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IMPACTS OF THE TAX CUTS AND JOBS ACT ON AGRICULTURAL PRODUCERS

by Kristine Tidgren*

The Tax Cuts and Jobs Act (TCJA) ushered in the most significant changes to our tax code in more than 30 years. On December 22, 2017, President Trump signed the TCJA into law. Although most changes went into effect January 1, 2018, meaning they will impact tax returns filed in 2019, most agricultural clients need to understand how the law is impacting them early in 2018 so they can make good business decisions in the months ahead.

Below is an overview of major changes implemented by the new law and how they may impact agricultural producers.

Modifying Individual Income Tax Brackets

Most farm businesses are taxed as sole proprietorships, partnerships, or S Corporations. This means that business income is passed through to the owners, who pay taxes based upon individual income tax rates. From 2018 to 2025, the TCJA lowers individual income tax rates

across the board.¹ The graduated rates that apply to ordinary income are 10%, 12% (down from 15%), 22% (down from 25%), 24% (down from 28%), 32% (down from 33%), 35%, and 37% (down from 39.6%).² The TCJA leaves the maximum rates on net capital gains and qualified dividends unchanged.

Increasing the Standard Deduction

Taxpayers only itemize deductions if the amount they can deduct on 1040, Schedule A, is more than their standard deduction. The TCJA will significantly decrease the number of taxpayers who itemize. Beginning in 2018, the TCJA increases the standard deduction from \$13,000 to \$24,000 for married filing jointly taxpayers and from \$6,500 to \$12,000 for single taxpayers.³ The

increased standard deduction is in place through 2025.

Suspending the Personal Exemption

In 2017, taxpayers could generally take a personal exemption of \$4,050 for themselves, their spouse, and each of their dependents. In conjunction with increasing the standard deduction and lowering individual income tax rates, the TCJA suspends the personal exemption from 2018 through 2025.⁴

Eliminating Many Deductions

The TCJA eliminates or modifies a number of individual itemized deductions for tax years 2018 through 2025.

State and Local Tax Deduction. For tax years 2018 through 2025, the TCJA limits the amount of combined state and local income and property taxes taxpayers can claim as an itemized deduction to \$10,000

¹ IRC § 1(j).

² IRC § 1(j)(2).

³ IRC § 63(c)(7)(A).

⁴ IRC § 151(d)(5)(A).

(\$5,000 for married filing separately).⁵ Property taxes incurred in a trade or business, however, continue to be fully deductible on a Schedule C, Schedule E, or Schedule F.⁶

Charitable Contributions. The TCJA generally leaves in place current law regarding the deductibility of charitable contributions. With many fewer taxpayers itemizing deductions, however, many charitable contributions will no longer result in a tax benefit. The TCJA does not change the ability of those over 70 1/2 to exclude from income qualified charitable distributions from an IRA.⁷ Nor does it impact the ability of farmers to exclude charitable gifts of grain from income.⁸

Home Mortgage Interest Deduction. Through 2025, the TCJA lowers the home mortgage interest deduction from \$1 million (\$500,000 married filing separately) to \$750,000 (\$375,000 married filing separately).⁹ The TCJA also suspends the deduction for interest paid on a home equity loan, unless that loan is used to buy, build, or substantially improve the taxpayer's home that secures the loan.¹⁰

Miscellaneous Itemized Deductions Subject to the 2 Percent Floor. For tax years 2018 through 2025, the TCJA suspends all miscellaneous itemized deductions subject to the two percent floor, including, for example, unreimbursed employee expenses, hobby expenses, and investment fees.¹¹

Medical Expenses Deduction. The TCJA retains the current itemized deduction for medical expenses exceeding 10 percent of the taxpayer's adjusted gross income. For tax years 2017 and 2018, the TCJA decreases this AGI threshold for everyone

(not just those 65 and older) to 7.5 percent.¹²

Increasing the Child Tax Credit and Creating a New Dependent Credit

The TCJA raises the child tax credit from \$1,000 to \$2,000 per qualifying child for tax years 2018 through 2025.¹³ It also provides a \$500 credit for dependents who do not qualify for the child tax credit, including those over the age of 16.¹⁴

Estate, Gift and Generation Skipping Tax

The TCJA does not eliminate the estate or gift tax, but it doubles the basic exclusion amount for tax years 2018 through 2025.¹⁵ Consequently a person can die with \$11,180,000 (adjusted for inflation) of property in 2018 and the estate will owe no estate tax.¹⁶ Basis adjustment (often a "step up") continues at death for all estates.¹⁷

Corporate Tax Rate

The TCJA permanently lowers the maximum corporate tax rate from 35% to 21%, beginning in 2018.¹⁸ Because the law transforms the corporate tax structure to a flat rate for all income, small C corporations with income below \$50,000 will see an increase in their corporate income tax rate from 15 percent to 21 percent. Such entities may consider electing S corporation status.

Deduction for Pass-Through Business Income

From 2018 through 2025, the TCJA allows most individuals receiving income from a sole proprietorship or a pass through business—including an S corporation or a partnership—to take a new "Section 199A" deduction.¹⁹

These individuals can generally deduct 20 percent of "qualified business income," defined as the net amount of qualified items of income, gain, deduction, and loss attributable to any qualified trade or business of the taxpayer, from their taxable income.²⁰ Qualified businesses income does not include income from capital gain or dividends, reasonable compensation received by an S corporation shareholder, or guaranteed payments received by a partner in a partnership.²¹ Nor does qualified business income include qualified REIT dividends, qualified cooperative dividends, or qualified publicly traded partnership income.²² These last three types of income have their own 20 percent deductions with separate calculations. The deduction for the qualified cooperative dividend has been the subject of much controversy.²³ As of this writing, a fix to the provision is expected. Click [here](#) for updates.

The 199A deduction for qualified business income is generally subject to a wages limitation (like the old DPAD deduction); however, the phased-in wages limitation only applies to individuals with taxable income greater than \$315,000 (MFJ) or \$157,500 for singles.²⁴ Once these income levels are reached, the limitation is phased in for the next \$100,000 of income (MFJ) or \$50,000 for singles.²⁵ *The wages limitation does not apply to income from REIT dividends or qualified cooperative dividends.*

The wages limitation, which incorporates an alternative capital component, is the greater of the following:

- 50 percent of the W-2 wages paid with respect to the qualified trade or business, or
- The sum of 25 percent of the W-2 wages with respect to the qualified trade or business plus 2.5 percent of

⁵ IRC § 164(b)(6)(B).

⁶ IRC § 212.

⁷ IRC 408(d)(8).

⁸ Rev. Rul. 55-138; Rev. Rul. 55-531.

⁹ IRC 163(h)(3)(F).

¹⁰ IRC 163(h)(3)(B).

¹¹ IRC § 67(g).

¹² IRC § 213(f)(2).

¹³ IRC § 24(h)(2).

¹⁴ IRC § 24(h)(4).

¹⁵ IRC § 2010(c)(3)(C).

¹⁶ Rev. Proc. 2018-10.

¹⁷ IRC § 1014(a)(1).

¹⁸ IRC § 11(b).

¹⁹ IRC § 199A.

²⁰ IRC § 199A(c).

²¹ IRC § 199A(c)(3), (4).

²² IRC § 199A(c)(a).

²³ IRC § 199A(a)(2).

²⁴ IRC § 199A(b)(2).

²⁵ IRC § 199A(b)(3).

the unadjusted basis, immediately after acquisition, of all qualified property.²⁶

Service Trade or Businesses. Specified service trade or businesses are generally excluded from taking the Section 199A deduction because they are excluded from the definition of a “qualified trade or business.”²⁷ Like the W-2 wages limitation, however, this restriction is phased in, based upon taxable income. The services business limitation begins to apply to taxpayers with taxable income greater than \$315,000 (MFJ) or \$157,500 for singles. Once these income levels are reached, the limitation phases in over the next \$100,000 of income for MFJ or \$50,000 for singles.²⁸ A specified service trade or business is defined as follows:

Any trade or business involving the performance of services in the fields of health, law, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners, or which involves the performance of services that consist of investing and investment management trading, or dealing in securities, partnership interests, or commodities.²⁹

IRS guidance is needed to determine the reach of the service trade or business exception.

Calculating the Deduction. A taxpayer’s Section 199A deduction generally may not exceed 20 percent of his or her taxable income, reduced by net capital gain.³⁰ The § 199A deduction reduces taxable income, not adjusted gross income.³¹ As such, limitations based upon AGI (such as payment limitations for farm programs)

are not impacted by the deduction. Taxpayers are not required to itemize to claim the Section 199A deduction.

Bonus Depreciation

The TCJA allows 100 percent bonus depreciation through 2022 for qualifying property acquired and placed into service on or after September 27, 2017.³² The percentage then phases down over the next four years, in increments of 20.³³ *The TCJA applies bonus depreciation to used property, as well as new property.*³⁴ During the first tax year ending after September 27, 2017, taxpayers may choose to elect 50 percent bonus.³⁵ And, taxpayers may continue to elect not to take the additional first year depreciation deduction.³⁶ Once such elections are made, they cannot be changed without IRS consent.

Section 179

Beginning in 2018, the TCJA permanently expanded Section 179 to provide an immediate \$1 million deduction (up from \$510,000 in 2017) with a \$2.5 million phase-out threshold (up from \$2,030,000 in 2017).³⁷ This amount will be indexed for inflation beginning in 2019.³⁸

Farm Equipment Depreciation

Beginning in 2018, new farm equipment may be depreciated over a period of five years, instead of seven.³⁹ This does not apply to grain bins, cotton ginning assets, fences, or other land improvements. The TCJA also allows farmers to use the 200 percent declining balance method of MACRS depreciation for many farming assets.⁴⁰ Before this change, most farming property was depreciated using the 150 percent declining balance method. The

change does not generally apply to (1) buildings and trees or vines bearing fruits or nuts, (2) property for which the taxpayer elects either the straight-line method or 150% declining balance method, (3) 15 or 20-year MACRS property that must be depreciated under the 150% declining balance method, and (4) property to which the alternative depreciation system applies.

Business Interest Limitation

Although the TCJA restricts business interest deductions generally to 30 percent of adjusted gross income, those restrictions do not apply to businesses with gross receipts below \$25 million.⁴¹ The gross receipts test is met if the average annual gross receipts for the three-tax-year period ending with the prior tax year don't exceed \$25 million.⁴²

Net Operating Losses

The TCJA reduces the five-year carryback of net operating losses for a farming business to two years.⁴³ It also limits the net operating loss deduction to 80 percent of taxable income for losses incurred after December 31, 2017.⁴⁴ The new law also allows indefinite carryovers, as opposed to limiting them to 20 years.⁴⁵

Like-Kind Exchange

The TCJA retains IRC §1031 like-kind exchange treatment for real property, but eliminates it for personal property, such as farm equipment or livestock.⁴⁶ For more information on this issue, click [here](#).

Domestic Production Activities Deduction

The TCJA eliminates the DPAD deduction, which was frequently used by agricultural producers and cooperatives. (repealed IRC § 199).

What’s Ahead?

²⁶ IRC § 199A(b)(2).

²⁷ IRC § 199A(d)(1)(A).

²⁸ IRC § 199A(d)(3)(A).

²⁹ IRC § 199A(d)(2)(A)(citing IRC §

1202(e)(3)(A).

³⁰ IRC § 199A(a)(1).

³¹ IRC § 63(b).

³² IRC § 168(k)(6)(A).

³³ IRC § 168(k)(A).

³⁴ IRC § 168(k)(2)(A)(ii).

³⁵ IRC § 168(k)(10)(A).

³⁶ IRC § 168(k)(7).

³⁷ IRC § 179(b)(1), (2).

³⁸ IRC § 179(b)(6).

³⁹ IRC § 168(e)(3)(B)(vii).

⁴⁰ IRC § 168(b)(2).

⁴¹ IRC § 163(j)(1), (2).

⁴² IRC § 448(c).

⁴³ IRC § 172(b)(1)(B).

⁴⁴ IRC § 172(a)(2).

⁴⁵ IRC § 172(b)(1)(A)(ii).

⁴⁶ IRC § 1031(a)(1).

Key details of some of these provisions, especially the IRC §199A deduction, will not be fully understood until the IRS issues guidance. Some farming businesses may need to make changes to their business structure in response to the new law. IRS has stated that guidance should be forthcoming on IRC § 199A by June 30, 2018.

One significant issue for many taxpayers is how their states will respond to the new

federal law. In states with an income tax, legislators are working to determine to what extent their states' tax codes should conform to federal law.



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AGRICULTURE AND NEW FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA) REGULATIONS

by Linda Chezem**

The threat to U.S. agriculture from the pending imposition of Federal Motor Carrier Safety Administration (FMCSA) regulations may surprise the agribusiness lawyer. But a quick look at the history of agricultural efforts to get products to markets provides an understanding of why U. S. agriculture has been blindsided by the draconian imposition of FMCSA regulations without regard to unique needs of agriculture.

The United States government has presented challenges to the transportation of agricultural products to market from early days on. The first challenge by the federal government was presented by the Whiskey Tax in 1794. The farmers and distillers could not readily get their corn to market from western Pennsylvania. Some may consider the Whiskey Rebellion important because it was the first and last time a sitting president (George Washington) led armed troops. However, for agriculture, the rebellion by the small producers in Western Pennsylvania provides a historical analogy for agricultural producers currently protesting Federal Motor Carrier Safety Administration (FMCSA)

regulations. In the western part of the United States (at that time), farmers could not efficiently transport their corn to the eastern seaboard markets in unprocessed form. One transportation solution was to distill whiskey and ship it in sturdy barrels. The coastal states saw a competitive edge and the federal government saw a tax opportunity. The farmers took issue with the tax as being aimed against them because distilling whiskey was the only profitable way to market their corn. And, being strong independent frontiersmen, the farmers resorted to armed rebellion.

Today, the agricultural world is not likely to resort to armed violence. However, repeated failures by FMCSA to understand and work with agricultural and agribusiness transporters to provide workable transportation regulations threatens marketing opportunities and profitability for agricultural producers. At one point, in a meeting of beef producers, FMCSA staff suggested that

railroads might be a better way to ship livestock.¹

FMCSA, as an agency, seems to not understand how the regulations impede the ability to get ag products to market and have culminated in wide spread anger and frustration. The lawyers who represent producers and agribusinesses are likely to be called upon to assist clients on new transportation issues.

The back ground of the current regulatory problems is deceptively simple. When President Obama on July 6, 2012 signed the Moving Ahead for Progress in the 21st Century Act (MAP-21) (P.L. 112-141) into law amidst praise for improved highway safety, agriculture was asleep at the wheel. Apparently, the agricultural transportation community assumed that existing exemptions, relevant state provisions, and current enforcement practices would protect them from the unreasonable requirements. The passage

¹ Remarks at the United States Cattlemen's Association Transportation Committee with Federal Motor Carrier Safety Administration (FMCSA) (June 6, 2017).

of the MAP 21 legislation gave no hint of the coming fury.

The Fixing America's Surface Transportation Act (FAST) was expected to mend some holes from MAP-21. The FAST Act made several notable changes to the authorities implemented by requirements in the Code of Federal Regulations (CFR). For example, FAST exempts welding trucks used in the construction and maintenance of pipelines from FMCSA's regulations. It excepts drivers of ready-mixed concrete trucks and hi-rail vehicles, as well as drivers of commercial motor vehicles (CMVs) transporting livestock and bees, from *some* of the hours of service (HOS) requirements in 49 CFR part 395. It also extends the length of the time (from 2 years to 5 years) that an exemption or renewal of an exemption may provide relief from the regulations. exception available to Federal agencies under the Administrative Procedure Act (APA).²

In spite of the effort needed to include a requirement in the FAST Act that FMCSA to amend its regulations or perhaps, because of the amendments, agribusinesses did not foresee the imposition of such poorly drafted regulations when it was time to implement the rules for the electronic logging devices. The massive set of FMCSA regulations purporting to implement the statute (MAP-21) overreaches beyond the requirements of the applicable statutes. The social media is on fire with allegations about the entire process. It is alleged that the claims of safety were inflated and the statement of costs of implementation

² Amendments to Implement Certain Provisions of the Fixing America's Surface Transportation Act, 81 Fed. Reg. 47,714 (July 22, 2016) (49 CFR Parts 365, 381, 383, 390, 391, 392, 393, 395, and 396).

were deflated to two billion dollars.³ This leaves the lawyer who represents agricultural enterprises with the dual tasks of dispelling fear while trying to provide accurate legal advice for the clients.

The first task for the lawyer in sorting out the clients' compliance requirements is to review of the regulatory and licensing landscape. Starting with the Electronic Logging Device rule, the quick and short explanation of the impact of the truck regulations is, with few exceptions, trucks driven by Commercial Driver's License(CDL) drivers must have an Electronic Logging Device(ELD). "Today's rule mandates ELD use for Hour of Service(HOS) compliance. It applies to most motor carriers and drivers who are currently required to prepare and retain paper Record of Duty Status (RODS) to comply with HOS regulations under part 395."⁴

Federal Motor Carrier Safety Administration (FMCSA) defines large trucks as "is any medium or heavy truck, excluding buses and motor homes, with a gross vehicle weight rating (GVWR) greater than 10,000 pounds.

The initial costs and monthly fees for the required communication links vary. Additional costs for training of the drivers and the office administrative staff are undetermined.⁵ Truck owners

³ See comments to Rules and Regulations and Federal Motor Carrier Safety Administration, 80 Fed. Reg. 78,292 (December 16, 2015) (49 CFR Parts 385, 386, 390, and 395).

⁴ Rules and Regulations and Federal Motor Carrier Safety Administration, 80 Fed. Reg. 78,292 (December 16, 2015) (49 CFR Parts 385, 386, 390, and 395).

⁵ Joseph E. Evagelist, *ELD Unmasked – Implementation Deadline Fast Approaching*, September 29, 2017, <http://www.transervice.com/eld->

and operators will incur increased operating costs but no one knows what those costs will be.

But as drivers argued over the ELD rule, law enforcement agencies in the different states began advising groups that they were required or not required to have an ELD. The advice was not consistent and remains problematic. The confusion then spread to the question of who was required to have commercial drivers' licenses.⁶ Clients do not always understand that licensing requirements are different from regulations and will vary as the states choose. An interesting twist in FMCSA regulations makes the states' decision whether to require drivers of recreational vehicles to have a CDL optional.⁷

In addition to the regulations from the FMCSA there is guidance from the agency which is denoted as "clarification" but in truth – may be more confusion. So, determining what is commercial and what is hobby is still a contentious issue for exhibitors, racers and rodeo folk.⁸

[unmasked-implementation-deadline-fast-approaching/](#); and see FMCSA, <https://www.fmcsa.dot.gov/regulations/title49/section/390.5> (last visited April 22, 2018).

⁶ American Horse Council, <http://www.horsecouncil.org/eld-mandate-cdl-requirements/> (last visited April 22, 2018).

⁷ See FMCA, <http://community.fmca.com/topic/11882-eld-or-electronic-logging-device-installed/> (last visited April 22, 2018).

⁸ The FMCSA information that sets out the agency position on agricultural application of the regulations may be found at <https://www.fmcsa.dot.gov/hours-service/elds/agricultural-exceptions-and-exemptions-federal-motor-carrier-safety> and <https://www.fmcsa.dot.gov/hours-service/elds/eld-hours-service-hos-and-agriculture-exemptions>.

Another significant area of confusion for the agricultural client is the 150-air mile exemption which is increased from the previously allowed 100 miles in 2014 in MAP-21.⁹ Some states allow movement around the entire state under the Map-21 exemption. Some larger states like Texas do not.

The resulting controversy has expanded as people in various states begin to review the statutes and regulations in greater detail. It is clear that some clients do not realize that CDL requirements are separate from the ELD mandate and are not new. The complete enforcement date of the CDL statute was effective on April 1, 1992. The horse hobbyists are particularly concerned and FMCSA has issued new guidance for them at <https://cms.fmcsa.dot.gov/hours-service/elds/non-business-related-transportation-horses>.

When advising clients with truck operations in the farming or agribusiness sectors and especially advising those who are engaged in horse industry activities, the balancing of the state statutes and the federal regulations will not be enough. The motor carrier divisions of the states' plans and instructions to enforce the regulations will be critical elements of advice. The determination of which agencies have been determined to have enforcement authority in each state is necessary. State laws assign enforcement authority, and, although, some law enforcement agencies may stop trucks for traffic violations, that agency may not be

trained to enforce FMCSA regulations. The audit and enforcement operations and functions by FMCSA at the company level are also impacted by the state specific driver regulations.

Many agricultural transports are exempt carriers. The determination of authority also dictates the level of insurance/financial responsibilities a company must maintain. Carriers not required to have operating authority include:

1. Private carriers (carriers that transport their own cargo)
2. "For-hire" carriers that exclusively haul exempt commodities (cargo that is not federally regulated)
3. Carriers that operate exclusively within a federally designated "commercial zone" that is exempt from interstate authority rules. A commercial zone is, for example, a geographic territory that includes multiple states bordering on a major metropolitan city, such as Virginia/Maryland/Washington, DC.¹⁰

Agriculture will often be in the first two classifications. The key takeaway for this discussion is that more agricultural enterprises will have FMCSA questions. The second is that the usual trucking advice may not apply to the agricultural client and the agribusiness lawyer may need to get up to speed on FMCSA regulations.



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⁹ FMCSA, How Can the MAP-21 "Transportation of Agricultural Commodities" Exemptions be Summarized?, <https://www.fmcsa.dot.gov/faq/how-can-map-21-%E2%80%9Ctransportation-agricultural-commodities%E2%80%9D-exemptions-be-summarized> (last visited April 22, 2018).

¹⁰ FMCSA, Get Authority to Operate (MC Number), <https://www.fmcsa.dot.gov/registration/get-mc-number-authority-operate> (last visited April 22, 2018).

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