



Agricultural Law Update

August 2012

USDA DESIGNATES FOUR COUNTIES IN MICHIGAN AS PRIMARY NATURAL DISASTER AREAS DUE TO DROUGHT

- Liza C. Moore

On July 25, 2012, the U.S. Department of Agriculture (USDA) announced that four counties in Michigan were designated as primary natural disaster areas due to this summer's drought: Branch, Cass, Hillsdale, and St. Joseph. The following counties also qualify for natural disaster assistance because their counties are contiguous: Berrien, Calhoun, Jackson, Kalamazoo, Lenawee, and Van Buren. On July 26, 2012, the USDA announced that "During the 2012 crop year, the [USDA] has designated 1,369 counties across 31 states as disaster areas—1,234 due to drought—making all qualified farm operators in the areas eligible for low-interest emergency loans." "The U.S. Drought Monitor currently reports that two-thirds of the continental United States is in a moderate to exceptional drought." The USDA has created a website focused on the drought: www.usda.gov/drought

On July 25, 2012, the Michigan Department of Agriculture and Rural Development (MDARD) issued a press release regarding the USDA's designations. "Michigan's agricultural community appreciates the rapid response by USDA in issuing a disaster declaration under their new expedited process. Our farmers and producers are facing unprecedented extreme weather conditions this year including frost/freeze that devastated many fruit crops to the drought conditions wreaking havoc on our corn and soybeans producers," said MDARD Director Jamie Clover Adams. "This disaster designation is essential to keep our farmers in business and ensuring they have ready access to the resources

they need to keep feeding Michiganders and the world," said the Director.

As stated in the July *Agricultural Law Update*, on July 2, 2012, the USDA designated 72 counties in Michigan as primary natural disaster areas due to the severe weather this winter and spring. For more information about primary natural disaster areas, please visit your local USDA FSA office. ■■

To view the July 25, 2012 USDA press release, please visit: tinyurl.com/boyllfc

To view the July 26, 2012 USDA press release, please visit: tinyurl.com/cs8en84

To view the July 25, 2012 MDARD press release, please visit: tinyurl.com/cpb6dpd



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DATES TO REMEMBER:

August 28-30, 2012 | Farm Progress Show, Boone, IA | tinyurl.com/79rrqr3

August 30, 2012 | National Agricultural Law Center webinar on the 2012 drought | tinyurl.com/95s3rfz

September 6, 2012 | Fall Ag Day, Crop Production Services, Sunfield, MI (MAEAP Phase I Meeting) | tinyurl.com/8kfo4l

September 6, 2012 | Shiawassee County 2012 Agricultural Tour, Shiawassee County Fairgrounds, Corunna, MI (MAEAP Phase I Event) | tinyurl.com/8fd64ed

September 12, 2012 | Siting GAAMP Workshop, Gratiot Isabella RESD, Ithaca, MI | tinyurl.com/9tfjhnp

COURT OF APPEALS CLARIFIES AGRICULTURAL EXEMPTION TO THE USE TAX

- Nicholas M. Oertel

The Michigan Use Tax Act has several notable exemptions, one of which is the agricultural exemption. The agricultural use tax exemption covers “[p]roperty sold to a person engaged in a business enterprise and using and consuming the property... in the breeding, raising, or caring for livestock, poultry, or horticultural products.” MCL § 205.94(1)(f). This establishes two requirements for the use tax exemption:

1. the entity must be a business enterprise, and
2. the property must be used or consumed “in the breeding, raising, or caring for livestock, poultry, or horticultural products.”

In order to qualify for the use tax exemption, an entity claiming the exemption must satisfy both requirements. Therefore, the business entity must be the same entity that is using or consuming the property, in order to claim the exemption.

The Court of Appeals clarified this exemption in the recent case of *Sietsema Farms Feeds, LLC v Department of Treasury*, 296 Mich App 232, -- NW2d --, 2012 WL 639339 (Mich App 2012). Sietsema Farms operated a feed mill, which sold its feed to hog and turkey farms. The Court held that because Sietsema

Farms was not using and consuming the property in the breeding, raising, or caring for livestock and poultry, it failed the second requirement of the agricultural use exemption.

To qualify for the exemption, Sietsema Farms must have been the entity doing the using or consuming. The producer cannot claim the agricultural use tax exemption vicariously because the purchaser of its products is using or consuming the products in a way that satisfies the use exemption. If Sietsema Farms was feeding the livestock, it would have satisfied the second requirement, but selling the property alone is not enough to qualify for the exemption.

If you have a use or sales tax issue, contact a Foster Swift attorney. ■ ■



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UPDATE ON 2012 FARM BILL

On June 21, 2012, the Senate passed its version of the Farm Bill by a vote of 64-35. On July 12, 2012, the House Agriculture Committee approved their version of the Farm Bill by a vote of 35-11. However, the House has still not considered the Farm Bill and the House is in recess (called a “District Work Period”) from August 6 to September 10, 2012. The current Farm Bill is set to expire in September 2012. On August 2, 2012, the House passed H.R. 6233, the Agricultural Disaster Assistance Act of 2012, by recorded vote of 223-197.

To view the Library of Congress’ bill summary and status, please visit:

tinyurl.com/8khkd8j

To view the August 1, 2012 Statement by National Agriculture Organizations Regarding House Disaster Assistance Legislation, please visit:

tinyurl.com/9mx44x2

WHAT TO DO WHEN YOU RECEIVE A BANKRUPTCY NOTICE

- Scott A. Chernich & Patricia J. Scott

Due to the influx of bankruptcy filings, chances are good that you have received notices of bankruptcy filings of your customers or persons with whom you do business. Chances are good, then, that you may receive notice of a bankruptcy filing. Ignore a bankruptcy notice at your peril. Pay close attention to any mail involving a bankruptcy case – because every bankruptcy case in which the Debtor owes you or your institution money, or has property you or your institution may have an interest in, has the potential to affect your interests. Consider the following hypotheticals:

Imagine that a customer of your institution files bankruptcy. In that bankruptcy, the Debtor proposes to pay none of the outstanding balance owed to the institution. How can the institution protect its right to receive full payment for the outstanding balance?

Worse yet, imagine that your institution received a payment from the customer within ninety (90) days of the customer filing for bankruptcy, and now you receive a notice from the bankruptcy trustee demanding the payment be returned. How can the institution protect the payment it has already received?

Imagine that you own property, personal or real, and you gave the property to another, for repair, for use, etc. Then the person possessing your property files bankruptcy and creditors now claim an interest in the property. How can you protect your ownership in the property and obtain its return?

Below is a short, basic primer on bankruptcies – including reasons to give special care to any correspondence you receive about a bankruptcy case and how to protect your interests that otherwise might be harmed during a bankruptcy.

What is voluntary bankruptcy?

Bankruptcy is filed by an individual or institution to obtain financial relief. The person or institution filing bankruptcy is referred to as a "debtor."

Are there different types of bankruptcies?

Yes. There are basically two types of bankruptcy cases: 1) liquidation; and 2) reorganization. The first type, a Chapter 7 case, totally eliminates the debtor's debt. The second type, a Chapter 13 for individuals and Chapter 11 for companies,

reorganizes the debtor's debt and provides for partial debt relief.

Can a bankruptcy case eliminate debt the debtor owes?

Yes. Any debt that the debtor owes can be affected in a bankruptcy case. This could include, for example, installment loans, mortgages, credit card balances, account receivables, personal loans, etc. Whether you are a secured creditor or an unsecured creditor determines the amount of the debt affected by the bankruptcy.

Can a bankruptcy case impact ownership or anything else other than a debt?

Yes. A bankruptcy case could also put at risk interests in property – such as personal property you may own but which is in the possession of the debtor. This includes interests you or your institution may have in the debtor's property. In short, every interest – legal or equitable – that you have and which is somehow related to the debtor is potentially at risk in a bankruptcy.

How do you find out there is a bankruptcy filing that potentially affects your interests?

The simplest answer is by either mail or word-of-mouth. With mail, you may receive documents from the bankruptcy court identifying the bankruptcy and noting how the debtor seeks to dispose of a debt owed or an item in which you claim an interest. Bankruptcy courts issue various types of documents, but the most common documents that might be received regarding a debtor's bankruptcy filing are the following:

1. Notice of Bankruptcy Filing
 - If the Debtor lists you or your institution as a creditor that the Debtor owes money, the Court will send you a notice of bankruptcy;
2. Notices of Dividends, Motions for Relief From Stay, Debtor's Plan
 - You could receive a notice of possible dividends, motions for relief from stay, or the debtor's reorganization plan. The debtor's plan generally relates to how the debtor intends to pay its creditors – i.e., how the payments will take place, at what interest rate, and over what period of time.

Each bankruptcy notice should be given careful attention and likely forwarded to a bankruptcy attorney to evaluate. ■▶

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What if the debtor does not list you as a creditor? How do you get notice then?

If the Debtor does not list you as a creditor, then you will not receive notice – even if you or your institution is owed money. For that reason, you must stay aware of anything you hear regarding a person or company with whom you are doing business. If you hear news of a person or company perhaps filing bankruptcy, you can either investigate further, or ask an attorney to investigate the bankruptcy court docket.

What should a person or institution do if it receives notice of a bankruptcy?

If you receive notice of a bankruptcy, the first thing to do is contact an attorney. This is necessary because bankruptcy cases have many deadlines and are extremely time-sensitive. Although each bankruptcy case is different, sometimes there is little attorney time needed to protect your interests. For example, if the debtor lists you or your institution in the plan and the payment terms are acceptable, then little attorney time may be required.

The second thing you must do is stop collection efforts against the debtor. From the moment a bankruptcy case is filed, bankruptcy laws require that all entities that the debtor owes money must cease collection efforts. You should contact an attorney to determine how to proceed in the bankruptcy case to collect any debt owed.

What could happen if a person or institution receives notice of a bankruptcy but does nothing about it?

Many potential unfavorable things may happen if quick action is not taken in a bankruptcy case. If owed money and the Debtor

proposes to pay less than what the Debtor owes, then the right to object may be lost if you do not respond, or wait too long to respond. Likewise, failure to timely respond could lead to losing any interest you may have in property (e.g., vehicle or property), of which the Debtor has possession.

Foster Swift's Bankruptcy team has years of experience handling multi-faceted bankruptcies. Please let us know if you would like Foster Swift to help with any bankruptcy related questions. ■■



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