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Will you get a 2009 ACRE payment?

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If your farm was enrolled in USDA's Average Crop Revenue Election or ACRE program in 2009, you may be wondering about the possibility of receiving a payment. Using the information available today, this article provides an outlook of ACRE payments for 2009 crops.

Based on the information in the Jan. 12, 2010 USDA reports, which updated the official estimates of 2009 crop size and USDA's supply/demand estimates and price projections, it is still unlikely that Iowa will trigger 2009 ACRE payments for either corn or soybeans. That's because USDA projects the Iowa corn yield per harvested acre is 182 bushels per acre and the soybean yield per harvested acre is 51 bushels per acre.

To figure whether or not an ACRE payment is triggered, FSA uses the yield per planted acre, rather than harvested acre. So, these yield numbers will be slightly lower for ACRE calculations but not more than a half bushel per acre average on corn and relatively no change for soybeans.

The Iowa ACRE revenue guarantee in 2009 for corn is \$635.61 per acre. For soybeans, the 2009 ACRE revenue guarantee for Iowa is \$456.32 per acre. To determine a potential ACRE payment, FSA subtracts the 2009-10 marketing year actual state revenue from the revenue guarantee.

As of Jan. 12, 2010 the national cash prices for the 2009-10 marketing year are forecast at \$3.70 per bushel for corn and \$9.65 per bushel for soybeans. These are the prices used to determine 2009-10 actual revenue for the potential state and farm ACRE triggers. Payments are determined at the state level, but the actual farm revenue must fall below the revenue guarantee to qualify.

These prices represent a weighted average of all cash bushels sold nationally during the marketing year (Sept. 1, 2009 through Aug. 31, 2010).

The final national cash price will not be released by USDA until Sept. 30, 2010, and 2009 ACRE payments if triggered, would be issued in October 2010.

Bottom line for 2009, the Iowa corn and soybean yields are too high and the national cash price forecast too large to trigger a 2009 ACRE payment. However, it is possible that the drop in corn and soybean prices seen since the January 12 USDA reports were released does increase the potential for a 2009 ACRE payment, a possibility for corn more so than for beans. Should the January state yields reflect the final yield per planted acre in Iowa, the ACRE trigger prices would be \$3.49 per bushel for corn and \$8.95 per bushel for soybeans.

The potential is greater for corn to trigger an ACRE payment since a large percentage of U.S. cash soybeans have already been sold at much higher prices than \$8.95 per bushel. Remember, besides the state trigger, the farm must also trigger in order to qualify for an ACRE payment. Unless the national cash price falls below \$3.49 per bushel for corn it is likely that many farms in Iowa would not qualify for an ACRE payment.

Regarding the farm revenue guarantee, if the Iowa revenue guarantee was to trigger in 2009 the national cash price for corn would have to drop to \$3.49 per bushel or less. If this is true, you could have a farm yield up to 257 bushel per acre and still trigger an ACRE payment. So yes, if Iowa triggers an ACRE payment on corn, your farm would likely trigger as well. Remember ACRE payments are on planted acres and adjusted to 83.3 percent.

ACRE Payment information is available on the AgDM Farm Bill page, <http://www.extension.iastate.edu/agdm/info/farmbill.html>. Information File A1-33, Projected ACRE Payment Rates for Iowa Crops or Information File A1-45 provides an

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overview of the ACRE program.

If you have questions or need details about USDA farm programs contact your local USDA Farm Service Agency office. You can also get news and information about DCP, ACRE, SURE and other USDA programs at www.fsa.usda.gov. The Ag

Decision Maker site at www.extension.iastate.edu/agdm and ISU Extension farm management specialist Steve Johnson's site at www.extension.iastate.edu/polk/farmmanagement.htm are other resources for your farm management needs.



Change of “taxpayer” after crop insurance (and disaster payment) deferral

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Recently the question was asked, “what are the consequences of incorporating or forming an LLC after electing to defer crop insurance and disaster payments?” It is tempting to change entities (for the business entity involved), particularly if income shifting to a lower tax bracket taxpayer is possible. However, that outcome seems to be blocked by assignment of income rules of long standing.

Provisions of the deferral statute and regulations

The statute governing deferrals of crop insurance and disaster assistance proceeds is silent on the issue of whether the income tax on deferrals must be paid by the electing taxpayer. The regulations state that an election is “. . . deemed to cover all such proceeds which are attributable to crops representing a single trade or business under section 446(d).” A separate election must be made with respect to insurance proceeds attributable to each crop which represents a separate trade or business under section 446(d).” Section 446(d) states that a taxpayer engaged in more than one trade or business may, in computing taxable income, use a different method of accounting for each trade or business. Thus, it would appear from that authority that an election by a sole proprietorship could be effective for a successor entity so long as the new entity is the same trade or business with no change of ownership or change in the scope of operation.

However, nowhere is the issue addressed directly in either the Internal Revenue Code, regulations or rulings. Nonetheless, it seems questionable whether the “trade or business” requirement could be stretched to allow assignment of the obligation to pay income tax on the deferred proceeds to a successor entity.

Midstream incorporation rules

The “midstream incorporation” rules applicable to tax-free exchanges to a corporation cast some light on what types of conveyances to a newly-formed corporation are likely to be challenged by the Internal Revenue Service. Those rules include application of the “assignment of income” doctrine which can override an otherwise tax-free exchange and result in the taxing of proceeds from the subsequent recognition of gain back to the transferor. The midstream incorporation rules also include the reallocation of income, deductions, credits or allowances by the Commissioner as necessary “. . . in order to prevent the evasion of taxes or clearly to reflect . . . income . . .” In *Rooney v. Commissioner*, the Commissioner was upheld in reallocating to a newly-formed corporation production expenses incurred by the individual taxpayer. The case involved a July 31 transfer of a growing hop crop (which had been sold under contract the prior January 22) to the new corporation with the crop harvested in late August and early Septem-

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