



Agricultural Law Update

May 2013

CAN I BENEFIT FROM THE AG EXEMPTION?

- James B. Doezema & Ryan E. Lamb

The term "Ag Exemption" is frequently used, yet because there are actually three separate and distinct types of tax-related "Ag Exemptions," they are often combined or confused in discussion.

1. PROPERTY TAX EXEMPTION.

This is the most common exemption, and may be applied automatically for some property that is zoned agricultural. This exemption reduces an owner's property taxes, like the principal residence exemption (also known as the "PRE Exemption" or the "Homestead Exemption"). An owner with a residence on an ag land parcel might have either a Homestead Exemption or an Ag Exemption, but cannot join and double the exemption.

2. EXEMPTION FROM UNCAPPING FOLLOWING TRANSFER.

By filing an Affidavit with the Assessor's office stating that the acquired property will remain qualified agricultural property, a purchaser of qualified agricultural property can claim an exemption so that a transfer of property is not deemed a statutory "transfer of ownership" which would otherwise reset or "uncap" the property's taxable value. This exemption is commonly known as an "Act 260 Exemption" or a "P.A. (Public Act) 260 Exemption."

a. Retroactive Exemption for Missed Filings.

In a rare reprieve, owners of qualified agricultural property who were not aware of this exemption or

simply failed to file it can file the exemption years later, and request that the Assessor recap the property retroactive to the date of acquisition. This will typically lower the property's tax base in the current year and future years moving forward, but the taxpayer is not entitled to a refund of taxes already paid prior to the correction.

3. FARMLAND AND OPEN SPACE PRESERVATION PROGRAM.

This program is commonly known as the "P.A. 116 Program" for P.A. 116 of 1974, which has since been replaced by P.A. 451 of 1994. Under this program, a farmer seeks credits against the farmer's state income tax liability. In exchange for entry into the program and potential state income tax credits, the farmer enters a contract with the State of Michigan for a minimum of ten years, which restricts the use and development of the subject land in favor of continued farming and preservation of open space.

We hope this summary and overview is helpful in distinguishing the various exemptions, and determining which might apply to your land. We will provide more detail regarding qualification nuances and procedures for each of these separate exemptions in future articles.

In the meantime, if you have any property or tax questions related to farmland, please feel free to contact one of our experienced agricultural attorneys.

IMMIGRATION UPDATE

- Liza C. Moore

Immigration reform is a hot-button, important issue. Recently, both the Senate and House have introduced legislation regarding immigration and agriculture. On April 16, 2013, eight Senators introduced comprehensive immigration reform legislation (titled the "Border Security, Economic Opportunity, and Immigration Modernization Act, S.744).

One subtitle of the 844-page Senate bill is called the "Agricultural Worker Program." The proposed Agricultural Worker Program has two main components: a "Program for Earned Status Adjustment of Agricultural Workers" (Blue Card Status program) and a "Nonimmigrant Agricultural Visa Program" (Guest Worker program).

Under the proposed Blue Card Status program, after completing a detailed application, paying fees, and passing national security and law enforcement clearances, workers (and their spouses and children) who performed a certain amount of agricultural employment prior to 2012 could obtain "Blue Card" status. After a certain number of years and satisfaction of additional requirements, blue card status could be adjusted to permanent resident status.

The proposed Guest Worker program would allow a nonimmigrant agricultural worker satisfying various

requirements to be admitted into the United States for an initial 3-year period, which could potentially be renewed.

The lengthy proposed legislation has many other requirements and programs. The Senate Judiciary Committee held full committee meetings on S.744 on April 19, 22, and 23, and is currently set to consider the bill at its next executive business meeting on May 9, 2013.

On April 26, 2013, House Judiciary Chairman Goodlatte introduced a proposed "Agricultural Guestworker Act," H.R. 1773. According to the summary posted on the House Judiciary Committee's website, the proposed legislation would create an H-2C worker program run by the USDA.

These proposals have received extensive news coverage and will be subject to intense political debate. More information about the Senate Judiciary Committee's hearings and actions can be located at: www.judiciary.senate.gov. To view all 844 pages of S.744 as introduced on April 16, 2013, please visit: www.schumer.senate.gov/forms/immigration.pdf. The House Judiciary Chairman's April 26, 2013 news release about H.R. 1773 (with links to a summary and the bill) may be accessed at: judiciary.house.gov/news/2013/04262013.html.

FMCSA EXPANDS HOURS OF SERVICE EXEMPTIONS FOR FARMERS

- Dirk H. Beckwith

The Federal Motor Carrier Safety Administration ("FMCSA") promulgates regulatory exemptions for the "transportation of agricultural commodities and farm supplies" and for "covered farm vehicles" and their drivers. Effective March 14, 2013, the FMCSA adopted a rule that expands an hours-of-service (HOS) exemption that has been in effect since 1995 for farm-related operations during the planting and harvesting season. Under the new rule, drivers transporting agricultural commodities within a 150 air-mile radius of the farm or source of the commodities

are exempt from the HOS rules. Drivers were previously exempt for up to a 100 air-mile radius. Drivers of a covered farm vehicle are defined as farmers, their family members, and employees. Also exempt are retailers delivering farm supplies for agricultural purposes within a 150 (instead of 100) air-mile radius of their distribution point to a farm or other place where the supplies will be used, and wholesalers delivering farm supplies within the same radius to a retailer, farm, or place where they will be used.

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Under the new rule, commercial farm vehicles and their drivers also are exempt from:

1. the requirement to obtain a commercial driver's license;
2. certain drug and alcohol testing regulations;
3. medical qualification requirements;
4. hours of service limits;
5. and vehicle inspection, repair and maintenance rules.

States must adopt compatible regulations as soon as practicable after the effective date of any newly adopted FMCSA regulation, but no later than 3 years after that date. If a State fails to adopt a compatible regulation within three years, the State will be ineligible to receive certain Federal-aid highway funds.

If you have questions about the FMCSA's new rule, please contact [Dirk Beckwith](#) at 248-539-9918 or dbeckwith@fosterswift.com.

NEW VIDEO HELPS AG BUSINESSES EVALUATE THEIR EXPORT OPPORTUNITIES

The Michigan Department of Agriculture and Rural Development's International Marketing Program released a new YouTube video: "[Your First Steps Toward Food & Ag Exporting in Michigan](#)." The video is targeted towards Michigan Food and Agribusiness Firms who are new to exporting and interested in evaluating their export potential and learning about the first steps for entering the export market.

To view the MDARD export video, please visit youtu.be/sDi98iKo8cc. If you have any questions, please contact [Jamie Zmitko-Somers](#) the International Marketing Program Manager at 517-241-3628 or zmitkoj@michigan.gov.

For questions regarding, protecting intellectual property, export control, agent/distributor agreements or other exporting questions, please contact [Jean Schtokal](#) at 517-371-8276 or jschtokal@fosterswift.com.

UPCOMING AG EVENTS

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|-------------------------|--|
| May 9, 2013 | How to Start a Successful Cottage Food Business in Michigan
– MSU Extension Monroe County - 517-439-9301 |
| May 14, 2013 | How to Start a Successful Cottage Food Business in Michigan
– MSU Extension Ypsilanti - 517-439-9301 |
| May 16, 2013 | How to Start a Successful Cottage Food Business in Michigan
– MSU Extension Hillsdale County - 517-439-9301 |
| May 16, 2013 | How to Start a Successful Cottage Food Business in Michigan
– MSU Extension Saginaw County - 989-832-6643 |
| June 19-20, 2013 | Farm Progress Hay Expo – Waukon IA - hayexpo.com |
| July 16-18, 2013 | Michigan Ag Expo – East Lansing - agexpo.msu.edu |
| July 11-16, 2013 | Michigan Livestock Expo – East Lansing - www.milivestock.com |



AGRICULTURAL LAW SECTION ADDED BY STATE BAR OF MICHIGAN

In summer 2012, a group of agricultural law attorneys in Michigan decided to form an Agricultural Law Section at the State Bar of Michigan. We felt an industry as vibrant and diverse as agriculture should have a State Bar section to help attorneys practicing in this area meet and share knowledge and ideas, with the goal of better serving this important community. **Liza Moore** worked with a few other people to prepare the documents the State Bar requires to form a new section. On July 27, 2012, the State Bar of Michigan Board of Commissioners unanimously approved the proposal to form a new Agricultural Law Section.

Around 128 attorneys have joined the Agricultural Law Section since its creation. Forty-nine attorneys from all across Michigan traveled to Lansing to participate in the Section’s organizational meeting earlier this year. At that first meeting, the members elected **Liza Moore** as Chairperson of the new Section and **Todd Hoppe** as a member of the Section’s Council. For more information about the Section, please visit www.michbar.org/aglaw/

AT THE PODIUM

Todd Hoppe will present “Estate Planning for the Farm-Owning Family” on May 10 at ICLE’s 53rd Annual Probate & Estate Planning Institute in Acme. Topics covered include:

- knowing your client’s business and assets;
- special Michigan real property rules;
- dealing with cash poor, land rich estates; and
- fairness versus equality in distributions.

More information

www.icle.org/modules/store/seminars/schedule.aspx?PRODUCT_CODE=2013CI6530

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LANSING

FARMINGTON HILLS

GRAND RAPIDS

DETROIT

MARQUETTE

HOLLAND

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