603(b).

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Public schools

A special rule applies to public schools owned by a unit of government. A State or local government, or political subdivision or agency of government, is eligible to receive a payment for land owned by the State or local government, or political subdivision or agency of the government, that is used to maintain a public school. However, except for states with a population of less than 1,500,000, a State cannot receive more than \$500,000. That limitation presumably applies to payments received each year. Apparently, states with a population of less than 1,500,000 do not face a limitation on payments. Act § 1603(b), amending 7 U.S.C. § 1308(a).

Repeal of the “three-entity” rule

The Act repeals the so-called three-entity rule that limited the number of entities through which an individual could receive program payments. Under the three-entity rule, an individual who received payments as an individual could not receive payments from more than two entities. An individual who did not receive payments as an individual could receive payments from up to three entities. Individuals who could potentially receive payments from more than the allowed number of entities were required to designate from which entities they would receive payments. Act § 1603(c), amending 7 U.S.C. § 1308-1.

Changes in the “actively engaged” rule

The legislation makes minor changes in the “actively engaged” requirement for payment eligibility.

In order to receive payments, under the new language, a person is considered to be actively engaged in a farming operation if (1) the person makes a significant contribution (based on the total value of the farming operation) to the farming operation of (a) capital, equipment, or land; and (b) personal labor or active personal management; (2) the person’s share of the profits or losses from the farming operation is commensurate with the contributions of the person to the farming operation; and (3) the contributions of the person are at risk.

A legal entity is considered to be actively engaged in a farming operation if – (1) the legal entity separately makes a significant contribution (based on the total value of the farming operation) of capital, equipment, or land; (2) the stockholders or members collectively make a significant contribution of personal labor or active personal management to the operation and (3) the entity’s share of the profits or losses from the farming operation is commensurate with the contributions of the entity to the farming operation; and (4) the contributions of the entity are at risk.

The legislation recognizes six special classes of producers for the actively engaged test – (1) for landowners, a contribution of owned land is considered to meet the actively engaged in farming operation test if the returns from the land are based on the production on the land, the shares of profits or losses are commensurate with the contributions to the farming operation, and the contributions are at risk; (2) for an adult family member, if a majority of the participants in a farming

operation are family members, an adult family member is considered to be actively engaged in the farming operation if the adult family member makes a significant contribution, based on the total value of the farming operation, of active personal management or personal labor, the shares of profits or losses are commensurate with the contributions to the farming operation, and the contributions are at risk; (3) for a sharecropper, a significant contribution of personal labor is considered to be actively engaged in farming with respect to the farming operation if the share of profits or losses is commensurate with the contributions to the farming operation and the contributions are at risk; (4) for growers of hybrid seed, the existence of a hybrid seed contract is not taken into consideration; (5) for persons or entities receiving custom farming services, the test is met if the general requirements for actively engaged are met or the landowner, adult family member, sharecropper, or grower of hybrid seed requirements are satisfied – and no other rules with respect to custom farming shall apply; and (6) if one spouse or estate of a deceased spouse is determined to be actively engaged, the other spouse is considered to have met the requirements.

The 2008 legislation identifies two situations of persons who are not considered to be actively engaged – (1) a cash rent landlord if the landlord receives cash rent or a crop share guaranteed as to the amount of the commodity to be paid in rent and (2) other persons who fail to meet the standards for actively engaged. Act § 1603(d), amending 7 U.S.C. § 1308-1.

Adjusted gross income limitation

A person or legal entity is not eligible to receive any farm program benefits if the average adjusted non-farm income of the person or entity exceeds \$500,000. The calculation involves the last three preceding taxable years.

Moreover, a person or legal entity is not eligible to receive a direct payment during a crop year if the average adjusted gross farm income of the person or legal entity exceeds \$750,000. The benefits affected by the two rules include direct payments, counter-cyclical payments, marketing loan gains, loan deficiency payments, a payment or benefit under Section 196 of the 1996 farm bill, a payment or benefit under Section 1506 of the 2008 farm bill (the milk income loss contract program), and a payment or benefit under Title IX of the Trade Act of 1974 or subtitle B of the Federal Crop Insurance Act. Act § 1604(a), amending 7 U.S.C. § 1308-3a(e)

Conservation program limits

For an array of conservation benefits, a person or legal entity is not eligible to receive benefits if average adjusted nonfarm income of the person or entity exceeds \$1,000,000 unless not less than 66.66 percent of the average adjusted gross income of the person or entity is average adjusted gross farm income. Those limitations can be waived if it is determined that “environmentally sensitive land of special significance” would be protected. Act § 1604(a), amending 7 U.S.C. § 1308-3a(e)