



Farm Service Agency Adjusted Gross Income Verification Process

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- by Robert E. Moore* and Roger A. McEowen**

Overview

The 2008 Farm Bill implemented new Adjusted Gross Income (AGI) qualifications for some programs, most notably direct payments and ACRE.¹ The limits are \$500,000 for non-farm average AGI, \$750,000 for farm AGI, and \$1 million non-farm AGI for conservation programs.² All producers are required to declare their AGI on Form CCC-926 with FSA. In addition, upon filing Form CCC-926 a producer agrees to provide additional information to FSA to assist in verifying income.

USDA and the IRS recently announced a joint program under which producers' tax data will be shared with the purpose of verifying the AGI of producers receiving program payments.³ The program is intended to strengthen the integrity of FSA programs and reduce abuse and fraud.

Consent Forms

Effective at the beginning of 2010, FSA and NRCS will provide producers with consent forms to be completed and submitted to IRS which authorize the IRS to disclose information to USDA. Two consent forms, one for individuals (CCC-927) and one for legal entities (CCC-928) will be used.⁴

Note: The completed consent forms are not to be sent to the USDA.⁵ USDA offices will not accept or retain the completed consent forms. Producers are to mail completed consent forms directly to the IRS. The deadline to submit the forms is June 15, 2010.

The forms are to be mailed to the IRS as follows:

Internal Revenue Service – USDA
P.O. Box. 24033
Fresno, CA 93779

Producers farming within business entities will need to provide both a Form CCC-927 for themselves and a Form CCC-928 for the entity.⁶ The forms must be signed by the producer and submitted to the IRS within 60 calendar days of the signature date. FSA Power of Attorney forms do not authorize others to sign the CCC-927. Thus, each individual producer must sign his or her own CCC-927.

Producers who do not voluntarily submit the consent form will receive notice of the requirement to submit a consent form to IRS to avoid interruption of program payments. Producers who do not submit consent forms by June 15, 2010, will become ineligible for future payments and could be required to pay back all 2009 payments.

AGI Verification

The IRS will check each individual producer's AGI and each entity's AGI for compliance. AGI calculations for 2009 are computed based on the 2005, 2006, and 2007 tax years, and the AGI calculations for 2010 are computed based on the 2006, 2007, and 2008 years. The IRS will report the result of their examination of any particular producer or entity's data to the FSA on a regular basis.

Note: The IRS, based on its examination of a program participant's tax information, is to report to FSA whether or not the participant appears to meet all average AGI limitations, the number of years in the applicable three-year period that tax data was available for the participant, and the IRS form series on file that were used in the data comparison for each participant.

A producer with AGI that appears to exceed the minimum eligibility requirements will be notified in writing of the results. Upon receipt of such notice, a producer will have the opportunity to provide FSA with a third party verification from a CPA or attorney demonstrating that the AGI limits have not been exceeded. If the FSA determines that a producer is not in compliance with the applicable AGI limitations, the producer will have the right to appeal the determination to the state FSA committee or National Appeals Division. County offices will not be involved with AGI appeals.

Likely Problem Areas

Married couples filing jointly may be a likely source of an adverse notice from FSA. That's because a married couple's combined AGI may exceed the AGI limitations without either spouse's individual AGI exceeding the minimum limitations. Unless the IRS analyzes the various schedules, 1099's, K-1's, and W-2's associated with a joint return, IRS will be unable to determine how to allocate AGI between the spouses.

Note: Given current staffing and budget issues that IRS is facing, this level of scrutiny is very unlikely on a wide scale.

Receipt of Adverse Notice

Upon receipt of an adverse notice, a producer should seek verification from an accountant or attorney. It is important for producers to realize that an adverse notice from FSA does not automatically mean they have exceeded AGI limitations. In many cases, the producers will

only need to provide third-party verification to overcome the adverse notice.

Use of Tax Information

While producers may be concerned about granting permission to IRS which allows the release of tax information to FSA, this income verification approach appears to be the least invasive of other alternatives. For example, instead of the present AGI verification program, FSA could have required producers to deliver tax returns, business records, or signed third-party verifications to county offices. That would have likely presented numerous administrative and confidentiality issues. Having tax returns and business records in county offices would be disastrous for everyone involved.

Summary

The AGI verification program implemented by FSA seems to be a reasonable balance between the need to enforcing program payment rules to protect taxpayers' interests, and obtaining personal income tax information. At the present time, however, it remains to be seen if the verification process will function in a workable manner and whether FSA appeals on the issue can be properly processed and adjudicated.

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¹ 7 U.S.C. §1308—3(a)(e).

² For a discussion of the AGI limitations contained in the 2008 Farm Bill, see Robert E. Moore and Roger A. McEowen, *Determining "Income" for Farm Program Eligibility Purposes*, located at <http://www.calt.iastate.edu/briefs/CALT%20Legal%20Brief%20-%20AGI%20Rules%20for%20Farm%20Program%20Eligibility.pdf>

³ See USDA PL-202 (Jan. 4, 2010). The final rule was published in the Federal Register on January 7, 2010. 75 Fed. Reg. No. 4, pp. 887-900 (Jan. 7, 2010).

⁴ Producers may obtain the consent form at their local USDA offices or via the FSA website. The consent form can also be obtained online at www.wright-law.net.

⁵ Indeed, PL-202 states that completed Forms CCC-927 and 928 are not to be accepted or retained in any FSA or USDA Service Center Office.

⁶ For AGI verification, entities include corporations, LLC's, limited partnerships, trusts, and partnerships.