September 2011

Agricultural Law Update

Foster Swift Agri-Business Section

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DATES TO REMEMBER:

September 24, 2011 - Breakfast on the Farm, McBain, Michigan

September 28, 2011 - Moncalm County MAEAP Phase One, Stanton, Michigan

October 4, 2011 - Soybean Harvest Equipment Field Day, Owosso, Michigan. RSVP by September 30 for complimentary lunch.

Estate Planning for the Family Farm

by: Todd W. Hoppe

From commodity prices to the weather, uncertainty is a fact of life in agriculture. There is one essential factor for long term success, however, that a family farm can control – careful estate and succession planning. Let's start with the basics, and then concentrate on how transfer taxes affect estate plans.

Estate planning is simply the process of creating a plan to transfer assets from one generation to another. No two estate plans are identical, but each properly structured estate plan will allow a family to transfer its assets from generation to generation and in the way the family chooses, while minimizing transfer taxes so more assets can be kept.

Generally speaking, federal transfer taxes apply when a person transfers an asset by gift or inheritance to another who does not give equal value in return. There are three federal transfer taxes. First, the well-known estate tax applies to transfers at death. Second, the generation-skipping transfer tax (GST) applies to certain lifetime or after-death transfers. Third, the gift-tax applies to lifetime transfers. Some states impose inheritance taxes, but Michigan does not do so at this time.

The law permits an individual to transfer certain assets without triggering the federal transfer taxes. There are generally two "exclusions" or "exemptions" from the federal gift tax: an annual amount and a lifetime amount. The gift tax **annual exclusion** permits any person to give up to $13,000 to any other person during a calendar year, without gift tax. In addition, there are lifetime exclusion amounts for the various federal transfer taxes. The gift tax **lifetime exemption** amount is basically an aggregate amount that any person may give to any other person during life (over and above the annual exclusion), without incurring an immediate tax liability. Lifetime exemption amounts also apply to transfers that are subject to estate tax and GST laws.

Over the past decade, the lifetime exempts amounts and transfer tax rates have been in constant flux. For example, the estate tax and GST lifetime exemption amounts steadily rose from $1 million in 2001 to $3.5 million in 2009 - and completely disappeared in 2010. The gift tax lifetime exemption remained at $1 million from 2002 through 2010. For 2011, the amounts excludable from the estate tax and GST were expected to decrease to $1 million with higher tax rates for transfers above the exclusion amount.

Congress, however, threw a curveball in December 2010. It passed legislation that increased the lifetime exemption amounts and lowered the tax rates for all three federal transfer taxes. Now, the lifetime exemptions and tax rates for all three federal transfer taxes are the same. The gift tax annual exclusion of $13,000 still applies. Additionally, an individual can transfer up to $5 million in the aggregate during life or after death without incurring transfer taxes ($10 million for married couples). A 35% tax rate applies to transfers in excess of $5 million ($10 million for married couples).

The new transfer tax exclusion amounts and lowered tax rates are scheduled to expire on

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December 31, 2012. After that, the transfer taxes may become more burdensome.

The new rules create many planning opportunities for families who have worked hard to build successful farm businesses. For example, members of older generations may choose to make large present gifts to younger generations free of transfer tax. While basis issues need to be carefully analyzed, this could permit transfers of significant portions of many farm business, avoiding the risk of future changes in the estate tax laws and transferring future growth in the value of the business to younger generations.

With additional planning, farm assets could be transferred in a manner that takes advantage of GST exemptions, such as through a long term trust for the benefit of children, grandchildren, and future generations. These transfers could be structured so that they will never be subject to transfer tax, even upon the death of members of the next generation.

The new transfer tax exclusion amounts and tax rates ease a portion of the tax burden, while estate tax planning has become as important as ever. Getting the maximum tax benefits and reducing the federal transfer taxes are not automatic. Careful estate planning is required to create a strategy that reduces future tax burdens and meshes with your overall succession plan.

Michigan Wheat Program Approved

by: Liza C. Moore

The Michigan Department of Agriculture & Rural Development announced that the Michigan Wheat Program was approved by wheat producers. The referendum was conducted from June 20, 2011 to July 1, 2011. 1,374 complete Official Referendum Response Forms were received. 747 producers voted yes and 627 producers voted no. The Michigan Wheat Program will be established beginning September 1, 2011 and ending August 31, 2016. The program will be resubmitted to a referendum of the producers during the fifth year of operation.

The program will be funded by an assessment of up to one half of one percent (.5%) of value of wheat sold during the marketing year, collected from all Michigan wheat producers at first point-of-sale. Nine members, eight of whom produce wheat in their representative district and one industry representative, shall be appointed to serve on the Michigan Wheat Committee. The MDARD Director will also be a non-voting member. The committee will administer the program. "The Michigan Wheat Program is aimed at promoting the profitable production, marketing, and utilization of wheat on behalf of Michigan producers," said Keith Creagh, MDARD Director. "It will emphasize advancements in wheat research, education, information delivery, market development, and foster industry-wide collaboration."

To view a copy of the MDARD Director's July 19, 2011 Opinion and Order regarding this program, please visit:
http://www.michigan.gov/documents/mdard/Wheat_Directors_Final_Order_7-19-11_358745_7.pdf

To view the program documents, please visit:
http://www.michigan.gov/documents/mdard/Michigan_Wheat_Program_9-1-2011_358746_7.pdf

DID YOU KNOW?

MICHIGAN'S 2010 OVERALL AGRICULTURAL EXPORTS REACHED $1.75 BILLION

The Michigan Department of Agriculture & Rural Development announced that USDA statistics show that Michigan's overall agricultural exports in 2010 grew over 10% from 2009, reaching $1.75 billion. See the press release at:

http://michigan.gov/mdard/0,4610,7-125-1572_28248-259938--,00.html

Public Input Meeting on 2012 GAAMPS Set for September 28, 2011

by: Liza C. Moore

A Public Input Meeting has been set for Wednesday, September 28, 2011 for the public to comment on the 2012 drafts of the Generally Accepted Agricultural and Management Practices (GAAMPs). To be protected by the Michigan Right to Farm Act, farm operations must conform to GAAMPs. The meeting will be held at 9:00 a.m. in the Lake Superior Conference Room at the State of Michigan Library & History Center, 702 W. Kalamazoo St., Lansing, MI. Written comments may also be submitted by mail or e-mail by September 28. If mailing comments, they must be postmarked by September 28 and sent to the Michigan Department of Agriculture and Rural Development, Environmental Stewardship Division, P.O. Box 30017, Lansing, MI 48909. If e-mailing comments, they must be e-mailed by 5:00 p.m. on September 28 to casteelh@michigan.gov.

For more information about GAAMPs, please visit www.michigan.gov/gaamps or call MDARD's Environmental Stewardship Division at (517) 373-9797 or (877) 632-1783. See also http://michigan.gov/mdard/0,4610,7-125-1572_28248-261686--,00.html

Reminder - Agriculture Foreign Investment Disclosure Act

by: Liza C. Moore

The Michigan USDA Farm Service Agency recently posted a reminder about the Agriculture Foreign Investment Disclosure Act. 7 U.S.C.A. § 3501 et seq.; 7 C.F.R. § 781.1 et seq. The Act requires a foreign person (including entities with a certain percentage of interest held by foreign persons) who acquires, disposes of, or holds an interest in United States agricultural land to disclose such transactions and holdings to the Secretary of Agriculture by filing a FSA-153 in the FSA Service Center where the land is physically located within 90 days of the date of the transaction, or be subject to penalty. Agricultural land includes all crop, ranch, forestland, and timberland more than 10 acres in the aggregate. Land totaling 10 acres or less in the aggregate that produces annual gross receipts in excess of $1,000 from the sale of farm, ranch, or timber products must be reported.

To view the reminder, please visit: http://www.fsa.usda.gov/Internet/FSA_File/michigan_afida_august2011.pdf

Livestock Insurance Policy Notice Requirements

by: Julie I. Fershtman & April L. Neihsl

Imagine the shock of returning to your farm from out of town only to learn that your prize bull became ill and died soon after you left. Imagine the further shock when your insurance company advises you that it has denied your claim because nobody gave it proper or timely notice of the bull's illness and death.

Livestock insurance policies usually require that you give the company (or designated representative) prompt notice of an insured animal's illness, injury, or death. Insurers take these provisions very seriously, and many will deny claims on the basis that they were not given proper notice. When this happens, litigation sometimes follows.

MORTALITY INSURANCE

Livestock mortality insurance policies are designed to pay you a sum of money after an insured dies from illness, injury, disease, or accident. These policies may also provide coverage if an animal is stolen. As a condition to their issuance, these policies require that the insured animal be in good health and free from any injury, disease, or disability at the time the application is made. (In some cases the insurer could impose an "exclusion" which states that it will not cover certain pre-existing conditions.)

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A common requirement of livestock mortality policies is that the animal owner provides the insurance company "prompt" or "immediate" notice of illness, injury, or death of an insured animal. These notice requirements vary among insurers.

AVOIDING DISPUTES

Notice disputes can be avoided. Here are some suggestions:

1. **Read your insurance policy carefully.** Pay particular attention to its requirements, especially that you give the insurance company "prompt" or "immediate" notice of any injury or illness to the insured animals. Never assume that you will be relieved of strict compliance with burden, even if you never read your policy.

2. **Give the insurer notice.** To help you satisfy the notice requirement, your policy will provide a 24-hour, toll-free number to contact the insurer or its designated claims representative. Most likely, this number will NOT be the number of the insurance agent that sold you the policy.

3. **Keep notice information handy and share it freely.** Once you receive the emergency contact number, keep it on hand and give it to your staff, your veterinarian and everyone who may care for livestock in your absence. Before leaving town for a vacation or business trip, confirm that these people have the information in case you cannot be reached and will provide the insurer notice in your absence.

4. **Prepare to call any time.** Prepare to make a notice call at all times. Insurers expect these calls all day, all night, and even on holidays.

5. **Give the insurer the opportunity to speak with your veterinarian.** Some insurance companies might want to speak to the attending veterinarian, especially if a valuable animal is seriously ill and may be euthanized. Give the insurer that opportunity.

CONCLUSION

Remember, courts around the country have enforced notice requirements of livestock mortality policies. To best protect your property and avoid coverage disputes with your insurer, make sure you understand the notice requirement of your insurance policy and develop a plan to ensure compliance when and if an unfortunate or unforeseen situation arises.

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