



*National Farm Machinery Show*  
*2008*

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# *Who is Kennedy & Coe, LLC?*

- **INTRODUCTIONS**

- Kennedy and Coe, LLC - An Accounting Firm Specializing in Services to Agricultural Producers
- Todd Jennison, Farm Program Services Consultant
- Farm Program Services - Special Resource Group within the Firm
- Farm Program Service Staff located in Goodland, Kansas
- Nearly Sixty Years of Combined Farm Program Experience





# *Farm Program Services*

- **DESCRIPTION OF SERVICES**

- Providing Expert Analysis of Program Regulations and Procedures
- Assisting Producers in Reorganization to Maximize FSA Payments while Complimenting Tax, Financial and Estate Planning
- Assisting Producers with FSA Appeals at the County, State, and National Levels
- Providing Technical Information to Other Accountants and Attorneys as they Deliver Services that may Impact Farm Program Payments
- Litigation Support
- An Array of Services to Clients in Selecting their “Best” Program Options





# *2008 FARM BILL*

## *CHALLENGES & OPPORTUNITIES*

- Key Differences between House and Senate Bills
- Focus on What's likely in Final Bill
  - Attribution Rule
  - Actively Engaged in Farming
  - Separate Person for Payment
  - Cash Rent Tenant Rule





# *2008 FARM BILL*

## *CHALLENGES & OPPOTUNITIES*

- Focus on What's likely in Final Bill
  - (Continued)
  - Husband & Wife Provision
  - Family Member Provision
  - Substantive Change Provision





## *Key Differences in House and Senate*

- Adjusted Gross Income (AGI) Limit
- DCP Payment Limits
- Revenue Programs
- Conservation Programs and Limits



# *Adjusted Gross Income (AGI) Limit*

- Current - \$2.5 M unless 75% Ag
- House - \$1 M hard cap, \$500 K unless 2/3 Ag (all programs)
- Senate – No hard cap
  - » 2009 - \$1 M unless 2/3 Ag
  - » 2010 and subsequent - \$750 K
  - » \$2.5 M for conservation programs



# *DCP Payment Limits*

- Current

- DP - \$40,000; CC - \$65,000; LDP - \$75,000

- House

- DP - \$60,000; CC - \$65,000; LDP - No Limit

- Senate

- DP - \$40,000; CC - \$60,000; LDP - No Limit



# *Revenue Programs*

- House
  - Revenue CC Option
  - Based on National Targets
- Senate
  - Average Crop Revenue (ACR) Program
    - » Replaces DCP program
    - » Fixed payment of \$15 per acre
    - » Revenue portion based on State targets





# *Conservation Programs*

- House

- Collapses 3-tiered structure of CSP
- \$60,000 per program limit, \$125,000 overall

- Senate

- Conservation Stewardship Incentives Program (CSIP)
  - » Combines activities under EQIP and CSP
- CSP limit at \$240,000 in any 6-year period





# *2008 FARM BILL CHALLENGES & OPPOTUNITIES*

- Caution During the Interim Period Between Farm Bills – What Could Get You in Trouble!
- Important Issues Relating to Payment Eligibility for 2008





# *Farm Program Eligibility*

*FSA Determinations & Rules*

- Definition of “Person”
- “Actively Engaged in Farming”
- Qualifying As a Separate “Person”
- “Cash-Rent Tenant” Rule
- “Separate & Distinct Person”
- “Substantive Change” Requirement
- Updating “Farm Operating Plans”
- FSA “End-of-Year Review” Audit



# *“Person” Eligibility Rules*

- Definition of a “Person”
  - Individual
  - Entity (Corporation, Limited Partnership, Limited Liability Company)
  - Trust or Estate
- Combination of Person Rules
  - Individual with Entity - > 50% Ownership
  - Individual with Minor Child’s Interest
  - Revocable Trust with Grantor/1 Beneficiary
  - Irrevocable Trusts with Sole (Income) Beneficiary





## *“Person” Eligibility Rules*

- Combination of Person Rules cont’d
  - Husband and Wife - Exceptions:
    - » Husband and Wife had Farming Interest Prior to Marriage
    - » Neither Spouse has Substantial Beneficial Interest in any other Entity Earning Payment
  - Entities where Two or More Individuals Collectively Own More than 50% Interest in Two or More Entities
  - Estate with Beneficiary where Beneficiary would have been Combined with Decedent





# *“Actively Engaged In Farming” Rules*

- Person must be At Risk
- Person’s Shares must be Commensurate
- Person must be Active By:
  - Significant Contribution of 1 or More:
    - » Capital - Land - Equipment (Left-Hand)
  - Significant Contribution of 1 or More:
    - » Active Personal Labor (Right-Hand)
    - » Active Personal Management (Right-Hand)





# *“Separate & Distinct Person”*

*FSA 1-PL (Rev. 1 ) Paragraph 110*

- What Does it Mean?
- What Actions Likely Violate This Rule?
  - Master loan for multiple operations
  - One farming operation loaning or guarantee another operation's operating note
  - Not having separate bank accounts for each operation
  - Other problem areas may invoke this rule



# *Cash Rent Tenant Rule*

- Person Must Contribute One of the following to Qualify:
  - Significant Contribution of Labor
    - » 1000 hours or 1/2 of Commensurate Share or;
  - Significant Contribution of Both Management and Equipment
- Person cannot Cash Rent Cropland and have it Custom Farmed/Share Rented





# *Substantive Change Requirements*

- Required for Increase in “Persons”:
  - Addition of a Family Member
  - Addition of a Spouse
  - Change in Land Rental (Landowner Only)
    - » Change Cash Rent to Crop Share





# *Substantive Change Requirements*

- Changes in the Operation cont'd
  - Increase in Cropland (Minimum 20% Increase) being Farmed
  - Change in Ownership through Sale or Gift of Land or Equipment
  - Use of Equipment not Previously Used in the Farming Operation



# *ATTRIBUTION RULE*

- Current Legislation

- “Three-entity rule”


- » Producer allowed to draw through two entities separate from self - ownership of 50% or less
    - » Effectively doubling DCP limits

- House and Senate Proposals

- “Attribution”

- » All payments, attributed to a “warm body”
    - » No limit on number of entities drawing payment
    - » DCP limits effective for each individual producer





# *BE CAUTIOUS IN CHANGING OWNERSHIP UNDER NEW FARM BILL*

- Multiple entities for additional limits
  - In some cases these entities have considerable net worth
  - Changing ownership in these entities could trigger considerable tax liability
- Discuss ownership changes with your accountant before making changes
- Forfeiting program payments may be less than taxes associated with the change
- Possibility of grace period
  - FSA Status Date of April 1





## *Common Problems*

- Development of an Estate Plan that has the Effect of Reducing “Persons” for Payment
- Year End Tax Planning where Members of a GP Receive Guaranteed Payment for Labor/Management
- Entities and/or Individuals with an Interest in the Farming Operation Providing Financing or Guaranteeing a Loan





# *Common Problems*

- Partners not Sharing Profits or Losses Based on their Ownership in the Partnership
  - Capital Accounts not Equal
  - Tax K-1 Forms not Commensurate with Ownership
- Cash Rent Tenant Violation
  - Cash Rented Land that is Custom Farmed
  - Cash Rented Land that is Share Rented





# *FSA Year End Review*

*Internal Audit*

- Take it seriously
- Watch time frame
- Request extension if needed
- Review CCC-502 Farm Operating Plan
- Organize Response around five inputs including land, capital, equipment, labor, management
- Add crop insurance and disposition
- Add proof of AGI





# *Thank You*

- Farm Program Services Page
  - [http://www.kcoe.com/serv\\_farmprogram.php](http://www.kcoe.com/serv_farmprogram.php)
  - Presentations
  - Legislative Comparison Handout
  - Other Informational Material
- Contact
  - Todd Jennison, Farm Programs Consultant
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