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Driven to Discover

2023 Fall Tax Update

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MAKING A DIFFERENCE IN MINNESOTA: ENVIRONMENT + FOOD & AGRICULTURE + COMMUNITIES + FAMILIES + YOUTH

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This information changes…often.

This is educational information, not tax or legal advice. Information is based on material from LGUTEF, Ruraltax.org, and IRS. Please be a good consumer of professional services.

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Source Acknowledgement

Land Grant University Tax Education Foundation, Inc.

Department of the Treasury Internal Revenue Service

RuralTax.org

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Agenda

- Corporate Transparency Act (Beneficial Ownership)
- Soil Fertility
- Debt Forgiveness/COD (USDA)
- Expiring Provisions
- Tax Planning

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Beneficial Reporting Requirements (Corporate Transparency Act)

Purpose of Beneficial Ownership Reporting

- The Corporate Transparency Act (CTA) was enacted as part of the Anti-Money Laundering Act of 2020 in the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283.
- The CTA was enacted to prevent money laundering, corrupt financial transactions, and financial terrorism. **Take shell companies out of hiding!**

Administered by FinCEN

- The CTA requires the Financial Crimes Enforcement Network (FinCEN) to establish and maintain a **national registry of beneficial owners of entities** that are otherwise not subject to disclosure regulations.
  - FinCEN is a bureau of the U.S. Treasury.
- Unauthorized use or disclosure of BOI may be subject to criminal and civil penalties.
  - The information will not be made public.
- Final Regs issues 9/22/2022. Goes into effect 1/1/2024.

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Effective Date

- **The rule is effective January 1, 2024.** Reporting companies created or registered before January 1, 2024, will have one year (until January 1, 2025) to file their initial reports, while reporting companies created or registered after January 1, 2024, will have 30 days after creation or registration to file their initial reports.
- Once the initial report has been filed, both existing and new reporting companies will have to file updates within 30 days of a change in their beneficial ownership information.

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Reporting Companies

- The rule identifies two types of reporting companies: domestic and foreign. Domestic reporting companies are corporations, limited liability companies (LLCs), or any entities created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe.
- This generally means that limited liability partnerships, limited liability limited partnerships, business trusts, and most limited partnerships are also required to file reports if they are not otherwise exempted. Single-member LLCs, disregarded for tax purposes, **are not exempt** from the reporting requirements.

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Beneficial Ownership Reporting

Entity Type	Reporting Entity (unless exempted?)
LLC	Yes
SMLLC	Yes
General Partnership	No
Sole Proprietorship	Not unless corporation or LLC
Limited Partnership	Yes
S Corporation	Yes
C Corporation	Yes
Trust	Not unless required to file with Secretary of State, but trustees or beneficiaries may be beneficial owners

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Exceptions to Reporting

- The FinCEN rule lists 23 types of entities that are specifically **excepted** from reporting requirements.
- These are generally excluded from the reporting requirements because other laws regulate these entities and separately require disclosure of BOI.
- Accounting firms are exempt only if:
  - Registered with the Public Company Accounting Oversight Board, as required by the Sarbanes-Oxley Act of 2022
  - They have greater than $5 million in gross receipts in 21 or more full-time employees and in U.S.

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When Must Reports Be Filed?

- Reporting companies created or registered before January 1, 2024, must file their first BOI report no later than January 1, 2025.
- Reporting companies created or registered on or after January 1, 2024, must file their first BOI report within 30 calendar days of receiving actual or public notice from the state's secretary of state or similar office that the company was created or registered.
- Any reporting company that no longer meets the requirements of an exemption from reporting shall file its report within 30 calendar days after it no longer qualifies for the exemption.

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When Must Reports Be Filed?

PRACTITIONER NOTE

Death of Beneficial Owner

If an individual becomes a beneficial owner by virtue of rights transferring at the death of another, a change is deemed to occur when the estate of the deceased beneficial owner is settled, either through the operation of intestacy laws or through a testamentary disposition. An updated report must identify any new beneficial owners.

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When Must Reports Be Filed?

- FinCEN will begin accepting reports electronically on January 1, 2024. No reports may be filed before that time. The person filing the report will be required to certify that the report is true, correct, and complete.
- Once a reporting company has filed its first report, it must file a new report any time the reported information changes, making the prior report inaccurate. Reporting companies will have 30 days to report any changes or updates to reported information.
- The 30 days begins after the company becomes aware of or has reason to know of an inaccuracy in a prior report.

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What Must Be Reported?

- A reporting company must disclose:
  - its full legal name and any trade name or DBA;
  - a complete address, including the street address of the principal place of business for U.S. companies and primary U.S. location for other businesses;
  - the State, Tribal, or foreign jurisdiction in which it was formed or first registered, depending on whether it is a U.S. or foreign company; and
  - its Taxpayer Identification Number (TIN)(i.e., EIN)

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What Must Be Reported?

- For each beneficial owner and each company applicant (if required), the company must provide the individual's:
  - full legal name
  - birthdate
  - a complete address
    - For company applicants who form or register an entity, this includes the street address of the company applicant. For all individuals, beneficial owners and applicants, the address must be the residential street address of the individual.
  - an identifying number from a non-expired driver's license, passport, or other approved document for each individual, **as well as an image** of the document from which the document was obtained

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When Must Applicants Be Reported?

- Companies created or registered **on or after January 1, 2024**, are required to report the company applicants, in addition to beneficial owners.
- Applicants include:
  - the individual who directly files the document that creates, or first registers, the reporting company; and
  - the individual that is primarily responsible for directing or controlling the filing of the relevant document.
- Companies created or registered **before January 1, 2024**, are required to report only beneficial owners.

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Who are Beneficial Owners?

- In general, beneficial owners are individuals who:

1. directly or indirectly exercise "substantial control" over the reporting company, or
2. directly or indirectly own or control 25% or more of the "ownership interests" of the reporting company.

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Direct or Indirect Substantial Control

- Individuals may directly or indirectly (including as a trustee of a trust or similar arrangement) exercise substantial control over a reporting company through:
  - Board Representation
  - Ownership or control of a majority of the voting power or voting rights
  - Rights associated with any financing arrangement or interest in the company
  - Control over one or more intermediary entities that separately or collectively exercise substantial control
  - Nominee arrangements
  - Any other contract, relationship, understanding, etc.

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Penalties for Noncompliance

- The CTA authorizes reporting failure penalties of not more than $500 for each day that the violation continues or has not been remedied, up to $10,000.
- The statute also calls for possible imprisonment of up to two years.
- In the preamble to the rule, FinCEN states that it "intends to prioritize education and outreach to ensure that all reporting companies and individuals are aware of and on notice regarding their reporting obligations."

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Penalties for Noncompliance

- The final rule clarifies that a person is considered to have failed to report complete or updated BOI if the person causes the failure or is a senior officer of the entity at the time of the failure.
- A penalty safe harbor applies to companies that discover an inaccuracy and file a corrected report within 90 days of the filing of an initial report.

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But Wait!

- FinCEN is asking for a delay for companies created in 2024 (no details yet).
- Regardless of whether a delay is secured, EDUCATE clients about the upcoming obligations.

AGENCY: TREAS-FINCEN
RIN: 1506-ZA02
Status: Pending Review
TITLE: Beneficial Ownership Information Reporting Deadline Extension for Reporting Companies Created or Registered in 2024
Section 3(f)(1) Significant: No
STAGE: Proposed Rule
Economically Significant: No
RECEIVED DATE: 08/14/2023
LEGAL DEADLINE: None

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Beneficial Ownership Reporting: More Resources

https://www.fincen.gov/news/news-releases/fincen-issues-initial-beneficial-ownership-information-reporting-guidance

14. How will I report my company's beneficial ownership information?

If you are required to report your company's beneficial ownership information to FinCEN, you will do so electronically through a secure filing system available via FinCEN's website. This system is currently being developed and will be available before your report must be filed.

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Residual Fertilizer Deduction

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Soil Fertility

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TAM 9211007

- TAM stated that in order to amortize the cost of fertilizer acquired with land, the taxpayer must:
- 1. establish the presence and extent of the fertilizer;
- 2. show the level of soil fertility attributable to fertilizer applied by the previous owner;
- 3. provide a basis upon which to measure the increase in fertility in the land and
- 4. provide evidence indicating the period over which the fertility attributable to the residual fertilizer will be exhausted.

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Debt Relief Under IRA

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Debt Relief Under IRA

- Debt relief associated with the passage of the Inflation Reduction Act is taxable income.
  - Any debt relief is not treated as forgiveness but rather a payment.
  - Payments will be reported on Form 1099-G and must be reported as income on Schedule F.

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Debt Relief Under IRA

- Debt relief will be reported on 1099-G (if the amount is over $600)
- Farmer will also receive a 1098 showing interest paid for the loan
  - Interest may be deducted schedule F.
  - Make sure to distinguish between mortgage and other interest.

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Information Returns (1099-G)

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Unemployment compensation $	OMB No. 1545-0120 Form 1099-G (Rev. January 2022) For calendar year 20__	Certain Government Payments
		2 State or local income tax refunds, credits, or offsets $		
PAYER'S TIN	RECIPIENT'S TIN	3 Box 2 amount is for tax year	4 Federal income tax withheld $	Copy 1 For State Tax Department
RECIPIENT'S name		5 RTAA payments $	6 Taxable grants $	
Street address (including apt. no.)		7 Agriculture payments $	8 Check if box 2 is trade or business income ▶ ☐	
City or town, state or province, country, and ZIP or foreign postal code		9 Market gain $		
Account number (see instructions)		10a State / 10b State identification no.	11 State income tax withheld $ $	

Form 1099-G (Rev. 1-2022) www.irs.gov/Form1099G Department of the Treasury - Internal Revenue Service

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Impact of Debt Relief Payments

- Relief payments are electronic transfer or by check written to the producer and the lender.
- Relief payments will not show up in the producers' bank account, creating phantom cash/income.
- Payments will increase taxable income and result in additional tax.
- Mitigation efforts may require the producer to borrow additional funds.

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Payments Re-characterized as COD

- To provide recipients with additional tax options, the USDA has re-characterized the direct farm loan relief payments originally reported on the 1099-G as cancelation of debt (COD).
  - This may allow some direct loan borrowers to exclude some or all of the payment(s) made on their behalf from gross income on their 2022 income tax return.
  - Guaranteed loan borrowers receiving relief will not receive 1099-Cs.

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New Forms Were Sent

- Corrected 1099-G eliminating the debt relief portion of the payments received.
- 1099-C (Cancellation of Debt) form showing the amount of debt relief and interest paid.

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1099-G (Certain Government Payments)

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Unemployment compensation $	OMB No. 1545-0120 Form 1099-G (Rev. January 2022)	Certain Government Payments
		2 State or local income tax refunds, credits, or offsets $	For calendar year 20 ___	
PAYER'S TIN	RECIPIENT'S TIN	3 Box 2 amount is for tax year	4 Federal income tax withheld $	Copy 1 For State Tax Department
RECIPIENT'S name		5 RTAA payments $	6 Taxable grants $	
Street address (including apt. no.)		7 Agriculture payments $	8 Check if box 2 is trade or business income ► ☐	
City or town, state or province, country, and ZIP or foreign postal code		9 Market gain $		
Account number (see instructions)		10a State	10b State identification no.	11 State income tax withheld $ $

Form 1099-G (Rev. 1-2022) www.irs.gov/Form1099G Department of the Treasury - Internal Revenue Service

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1099-C (Cancellation of Debt)

CORRECTED (if checked)

CREDITOR'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.	1 Date of identifiable event	OMB No. 1545-1424	
	2 Amount of debt discharged $	Form 1099-C (Rev. January 2022)	Cancellation of Debt
	3 Interest, if included in box 2 $	For calendar year 20 ____	
CREDITOR'S TIN / DEBTOR'S TIN	4 Debt description		Copy B For Debtor
DEBTOR'S name			This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if taxable income results from this transaction and the IRS determines that it has not been reported.
Street address (including apt. no.)	5 If checked, the debtor was personally liable for repayment of the debt . . . . ☐		
City or town, state or province, country, and ZIP or foreign postal code			
Account number (see instructions)	6 Identifiable event code	7 Fair market value of property $	

Form 1099-C (Rev. 1-2022) (keep for your records) www.irs.gov/Form1099C Department of the Treasury - Internal Revenue Service

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Tax Considerations for Cancellation of Debt

- Section 108 of the Internal Revenue Code (tax law) contains several provisions allowing some individuals to exclude or defer the cancelation of debt from gross income on the 2022 return.
- It is possible that the following exclusions may apply to some FSA direct loan borrowers who have received the loan payment relief.
  - Insolvency
  - Qualified Farm Indebtedness

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Reduction of Tax Attributes

- **Insolvency** and **Qualified Farm Indebtedness** both require the taxpayer to reduce tax attributes to defer the tax liability.
- This can include a reduction of…
  - Net Operating Losses
  - Business Credits
  - Basis in Assets

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Reduction of Tax Attributes

- The rules for reduction of tax attributes do differ with **Insolvency** and **Qualified Farm Indebtedness**. The rules are similar, but distinct to each category.
- Resources for Cancellation of Debt
  - IRS Publication 225 (Farmers Tax Guide)
  - IRS Publication 4681 (Canceled Debts, Foreclosures, Repossessions, and Abandonments)

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Options – Already filed 2022 Return

- Contact your tax professional and provide them with the new forms and the letter from FSA.
- If you determine that you do not qualify or do not wish to exclude this discharge of debt from income, YOU DO NOT NEED TO AMEND YOUR RETURN.
- IRS will not require an amendment to consider the 1099-C. IRS is aware of this issue.

Options – Already filed 2022 Return

- If you determine that you do qualify to exclude some of the discharge of indebtedness from income, you may FILE AN AMENDED RETURN, including the proper forms, to exclude the income.
- You should seek advice immediately regarding this issue. Some elections must be made within 6 months of the due date of the return.

Eligibility for Future USDA Loans/Programs

- Receiving debt relief will not make a producer ineligible for future USDA loans and programs.
- Applying an exclusion for cancellation of debt will also not affect future eligibility.

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Sunset of Income Tax Provisions

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Provisions that Changed or Expired in 2022

- **Increased deduction for restaurant business meals**
  - In 2023, businesses are allowed a 50% deduction for all deductible business meals, including those from a restaurant. The increased deduction expired at the end of 2022.
- **Business Interest Deduction Limitation**
  - For businesses with a three-year average of gross receipts at $29 million or more, the business interest deduction has been limited to 30% of adjusted taxable income since 2018. In 2022, ATI does not include depreciation, amortization, or depletion.
- **Research and Development Expenses**
  - Beginning in 2022, research and development expenses are no longer deductible under IRC § 174. Instead, they are amortized over five years.

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Income Tax Provisions Set to Expire at the End of 2025

- Lower Individual tax rates
- Increased standard deduction
- Increased child tax credit
- 20 percent QBI deduction
- Employer-Provided meals
- Personal Exemptions will return
- SALT limit will end
- Home mortgage deduction limit will increase
- Miscellaneous Itemized deductions no longer suspended

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Income Tax Provisions That are Permanent

- Like kind exchange restricted to REAL property
- Vehicle depreciation limits
- Net operating loss restrictions
- Cash accounting expansion
- Farm machinery and equipment depreciation rules

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Tax Planning

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Two Deductions for Patrons

- I.R.C. § 199A(a) 20% QBI deduction
- I.R.C. § 199A(g) DPAD which is passed through to farmers/producers by the Cooperative
- Normal Calculation below the threshold (above threshold, calculation limited to wages and basis (UBIA)
  - $364,200 MFJ
  - $182,100 Unmarried Individuals

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Patron Reduction

- Patrons must reduce their I.R.C. § 199A(a) QBI (20 percent) deduction if they receive qualified payments.
  - 9% of the QBI for that trade or business that is allocable to the qualified payments from the cooperative
  - 50% of patron's W-2 wages paid that are allocable to the qualified payments.
  - Observation. No wages paid, no reduction to patron's QBI deduction

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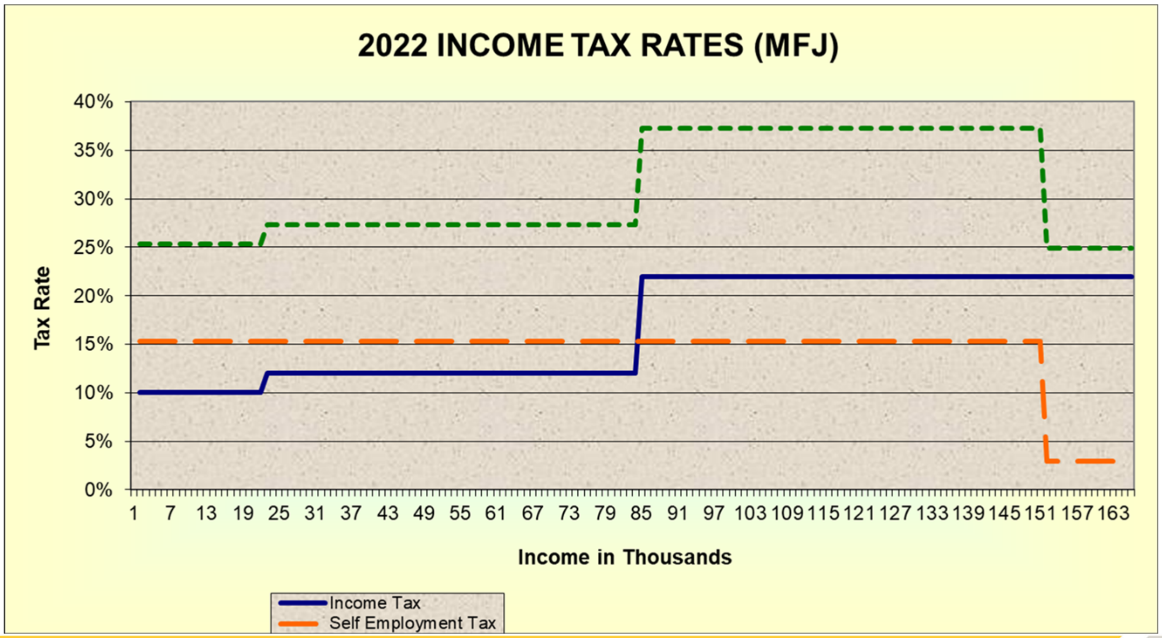

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Tax Planning Strategies

- Pre-Pay Expenses
- Income Averaging
- Deferral of Income
  - Crop and/or Livestock sales
- Accelerated Depreciation
  - Section 179 and Bonus
- Crop Insurance Deferral

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Prepaying expenses

- Cash basis deduction generally limited if useful life beyond end of tax year
- 12-month rule provides an exception if benefits do not extend beyond the ***earlier of***
  - 12 months after the benefit begins, or
  - the end of the following tax year
- Example: One-year insurance premium paid in November is okay
- Planning Note - No prepaid interest, only to year-end

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Prepaid farm supplies exception and limit

- Special exception provided under I.R.C. § 464
- Prepaid farm supplies may still be limited to 50% of all other expenses
  - ➢ Unused due to fire, storm, flood, etc. won't be counted
- Limit doesn't apply to taxpayer who
  - Is a *farm-related taxpayer* *and*
  - Has total prepaid farm supplies for the preceding 3 years of less than 50% of all other expenses *or*
  - Exceeds limit due to unusual change in business operations

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Prepaid farm supplies

3-part test for prepaid expense deduction

1. **Payment, not deposit**
   - Facts and circumstances
   - Specific quantity at fixed price
2. **Valid business purpose**
   - Fixing price and supply
3. **No material distortion of income**

➢ Remember other expenses!

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Income Averaging

- Filed on Schedule J
- Allows taxpayers to utilize unused tax brackets from past years

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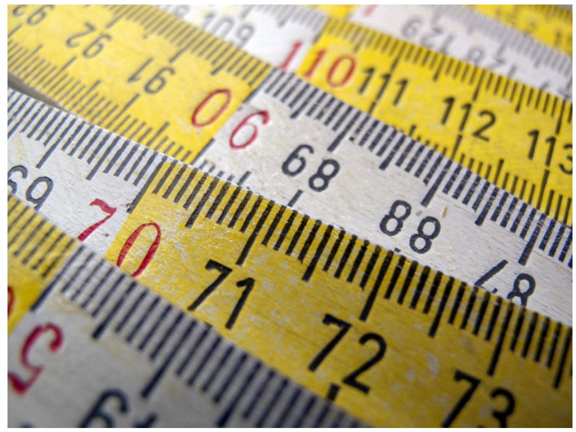
Income Averaging

- Only farm income qualifies
- Does not affect:
  - Self-employment income
  - Taxable income



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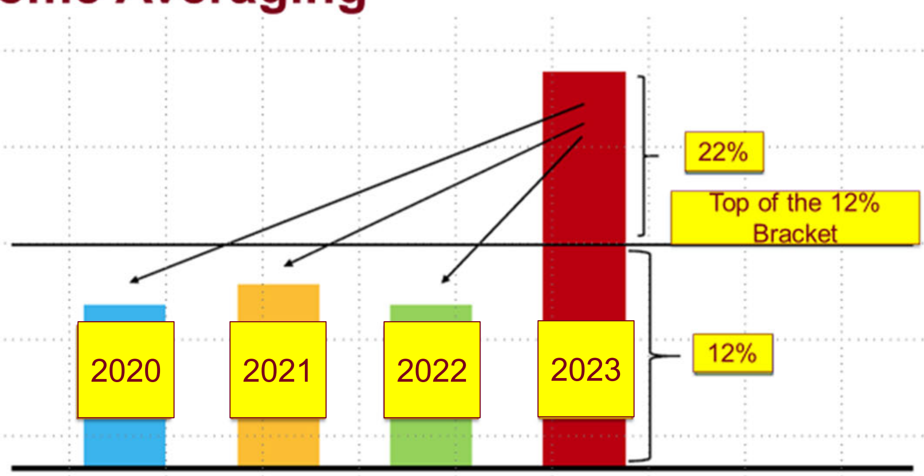
Income Averaging



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Defer Crop and Livestock Sales

- Postpone sales into next year. Income is taxable upon receipt.
  - Constructive receipt rules
- Transfer of ownership and telling the buyer to hold the check does not work. Must do a deferred payment contract (next slide).

Deferred Sales (Deferred Sales Contract)

- Allowed under installment sale rules
- Producer must have binding contract with buyer
- No constructive receipt of income
- Seller is unsecured creditor
  - Risk if buyer goes out of business before payment

Weather-Related Provisions for Livestock Sales

- Sales of animals due to weather-related conditions
- Shortage of feed or water
- Draft, dairy, and breeding animals
- Not sport or poultry
- Postpone gain to avoid bunching of income
- Sales in excess of normal practice

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Weather-Related Sales of Livestock

- Breeding Stock
  - If sold due to weather-related conditions, the gain is postponed for up to two years providing the producers replace the animals.
  - Replacement animals must be like-kind.
  - Deferral amount is based on the number of head above the normal cull rate.
  - Replacement period may be extended if weather conditions persist.
  - No disaster declaration is required

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Weather-Related Sales of Livestock

- Animals Raised for Sale
  - Weather-related sales of raised animals may be deferred into the following year
  - Based upon sales in excess of a normal year
  - Must be cash method farmer
  - Requires Federal disaster declaration
  - Election to defer filed with tax return

Deferral of Crop Insurance

- Cash basis farmers can defer income, planning is important.
  - Deferral election applies to destruction or damage to crops that results in an insurance or disaster payment.
    - I.R.C. § 451(f); Treas. Reg. § 1.451-6(a)

Deferral of Crop Insurance

- Report income on cash basis
- Establish that under normal business practice, income from crops would have been reported in following year.

Deferral of Crop Insurance

- Rev. Rul. 74-145 requires taxpayer to show that more than 50% of income from **each** damaged crop(s) would be reported in the following year.
  - *Nelson v. Commissioner* (2008)

Thank you!

Contact Information

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