Farm Business Workshop
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I. Regulatory Issues of Doing Business

A. Business Licenses

General Information
Business or Occupational Tax Licenses may be required by counties and/or municipalities for the legal conduct of businesses. Generally in Georgia, a business license is needed from an incorporated municipality to conduct business in that municipality. If a business is located in an unincorporated area of a county, a business license is usually required and issued by the county government.

Because Georgia counties and municipalities each impose their own business / occupational tax licensure rules and their offices to administer such licenses, it is necessary to determine on an individual basis the process for obtaining a business license from a specific county or local government. All Georgia counties and many municipalities have internet web sites which can be used to identify and contact the specific county or local office responsible for issuing business licenses. Local or county Chambers of Commerce are also useful resources for obtaining information on business licensing procedures for specific localities.

If the business is conducted in multiple locations, such as in several communities or counties, whether on a permanent, rotating or temporary basis, it will probably be necessary for the business owner to obtain a business license from each governmental unit in which the business is operated.

Business licenses are generally issued on a calendar year basis, with a variable-length “grace period” for renewal stretching into each new calendar year.

Information on locations, email addresses and websites for many of Georgia’s Community Farmers’ Markets is available from the Georgia Department of Agriculture at http://www.agr.georgia.gov/community-farmers-markets.aspx.

State Farmers’ Markets
No county or local business license is required for vendors at the nine State Farmers’ Markets in Georgia. Sales permits for each State Farmers’ Market are obtained on-site from the specific market manager. Sellers at multiple State Farmers’ Markets should obtain a separate permit from the manager at each State Farmers’ Market, because permitting is the responsibility of each market manager. No on-line permit form exists, so it is essential to talk with the local manager. More information about Georgia’s State Farmers’ Markets is available from the Georgia Department of Agriculture at http://www.agr.georgia.gov/state-farmers-market.aspx.

B. Sales Tax

Sales Tax on Inputs Purchased
The Official Code of Georgia, Annotated (O.C.G.A) provides several exemptions from the payment of sales and use taxes for equipment and inputs used in farming and timber activities conducted as a trade or business. The exemptions do not apply to otherwise qualified equipment or inputs used to produce products for the personal consumption of the purchaser, or to equipment or inputs purchased for an activity in which the purchaser has no profit motive.
Qualifying Property
The items of tangible personal property qualifying for the agricultural sales and use tax exemption are listed on Georgia Department of Revenue Form ST-A1 (Agricultural Certificate of Exemption – Sales and Use Tax). To receive the exemption from sales and/or use tax, the purchaser must present Form ST-A1 to the dealer or lessor from whom the property is acquired. The purchaser is required enter the dealer’s name on the form and the date the form is submitted; to identify the type(s) of property being obtained from the dealer; to sign his or her (the purchaser’s) name; and to provide their business address. Form ST-A1 will be deemed to be accepted in good faith by the dealer when properly executed for qualifying items. If the Georgia Department of Revenue determines that the purchaser incorrectly executed Form ST-A1, the Department will assess the purchaser for any sales and use tax liability due. Dealers are required to retain all Forms ST-A1 received for inspection by the Department of Revenue. If a dealer does not provide a requested Form ST-A1 in the event of audit, the dealer will then be liable for any tax, interest and penalty determined to be due.

Sales Tax on Products Sold
In Georgia, sales and use taxes are normally assessed on the transfer of property or certain services to purchasers whose use of the property or service is not covered by a sales tax exemption. Usually the purchaser paying the sales tax to a seller is the ultimate consumer of the product or service. It is important to remember that sales taxes in Georgia are assessed at two governmental levels: a four percent State sales tax, and Local Option Sales Taxes (LOST), which can and do vary from one local government unit to another.

Agricultural products
Sales of agricultural products in their first marketable form may or may not be subject to sales taxes, depending on whether or not the purchaser is using the product for a legitimate exempt purpose and has provided the seller with the proper Sales and Use Tax Exemption form.

Example 1: Fred Farmer has land that he uses to produce hay for his small beef herd, and for sale to other cattle producers. Roy Rancher purchases 50 large round bales of Fred’s hay to feed to his beef cows over the coming winter. Roy provides Fred Form ST-A1, attesting that his purchase of the hay is for feed to be used in his business of producing beef. Roy will check box 13 on Form ST-A1, stating that the purchase qualifies for exemption from sales and use tax under O.C.G.A. §§ 48-8-3(25) & (35)(A)(iii).

Example 2: Red Clay, a row-crop farmer in Webster County, stores a small part of his corn production in a gravity wagon from which he sells corn to deer hunters on the basis of the capacity of a five-gallon bucket. Many of Red’s customers are hunters who have leased land in the area to have an assured place to conduct their recreational activity of deer hunting. These purchases have no sales and use tax exemption available to them for these purchases, since the corn is not being used in an activity with a profit motive. Red should complete and submit Form CRF-002 (State Tax Registration Application) if he has not done so in the past, and he should collect from his non-exempt purchasers and remit to the Georgia Department of Revenue the correct amount of State and Local Sales and Use taxes. Form CRF-002 can be completed and submitted online from the webpage: https://etax.dor.ga.gov/ctr/TSD_State_Tax_Registration_Application_CRF002.pdf.
Food
The term "food and food ingredients" requires sellers of these products to have additional understanding of the sales and use tax regulations. Some foods and food ingredients are exempt from the state sales and use tax, while others are subject to both state and local taxes.

(Department of Revenue, Sales and Use Tax Division: Substantive Rules and Regulations, Chapter 560-12-2-.104)
(1) Sales of food and food ingredients qualify for an exemption from sales and use tax as provided herein.

(2) 3. (d) “Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients shall not include alcoholic beverages, dietary supplements, or tobacco.
(2) 3. (f) 1. Prepared food", which is subject to both state and local sales and use taxes, means:
(2) 3. (f) 2. Food with two or more food ingredients mixed or combined at the seller’s location by the seller for sale as a single item; or
(2) 3. (f) 3. Food sold with eating utensils provided by the seller. Food shall be considered to be sold with eating utensils provided by the seller when the food is customarily intended for consumption with the utensils provided. The presence of self-service utensils in a facility does not make otherwise exempt food taxable unless it is customarily intended that the food be consumed with those utensils.

(3) Food Exemptions
(3) (a) O.C.G.A. § 48-8-3(57) exemption. Effective for transactions occurring on or after January 1, 2011, food and food ingredients sold to natural persons for consumption off premises are not subject to state sales and use tax, but are subject to any local sales and use tax.

The above excerpt from Chapter 520-12-2 of the Substantive Rules and Regulations with respect to food exemptions of the Georgia Department of Revenue Sales and Use Tax Division highlights the sales tax issues related to the sales of foods to consumers.

Two simple examples provide insight on these issues.

Example 1. Georgia Greene sells fresh green peanuts to consumers at her local Community Farmers Market. This is a sale of food to natural persons for consumption off premises. Under O.C.G.A. § 48-8-3(57), this sale is not subject to state sales and use tax, but it is subject to any local sales and use tax.

Example 2. Georgia also boils and sells green peanuts at her sale site. The boiled green peanuts are a "prepared food", and therefore subject to both state and local sales and use taxes.

Sales Tax Collection and Remittance
The previous section (Sales Tax on Products Sold) illustrates several typical situations which require sellers to collect and remit either local or state and local sales and use taxes. Georgia businesses which collect $200.00 or more in sales and use taxes in a calendar month must
remit their tax collections by the 20th day of the following month. If sales tax collections exceed $500.00 per month, remittance must be made electronically.

To be able to remit sales and use taxes collected, a business operator must register with the Georgia Department of Revenue. Registration can be accomplished online through the Georgia Tax Center website (http://www.gataxinfo.org). The Georgia Tax Center is basically a “one-stop” site for business registration, sales and use tax reporting and remittance, and Georgia income tax withholding remittance. Assistance available online through the Georgia Tax Center includes “How To” Videos and Instructional Documents including the Georgia Tax Center User Manual. The Sales and Use Tax Division of the Georgia Department of Revenue also conducts Sales and Use Tax Seminars annually at various locations around the state. For information on the seminars scheduled for the remainder of calendar year, visit: https://etax.dor.ga.gov/salestax/2012_Sales_Tax_Seminar_Schedule_02032012.pdf

II. Income Tax Issues

A. Cash versus Accrual Basis Accounting

Nearly all production agriculture businesses are cash basis taxpayers, filing returns on a calendar year basis. Cash basis taxpayers recognize items of income when they either actually receive them, or when they are available to be received. Expenses are recognized when they are paid, rather than when they are incurred, if incurrence of an obligation and payment of the obligation occur at separate times. With respect to items of income, the phrase “when income is available to be received” is extremely important. A cash basis taxpayer must report income when it first becomes legally available to him or her; not when actual possession of the income is taken.

Example: T. O. Mater agrees to supply cabbage to Big Food Stores (BFS). BFS pays Mr. Mater for each cabbage within three business days of the delivery date. Mr. Mater delivers cabbage to BFS on December 22, 2012, and requests that BFS not pay him for the produce delivered until January 2013. As a cash basis taxpayer, Mr. Mater is required to include the agreed value of the cabbage delivered on December 22nd in his 2012 farm income, since it was delivered without prior execution of a valid deferred payment contract. To be valid, a deferred payment contract must specify the quantity of product to be delivered, the price agreed to, and the first date upon which payment may be made. Since Mr. Mater had no contract deferring his recognition of the income from the cabbage, he must include the income in his 2012 tax records, even though he did not pick up the check until 2013.

Accrual basis accounting taxpayers operate under rules which require the recognition of income for income tax purposes when it is realized, regardless of when it is actually received. Expenses are deductible when they are incurred, regardless of when they are paid. Many accrual basis taxpayers must also keep input and product inventories for income tax purposes.

B. Special Estimated Tax Rules

Special rules apply to the payment of estimated tax by individuals who are qualified farmers.

Qualified Farmer
An individual is a qualified farmer for the current tax year if at least two-thirds of his or her gross income from all sources for either the current tax year or the first preceding tax year was from farming.

Gross Income
Gross income is all income received by the taxpayer in the form of money, goods, property and services that is not exempt from income tax. On a joint return, the gross income of both spouses is combined to determine gross income from all sources.

Gross Income from Farming
Gross income from farming is the total of the following:

- Gross farm income from Schedule F (Form 1040). For cash basis taxpayers this is the amount shown on line 9.
- Gross farm rental income from Form 4835.
- Gross farm income from Schedule E (Form 1040), Parts II and III.
- Gains from the sale of livestock used for draft, breeding, sport, or dairy purposes reported on Form 4797.

Special Rules for Qualified Farmers
- You do not have to pay estimated tax if you file your 2012 tax return and pay all the tax due by March 1, 2013.
- You do not have to pay estimated tax if you expect your 2012 income tax withholding (including any amount applied to your 2012 estimated tax from your 2011 tax return) to be at least 66.67% of the total tax shown on your 2012 tax return or 100% of the tax shown on your 2011 return.
- If you must pay estimated tax, you are required to make only one estimated tax payment (your required annual payment) by January 17, 2013 (January 15, 2013 falls on a Saturday).
- General rule for all taxpayers: You do not have to pay estimated tax if you expect to owe less than $1,000 after withholding and tax credits.

C. Income Issues

Community Supported Agriculture

Many community supported agriculture programs around the United States feature subscription programs under which consumers "subscribe" with producers to receive a portion of the producer’s crop or livestock products over the production season. It is important to understand the tax treatment of these subscriptions, with respect to both the producer and the consumer.

Example: Vic and Tori Gardner have three acres of land which they have decided to put into vegetable production through a local Community Supported Agriculture program. They sell “shares” in their planned production to consumer members of the local CSA program, guaranteeing each participating member a specified portion of their production during each week of the garden’s harvest season.

Tax Issues of the Producer
Vic and Tori must treat CSA member subscription payments as advance sales of their intended production. Vic and Tori plan to sell only products that they raise, and they do not accept
payment cards, so all of their subscription receipts will be included on line 2b in Part I of their Form 1040 Schedule F. Their farm business expenses, including any expenses associated with weekly drop-off or delivery of members’ shares of production, will be reported in Part II of the Form 1040 Schedule F.

**Tax Issues of the Subscribers**
Since Vic and Tori’s subscribers are purchasing memberships for the purpose of obtaining fresh producer for personal consumption, there are no income tax issues associated with their membership costs. None of the members are physically participating in the production process, so they are not at risk with respect to production. Members will receive a guaranteed portion of whatever production is realized, so their risk is limited to the final price they pay for the produce they consume.

**Crop Insurance and Disaster Payments**

Farmers using the cash method of accounting may be eligible to defer for one year recognition of certain crop insurance and disaster program proceeds. The statutory exception to the general rule that payments must be reported in the year received applies to crop insurance proceeds and disaster payments received from the federal government [I.R.C. § 451(d)]. In regulatory language, the provision applies to all federal payments received after December 31, 1973, for losses due to a natural disaster [Treas. Reg. § 1.451-6(a)].

**Qualifying for and Making the Election**
In addition to the requirement that the taxpayer use the cash method of accounting, he or she must also be able to show that, under the taxpayer’s normal business practice, the income from the crop would have been reported in a year following the year of the receipt of the payment.

Qualifying taxpayers have the option of reporting the payment as income in the year received, or as income in the following year. The election to postpone reporting the payment can be made on the original return or an amended return for the tax year. The election covers all crops from a farm. If the taxpayer has more than one farming business, a separate election must be made for each business.

Only payments for physical losses are eligible for postponement under I.R.C. § 451(d). If the taxpayer has received crop insurance proceeds under the terms of a Crop Revenue Coverage (CRC) policy, any part of the proceeds attributable a cause other than physical losses cannot be postponed.

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**Note:** Crop Revenue Coverage insurance, and a method for allocating CRC proceeds between physical damage and reduced market price are discussed in Chapter 13 (Agricultural Issues) of the 2007 National Income Tax Workbook, © 2007 Land Grant University Tax Education Foundation, Inc.

**Example 1**
Grady Thomas received $20,000 of crop insurance proceeds for drought damage to his 2012 peanut crop and $9,000 of crop insurance proceeds for drought damage to his 2012 corn. The crop insurance proceeds are received in December 2012. Grady normally sells both crops in the year following the year of production.
Question 1  What options does Grady have in reporting his crop insurance proceeds?

Answer 1  Grady may elect to defer recognition of the crop insurance proceeds for both crops, since his normal marketing practice for each crop is to sell the crop in a year after the year of harvest. He may also consider reporting all of his crop insurance proceeds in 2012, if it is advantageous to him.

Question 2  What if Grady normally sells his crops in the year they are harvested?

Answer 2  Grady has no reporting options. If his normal business practice is to sell his corn and his peanuts in the year they are produced, he must report all of his crop insurance proceeds received in 2012 on his 2012 income tax return.

Question 3  What if the $9,000 crop insurance payment had been made for losses to Grady’s cotton crop, which he normally sells in the year of harvest?

Answer 3  Rev. Rul. 74-145, 1974-1 C.B. 113 states that if a producer normally sells 50% of all crops in the year following the year of harvest, then all insurance payments must be postponed if an I.R.C. § 451(d) election is made. However, Notice 69-55, 1989-1 C.B 695 and I.R.C. § 451(d) state that insurance proceeds and disaster payments can be postponed “if the taxpayer establishes that, under its normal business practice, income from the crops would have been reported in the year following the year of destruction or damage.”

Treas. Reg. § 1.451-6(a)(1) states: “In the case of a taxpayer who receives insurance proceeds as a result of the destruction of, or damage to, two or more specific crops, if such proceeds may, under section 451(d) and this section, be included in gross income for the taxable year following the taxable year of such destruction or damage, and if such taxpayer makes an election under section 451(d) and this section with respect to any portion of such proceeds, then such election will be deemed to cover all of such proceeds which are attributable to crops representing a single trade or business under section 446(d). A separate election must be made with respect to insurance proceeds attributable to each crop which represents a separate trade or business under section 446(d).” [Emphasis added.]

By saying the election covers “such proceeds,” the regulation apparently applies the election to only the proceeds that may be postponed under I.R.C. § 451(d)—that is, the proceeds for crops that would have been sold in the following year.

Based on this wording, any insurance or disaster payments received by Grady for his cotton crop, normally marketed in the year of harvest, cannot be postponed, even if the election is made to postpone reporting his peanut crop insurance proceeds.

Example 2

Question  Floyd Polk received $8,000 in crop insurance proceeds in August 2012 for drought damage to his 2012 corn crop. In December 2012, he received a $12,000 federal disaster payment for damages to his cotton crop. Floyd normally sells both of these crops in the year following their production. Can Floyd include his crop insurance income on his 2012 return, while electing to postpone recognizing the disaster payment for his cotton until 2013?

Answer  In this situation, the answer is no. In both I.R.C. § 451(d) and Treas. Reg. § 1.451-6(a), crop insurance proceeds and disaster payments are treated as equivalents, and must be reported in a consistent manner. Both crops are normally sold in the year following the
year of production, so both payments are eligible for postponement. Floyd must either include both payments in his 2013 income, or postpone recognizing both payments until 2013.

The above section, "Crop Insurance and Disaster Payments," is excerpted and adapted from Chapter 13 of the 2007 National Income Tax Workbook, ©Land Grant University Tax Education Foundation, Inc. Original chapter co-authors are George F. Patrick, Purdue University, and Philip E. Harris, University of Wisconsin - Madison.

Weather-Related Sales of Livestock

Livestock producers who are forced to sell animals because of weather-related conditions, such as flood, drought, or other conditions that cause a shortage of water or feed, may be eligible to postpone recognition of income from the proceeds, avoiding the current reporting of income that normally would have been received in a future year.

Involuntary Conversion

The sale or exchange of livestock (other than poultry) held for draft, breeding, or dairy purposes in excess of the number ordinarily sold in the producer's usual or normal business practice is treated as an involuntary conversion if the additional livestock are sold or exchanged solely because of drought, flood, or other weather-related conditions [I.R.C. § 1033(e)].

If livestock (other than poultry) held for any length of time for draft, breeding, or dairy purposes are sold because of weather-related conditions, the gain realized on the sale does not have to be recognized if the proceeds are used to purchase replacement livestock within 2 years from the end of the tax year in which the sale takes place. The 2-year replacement period is extended to 4 years if the weather condition that caused the excess sales also caused an area to be eligible for assistance by the federal government. The replacement period can be further extended by the Secretary of Treasury if the weather condition continues for more than 3 years [I.R.C. § 1033(e)(2)].

Note: In Notice 2006-82, 2006-92 I.R.B. 529, the IRS announced that for tax years ending after September 25, 2006 it will extend the replacement period for sales of livestock due to weather for taxpayers living in regions of extreme, exceptional, or severe drought, based on maps produced by National Drought Mitigation Center. The replacement period is extended until the end of the taxpayer's first tax year ending after the first drought-free year for the applicable region. The first drought-free year for the applicable region is the first 12-month period ending on August 31 that meets both of the following criteria: 1. It ends in or after the last year of the taxpayer's 4-year replacement period. 2. It does not include any weekly period for which exceptional, extreme, or severe drought is reported for any location in the applicable region.

The applicable region is the county that experienced the drought conditions causing the sale or exchange of the livestock and all counties that are contiguous to that county. U.S. Drought Monitor maps are archived, and can be viewed at http://www.drought.unl.edu/dm/archive.html.

Example 1

L. O. Waters, a calendar-year taxpayer, raises cattle in Baked Clay County. L. O. made his annual evaluation of his cow herd in May 2012, and sold 15 old and unproductive cows. At the same time, he selected 17 heifers from the young stock he owns to add to his breeding herd. In
August 2012 L. O. sold his entire breeding herd (84 cows, 17 heifers, and 3 bulls), solely because of extreme drought conditions in Baked Clay County. The Secretary of Agriculture designated Baked Clay County as eligible for federal assistance because of the drought conditions on October 1, 2012.

**Question** Which breeding animals sold by L. O. Waters in 2012 are eligible for the I.R.C. § 1033(e) election?

**Answer** All of the animals sold in August are eligible for the § 1033(e) election. The fact that the 17 heifers were held for breeding for only a few months has no effect on their eligibility. The 15 cows sold in May are not eligible, since they were sold under his normal business practice of annually disposing of his least productive animals.

**Question** How long does L. O. have to purchase replacement animals?

**Answer** Because his August sales were due to weather-related conditions, L. O. has at least until December 31, 2014 to purchase replacement animals. The federal drought disaster declaration issued on October 1 extends his replacement period until December 31, 2016, even though the sale came before the disaster declaration. L. O.'s replacement period may be extended further if the area he lives in continues to be classified by the National Drought Mitigation Center as a region of extreme, exceptional, or severe drought.

**Example 2**
Dusty Meadows, a Sandy Plains County cattlemaster, was concerned about the dry conditions in the spring of 2012, when he sold his 2011 steer calves, and made his annual herd evaluation. In making his evaluation, Dusty decided to keep all of his mature cows, and to add no heifers to his herd. He sold all of his heifer calves with the steers.

**Question** Are any of the heifers sold by Dusty eligible for the I.R.C. § 1033(e) election?

**Answer** It is doubtful that Dusty can defer gain from the sale of any of his heifers, since he never chose to add any of those animals to his breeding herd. Dusty may still be able to postpone recognizing the income from the sale of the number of heifers that he normally would have added to his herd for one year, however, if he can document that he sold them because of the same weather-related conditions that led to the federal drought disaster declaration [I.R.C. § 451(e)].

**One-Year Deferral of Income**
Cash-method farmers can elect a 1-year deferral of income received from certain livestock sales made because of drought, flood, or other weather-related conditions. The drought, flood, or other weather-related condition must be of such severity that an area affecting the taxpayer's area is designated as eligible for federal assistance.

**Qualifying for I.R.C. § 451(e)**
To qualify for deferral, the taxpayer must show that he or she sold more livestock than he or she would ordinarily have sold had there been no drought, flood, or other weather-related condition. If any livestock are sold because of qualifying weather-related conditions, the taxpayer may be eligible for an exception to the general rule that sales proceeds must be reported in the year received. To defer income to the next year, the following requirements must be met:
1. The taxpayer's principal business must be farming as defined in I.R.C. § 6420(c)(3).
2. The taxpayer must use the cash method of accounting.
3. The taxpayer must show that the livestock would normally have been sold in the following year.
4. The weather-related conditions that caused an area to be declared eligible for federal assistance must have caused the sale of the livestock.

The livestock do not have to be raised or sold in the declared disaster area, but the weather-related condition that caused an area to be declared eligible for federal assistance must have caused the premature sale of the livestock. The sale can take place before or after an area is declared eligible for federal assistance as long as the same weather-related condition caused the sale.

**Number of Eligible Animals**
The number of animals that would normally be sold is determined from the taxpayer’s history. If the taxpayer usually holds all calves until the year after they are born before selling them, but was forced because of weather-related conditions to sell them in the year they were born, the proceeds from this sale may be reported in the year following the year of the sale.

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The above section, “Weather-Related Sales of Livestock”, is excerpted and adapted from Chapter 13 of the 2007 *National Income Tax Workbook*. ©Land Grant University Tax Education Foundation, Inc. Original chapter co-authors are George F. Patrick, Purdue University, and Philip E. Harris, University of Wisconsin - Madison.

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**D. Expense Issues**

**Prepaid Expenses versus Deposits**

**Prepaid Expense Rules**
The general rule of I.R.C. § 464 is that a deduction for amounts paid for feed, seed, fertilizer, or other similar farm supplies shall only be allowed for the taxable year in which such feed, seed, fertilizer, or other supplies are actually used or consumed. This rule, however, does not apply to qualified farm-related taxpayers.

**Qualified Farm-related Taxpayer**
A farm-related taxpayer is any taxpayer meeting one of the following three requirements:
1) His or her principal residence (as defined in I.R.C. § 121) is on a farm,
2) He or she has a principal occupation of farming, or
3) He or she is a member of the family (sibling, spouse, ancestor or lineal descendent) of a taxpayer qualifying under (1) or (2).

The IRS argued unsuccessfully in *Golden Rod Farms, Inc. v. United States*, 97-2 USTC ¶50,507 that only an individual can have a principal occupation of farming. The court ruled that a corporation whose primary business involved raising broiler chickens for resale was a “farm-related” taxpayer because the corporation was determined to have a principal occupation of farming.

To be qualified, a farm related taxpayer must meet one of the following two requirements:
1) The aggregate prepaid farm supplies for the three taxable years preceding the taxable year are less than 50 percent of the aggregate deductible farming expenses (other than prepaid farm supplies) for such three taxable years, or
2) The taxpayer has excess prepaid farm supplies for the taxable year by reason of any change in business operation directly attributable to extraordinary circumstances.

**Note:** Deductible farming expenses means any amount allowable as a deduction under the Code, including deductions for depreciation and amortization that is properly allocable to the trade or business of farming.

**Deposits [Rev. Rul. 79-229]**

Rev. Rul. 79-229, 1979-2 C.B. 210 establishes three tests that must be met in order to deduct the cost of a supply purchased in the current taxable year that will be used in a subsequent taxable year.

1) The expenditure must be a payment for the purchase of a supply rather than a deposit.
2) The prepayment must be made for a business purpose and not merely for tax avoidance.
3) The deduction of such costs in the taxable year of prepayment must not result in a material distortion of income.

Rev. Rul. 79-229 includes explanations of each of the three tests.

**Deposits:** Whether a particular expenditure is a deposit or a payment depends on the facts and circumstances of each case. When it can be shown that the expenditure is not refundable and is made pursuant to an enforceable sales contract, it will not be considered a deposit. The following factors are indicative of a deposit rather than a payment:

- The absence of specific quantity terms.
- The right to a refund of any unapplied payment credit at the termination of the contract [Lillie v. Commissioner, 45 T.C. 54 (1965)].
- The treatment of the expenditure as a deposit by the seller.
- The right to substitute other goods or products for the feed ingredients specified in the contract. **Note:** A provision permitting substitution of ingredients to meet the current diet needs of the livestock for which the feed was purchased will not be indicative of a deposit.

**Business Purpose:** Examples of business benefits include, but are not limited to:

- Fixing maximum prices.
- Securing an assured product supply.
- Securing preferential treatment in anticipation of a product shortage.

**Distortion of Income:** Meeting the first two tests does not automatically mean that the expenditure will be deductible in the year paid. A deferral of the deduction may be necessary to clearly reflect the taxpayer's income. I.R.C. § 446(b) provides that if the method of accounting used by the taxpayer does not clearly reflect income, the computation of taxable income shall be made under such method, as, in the opinion of the Secretary, does clearly reflect income.

Treas. Reg. § 1.461-1(a)(1) provides that an expenditure resulting in the creation of an asset having a useful life extending substantially beyond the close of the taxable year may not be deductible, or may be deductible only in part, for the taxable year in which it was made. Although a taxpayer using the cash method of accounting generally can deduct expenses in the year paid, the taxpayer cannot do so if the allowance of a deduction in that year will produce a material distortion of income. **Note:** See Commissioner v. Boylston Market Association, 131 F.2d 966 (1st Cir. 1942); Lovejoy v. Commissioner, 18 B.T.A. 1179 (1930); and Clement v. United States, 580 F.2d 422 (Cl. Ct. 1978).
Promissory Notes
If a farmer pays for a farm input by giving the supplier a promissory note, the farmer cannot claim a deduction for the input until the note is paid. The payment of an expense from a third party, however, does give rise to a current deduction [Rev. Rul. 77B257]. If the purchase of inputs is financed by a lending subsidiary of the vendor, the IRS may argue that the promissory note to the lending subsidiary should be treated as a loan from the vendor, and therefore, no deduction can be claimed until the note is paid.

Note: Third party lenders other than financial institutions have become common financers of farm input purchases. When a client’s records show an inflow of funds from a lender that is not a financial institution, and a simultaneous farm expense payment in the same amount, it is necessary to determine what relationship, if any, exists between the lender of the funds and the business receiving the payment.

The above section, “Prepaid Expenses and Deposits” has been excerpted and adapted from Agricultural Tax Issues and Form Preparation (Fall 2003), ©2003 BY Tax Insight, LLC. The original author is Philip E. Harris, University of Wisconsin - Madison.

Items Purchased for Resale
Taxpayers using the cash method of accounting are generally permitted to deduct the cost of items purchased for resale only in the year of sale. The cost of items purchased for resale includes all costs of acquisition, including costs of transporting the purchased items to your place of business.

Chickens, Seeds and Young Plants
Cash basis farm taxpayers are permitted to deduct the cost of hens and baby chicks purchased for either commercial egg production or for raising and resale as an expense in Part II of Schedule F (Form 1040) in the year the expense is paid, provided the taxpayer does it consistently and the timing of the deduction does not distort net farm income. Current deduction of the cost of seeds and young plants purchased for further cultivation is also permitted, subject to the same constraints regarding consistency of treatment and distortion of net income.

Business versus Personal Expenses
In many production agriculture businesses, the line between business and non-business expenses is fine, and sometimes blurred. The following section deals with expenditures which may need to be allocated by the taxpayer between business purposes and personal benefits.

Communications
The cost of basic local telephone service for the first telephone service (including taxes) into your home is not deductible for business purposes, even if you have a qualifying home office. The cost of long-distance service can be allocated on a per-call or percentage of use basis. If there are additional services (landlines or cellular), all costs directly related to the conduct of a trade or business can be deducted. This principle of cost allocation can be extended to other communications media, including internet and telecommunications fees.
Other Utilities
If other utility costs (electricity, water, waste disposal, etc.) are bundled into a single account, it is also necessary for the taxpayer to make some reasonable allocation to the portion of each bill attributable to business activities versus personal use. In a new business, this can often be done by comparing current utility costs to the average costs incurred before the business commenced.

Insurance
Property and liability insurance policies may or not separate business and personal assets insured. When assets are separated, documentation of the premiums on property used in a trade or business is a simple matter. If a structure or other asset has dual-purpose usage, the taxpayer should make a good faith effort to allocate the insurance premium for the asset between business and personal expense. Advance premiums, such as property insurance premiums paid for a multi-year period, must be deducted over the term of the insurance coverage.

Life and disability insurance premiums are usually not deductible in any part as business expenses. Unless the business is incorporated and insurance is provided to the owners as officers and employees, there are no provisions in the Internal Revenue Code permitting the deduction of any part of the premium for either of these types of insurance as a cost of business. The cost of credit life insurance, when required by a lender, is also not a deductible expense.

Health insurance premiums are deductible to the extent of the net income from the trade or business by self-employed business operators. The deduction is not taken on the business income form (Schedule C or Schedule F), but it is allowed as an Adjustment to Income in Part II of Form 1040. Health insurance premiums paid by employers under a qualified plan for employees, including the employer’s spouse, are fully deductible business expenses.

Property Taxes
If a single property tax bill includes both business and non-business property, or property used for both business and personal purposes, the taxes paid must be allocated between business and non-business property. Non-business property taxes, such as the tax on the business owner’s home, may be deductible on Schedule A (Form 1040).

Domestic Production Activities Deduction

Business taxpayers are permitted a business deduction for income attributable to domestic production activities. The current permitted deduction is 9% of the lesser of the taxpayer’s qualified production activities or his or her taxable income (AGI for individuals). The deduction is limited to 50% of the cash wages paid by the business for the tax year that are allocable to domestic production activities. Wages paid by a sole proprietor to his or her children under age 18 which are not subject to FICA and medicare taxes are excluded from the wage computation.

Farm Vehicles

“Light vehicles” used in a farm business include vehicles ranging from subcompact to luxury cars, small pickups to large “dualies,” and Sport Utility Vehicles (SUVs). The type and weight of these “light vehicles” affects their cost recovery rules. All of the vehicles discussed here fall into the five-year GDS life class, except for semi tractors, which have a three-year GDS recovery period.
Passenger Automobile
A "passenger automobile" is defined in I.R.C. § 280F(d)(5) as a four-wheeled vehicle that is manufactured primarily for use on public streets, roads and highways, and is rated at either:
1. 6,000 or fewer pounds unloaded GVW ("curb weight") if the vehicle is a car
2. 6,000 or fewer pounds loaded GVW (including passengers and cargo) if the vehicle is a truck or van.

I.R.C. § 280F provides for the annual update of permitted depreciation on subject vehicles placed in service each year. For vehicles placed in service in 2012 which are subject to the I.R.C. § 280F limits, the first year depreciation for cars is $3,160, and the first year depreciation limit for trucks and vans is $3,360. Any I.R.C. § 179 deduction claimed by the purchaser of the vehicle also falls under the I.R.C. § 280F first year limit. The limits (first through four and later years) published for the year the vehicle is placed in service are to be used for the entire period that the vehicle remains in the purchaser’s service.

The annual depreciation deductions are based on 100% business use, and must be prorated if business use is less than 100%. For new vehicles subject to the § 280F limits placed in service in 2012, an additional $8,000 is allowed if the purchaser of the vehicle does not elect out of additional first-year depreciation. The $8,000 AFY limit applies to all vehicles subject to § 280F.

Listed Property
Light vehicles having Gross Vehicle Weight (GVW) of more than 6,000 lbs, but not more than 13,000 lbs are classified as listed property. While a few large passenger cars may possibly exceed the 6,000 unloaded gross weight limit (Rolls-Royce and Bentley do not), vehicles falling into this category consist of pickups, vans, and sport utility vehicles (SUVs).

Vehicles over 6,000 pounds GVW are not subject to the rules of I.R.C. § 280F(a) annual depreciation limits. As long as business use of the vehicle exceeds 50%, any permitted recovery period and method is approved. For new vehicles placed in service in 2012, the full business-use basis of the vehicle may be considered in claiming any I.R.C. § 179 deduction, and for computing AFY depreciation ($8,000 limit does not apply).

If business use of the vehicle is 50% or less, the taxpayer is limited to using straight-line depreciation only, and no § 179 deduction or AFY depreciation is permitted. If business use begins at greater than 50%, and subsequently declines to 50% or less, all depreciation claimed in excess of the straight-line method (including any § 179 deduction and AFY depreciation) is subject to recapture. This depreciation recapture is reported in Part IV of Form 4797, and for individuals and general partners, the recapture is subject to inclusion in net income from self-employment.

Special I.R.C. § 179 Limit for SUVs
For SUVs having a GVW in excess of 6,000 lbs placed in service after October 22, 2004, the I.R.C. § 179 deduction is limited to $25,000. Any excess cost is depreciable using MACRS rules. An SUV eligible for the $25,000 expensing limit is any four-wheeled vehicle that meets all three of the following criteria:
1. It is primarily designed to or can be used to carry passengers over public streets, roads, or highways (except any vehicle operated exclusively on a rail or rails).
2. It is not subject to I.R.C. § 280F [i.e., it is rated at more than 6,000 pounds unloaded gross vehicle weight (GVW)].
3. It is rated at not more than 13,000 pounds GVW.
The definition of SUV does not include a bus, truck, or van that meets any one of the following criteria:

- It is designed with a seating capacity of more than nine persons behind the driver’s seat.
- It has a cargo area at least 6 feet in interior length that is an open area (or is designed for use as an open area but is enclosed by a cap) that is not readily accessible directly from the passenger compartment.
- It has an integral enclosure fully enclosing the driver’s compartment and load-carrying device, does not have seating in the rear of the driver’s seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.

**Note:** Several automotive manufacturers produce vehicles which exceed the 6,000 pound GVW limit, exempting those vehicles from the I.R.C. § 280F depreciation cap, but having cargo beds less than 6 feet in interior length. These vehicles, commonly considered to be pickup trucks, are subject to the SUV limit. Purchasers of pickup trucks should be aware of the interior length of the bed, and the Gross Vehicle Weight (GVW) of the truck if the bed is less than 6 feet in length.

### Substantiation of Expenses

Regardless of whether a taxpayer elects to use the standard mileage rate or actual expenses for deducting the cost of a vehicle, substantiation of the business use of the vehicle to support the deduction claimed is generally required. Failure of the taxpayer to maintain adequate records may result in disallowance of the business deduction.

**Standard Mileage Rate** The current standard mileage rate for business use of a vehicle is 55.5¢ per mile. The standard mileage rate can be used if the taxpayer has up to four vehicles in service at the same time. If more than four vehicles are in service simultaneously, the taxpayer must deduct the actual business expenses associated with each vehicle. If the taxpayer elects to use the standard mileage rate, it must be used for a vehicle from the time the vehicle is placed into business use by the taxpayer. The taxpayer is not required to keep vehicle related expense records, with the exception of records for parking, tolls and other vehicle use expenses that are not directly related to the ownership or leasing of the vehicle, and to its operation. Contemporaneous records of vehicle use should be maintained, showing dates, business travel purposes, and the miles driven in the course of business use. The standard mileage rate method of claiming vehicle expenses is permitted for both owned and leased vehicles. If the standard mileage rate is used by an individual, the individual may also deduct ad valorem taxes on the vehicle, and interest expenses connected to the ownership and/or use of the vehicle.

Self-employed individuals may deduct vehicle related interest expenses and ad valorem taxes in proportion to their business use of a vehicle on their business schedule. Any interest or taxes attributable to non-business use of a vehicle is subject to the same deduction rules that apply to employees and to all taxpayers in general.

**Actual Expenses** Many business taxpayers choose to report the business portion of the actual vehicle expenses, including depreciation (or lease payments), interest, and taxes. Substantiation of these expenses is required, preferably through written records, supported by invoices, receipts, cancelled checks, etc. In addition, the taxpayer must substantiate the
percentage business use of the vehicle. This requires contemporaneous records of business use, at least on a representative sample basis.

Farmer Safe Harbor. A safe harbor provision for the deduction of vehicle expenses exists for farmers who use an owned or leased light vehicle during most of a normal business day directly in connection with the business of farming. “Use directly in connection with the business of farming” includes both use on the farm, and use incidental to the business of farming, such as trips to obtain farm services and supplies. If these requirements are met, the taxpayer may treat 75% of the vehicle use as farm business use, without any substantiation requirement.

Qualified Non-personal Use Vehicles
Qualified non-personal use vehicles are excepted from expense substantiation requirements. I.R.C. § 274(i) defines a qualified non-personal use vehicle as a vehicle that, by reason of its nature, is not like to be used more than a de minimis amount for personal purposes. Treas. Reg. § 1.274-5T(k)(2)(ii) and Prop. Treas. Reg. § 1.274-5 identify qualified non-personal use vehicles. In farming, the most commonly found non-personal use vehicles are vehicles (trucks) for carrying cargo which have a loaded GVW greater than 13,000 lbs, and buses with a capacity of more than 19 passengers which are used as passenger buses.

E. Depreciation

Most types of tangible property (except land) having a determinable useful life in excess of one year can be depreciated. Intangible property such as copyrights, patents and computer software can also be depreciated. To be depreciable, property must meet four requirements:

- It must be owned by the taxpayer claiming depreciation;
- It must be used in a trade or business or an income-producing activity;
- It must have a determinable useful life; and
- It must have a useful life substantially longer than one year.

MACRS Depreciation

The Modified Accelerated Cost Depreciation System is used to recover the basis of most business and investment property placed in service after 1986. MACRS is made up of two depreciation systems, the General Depreciation System and the Alternative Depreciation System. These systems provide different methods and recovery periods for computing depreciation deductions.

GDS

The General Depreciation System is the standard system for the recovery of basis of assets having 3, 5, 7, 10, 15, 20 or 25-year recovery class lives. It is also the standard system for residential rental property and nonresidential real property.

GDS provides the taxpayer with a choice of accelerated or straight-line depreciation methods. All property in the same year in the same recovery period must be depreciated using the same method. For property used in the trade or business of farming or ranching, the GDS depreciation method alternatives are the 150% declining balance method or the straight-line method, over the GDS recovery period. For non-farm property, 200% declining balance depreciation over the GDS life is permitted for 3, 5, 7, and 10-year property. Straight-line depreciation over the GDS life is permitted for residential rental property and non-farm real property.
ADS
The Alternative Depreciation System limits the taxpayer to straight-line depreciation over the same or a longer life than the General Depreciation System. Farm businesses producing crops from plants having a preproductive period of more than two years are required to use ADS for all property placed in service in the same year that property subject to the uniform capitalization rules is placed in service. By electing to capital the preproductive costs of plants with a preproductive period of more than two years, the farm operator is free to use either ADS or GDS for depreciable property acquired in that year, and under the GDS system, to use either accelerated or straight-line depreciation.

ADS must be used for the following property:
- Listed property used 50% or less in a trade or business
- Tangible property used predominantly outside the United States during the year
- Tax-exempt use property
- Tax-exempt bond-financed property
- Property used predominantly in a farming business placed in service in a tax year for which an election not to apply the uniform capitalization rules to certain farming costs is made
- Property imported from a foreign country for which an executive order is in effect because the country maintains trade restrictions or engages in other discriminatory acts

Taxpayers can elect to use ADS for property that qualifies for GDS. For personal property, the election is made on a year-by-year basis, and it must cover all property in the same property class placed in service during the year. For residential rental property and nonresidential real property, the election can be made on a property-by-property basis. The election is on line 20 in Part III of Form 4562, Depreciation and Amortization. The election is irrevocable.

Additional Information

Date Placed in Service
Property is placed in service when it ready and available for a specific business use. It does not matter whether or not that use is needed when the property becomes ready and available.

Depreciation Timing
Property commonly used in a farm business (3, 5, 7, 10, 15 and 20-year property) is normally depreciated on a half-year basis. Assets in these life classes are normally depreciated as if they were placed in service at the mid-point of the tax year. An exception arises when more than 40% of the value of the taxpayer's depreciable asset purchases in these life classes occurs in the fourth quarter of the tax year. In this situation, properties acquired in these life classes will have first year regular depreciation computed from the mid-point of the quarter in which each asset was placed in service. 27.5, 31.5, 39, and 40-year recovery period depreciable assets are all depreciated from the mid-point of the month in which they are placed in service.

Additional First-Year Depreciation
- 50% additional first-year depreciation is assumed to be taken on MACRS property with an applicable recovery period of 20 years or less, unless the taxpayer elects out of AFY by attaching a statement to his or her timely filed 2012 tax return, indicating the classes of property he or she is electing to not claim AFY for.
- AFY depreciation on vehicles subject to the limits of I.R.C. § 280F is limited to $8,000.
• Additional first year depreciation is claimable on both the exchange basis and the excess basis of property acquired in a like-kind exchange.
• AFY is not an item of adjustment for the purpose of computing the Alternative Minimum Tax.
• Additional first year depreciation is not permitted for Georgia income tax purposes.

I.R.C. § 179 Deduction
For qualifying assets placed in service during 2012, both the electable amount of a taxpayer's I.R.C. § 179 deduction and the maximum total expenditure qualifying for the § 179 deduction have been reduced from $500,000 to $139,000 and from $2,000,000 to $500,000, respectively. For eligible property acquired in a like-kind exchange, only the excess basis is eligible. The special § 179 deduction limit of $25,000 for SUVs continues.

The Georgia General Assembly has adopted any changes relating to the § 179 deduction since 2006, so for Georgia income tax purposes, the maximum total expenditure qualifying for the § 179 deduction remains at $125,000, and the § 179 deduction phase out threshold remains at $500,000.
### MACRS Recovery Periods for GDS and ADS

For Selected Assets

<table>
<thead>
<tr>
<th>Asset</th>
<th>GDS</th>
<th>ADS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automobiles</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Calculators and copiers</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Calculators and copiers</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Cattle (dairy and breeding)</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Communication equipment</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Cotton ginning</td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td>Computer and peripheral equipment</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Cutting of timber</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Drainage facilities</td>
<td>15</td>
<td>20</td>
</tr>
<tr>
<td>Farm buildings (except single-purpose structures)</td>
<td>20</td>
<td>25</td>
</tr>
<tr>
<td>Farm machinery and equipment</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Fences (used in farming)</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Fences (other than used in farming)</td>
<td>15</td>
<td>20</td>
</tr>
<tr>
<td>Goats and sheep (breeding)</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Grain bins</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Hogs (breeding)</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Horses (age when placed in service)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Breeding and working (12 years or less)</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Breeding and working (more than 12 years)</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td>Racing horses (more than 2 years)</td>
<td>3</td>
<td>12</td>
</tr>
<tr>
<td>Land improvements (sidewalks, fences, landscaping, shrubs)</td>
<td>15</td>
<td>20</td>
</tr>
<tr>
<td>Logging machinery and equipment</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Manufacture of food and kindred products</td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td>Nonresidential real property</td>
<td>39*</td>
<td>40</td>
</tr>
<tr>
<td>Office furniture, fixtures, and equipment (not calculators, copiers or typewriters)</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Paved lots</td>
<td>15</td>
<td>20</td>
</tr>
<tr>
<td>Residential rental property</td>
<td>27.5</td>
<td>40</td>
</tr>
<tr>
<td>Single purpose agricultural or horticultural structures</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>Tractor units (over the road)</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Trees or vines bearing fruit or nuts</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>Truck (heavy duty, unloaded weight 13,000 lbs. or more)</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Truck (actual weight less than 13,000 lbs.)</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Water wells</td>
<td>15</td>
<td>20</td>
</tr>
</tbody>
</table>

* The recovery period is 31.5 years for property placed in service before May 13, 1993.
F. Limitation of Deduction of Farming Losses

New I.R.C. § 461(j) was created by Sec. 15351 of the 2008 Farm Bill. The legislation limits the current use of farming losses to offset non-farm income for some taxpayers in tax years beginning after December 31, 2009.

Taxpayers Affected
Taxpayers other than C corporations who receive CCC marketing loans or direct or countercyclical payments under Title I of the Farm Bill are subject to the limitation. In this legislation, the definition of farming business includes the processing of commodities, regardless of whether or not the taxpayer produces the commodities processed.

Limitation on Losses
The amount of farming losses that can be used to offset non-farm income beginning in 2010 is limited to the greater of:
1. $300,000 ($150,000 MFS), or
2. The taxpayer’s total net farm income received in the previous five years.

Because the limit is the greater of the two amounts, a farmer with no net farm income in the past five years can still deduct $300,000 of farming losses against non-farm income in the current year.

Exception for Casualty, Disease and Weather-Related Losses
Farming losses due to casualty and weather-related events are not subject to the above farming loss deduction limit. In some circumstances, it may be necessary to separate the casualty event component of the loss from other loss components.

IV. Labor

A. Minimum Wage

Minimum Wage Rate
The federal minimum wage has increased by more than $2.00 per hour over the past five years. On July 24, 2007, the federal minimum wage increased from $5.15 per hour to $5.85 per hour. The minimum wage will reached $7.25 per hour on July 24, 2009, rising in the following increments:

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Minimum Wage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to July 24, 2007</td>
<td>$5.15</td>
</tr>
<tr>
<td>July 24, 2007 – July 23, 2008</td>
<td>$5.85</td>
</tr>
<tr>
<td>July 24, 2009 and after</td>
<td>$7.25 (under current legislation)</td>
</tr>
</tbody>
</table>

Fair Labor Standards Act
The Fair Labor Standards Act of 1938 controls administration of federal minimum wage law. The determination of whether or not a farm employer is subject to federal minimum wage law with respect to his employees is based on the number of “Man Days” of labor used on the farm in a calendar quarter. Agricultural employers who did not use more than 500 man days of labor
during any calendar quarter of preceding year are exempt from minimum wage law during the current year.

A "Man Day" is defined for agriculture in the Act as "...any day during which an employee performs agricultural labor for not less than one (1) hour." Agricultural labor performed by the employer or any member of his or her immediate family (spouse, parent, child, stepchild or sibling) is not counted as man days, regardless of the form of business organization (sole proprietorship, partnership or corporation) in "family" farms. Generally, a farm employer will fall under the 500 man day per calendar quarter limit if there are five or fewer employees.

Example
George A. Farmer has three full-time hired employees who work at least one hour per day six days per week. He also currently has 12 seasonal employees who worked at least one hour per day six days a week for four weeks.

George Farmer’s man days of labor for the calendar quarter are:

- Full time (3 workers x 6 days per week x 13 weeks) = 234 man days
- Seasonal (12 workers x 6 days per week x 4 weeks) = 288 man days

Mr. Farmer has 522 man days of labor during the calendar quarter. He will be subject to the agricultural provisions of the Fair Labor Standards Act next year. He is not subject to the Act this year unless he had more than 500 man days of labor in any calendar quarter of the previous year.

B. Form W-4

Since January 1, 1990 agricultural wages subject to Social Security and Medicare taxes have also been subject to federal income tax withholding under the Internal Revenue Code of the Internal Revenue Service. Employers are required to have on file for each employee Form W-4 (Employee’s Withholding Allowance Certificate). To be able to deposit and report employment taxes withheld and paid, the employer must also have a Federal Employer’s Identification Number (FEIN). If the employer does not have a FEIN, Form SS-4 (Application for Employer Identification Number) can be obtained from the Internal Revenue Service website (http://www.irs.gov). Employers are unable to make employment tax deposits or file employment tax related reports without a FEIN.

Employees use Form W-4 to report the number of withholding allowances they are entitled to, based on marital status, number of dependents, other income, and amount of excess itemized deductions. The employer must have a Form W-4 from each employee to withhold the correct amount of federal income tax from the employee’s wages. It is the employer’s duty to supply Form W-4, and the employee’s duty to truthfully complete the form and return it to the employer. If an employee fails to return Form W-4, the employer is required to withhold federal income tax from the employee’s wages as if the employee is single, claiming no withholding allowances. This causes the maximum permissible amount of income tax to be withheld, as determined by consulting the proper table in Circular E (Employer’s Tax Guide), or Circular A (Agricultural Employer’s Tax Guide).
C. Form I-9

Note: The Handbook for Employees (USCIS publication M-274), has been revised effective June 1, 2011. The Handbook for Employees can be accessed online at http://www.uscis.gov/files/nativedocuments/m-274.pdf

The U.S. Citizenship and Immigration Services (Department of Homeland Security) Form I-9 was created under the Immigration Reform and Control Act of 1986 (IRCA,) for employers to use to record and retain proof of the identity and employment eligibility of any person hired. Under IRCA, employers may employ only persons who are legally entitled to work in the United States: U.S. citizens and nationals, and aliens authorized to work.

Rules for employers

All new employees must complete Section 1 of Form I-9 at the time of hire (the beginning of employment). Employers must complete Section 2 of the form (review and verification of documents) within three business days of the date employment begins. An employer must have a completed Form I-9 on file for all workers employed on or after November 6, 1986. A worker’s Form I-9 must be kept on file for as long as the worker is employed and for at least one year after the worker’s departure. If the worker was employed for less than two years, Form I-9 must be kept on file for a minimum of three years, beginning with the date the form was completed. Form I-9 is subject to inspection by federal agencies (such as USCIS and the Department of Labor), but it is not filed with any agency.

Form I-9 is not required for the following individuals:

- Workers hired before November 6, 1986, who have been in continuous employment with the same employer.
- Workers employed in casual domestic work in a private home on a sporadic, irregular, or intermittent basis. Use of Form I-9 is required when a household employee works on a regular basis, such as once a week.
- Workers who are not employees, such as independent contractors.
- Workers who are employees of a third party, such as a contractor providing contract services, including leased employees. However, employers may not contract for the work of an alien if they know the alien is not authorized to work in the United States.

IRCA forbids employers to discriminate against work-eligible individuals on the basis of national origin or citizenship, or to require more or different identification and employment eligibility documents from any particular individual.

Rules for Employees

Employees are required to complete Section 1 of Form I-9, and to provide original documents establishing identity and employment eligibility. New employees have three business days, beginning with their first day of employment, to provide for the employer’s inspection documents that establish the employee’s identity and eligibility to work in the United States. Should an employee be unable to meet the three-day requirement, he or she must produce a receipt showing that a required document has been applied for. In addition, the employee must present the actual document to the employer within 90 days of the date of hire.
Employees who fail to produce either the required documents or receipts proving that the required documents have been applied for within three business days of the beginning of their employment cannot work until the documents are provided. Employers should exercise caution in terminating employees in this situation, being certain that the practice is applied uniformly to all employees.

Lists of Acceptable Documents

USCIS has established three lists (A, B, and C) of documents that are recognized for the establishment of identity, employment eligibility, or both. An employee may provide any of recognized documents. Documents on List A establish both identity and employment eligibility. List B documents establish identity only, and List C documents establish employment eligibility. A worker may provide one List A document, or one document from List B and one document from List C to establish identity and employment eligibility. Only unexpired documents are acceptable.

An employer may not specify which documents from the Form I-9 lists he or she will accept to establish employee identification and/or employment eligibility. Employers are required to accept any listed documents that appear on their face to be genuine and to relate to the person presenting them. Failure to do so, or to treat individuals of differing physical characteristics in different manners may result in the employer being charged with an immigration-related unfair employment practice. At the same time, however, the employer must not accept documents that on their face do not appear to be genuine or to relate to the person presenting them.

List A: Documents that Establish both Identity and Employment Eligibility
1. U.S. Passport
2. Unexpired foreign passport, with I-551 stamp or attached INS Form I-94 indicating unexpired employment authorization.
3. Permanent Resident Card or Alien Registration Receipt Card with photograph (INS I-551).
4. Unexpired Temporary Resident Card (INS Form I-688).

List B: Documents that Establish Identity
1. Driver’s license or ID card issued by a state or outlying possession of the United States, providing it contains a photograph or information such as name, date of birth, gender, height, eye color and address.
2. ID card issued by federal, state or local government agencies, providing it contains a photograph or information such as name, date of birth, gender, height, eye color and address.
3. School ID card with a photograph.
4. Voter’s registration card.
5. U.S. Military card or draft record.
6. Military dependent’s ID card.
7. U.S. Coast Guard Merchant Mariner Card.
9. Driver's license issued by a Canadian government authority (allowed by treaty).

For persons under age 18 who are unable to present a document listed above:

10. School record or report card.
11. Clinic, doctor or hospital record.
12. Day-care or nursery school record.

**List C: Documents that Establish Employment Eligibility**

1. U.S. social security card issued by the Social Security Administration (other than a card stating that it is not valid for employment).
2. Certification of Birth Abroad issued by the Department of State (Form FS-545 or Form DS-1350).
3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal.
5. U.S. Citizen ID Card (USCIS Form I-197).
6. ID Card for use of Resident Citizen in the United States (USCIS Form I-179).
7. Unexpired employment authorization document issued by the USCIS (other than those listed under List A).


**Expiration Dates**
Expiration dates appear on INS employment authorization documents. INS includes expiration dates even on documents issued to aliens with permanent work authorization. The existence of a future expiration date:
- Does not preclude continuous employment authorization;
- Does not mean that subsequent employment authorization will not be granted; and
- Should not be considered in determining whether an alien is qualified for a particular position.

**Re-verification**
An alien employee's work eligibility must be re-verified no later than the expiration date of the employee's work authorization. Section 3 of Form I-9 is used to record re-verification information. The employee must present a document that shows either an extension of the initial work authorization or a new work authorization. If the employee cannot provide proof of current work authorization by the expiration date of the prior authorization, that person cannot continue to be employed.

**Continuous Employment Eligibility**
To maintain continuous employment eligibility, a worker with temporary work authorization should apply for a new authorization at least 90 days before the current expiration date. If INS fails to rule on the application within 90 days, the worker will be authorized for employment on Form I-688B for a period of not more than 240 days.
D. New Hire Reporting

Purpose

To enhance child support order enforcement and reduce the need for public assistance, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) required each State to develop a State Directory of New Hires that met Federal requirements no later than October 1, 1998. The law also required the Department of Health and Human Services (HHS) to develop a National Directory of New Hires by October 1, 1997.

Employers must report Form W-4 entity information and any other state-required information on newly hired employees to a designated state agency. States can use new hire reports to locate parents, establish a child support order, or enforce an existing order. In addition to in-state matching, new hire reports are submitted to the National Directory of New Hires (NDNH) for use by other states. States may also use the directory to prevent erroneous receipt of public assistance, including Medicaid and food stamps, and to check for recipients of unemployment insurance and worker compensation payments.

Minimum information requirements

Federal regulations provide the minimum requirements for new hire reporting information. Individual States may require or request additional data. The employee information needed to meet federal requirements is contained on Form W-4:

- Employee Name
- Employee Address
- Employee SSN
- Employer Name
- Employer Address
- Federal Employer Identification Number (FEIN)

Federal regulations require new hires to be reported to the State within 20 days of the date of hire. Individual States may establish more stringent requirements. Multi-state employers may report separately to each state or select one state for reporting all new hires, using electronic or magnetic media. Written notification must be made to HHS if this option is chosen.

The law requires employers to submit new hire information within ten (10) days of the date of hire. Georgia employers can report new hires electronically through the Georgia New Hire Reporting Program website (http://www.ga-newhire.com).

Sections C and D. above, are excerpted and adapted from Chapter 5 of the 2002 National Income Tax Workbook, ©Land Grant University Tax Education Foundation, Inc. Original chapter author is Keith D. Kightlinger, The University of Georgia.
E. SSA Social Security Number Verification

Recording the correct names and social security numbers for employees is essential to accurate and efficient processing of wage information with government agencies. The Social Security Administration (SSA) operates a free Social Security Number Verification Service (SSNVS) for employers to check name and SSN matches. Three methods are currently available, depending on the number of employee names and SSNs being submitted for verification at a single time.

SSA will advise an employer if a name or SSN submitted does not match its records. It will not disclose what information causes a mismatch. A mismatch does not imply that incorrect information about the employee's name or SSN was intentionally provided. It is not a basis, in and of itself, for adverse action against the employee. A SSNVS report makes no statement about an employee's immigration status. An employer's policy concerning the use of SSNVS should be applied consistently to all workers: If SSNVS is used for newly hired employees, it should be used to verify all newly hired employees; and if it is used to verify an employee data base, the entire data base should be verified. Any employer that uses the information SSA provides regarding name or SSN verification to justify taking adverse action against an employee may violate state or federal law and be subject to legal consequences.

The Social Security Administration currently offers two internet verification options to permit employers to verify that employee names and social security numbers match SSA's records. They are:

**Verifying up to 10 names/SSNs**
Up to 10 names and SSNs (per screen) can be verified online with immediate results. This is the most useful new hire verification option for small employers with internet access.

**Verifying up to 250,000 names/SSNs**
An electronic file may be uploaded overnight to verify up to 250,000 employee names and SSNs at a single time. Results are usually received the next government business day. This option is best used by employers seeking to verify an entire payroll database, or by employers who hire a large number of workers at a single time.

**Registration for SSNVS**
Registration is required of employers using SSNVS. Registration is accomplished through the website [http://www.ssa.gov/bsowellcome.htm](http://www.ssa.gov/bsowellcome.htm). Employers must complete the registration form, and may select their own password. Social Security will verify the employer's identity against its records, and display a User ID. The User ID, password, and expiration date should be recorded by the employer. After registering and obtaining a User ID, the employer should return to [http://www.ssa.gov/bsowellcome.htm](http://www.ssa.gov/bsowellcome.htm), and login, using his or her password and user ID, and select the option “Request Access and Activation Code.” The activation code will be mailed to the address provided by the employer. Once the activation code is received, the employer can go to [http://www.ssa.gov/bsowellcome.htm](http://www.ssa.gov/bsowellcome.htm), input the user ID, password, and activation code, and begin using the Social Security Number Verification Service. The SSNVS handbook can also be downloaded from the above website.
F. Employment Eligibility Verification Program

The Employment Eligibility Verification Program (EEV) is a free, voluntary program available in all 50 states. Employers can confirm some Form I-9 information electronically by checking SSA or DHS databases. The program verifies whether employee’s name and number match SSA records, and whether the person has been authorized to work in the United States by DHS.

Enrolling in EEV
Employers wanting to use EEV must register online at https://www.vis-dhs.com/Employer Registration. The employer must sign a memorandum of understanding, and complete a web-based tutorial program. Participating employers must use EEV for all new hires.

Using EEV
Employers submit the employee’s name and SSN, or the admission number from Form I-94, Arrival and Departure Record. The information must be submitted into the EEV system within three working days of hiring the employee. EEV will either confirm the information submitted, or issue a tentative non-confirmation. If a tentative non-confirmation is received, the employer can take no action against the employee until either a final non-confirmation is received, or until a 10-day secondary verification process period expires.

The section above is excerpted and adapted from Chapter 5 of the 2006 National Income Tax Workbook, ©Land Grant University Tax Education Foundation, Inc. Original chapter author is Linda Yoder, retired IRS Revenue Agent.

Georgia Rules
Current Georgia law requires certain employers to use the Federal E-Verify system. The requirement is being phased in on a staggered basis by the number of employees.
1/1/2012 if > 500 employees  7/1/2012 if > 100 employees
7/1/2013 if > 10 employees
Employers having 10 employees or less are exempt from these provisions.

G. Unemployment Taxes

Agricultural employers are subject to Federal and State Unemployment Taxes if they meet either of two conditions either this year or last year:
- Payment of cash wages of $20,000 or more to farmworkers in any calendar quarter; or
- Employment of 10 or more farmworkers during any part of a day for at least one day during any 20 different weeks.

Subject employers must file reports with the proper State and Federal agencies and make timely payments of unemployment taxes. Employers are subject to both State and Federal Unemployment Tax liability. A credit applies against Federal Unemployment Tax Act (FUTA) liabilities for State Unemployment Tax Act (SUTA) liabilities paid.

Federal Unemployment Tax (FUTA)
FUTA is a 6.0 percent tax on the first $7,000 of wages paid to each employee. A 0.2 percent surcharge expired June 30, 2011. Employers paying SUTA receive a 5.4% credit against their
FUTA liability, resulting in a 0.6 effective FUTA tax rate. FUTA is computed on wages paid from the beginning of the year, even if FUTA liability is triggered later in the year. FUTA is reported annually on Form 940 (Federal Unemployment Tax Return). The employer must calculate FUTA liability quarterly, and deposit the accrued tax whenever the liability exceeds $100 at the end of any calendar quarter. Deposits must be made by the end of the first month after the end of the quarter in which the accrued liability exceeds $100. Deposits are made at authorized financial institutions by submitting Form 8109 with the payment. FUTA deposits must be made with separate payment and Form 8109 from FICA/Medicare/Federal Income Tax deposits. If the accrued FUTA liability exceeds $100 at the end of the calendar year, the tax must be deposited in full with Form 8109 by January 31. If the end of the year liability is less than $100, the undeposited tax may be submitted with Form 940. FUTA regulation falls under the domain of the U.S. Department of Labor. Collection of FUTA deposits is handled by the Internal Revenue Service.

State Unemployment Tax (SUTA)

SUTA in Georgia is computed on the first $8,500 of wages paid to each employee of a subject employer. SUTA must be computed on employee wages from the beginning of the year, even if SUTA liability is not triggered until later in the year. Employers newly subject to SUTA are assessed at a rate of 2.70 percent. This rate consists of two components; 2.64 percent unemployment tax, and 0.06% administrative assessment. The rate of tax paid by an employer is subject to change, based on the employer's ratio of contributions paid in to benefits paid out, and the statewide ratio of Georgia's trust funds to Georgia's covered wages. Employers newly liable for SUTA should contact their nearest Department of Labor office and request Form DOL-1A (Employer Status Report), to apply for a SUTA identification number and Publication DOL-224 (Unemployment Insurance: The Employer's Handbook). Georgia employers subject to SUTA must file Form DOL-4 quarterly to report their SUTA-taxable wages paid to each employee, and to make payment of tax. SUTA payments are submitted directly to the Department of Labor with Form DOL-4. Form DOL-4 is sent to registered employers quarterly and must be completed and returned with payment by the end of the month following the last month of a calendar quarter. Failure to receive Form DOL-4 does not relieve the employer of his or her timely filing and payment requirements.

III. Schedule C Activities

Many businesses seek to increase profits through extending their ownership of products further through the product processing chain. In agriculture, value added processing can often increase profitability, but it may cause the business to engage in both agricultural and non-agricultural activities.

Activities relating to the processing of many farm products cease to be considered agricultural production activities if they take the product beyond its first marketable state. When this happens, the additional production activities are considered to be part of a non-farm business. Moving "past the Farm Gate" puts the business operator into a different world with respect to many tax, licensure, inspection and labor issues.
A. Value Added Processing

There are many actions which can take an agricultural product beyond the definition of a "farm product". The most common activities include changing the form of the product, combining the product with other products, and changing the packaging of the product.

Examples

Changing product form: Extracting grape juice from fresh grapes is one method of changing the product form. Other common examples include the making of applesauce, jams, jellies and other preserved food products. Grinding whole grains into flour or meal also qualifies as a change in the form of the product.

Combining with other products: Taking different fresh vegetables and combining them on either a raw or cooked basis is a process that takes the products beyond the farm gate.

Processing and Packing: Husking and de-silking sweet corn, and packaging only the ears is a processing and packaging technique that takes the product "off the farm". This will also apply to activities such as topping carrots and packaging them in bundles or bags.

B. Income Tax Changes

In the case of a non-corporate taxpayer, value added processing of agricultural products creates a Schedule C (Form 1040) business in addition to the Schedule F (Form 1040) business. Using the example of "apples to applesauce", the taxpayer will need to treat the value of the fresh apples as a Schedule F receipt, and include the same amount as an expenditure on Schedule C. This has the effect of shifting the costs of producing applesauce and the income from sales of the value added product from a farm to a non-farm business.

The creation of additional net income and the shifting of this additional net income from a farm to a non-farm source can with the addition of other sources of non-farm income, create a situation in which the taxpayer no longer qualifies as a farmer for the exemption from estimated tax payments (page 8).

The presence of Schedule C in the tax return, depending on the nature of the activity, may also require the taxpayer to track product inventories for income tax purposes.

C. Labor Changes

Non-farm businesses differ in several significant ways in the regulatory environment they operate in with respect to labor.

Minimum Wage

The 500 man-hour rule does not apply to non-farm businesses. The minimum wage law (the Fair Labor Standards Act) applies to employees of enterprises that have annual gross volume of sales or business done of at least $500,000. It also applies to employees of smaller firms if the employees are engaged in interstate commerce or in the production of goods for commerce. Many businesses are not required to pay minimum wage to their workers under federal law, but they do compete for the services of workers with firms that must pay minimum wage. In Georgia, state law requires the payment of minimum wage by employers of six or more workers.
Worker Compensation Insurance
Georgia farmers are not required to carry workers’ compensation insurance. Non-farm businesses are required to carry workers’ compensation insurance regularly employ three or more persons in a Georgia business. Both full-time and part-time workers are counted in reaching the three employee threshold. Part-time workers are regular workers if they work on a regular basis, such as evenings or weekends, even though they are not full-time employees.

V. Selling Food Products in Georgia

The following information is excerpted and adapted from:
FOOD SAFETY UPDATE: Selling Products at Farmers’ Markets in Georgia — What You Need to Know
Authors: Craig Nielsen, Food Safety Manager, Retail Food Section, Food Safety Division, Georgia Department of Agriculture, and Judy A. Harrison, PhD, Professor and Extension Foods Specialist, College of Family and Consumer Sciences, The University of Georgia

A. Licensing

The Georgia Department of Agriculture is the issuer of Food Sales Establishment Licenses. The license is required for all sellers of food for consumption off the premises. The types and locations of businesses subject to their oversight include:
- Grocery stores and Convenience stores
- Bakeries
- Processing plants and Warehouses
- Farmers’ markets

County Health Departments are responsible for the licensing, certification and inspection of foodservice operations, such as restaurants and catering businesses, where it is intended that food products be consumed on premises.

B. Exemptions to the Dept. of Agriculture License

Under the Georgia Food Act, a license is required for any food sales operation, whether business engages in retail (including internet sales), wholesale or manufacturing activities.

The only exception to this Dept. of Agriculture licensing requirement is for markets and events sponsored by a county or municipality which last for less than 120 hours (O.C.G.A. § 26-2-391).

Fresh produce is considered to be a raw agricultural commodity. No Dept. of Agriculture license is required for the sale of such products when in their whole, unprocessed state.

Baked goods and other “low risk” foods may also be sold without a Dept. of Agriculture license at county or municipality sponsored markets which last for less than 120 hours (O.C.G.A. § 26-2-391). Baked goods must have a water activity of 0.85 or less, and prepared foods are allowed this exemption only if they are not Acid Foods, Acidified Foods or Low-acid Foods.
C. Foods Requiring a Dept. of Agriculture License

1. Acid Foods (natural pH 4.6 or less)
   - Always requires a license to be sold
   - Product Classification is also required
   - Food production process must be approved by a Processing Authority (UGA Food Science Extension)
   - Completion of the Better Process Control School is not required.

2. Acidified Foods (containing an ingredient lowering final pH to 4.6 or less)
   - Always requires a license to be sold
   - Product Classification is required
   - Food production process must be approved by a Processing Authority (UGA Food Science Extension)
   - Requires Better Process Control School before issuance of license
   - Process Approval and BPCS waived if product labeled "Keep Refrigerated" and maintained under refrigeration throughout manufacture, transport and sale to end customer.

3. Low-acid Foods (pH higher than 4.6 that are heat treated for food safety)
   - Always requires a license to be sold
   - Product Classification is also required
   - Food production process must be approved by a Processing Authority (UGA Food Science Extension)
   - Completion of the Better Process Control School is not required.
   - Process Approval and BPCS waived if product labeled "Keep Refrigerated" and maintained under refrigeration throughout manufacture, transport and sale to end customer.

4. Eggs
   - All eggs offered for sale must be candled and graded
   - Passage of egg candling class required (GDA offers free classes and certificates)
   - Wholesale distributors required to have a Food Sales Establishment License

5. Meat, Poultry and Seafood
   - Products must come from a GDA or USDA inspected facility
   - Mobile Vehicle License required
   - All sales must be from vehicle. Stationary freezers or reach-in refrigerators for consumer packages are not permitted
   - Fresh products subject to regulations § 45-7-.02 “Meat market on wheels…”
   - Frozen products subject to regulations § 45-7-.03
   - No sinks or enclosed sales areas are required for frozen products.

6. Dairy Products
   - Georgia is a Pasteurized Milk Ordinance (PMO) state
   - Always requires a license to be sold
   - All dairy products subject to PMO
   - Raw milk only sellable as pet food. Milk must be labeled as pet food and come from a vendor licensed by GDA Seed, Fertilizer & Feed Division
• Cheese permitted to be made from raw milk if aged a minimum of 60 days at a temperature of 40°F or less.

7. Organic Foods (food grown without synthetic fertilizers and pesticides)
• Growing process must be certified by an Organic Certification Entity to be labeled or sold as organically grown
• Must be separated from regular produce to prevent transfer of chemicals or residues
• Multi-ingredient organic foods must be prepared from certified organic ingredients.