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AGRICULTURE & EQUINE INDUSTRY LEGAL INFORMATION NEWS & COMMENTARY

INSIDE THIS ISSUE

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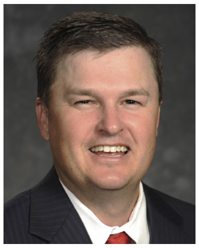
Our goal: full service to the industry

In 1997, this farm kid and calf roper joined McAfee & Taft, then one of Oklahoma's largest and fastest growing law firms. The firm was a full-service business firm with a solid foundation in tax, corporate, real estate, oil and gas, employment and litigation. Being fresh out of law school, I probably did not fully comprehend the value of working at a full-service firm like McAfee & Taft, but in addition to learning how to be a lawyer, I began cultivating my goal of developing expertise in matters affecting the agriculture industry. After all, I could speak the language, and the agriculture industry comprised diverse business enterprises and continued to play a dominant role in Oklahoma's economy.



JEFF TODD

After a few months of working at the firm, I discovered that we already had an underground agriculture practice. Our tax lawyers represented many large farming and ranching families in business succession, estate and tax planning. Our real estate lawyers represented the same clients and others in major real estate transactions. Our corporate lawyers represented numerous local, state and national agri-businesses. Our oil and gas lawyers also assisted mineral owners in oil and gas matters. Our employment lawyers counseled agriculture clients on employment issues and disputes. Our litigators handled a multitude of cases that impacted the agriculture industry. However, most of these lawyers didn't consider their work to be ag work. They simply viewed this work as an integral part of being a business lawyer in Oklahoma. I also realized the incredible benefits of being able to look within the firm to lawyers with expertise in specific areas.

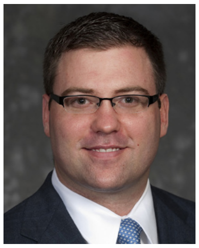
These revelations confirmed my belief that McAfee & Taft was the perfect place for Oklahoma's first "full-service" firm to the agriculture industry. Over the years we strengthened our expertise in many facets of the industry and gained expertise through the hiring of new lawyers. We also increased our visibility among industry insiders, both in Oklahoma and way beyond our state's borders. So, in 2009, a group of our lawyers decided it was time to create a formal group to better leverage our collective experience and expertise for the benefit of the agriculture and fast-growing horse industry.

Today, the McAfee & Taft Agriculture & Equine Group is composed of lawyers from each of our firm's practice groups who have experience, education or special interests in agriculture matters relevant to their practice. The group represents agriculture and equine interests throughout Oklahoma and the United States in our quest to provide "full-service" legal support to the Agriculture Industry. As it turns out, this downtown law firm, which has since grown to become Oklahoma's largest with 165 lawyers and offices in Oklahoma City and Tulsa, is a pretty good place for an ag practice.

We hope you find this second edition of AgLINC to be useful and informative. For more information about the comprehensive legal and business consulting services we offer through our Agriculture and Equine Industry Group, please visit our website at **www.mcafeetaft.com/ag**. Please also feel free to contact me or any of the industry lawyers listed in this publication.

Oklahoma's Nontestamentary Transfer of Property Act

Oklahoma is among a growing minority of states that have enacted a transfer-on-death deed act. Oklahoma's version, the Nontestamentary Transfer of Property Act (the "NTPA"), is a mouthful; however, it provides a useful tool for landowners to transfer ownership of their land at death to another person without the transfer being subject to expensive and public probate procedures, gift taxes and other legal requirements that have historically been imposed on testamentary land transfers.



COLE MARSHALL

Prior to the enactment of the NTPA, landowners had limited options for transferring ownership of their land at death, such as a will, which is subject to the public procedures of probate, or the creation of a trust that can be expensive, and many times more appropriate for complex estate planning. The NTPA provides an alternative to these methods of transferring land at death by allowing landowners to execute and record a transfer-on-death deed ("TOD") that designates a "grantee beneficiary" who will take title upon the owner's death. Some aspects of a TOD are:

- The transfer takes place upon the death of the owner, not when the TOD is recorded.
- No monetary exchange is required, and no signature, consent, agreement or notification is required to be provided to the designated grantee beneficiary.
- At anytime during the owner's life, the owner may revoke or change the designated grantee beneficiary.
- The designated grantee beneficiary takes title to the land exactly as it was held by the owner at the time of the owner's death and is, therefore, subject to all conveyances, assignments, contracts, mortgages, liens and security pledges made by the owner, including any leases, etc.
- The owner shall remain the equitable and legal owner until death and considered absolute owner with respect to creditors and purchasers.
- The TOD is not considered a completed gift; therefore, it is not subject to gift taxes.
- The TOD will become public record once filed; however, the beneficiary is not required to receive notification. Therefore, the process is relatively private and can be a valued alternative to probating a will.

While not a replacement for important estate and tax planning, the NTPA can be a useful tool for farmers and ranchers. Everyone is probably aware of a circumstance when a landowner made it known how he wanted to leave his land after death, but failed to take the necessary steps to create a valid will and the landowner's wishes ultimately were not honored. In other cases, the landowner may have taken the step to put one child on the deed only to realize later that the action could not be unilaterally unwound or modified to include other children. The NTPA gives landowners a simple, cost-efficient and revocable method for transferring ownership in land upon the landowner's death that will not burden the beneficiary with the costs and expenses of probate, gift taxes and other legal requirements that have historically been imposed on testamentary and non-testamentary real estate transfers.

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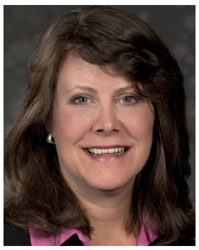
Tracking EPA's enforcement of the CAFO Mandatory Greenhouse Gas Reporting Rule

As we know, the U.S. Environmental Protection Agency has been working on adopting regulations requiring larger animal feeding operations to calculate and report emissions of greenhouse gases, including carbon dioxide, methane and nitrous oxide. The EPA adopted these rules on October 30, 2009, and they were effective as a matter of law on December, 29, 2009. Generally, facilities and other entities targeted by the rules had to begin various stages of implementation on January 1, 2010. For animal feeding operations, however, Congress stepped in. On October 29, 2009, Congress added language, initially to the EPA's 2009-2010 budget, and recently to EPA's 2010-2011 budget, that prevented the EPA from using any of its budget for the enforcement of the greenhouse gas reporting rule on animal feeding operations. As a result, the EPA guidance regarding these rules specific to animal feeding operations (40 C.F.R. § 98.360, Subpart JJ) now includes the following note: "EPA will not be implementing subpart JJ of Part 98 using funds provided in its FY2010 appropriations or Continuing Appropriations Act, 2011 (Public Law 111-242), due to a Congressional restriction prohibiting the expenditure of funds for this purpose," available at: **http://www.epa.gov/climatechange/emissions/subpart.html**.



MARY ELLEN TERNES

Animal feeding operations were not required to calculate and report greenhouse gas emissions for the EPA's fiscal year beginning October 1, 2009 or October 1, 2010. If, however, any animal feeding operation facilities are covered by any other subparts of the final rule – for example, Subpart C relating to the burning of fossil fuel – these facilities should be finalizing their first year of recordkeeping in time to report their emissions in March 2011. Also, Congress' extended limitation on EPA's use of budgeted resources for enforcing the greenhouse gas reporting requirements for animal feeding operating only lasts through September 2011. Be watching for further congressional action on this issue in October 2011.

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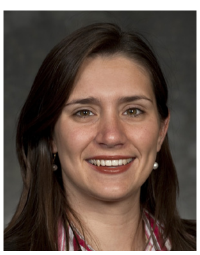
The excess farm loss deduction limitation

Beginning in 2010, most taxpayers who receive an "applicable subsidy" may not claim income tax deductions for "excess farm losses" in the same year that they receive the subsidy. The full amount of farm loss deduction is not disallowed, but is limited to certain threshold amounts with the balance claimed in the next tax year.



GIANNINA MARIN

To Whom Does the Limitation Apply?

The deduction limitation applies to all taxpayers other than C corporations that receive a direct or counter-cyclical payment under Title I of the 2008 Farm Bill or a Commodity Credit Corporation loan. Taxpayers who receive payments under the Conservation Reserve Program (CRP) are not subject to the limitation because those payments are made under Title II of the 2008 Farm Bill.

What is an Excess Farm Loss?: Threshold Amounts

"Excess farm losses" are the amount of farm losses that the taxpayer will be unable to claim during the tax year in which a "subsidy" was received.

- Excess Farm Losses = Deductions for the Year – (Farm Income for the Year + Threshold Amount).
- Threshold Amount = The greater of $300,000* OR the Sum of Net Farming Income for the past 5 years.[1]

For example, if a taxpayer has $100,000 of net farming income in each of years 1 through 5, and in year 6 receives an applicable subsidy and has gross farming income of $200,000 and farming deductions of $750,000, the taxpayer would have the following excess farm loss: $750,000 – ($200,000 + $500,000) = $50,000. The taxpayer could deduct $700,000 of the farming deductions in year 6, but would be unable to deduct the remaining $50,000 in that year. The taxpayer could deduct the remaining $50,000 during the next tax year.

Does this Limitation Impact You?

Obviously, the impact of the deduction limitation on you depends on the nature and history of your business as well as any previous tax planning that may been done. Farmers and their tax planners should be aware of these new rules so that they can make appropriate business decisions. We encourage you to contact your tax professional to appropriately determine the effect of these new rules on your business and any existing tax plans.

[1]For married taxpayers filing separately, the $300,000 threshold value is decreased to $150,000.

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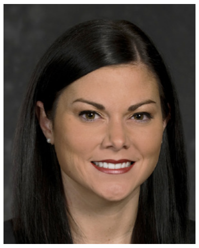
Oklahoma's Oil and Gas Owners' Lien Act of 2010

In the wake of litigation involving SemGroup, L.P., Oklahoma recently repealed its Oil and Gas Owners' Lien Act (the "Prior Act") and replaced it with the Oil and Gas Owners' Lien Act of 2010 (the "2010 Act"). The 2010 Act strengthens the rights and protections afforded to owners of an interest in oil and gas rights by addressing some of the inadequacies of the Prior Act, while preserving the rights of any interest owner accrued under the Prior Act.



RACHEL EVANS

Pursuant to the 2010 Act, each interest owner is granted an oil and gas lien to secure the obligations of a first purchaser to pay the sales price, to the extent of the interest owner's interest in oil and gas rights. The oil and gas lien granted by the 2010 Act exists as part of and is incidental to ownership of any interest in oil and gas rights, regardless of the type or nature of the interest. The 2010 Act defines "oil and gas rights" as "to any lands within the State of Oklahoma, any right, title or interest, whether legal or equitable, in and to: (1) oil, (2) gas, (3) proceeds, (4) an oil and gas lease, (5) a pooling order, and (6) an agreement to sell."

In contrast to the lien granted under the Prior Act, the oil and gas lien granted by the 2010 Act is perfected automatically without the need to file a lien notice, financing statement or other document. The 2010 Act states that the oil and gas lien attaches immediately to all oil and gas on the effective date of the 2010 Act, which is April 19, 2010, and continues uninterrupted and without lapse (i) in all oil and gas upon and after severance and (ii) in and to all proceeds. Subject to a few limitations, the oil and gas lien exists until the sales price is received by the interest owner or representative first entitled to it. However, the oil and gas lien granted by the 2010 Act expires one year after the last day of the month following the date proceeds from the sale of oil or gas subject to the lien are required to be paid (but only as to the oil and gas sold during that month), unless an action to enforce the oil and gas lien has been commenced.

With respect to priority, the 2010 Act provides that, except for a permitted lien, the oil and gas lien granted by the 2010 Act takes priority over any other lien or security interest. A "permitted lien" under the 2010 Act is essentially (i) a mortgage lien or security interest granted by the first purchaser to a person that is not an affiliate of the first purchaser, which secures payment under a written instrument of indebtedness that states a principal amount and fixed maturity date and is signed by the first purchaser and the payee prior to the effective date of the 2010 Act, or (ii) a validly perfected and enforceable lien created by statute, rule or regulation of a governmental agency for certain storage or transportation charges owed by a first purchaser in relation to oil or gas originally purchased under an agreement to sell. While the 2010 Act also provides that a purchaser that is a buyer in the ordinary course of the first purchaser's business as defined in Article 9 of the UCC, and a purchaser that has paid all consideration due the first purchaser, take free of any oil and gas lien on the oil or gas purchased, the oil and gas lien will continue uninterrupted in the proceeds paid or due to the first purchaser.

Oklahoma interest owners are undoubtedly in a better position to ensure payment under the 2010 Act than under the Prior Act. Interest owners that are not being paid by a first purchaser should contact an attorney to discuss enforcement of the oil and gas lien granted by the 2010 Act.

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