



AMERICAN  
BANKRUPTCY  
INSTITUTE

# 2017 Central States Bankruptcy Workshop

## Farm/Agribusiness

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**Special Problems in Ag-Based DIP Financing and Cash Collateral Use**

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**A. Verifying Status of Pre-Petition Perfected Liens on “Farm Products”**

1. **Definition of “Farm Products.”** Section 9-102(a)(34) of the Uniform Commercial Code (“UCC”) defines “farm products” to mean “goods, other than standing timber, with respect to which the debtor is engaged in a farming operation” and that are
  - (A) crops grown, growing, or to be grown, including:
    - (i) crops produced on trees, vines, and bushes; and
    - (ii) aquatic goods produced in aquacultural operations;
  - (B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;
  - (C) supplies used or produced in a farming operation; or
  - (D) products of crops or livestock in their unmanufactured states.
2. **Definition of “Farming Operation.”** Under Section 9-102(a)(35) of the UCC. “Farming operation” means “raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.”

**B. Priority Among Competing Liens**

**1. State law may give superpriority to “Agricultural Liens”**

Revised Article 9 of the Uniform Commercial Code, as adopted in many states, brought agricultural liens within its scope. *See, e.g.*, 810 ILCS 5/9-102(a)(5). Under Section 9-102(a)(5) of the UCC, as adopted in Illinois, an “agricultural lien” is defined as an interest, other than a security interest, in farm products

- (A) which secures payment or performance of an obligation for goods or services furnished in connection with a debtor’s farming operation;
- (B) which is created by statute in favor of a person that in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor’s farming operation; and
- (C) whose effectiveness does not depend on the person’s possession of the personal property.

There are at least three types of statutory liens in Illinois that involve agriculture:

1. agister's lien, 770 ILCS 40/50;
2. thresherman's lien, 770 ILCS 40/50a.; and
3. landlord's crop lien, 735 ILCS 5/9-316.

Of these, only the thresherman's lien and landlord's crop lien fall within the definition of "agricultural lien" under Article 9 of the UCC in Illinois. Consequently, the rules for perfection, priority, and enforcement of these liens would be provided by Article 9. Perfection is achieved by filing with the Secretary of State, and the priority rules of first to file apply. See 810 ILCS 5/9-310(a), 5/9-322.

Crop liens, however, receive special treatment under Illinois law with regard to priority. In 2002 the legislature added the following provision to the section regarding the establishment and treatment of crop liens:

A lien arising under this Section shall have priority over any agricultural lien as defined in, and ***over any security interest arising under, provisions of Article 9 of the Uniform Commercial Code.***

735 ILCS 5/9-316 (emphasis added). Consequently, the landlord's statutory lien for rent against crops grown on leased land continues to be superior to any consensual lien that the tenant may give on the crops, even those created under Article 9. *Schweickert v. Ag Servs. of Am., Inc.*, 355 Ill.App.3d 439, 823 N.E.2d 213, 215, 291 Ill.Dec. 203 (3d Dist. 2005). To the extent that a debtor is not current on rent payments for agricultural land, these statutory liens may need be addressed in the context of adequate protection issues arising in cash collateral and DIP financing motions.

## 2. **Statutory Liens May Be Avoided In Bankruptcy**

An interesting dynamic may arise with respect to the potential avoidance of a landlord's statutory lien for unpaid rent. Such a lien may be avoided under the Bankruptcy Code. 11 U.S.C. §§ 545(3) & (4). See *In re Wedemeir*, 237 F.3d 938, 941 (8th Cir. 2001); *Marshall v. Aubuchon (In re Marshall)*, 239 B.R. 193 (Bankr. S.D. Ill. 1999); *Pogge v. Powers (In re Smith)*, 302 B.R. 865 (Bankr. C.D. Ill. 2003). Given that the power to avoid such liens rests with the trustee (or debtor-in-possession) rather than with secured lenders, the application of these provisions naturally points in the direction of multi-party negotiations with respect to the terms of financing orders in order to avoid litigating the interplay of these thorny issues at a critical moment in the bankruptcy case.

## 3. **Notice to Buyers of Farm Product - Impact of the Food Security Act**

The Food Security Act of 1985 (FSA), Pub.L. No. 99-198, §1324, 99 Stat. 1354, preempts the farm products rule in the Uniform Commercial Code that otherwise may permit a secured party to follow its lien into the hands of a buyer. 7 U.S.C. §1631(h). Illinois enacted its own provision for notice of secured claims to buyers of farm products. 810 ILCS 5/9-320(f). The purpose of the notice is to protect the secured party and prohibit the buyer of farm products from paying the seller without including the secured party's name on the check.

In order to invoke this protection, the holder of the security interest is required to send notice to the potential buyers of farm products. The notice must contain:

- (I) the name and address of the secured party;
- (II) the name and address of the person indebted to the secured party;
- (III) the social security number, or other approved unique identifier, of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number, or other approved unique identifier, of the debtor; and
- (IV) a description of the farm products subject to the security interest created by the debtor, including the amount of such products where applicable, crop year, and the name of each county or parish in which the farm products are produced or located.

7 U.S.C. §1631(e)(1)(A)(ii).

Illinois state law also provides for fines and criminal penalties for selling to parties other than as disclosed to a secured party. 810 ILCS 5/9-315.02. Similarly, the FSA provides for penalties if the debtor violates the restriction on sale without paying the secured party. 7 U.S.C. §1631(h).

In interpreting the FSA, the Illinois Supreme Court has held that strict compliance with the notice provisions of §1631(e) is required for a secured party to obtain the protection provided by the FSA. *State Bank of Cherry v. CGB Enterprises, Inc.*, 2013 IL 113836, 984 N.E.2d 449, 368 Ill.Dec. 503. In *State Bank of Cherry*, the bank claimed that CGB Enterprises, Inc. failed to protect the bank's security interest in crops that CGB purchased from a farmer. The bank argued that it gave notice of the security interest in the crops to CGB pursuant to the FSA and that CGB violated the FSA by making payment on the crops directly to the farmer without naming the bank on the check. However, neither of the FSA notices at issue included information regarding the names of the county where the farm products were produced or located.

Relying upon *Farm Credit Midsouth, PCA v. Farm Fresh Catfish Co.*, 371 F.3d 450 (8th Cir. 2004), CGB argued that strict compliance with the §1631(e) notice provision is required for a party to recover for failing to protect a security interest in crops. The Eighth Circuit held that FSA "does not contain language indicating the required contents of the written notice are merely permissive or can be satisfied through substantial compliance." *Farm Fresh Catfish*, 371 F.3d at 453. The appellate court adopted the construction of *Farm Fresh Catfish* and concluded that Congress intended strict compliance with the FSA. The Illinois Supreme Court affirmed. As a result, CGB took free of the bank's security interest even though CGB knew of its existence. 2013 IL 113836 at ¶67.

A bankruptcy court ruled that the FSA protections for a grain buyer of corn and soybeans do not extend to the proceeds of those crops. *CNH Capital America LLC v. Trainor Grain & Supply Co. (In re Printz)*, 478 B.R. 876 (Bankr. C.D. Ill. 2012). In *Printz*, the debtors entered into multiple loan and security agreements with CNH Capital America LLC. In addition to filing financing statements to perfect a security interest in the debtors' crop proceeds and other personal property,

CNH sent four separate letters to Trainor Grain and Supply Co., a potential purchaser of the crops, notifying Trainor of CNH's lien on the crops. In addition to entering into sale agreements with Trainor, the debtors also entered into a number of transactions with Trainor pursuant to which Trainor would provide farming inputs.

A dispute arose between CNH and Trainor when Trainor set-off approximately \$362,443.49 from the proceeds of crops sold by the debtors against amounts the debtors owed it for inputs. In response to a complaint to determine the validity, priority, and extent of competing liens, Trainor argued that the notices sent by CNH were deficient because they all failed to include the debtors' social security numbers and a proper description of the crops subject to the security interest. The bankruptcy court agreed that strict compliance is required for the FSA notice and held that Trainor purchased the corn and soybeans free and clear of CNH's security interest. However, the bankruptcy court ruled that the same does not apply to the "proceeds" of the grain. The purpose of the FSA is to protect buyers from liability to lien holders when the debtors fail to remit the proceeds of products sold. The company, in setting off its preexisting debt against the proceeds of the debtors, was acting as a creditor and not as a buyer. In that capacity, Trainor was not entitled to the protection of the FSA.

#### **4. Evaluation and Protection of Government Payments With Regard to the Collateral Base**

The treatment of government payments may add an additional layer of complexity and uncertainty in determining the extent of a pre-petition lender's secured claim. Are government payments "proceeds" of crops or general intangibles? *See In re Schmaling*, 783 F.2d 680 (7th Cir. 1986) ("payment-in-kind" payments did not constitute crop proceeds). Any security agreement limited to crops can avoid this issue by also taking a security interest either in all general intangibles or specifically in the various programs that a lender seeks as security. *See In re Otto Farms, Inc.*, 247 B.R. 757, 760 (Bankr. C.D. Ill. 2000) (collateral description of "general intangibles, including government payments" was adequate to cover government loan deficiency payments). It is best to avoid litigation as to whether such a payment is "proceeds."

Special care should be taken to specifically identify the program in which borrowers participate and analyze the requirements under those programs. For purposes of solidifying the collateral base, creditors must be aware that some programs prohibit or regulate assignments or security interests. For example, the creation of an enforceable security interest in crop insurance proceeds requires compliance with the statutory requirements for assignment. *See In re Duckworth*, Bankruptcy No. 10-83603, 2012 WL 986766 (Bankr. C.D. Ill. Mar. 22, 2012). In *Duckworth*, the bankruptcy court held that the Federal Crop Insurance Act preempted state law with respect to the attachment of a lien on an insured's right to crop insurance proceeds may be created, adopting the reasoning of *In re Cook*, 169 F.3d 271 (5th Cir. 1999). If the requirements for assignment are not satisfied, the creditor will not be able to obtain a lien or security interest on undisbursed crop insurance proceeds.

#### **5. The Impact of the Perishable Agricultural Commodities Act**

The Perishable Agricultural Commodities Act (PACA), 7 U.S.C. §499a, *et seq.*, is a federally-created statutory trust. The PACA trust protects persons who sell perishable agricultural commodities that are not paid. The statutory trust arises when the following occur:

1. The commodities sold are “perishable agricultural commodities.” 7 U.S.C. §499a(b)(4). A “perishable agricultural commodity” is defined as fresh fruits or vegetables of every kind and character (whether frozen or packed in ice) and cherries in brine. *Id.*
2. The purchaser of perishable agricultural commodities is one of the following:
  - a. a commission merchant (7 U.S.C. §499a(b)(5));
  - b. a dealer (7 U.S.C. §499a(b)(6)); or
  - c. a broker (7 U.S.C. §499a(b)(7)).
3. The transaction occurs in interstate or foreign commerce. 7 U.S.C. §499a(b)(8).
4. The suppliers, sellers, or agents have not received full payment on the transaction. 7 U.S.C. §499e(c).
5. The suppliers, sellers, or agents preserve their trust rights by giving written notice to the commission merchant, broker, or dealer within the time provided by law. *Id.*

Under the PACA, the purchaser holds all perishable agricultural commodities, all products derived therefrom, and all receivables or proceeds from the sale of such perishables “in a floating trust” for the benefit of the unpaid suppliers, sellers, or agents. *See, e.g., G&G Peppers, LLC v. Ebro Foods, Inc. (In re Ebro Foods, Inc.)*, 449 B.R. 759, 762 (N.D. Ill. 2011). If a debtor is the purchaser, the rights of suppliers, sellers, or agents as trust beneficiaries in all inventory, receivables, or proceeds from the perishable agricultural commodities are statutorily superior. This priority applies even if the creditor holds a perfected security interest in those inventories, receivables, or proceeds. *A & J Produce Corp. v. Bronx Overall Econ. Dev. Corp.*, 542 F.3d 54 (2d Cir. 2008). Consequently, lenders need to ensure that a purchaser-borrower has paid all of its suppliers or to be prepared to deal with these superior claims in extending DIP financing or negotiating the terms of cash collateral use.

There is a parallel statutory scheme known as the Packers and Stockyards Act, 1921, 7 U.S.C. §181, *et seq.*, that provides the same protection for livestock producers. *See, e.g., Weichman Pig Co. v. Jack-Rich, Inc. (In re Jack-Rich, Inc.)*, 176 B.R. 476 (Bankr. C.D. Ill. 1994). Thus, similar analysis will be involved for cases involving this type of collateral.

### **C. Providing “Adequate Protection” for Post-Petition Financing**

#### **1. Special Definition Under Chapter 12**

Debtors operating in Chapter 12 cases have many of the same powers as debtors-in-possession in Chapter 11 cases. Section 1203 of the Bankruptcy Code provides as follows:

Subject to such limitations as the court may prescribe, a debtor in possession shall have all the rights, other than the right to compensation under section 330, and powers, and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4)

of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation.

11 U.S.C. § 1203. Thus, chapter 12 debtors are able to secure post-petition financing, subject to the requirements of Section 364 of the Code, and may continue to use cash collateral subject to the requirements of Section 363(c)(2) of the Code.

In exercising these powers, Chapter 12 debtors are subject to a unique definition of “adequate protection” under Section 1205:

- (a) Section 361 does not apply in a case under this chapter,
- (b) In a case under this chapter, when adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by~
  - (1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of property securing a claim or of an entity's ownership interest in property;
  - (2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of property securing a claim or of an entity's ownership interest in property;
  - (3) paying to such entity for the use of farmland the reasonable rent customary in the community where the property is located, based upon the rental value, net income, and earning capacity of the property; or
  - (4) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will adequately protect the value of property securing a claim or of such entity's ownership interest in property.

11 U.S.C. § 1205.

Absent from this formulation is the “indubitable equivalent” standard set forth in Section 361(3) of the Code. Section 1205, enacted in 1986 along with the rest of Chapter 12, was intended to statutorily overrule the line of cases requiring compensation to secured creditors for “lost opportunity cost” associated with such creditors’ inability to immediately reach their collateral. As a policy matter, Congress was concerned that such a requirement would doom Chapter 12 cases to failure. The Supreme Court overruled this interpretation of “indubitable equivalence” for all bankruptcy cases two years later. *See United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd. (In re Timbers of Inwood Forest Associates, Ltd.)*, 484 U.S. 365 (1988). As noted by a leading commentator, “[t]he *Timbers* decision thus effectively eliminates any

meaningful difference between sections 361 and 1205(b).” 8 COLLIER ON BANKRUPTCY, ¶ 1205.01 (2016).

## **2. Forms that Adequate Protection Can Take**

Among the factors in evaluating adequate protection proposed by debtors in chapter 12 cases are the following: (1) identifying the risks to the secured creditor’s value resulting from the debtor’s request for use of cash collateral and (2) determining whether the debtor’s adequate protection proposal protects value as nearly as possible against risks to that value. *In re Martin*, 761 F.2d 472, 476-77 (8th Cir. 1985).

- payment to the prepetition lenders of interest at the non-default rates
- additional replacement security interests and liens upon all crops, whether now existing or hereafter arising
- continuing crop insurance and assignment of interests in the crop insurance to the prepetition lenders so that in the event of a crop failure the lenders' interests remain protected
- junior liens on real and personal property that is not fully encumbered
- replacement liens on post-petition payments from federal programs, including CRP payments
- a superpriority administrative claim against the debtors as provided for in section 507(b) of the Bankruptcy Code to the extent of any diminution in the value of the prepetition lenders' interest in the prepetition collateral that the replacement lien fails to cover.

## **3. Liens on Crops To Be Planted in the Future**

Debtors can only use cash collateral for their proposed reorganization if they can adequately protect the secured creditor’s interest in the cash collateral. 11 U.S.C. § 363(e). “[I]f a creditor is threatened with a decline in the value of the interest in the estate’s property, the estate must take action to make up the decline[.]” *In re Markos Gurnee P’ship*, 252 B.R. 712, 716 (Bankr. N.D. Ill. 1997). In the context of Section 363(e), the debtor is proposing to consume or use up the collateral so the standard regarding whether the proposed protection is adequate is a strict one. *In re Polzin*, 49 B.R. 370, 371-72 (Bankr. D. Minn. 1985). The burden falls on the debtors to establish that the secured creditor’s position is adequately secured. *Id.* at 372.

As noted by one court, “[a] lien on crops to be planted is not the indubitable equivalent of cash collateral.” *In re Krumm*, 87 B.R. 76, 78 (Bankr. D. Neb. 1988). As the court in *Krumm* observed when discussing replacement liens on future crops:



If the Debtor defaults or becomes unable to perform after having purchased seed, fertilizer, fuel, and paid his rent, but before the crop is planted, the Bank, as of that point in time, certainly would not be secured by the indubitable equivalence of cash collateral. In all events, repayment of the cash collateral is contingent upon there being a crop to harvest.

*Id.* at 77. Future payments to be received by debtors and associated with the harvest are subject to many uncertain variables. Several of these include factors outside chapter 12 debtors' control, such as the weather, commodities prices and the debtors' ability to complete the harvest. There is an additional risk associated with potential defenses raised by contract counterparties related to the purchase of the crops.

Since the existence and value of the replacement collateral is speculative, debtors seeking to use future crops to provide adequate protection often face an uphill battle in contested hearings. Indeed, a majority of reported decisions have concluded that such a replacement lien, standing alone, does not adequately protect the value of creditors' liens on cash collateral. *In re Westcamp*, 78 B.R. 834, 837 (Bankr. S.D. Ohio 1987) (noting that the value to a creditor of a lien on an existing crop is greater than the promise of a lien on a crop to be grown).

Debtors fare much better when a lien on future crops is part of a bundle of additional unencumbered collateral offered as adequate protection for the use of cash collateral. Examples of such collateral include (a) multi-peril, all risk-crop insurance, (b) rights to federal funds from the Agricultural Stabilization and Conservation Service or under any other similar program, and (c) additional sources of income beyond farming operations, such as custom trucking and custom hog feeding. *Id.* at 839.

In evaluating the protection offered by crop insurance, it is essential for secured creditors to carefully review copies of such policies. The creditor must be able to identify the nature, extent or limits of the crop insurance so that it is able to evaluate what losses would be covered and what losses are excluded from coverage. As the court in *Krumm* observed when rejecting insurance as sufficient adequate protection:

However, there are many risks beyond his control in the form of drought, flood, early freeze, insects or accidental injury or death. These risks are not fully covered by the proposed insurance. The premium is deductible from the amount payable to the insured and only if the crops are completely destroyed by hail or fire, would there be sufficient insurance proceeds to repay all of the \$150,000.00 sought to be used. If the crop is entirely lost due to other reasons, the insurance proceeds would not be sufficient to repay all of the \$150,000 cash collateral used.

87 B.R. at 77-78. Likewise, it is important to consider whether the premiums on such policies have been fully funded by existing cash collateral, or whether future premium payments are contemplated. If premiums are to be paid from future revenues, the risk of non-payment is a factor weighing against a finding of adequate protection.

With respect to additional sources of income, such as "custom farming" secured creditors should analyze whether this source of funding is premised upon "smile and handshake"

transactions with close family members or whether it arises out of an enforceable contractual right. If such income falls into the former category, creditors have no additional source of collateral should there be a crop revenue shortfall if family members are unwilling or unable to continue this relationship.

# Dealing with Tax Claims – Pre-Petition Sales- §1222(a)(2)(A)

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## Chapter 12's Original Problem

- Taxes on the gain on the sale of farm assets

# Income Tax 101

- Example: David Farmer purchases 160 A of bare ground in 1986 for \$1,000/A. In 1990 he adds tile costing \$50,000.

## David Farmer's Tax Basis 1990

• Farmland	\$160,000 – Beginning Basis
• Tile	<u>50,000</u>
• Total	\$210,000 – Adjusted Basis

## David Farmer's Adjusted Tax Basis 1995

- Tile is depreciated on a straight line basis over 7 years:
- $\$50,000/7 = \$7,143$  depreciation per year

• Bare Land Basis	\$160,000
• Tile Beginning Basis	50,000
• (less) Depreciation $\$7,143 \times 5$ years	<u>(35,715)</u>
• Adjusted Tax Basis	\$174,285

## David Farmer's Adjusted Tax Basis After 1997

- Tile is depreciated on a straight line basis over 7 years:
- $\$50,000/7 = \$7,143$  depreciation per year

• Bare Land Basis	\$160,000
• Tile Beginning Basis	50,000
• (less) Depreciation $\$7,143 \times 7$ years	<u>(50,000)</u>
• Adjusted Tax Basis	\$160,000

## David Farmer's Taxable Gain on Sale at \$10,000/A

• Sale Price 160 A x \$10,000/A	\$1,600,000
• (less) Adjusted Tax Basis	<u>(160,000)</u>
• Taxable Gain	\$1,440,000

## How is Taxable Gain Taxed?

• First, depreciation is recaptured and taxed at ordinary income tax rates:	
• Taxable Gain	\$1,440,000
• (less) Depreciation Recapture	<u>(50,000)</u>
• <b>Long Term Capital Gain (LTCG)</b>	<b>\$1,390,000</b>

- **LTCG is Taxed at the Capital Gains Rate of 24%**
- **Depreciation Recapture is Taxed at Ordinary Income Tax Rates**

### David Farmer's Projected Taxes on Sale of Farm

Type of Gain	Amount	Rate	Tax
Depreciation Recapture	\$50,000	25%	12,500
Long Term Cap. Gain	\$1,390,000	24%	<u>333,600</u>
Total Federal Tax			\$346,100

## Congress's Goal

- De-prioritize taxes due to sale of farm assets occurring before or after filing bankruptcy.
- Treating them as pre-petition unsecured claims.

## Congress's Solution

§ 1222(a)(2)(A)



## Was the Intent of Congress Clear?

- Did it apply to sales both before and after filing?
- What is “used in?”
- How is the amount of tax that is de-prioritized calculated?

## Chapter 12 Does Not Have a Short Tax Year

- Individual Chapter 7 & 11 Debtors can elect a short tax year

## Short Tax Year Illustration



### *Knudsen v. IRS*, 581 F.3d 696 (8<sup>th</sup> Cir. 2009)

- Applies to Both Pre-Petition & Post-Petition Sales
- Post-petition tax was incurred by the estate without reference to whether there was a separate tax entity

*Hall v. United States*, 617 F.3d 1161 (9<sup>th</sup> Cir. 2010)

- § 1222(a)(2)(A) does **NOT** apply to post-petition sales

Circuit Split Develops

**8<sup>th</sup> Cir.**

- Applies to post-petition sales

**9<sup>th</sup> Cir.**

- Does not apply to post-petition sales

## *Hall v. United States*

- Circuit split resolved
- § 1222(a)(2)(A) **does not** apply to post-petition sales

## *Hall's Collateral Damage*

- Taxes on post-petition sales **cannot be paid from estate assets.** 132 S.Ct. @1890.

## Timing of Asset Sales To Use §1222(a)(2)(A)

Assets must be sold in the tax year before filing Chapter 12.

Does not allow farmer to file Chapter 12 then decide what to sell to “*right-size*” the operation.

## What Assets Qualify for § 1222(a)(2)(A) Treatment?

Asset Sold	Any Farm Asset		Used in		Debtor's Farming Operation	
	Yes	No	Yes	No	Yes	No
Sow Herd	X		X		X	
Farrowing Equipment	X		X		X	
Livestock Trailer	X		X		X	
500 Shares Iowa Premium Select		X		X		X
Soybeans not fed	X			X		X
Corn fed to hogs	X		X		X	
Farmland	X		X		X	
Remainder Interest	?			?		?

## How is De-prioritized Tax Calculated

### Knudsen – Marginal Approach

- Pro-forma return is used so that Debtor gets the benefit of the marginal tax rates
- Lowers taxes to be paid by Debtors

### IRS – Proportional Tax

- Treats each dollar of tax identically

## Marginal Methodology

Step 1: Complete Normal Tax Return

Step 2: Complete *Pro-forma* Tax Return excluding income from sale of farm assets

Step 3: Subtract tax shown on *Pro-forma* return (priority tax) from tax shown on Normal Tax Return

Result is tax treatable under § 1222(a)(2)(A).

## Marginal Method – *Knudsen v. IRS*

	Tax on Return
<b>Traditional Return</b>	\$55,319
<b>(less) Pro-forma Return – Priority Tax Must be Paid</b>	<u>(1,413)</u>
<b>Tax Treatable under §1222(a)(2)(A)</b>	<b>\$53,906</b>

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## Proportional Methodology -- IRS

- Treats each dollar of income proportionately
- Results in higher priority tax and lower de-prioritized tax

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## IRS Proportional approach

		Non-Gain (Priority Claim)		Gain (General Claim) Subject to § 1222(a)(2)(A)	
Total Income	\$225,833	\$169,597	75.0%	\$56,236	25.0%
- ½ SE Tax	(7,588)				
- Health Ins.	(6,780)				
AGI	211,465				
-Std. Deduction	(9,700)				
-Exemptions	(18,600)				
Taxable Income	\$183,165				
Income Tax	\$40,666	\$30,500	75.0%	\$10,166	25.0%
SE Tax	15,176	15,176	100.0%	0	0.0%
Total Tax	\$55,842	\$45,676	82.0%	10,166	18.0%
Tax Withheld	(282)	(282)	100.0%	0	0.0%
Fuels Credit	(238)	(238)	100.0%	0	0.0%
Net Tax Due	\$55,322	\$45,156		\$10,166	
Payment	(8,000)	(6,530)	82.0%	(1,470)	18.0%
Tax Balance	\$47,322	\$38,626		\$8,696	
Interest	\$663	541	82.0%	122	18.0%
Total		\$39,167		\$8,816	

## Comparison of Taxes

	Marginal Debtors	Proportional IRS
Traditional Tax	\$55,319	\$55,319
Priority Tax	<b>1,143</b>	<b>30,167</b>
De-Prioritized Tax	<b>\$53,906</b>	<b>\$8,816</b>



## Chapter 12 Needs to be Fixed

-- The Code needs to be revised to fix *Hall* so Post-petition sales qualify

-- Debt limit needs to be significantly increased from the current \$4,153,150 to at least \$10,000,000

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA

IN RE:	Chapter 12
JOHN Q. DEBTOR and JANE Q. DEBTOR,	Bankruptcy No. 12-34567
Debtors.	FIRST AMENDED CHAPTER 12 PLAN OF REORGANIZATION

Debtors John Q. Debtor and Jane Q. Debtor propose this Chapter 12 Plan of Reorganization for the resolution of outstanding claims against the bankruptcy estate. Debtors file this Plan pursuant to 11 U.S.C. § 1221, and assert the contents herein meet the requirements for confirmation pursuant to 11 U.S.C. § 1222, 1225. This Plan is the Debtors' proposal to clear their debts owed on the Petition Date and the additional debts they will incur during this Chapter 12 case.

**ARTICLE I. INTRODUCTION AND PLAN OVERVIEW**

- 1.1 Background Information. John Q. Debtor and Jane Q. Debtor are 74 and 71 years old, respectively. They live on an acreage on the far west side of Anytown, Iowa, and orchestrate their farming and other business interests from that location. John began farming part-time in about 1968, and transitioned to full-time farming in 1972. He had a separate farming operation from his brother and dad, but the three commonly helped each other on the three farms. Now, after experiencing series of unfortunate circumstances, John seeks to use his years of farming knowledge to implement a successful Chapter 12 bankruptcy proceeding. Jane assists with farming activities. She is a former Methodist pastor, and, now retired, enjoys watching their nine grandchildren and eight great-grandchildren (with a ninth on the way) as time allows. Through this Chapter 12 bankruptcy, the Debtors' plan to repay the remaining indebtedness on their family homestead and a portion of the debts incurred as a result of rightsizing their farming operation. Chapter 12 is necessary as the income, capital gain, and depreciation recapture taxes occasioned by the sale of farm assets are projected to exceed \$250,000, and Chapter 12 allows the Debtors' to de-prioritize these taxes pursuant to 11 U.S.C. § 1222(a)(2)(A).
- 1.2 Petition Date. On May 27, 2016 the Debtors filed their Petition for Reorganization under Chapter 12 of the United States Bankruptcy Code (11 U.S.C. §§ 1201 *et seq.*).
- 1.3 Income Payment Summary. The Debtors will make payments as required by 11 U.S.C. §1222(a)(1) and as further described in this Plan. After careful analysis, the Debtors assert that this Plan generates a higher yield for

creditors than what would be realized under a Chapter 7 (straight bankruptcy) liquidation. If the Debtors' bankruptcy estate were liquidated in a Chapter 7 proceeding, no dividend or property would be available for distribution to any allowed unsecured claim.

- 1.4 Creditor Approval Unnecessary. The Plan need not receive creditor approval as a prerequisite to confirmation, 11 U.S.C. § 1225, but the Court must find the Plan was proposed in good faith and complies with the other requirements of § 1225. If this Plan is not accepted and approved, the Court may: (i) dismiss the case; or (ii) allow the Debtors to propose another plan. This Plan is the Debtors' first proposed plan under § 1221 *et seq.*, and the Debtors fully advocate that should the Court disagree with the Debtors and find that the Plan is not confirmable, the Court also grant the Debtors time to amend and propose another plan.
- 1.5 General Prohibition on Conversion. The Debtors are farmers. This case cannot be converted to liquidation under Chapter 7 without their consent, except for fraud in connection with the case. 11 U.S.C. § 1208(d).

## **ARTICLE II. IDENTIFICATION OF CLAIMS AND INTERESTS AND JOHNRAI PROVISIONS.**

- 2.1 Date of Determination of Claims. Unless otherwise provided by this Plan, all claims arising prior to the Petition Date shall be fixed and determined based upon rights and obligations existing on the Petition Date, and all unpaid claims or expenses arising after the Petition Date shall be fixed as of the date that payment is due.
- 2.2 General Rules of Classification. Unless otherwise provided by this Plan, a claim is classified in a particular Class for distribution purposes only to the extent the claim has not been paid, released or otherwise satisfied and qualifies within the description of that Class, and is classified in another Class or Classes to the extent any remainder of the claim qualifies within the description of such other Class or Classes.
- 2.3 Secured Claims. Claims shall be treated as secured only to the extent such claims do not exceed the value of the Debtors' assets (existing on the Petition Date) found by the Court to be valid security for said claims. 11 U.S.C. § 506; Fed. R. Bankr. P. 3012.
- 2.4 De-prioritized Claims of Governmental Units. Pursuant to 11 U.S.C. § 1222(a)(2)(A), if a priority claim owed to a governmental unit arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation, then that claim shall be treated and discharged as an unsecured claim.

- 2.5 Combined Classification and Treatment. This Plan combines the classification and treatment of claims as provided below.

**ARTICLE III. CLASSIFICATION AND TREATMENT OF ALLOWED CLAIMS, EXPENSES, AND INTERESTS**

- 3.1 Class 1: Priority Claims. Class 1 shall consist of any claim entitled to priority under § 507(a) of the Bankruptcy Code, other than: (i) those claims and expenses within Class 2 to the extent those claims would qualify within this Class 1; and (ii) the claims of the United States of America and the State of Iowa to the extent that the claims of those governmental units are classified and treated under Class 3. All claims in Class 1 shall be paid in full within five years after the Effective Date unless the holder of a particular claim agrees to a different treatment.
- 3.2 Class 2: Administrative Expense Claims. Class 2 shall consist of Administrative Expenses. All claims in Class 2 shall be paid in full at such time as such claims receive court approval or become due in the ordinary course, unless the holder of a particular claim agrees to a different treatment. As of April 25, 2017, the balance due to Peiffer Law Office, P.C. is \$13,323.73. There is currently \$17,302.50 being held in trust by Peiffer Law Office, P.C.
- 3.3 Class 3: Claims of Governmental Units Treated as Unsecured Claims Pursuant to 11 U.S.C. § 1222(a)(2)(A). The Debtors owe claims to the United States of America through the Internal Revenue Service and the State of Iowa through the Iowa Department of Revenue for income taxes arising as a result of their sale of farm assets used in farming in 2015. These tax claims that qualify for treatment under 11 U.S.C. § 1222(a)(2)(A) are in this Class 3 and shall be treated and discharged as unsecured claims, and shall be equal to that amount of tax resulting on the income tax return as if the taxable income for the sale, exchange, transfer or other disposition of the farming asset was excluded from that tax return, and from the tax resulting had that taxable income been excluded on the Debtors' return. The computation of claim amount subject to unsecured treatment and discharge described in the preceding sentence is known as the marginal method approved by the Court in *In re Knudsen*, 581 F.3d 696 (8th Cir. 2009).

The computations under the marginal method are employed by comparison of the Debtors' 2015 income tax return and a *pro forma* income tax return.<sup>1</sup> The *pro forma* return is not a true tax return, but instead an analytical tool to determine, first, how much tax was generated by the sale, exchange, transfer, or other disposition of the farming assets that can be classified

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<sup>1</sup> The Debtors submit their *pro-forma* income tax returns as Schedule 4.

and treated as an unsecured claim pursuant to 11 U.S.C. §1222(a)(2)(A), and, second, to determine the amount of tax that should be treated as priority tax that will be paid in full pursuant to the Plan. The calculation of the tax claims of the IRS and IDOR qualifying for classification in this Class 3 and treatment as unsecured claims pursuant to 11 U.S.C. §1222(a)(2)(A) is stated as follows:

Return	Federal	Iowa
2015 (amended)	\$207,818.00	\$55,791.00
2015 ( <i>pro forma</i> )	\$0.00	\$0.00
Tax Qualifying Under § 1222(a)(2)(A)	\$207,818.00, plus any penalties and interest	\$55,791.00, plus any penalties and interest

The treatment for unsecured claims is set forth in Class 5 below. Pursuant to 11 U.S.C. § 1222(a)(2)(A), the tax claims in this Class 3 treated as unsecured claims in Class 5 shall only be discharged when the Debtors obtain their Chapter 12 discharge. The priority tax claims as shown on the Pro Forma tax return are priority tax claims that shall be paid over the life of this plan.

- 3.4 Class 4: AnyBank. The secured claim of AnyBank is in this Class 4. As security AnyBank holds a mortgage on real estate, the Debtors' homestead, located at 1234 5th St., Anytown, IA 50000, and legally described on Exhibit "A" attached to the Debtors' Schedule A/B, and holds security interests in government program payments. The claim is deemed to be an allowed secured claim up to the value of collateral as stated in the Debtors' Schedules, \$116,420.00. The treatment and repayment of claims within this Class 4 are in full and complete substitution of the terms of repayment in any note, contract, or other claim for any claim within this Class 4.

The Debtors owed \$103,427.34 on the Petition Date and have continued to make ordinary mortgage payments of \$1,300.00 per month for since filing,<sup>2</sup> leaving a balance of \$93,927.40 to be repaid in this Plan, assuming no more payments are made prior to confirmation. Debtors shall be given credit for all payments made between the date of filing this plan and the date of confirmation. In October of 2016, Debtors received government agriculture risk coverage program payments in the total amount of \$25,432.00. At the current time, Debtors have approximately \$19,000.00 left from the government payment as they have been living on it while they worked less as their daughter was ill and died this spring. Upon confirmation of this Plan, the post-petition payments made to AnyBank shall be deemed authorized principal payments and not subject to recovery under the Bankruptcy Code. Within thirty-days after the Confirmation Date, the

<sup>2</sup> June of 2016 through April of 2017.

Debtors shall transfer the remainder of their government program ARC payments to AnyBank as a return of collateral and for application against the principal due on its Class 4 claim. The payment of the funds remaining from the government program payment will reduce principal, however, it will not decrease the monthly payment due AnyBank. If government program payments are received in the future, they shall be paid directly to AnyBank as additional principal payments.

Payment of AnyBank's current claim of \$93,927.40 shall be amortized over a period of fifteen years with interest accruing at the rate of 3.86% so that the payments shall be \$688.20. The first payment shall be due on the 1<sup>st</sup> day of the month following confirmation of this plan.

For purposes of illustration only, assume that the Confirmation Date is June 6, 2017. The Debtors would make their first payment of \$688.20 by July 1, 2017, and by the first of each month thereafter. Upon repayment as described herein AnyBank shall release its mortgage on real estate.

- 3.5 Class 5: General Unsecured Claims. Class 5 shall consist of all claims allowed under § 502 of the Bankruptcy Code and not included in Classes 1, 2, 3, or 4, and includes without limitation the unsecured portion (if any) of the claims in Class 4. The claims within Class 3 shall receive treatment pursuant to the treatment of claims within this Class 5. Claims in Class 5 shall be paid pro-rata from the payments made by the Debtors to the Chapter 12 Trustee.

#### **ARTICLE IV. ALLOWANCE AND DISALLOWANCE OF CLAIMS**

- 4.1 Delay in Distribution to a Disputed Claim. No distribution will be made on account of a Disputed Claim unless such claim is allowed by a final non-appealable order.
- 4.2 Settlement of Disputed Claims. The Debtors shall have the power and authority to settle and compromise a Disputed Claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.
- 4.3 Claim Deadlines and Amendment. As of the Confirmation Date, all pre-petition claims timely filed under Fed. R. Bankr. P. 3002(c) and amended, if applicable, shall be fixed and not subject to further amendment or alteration, except to the extent that any such claim is or becomes a Disputed Claim. Absent consent of the Debtors, all pre-petition claims not timely filed under Fed. R. Bankr. P. 3002(c) shall be barred. To the extent that, as of the Confirmation Date, pre-petition claims may still be timely filed under Fed. R. Bankr. P. 3002(c), such claims may continue to be timely filed and

amended after the Confirmation Date in accordance with Fed. R. Bankr. P. 3002(c), but shall become fixed and not subject to further amendment or alteration, except to the extent that any claim is or becomes a Disputed Claim, upon the expiration of the timely filing periods contained within Fed. R. Bankr. P. 3002(c). Nothing in this paragraph limits the Debtors' right to amend or file claims on a creditor's behalf, or to object to a claim, or resolve or settle a Disputed Claim.

## **ARTICLE V. MEANS FOR IMPLEMENTATION OF THE PLAN**

- 5.1 Sources and Use of Farm Income. The Debtors' farm income shall come from the sale of corn and soybeans. The income projected by Debtors is set forth on the attached feasibility analysis, Schedule 2. The actual amount of the farm income is not easily predictable.
- 5.2 Use of Off-Farm Earnings. The off-farm earnings of the Debtors will be utilized for day-to-day living expenses and taxes, and to make payments to creditors in Classes 1, 2, and 4 as fully set forth below. John Debtor is currently employed by Trucking Company, LLC as a truck driver. His net wage income after accounting for tax withholdings, Social Security, etc., is projected to be \$20,717 per year based upon current earnings rates and daily load estimates.
- 5.3 Feasibility Analysis. Attached hereto and incorporated herein is Schedule 2, which demonstrates the feasibility of this Plan.
- 5.4 Payments to Trustee. The Debtors shall submit to the Trustee monthly payments after paying ordinary living expenses and taxes and after payments are made to creditors in Classes 1, 2, and 4. Payments shall be in the amount of \$100.00 per month, and may be increased or decreased by motion and proof of a material change in the Debtor's financial circumstances as existing at the time first set for confirmation of this Plan. Payments shall be made over a period of 36 months with the first payment due in the month following the Effective Date. The payments described in this section are payments under the plan for purposes of 11 U.S.C. § 1228.
- 5.5 ARC Payments. If the Debtors receive ARC payments in the future, they shall be paid to AnyBank for application against the Class 4 within thirty days after the later of the Effective Date or receipt of the ARC payment.
- 5.6 Reporting Requirements. The Debtors shall continue to make periodic monthly reports for three years after the Effective Date, except that in no event shall such reporting be submitted for a period shorter than a quarterly monthly report, and such reporting may be waived entirely by the Trustee unless another party-in-interest or the Office of the United States Trustee gives notice of a request for periodic monthly reports to the Trustee

and the Debtors.

## **ARTICLE VI. INTEREST, PENALTIES, AND ACCELERATION**

- 6.1 Interest Accrual. Unless specifically provided in this Plan: (i) no creditor shall accrue interest on its claim after the Petition Date; and (ii) interest on an allowed secured claim shall begin to accrue at the rate set forth in this Plan on the Effective Date.
- 6.2 Exclusion of Fees and Costs. Each creditor waives and is excluded from collecting: (i) default interest and penalties under any contract or other agreement; (ii) any and all rights to accelerate payment except as provided herein; (iii) contractual attorneys' fees unless the contract giving rise to the claim so provides and the claim is an allowed secured claim, in which case such fees may be allowed only to the extent of over-security as it existed on the Petition Date.
- 6.3 Payment of Creditor's Attorneys' Fees. Attorneys' fees included as a claim or part of a claim by a creditor shall be paid only if the amount of the fee is itemized and reasonable as determined by the Debtors. If the creditor disagrees with the Debtors' determination, then the recovery of fees shall be determined by the Court. Any creditor seeking the payment of attorneys' fees shall supply the Debtors with requested information sufficient for the Debtors to determine fee reasonableness.

## **ARTICLE VII. DISTRIBUTIONS, FEES, AND DISCHARGE**

- 7.1 Payment Provisions Applicable to All Classes. The following payment provisions are applicable to all classes unless otherwise specifically provided in this Plan:
- a. The payments, distributions, and other treatments provided with respect to each Class shall be in complete satisfaction, discharge, and release of the claims and allowed interests in such Class except as otherwise expressly provided with respect to a Class.
  - b. Notwithstanding any other provisions of the Plan specifying a date or time for the payment or distribution of consideration hereunder, payments and distributions with respect to any claim and interest which at such date or time is contingent shall not be made until such claim or interest becomes non-contingent, whereupon such payments and distributions shall be made promptly and in accordance with the provisions of this Plan.
  - c. Payment owed by the Debtors under the Plan may be prepaid at any time on or after the Confirmation Date, in whole or in part, without premium, penalty, or discount.



- 7.2 Payments by Debtors. Debtors are authorized to make direct payments to creditors in Classes 1, 2, and 4, and to the extent not within those Classes, for their ordinary living expenses and taxes.
- 7.3 Trustee Fees. The Trustee shall receive fees from the payments made by the Debtors under Section 5.4 for distribution to claims receiving treatment under Class 5. The Trustee shall compute and deduct her statutory trustee fees from these payments the Debtors make to the Trustee for distribution to holders of all classes of creditors whose claims are paid by the Trustee under the Plan. In no event shall the Trustee receive a fee for payments made by the Debtors directly to creditors or the holders of claims in any Class, and including payments made to the Debtors' attorneys.
- 7.4 Payments by Trustee. After deducting trustee fees, the Trustee shall be obligated to remit pro-rata payments to the claims receiving treatment under Class 5, including those claims within Class 3.
- 7.5 Discharge. The Debtors shall be eligible for discharge upon the later of three years after the Confirmation Date or the Debtors' completion of full payments to the Trustee under Section 5.4. Nothing in this section limits the applicability of 11 U.S.C. § 1228(b). Upon entry of the Order of Discharge all claims subject to discharge, including but not limited to claims in Class 3, shall be discharged.

## **ARTICLE VIII. COVENANTS OF DEBTORS**

- 8.1 Covenants of Debtors. Until payment in full of the amounts stated in Section 5.4 or until such other time as may be expressly specified below with respect to any individual covenant, whichever is earlier, Debtors covenant that they shall do the following:
- a. Maintain insurance with responsible and reputable insurance companies on such of their properties and against such risks as is customarily maintained by reputable businesses engaged in similar business and owning or operating similar properties in the same general areas in which the Debtors operate.
  - b. Pay and discharge all material claims and obligations, including, without limitation, claims and obligations for rent, labor, services, materials, and supplies; and,
  - c. All taxes, assessments and governmental charges or levies imposed upon Debtors or their income or profits, or upon any property belonging to Debtors, prior to the date on which the same shall be in default, which, if unpaid, might become a lien or charge upon the property of the Debtors;

provided that Debtors shall not be required to pay any tax, assessment, charge, levy, obligation, or claim, payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted. Nothing in this subparagraph alters the classification and treatment of claims within Class 3.

#### **ARTICLE IX. EVENTS OF DEFAULT; ACCELERATION**

- 9.1 Events of Default. The occurrence of any of the following shall constitute an event of default by the Debtors under the Plan:
- a. Failure on the part of the Debtors to pay fully when due any payment required to be under the Plan, and upon the expiration of a thirty-day grace period starting the day after the date that any such payment was due.
  - b. Failure on the part of Debtors to perform or observe: (i) any term of provisions set forth in Article VIII which fairly remains uncured for a period of fifteen days; or (ii) any other term or provision of the Plan other than those set forth in sub-paragraph (a) above, which failure remains uncured for a period of fifteen days.
- 9.2 Notice of Default and Acceleration. If an event of default by the Debtors occurs, and such default is not cured within thirty days after a notice of default is served upon the Debtors and their counsel in the manner prescribed in this Plan by the entity affected by the default, the entire remaining claim may be accelerated and become due and payable upon the service of an Acceleration Notice. If Debtors timely cure the default the Debtors' obligation shall not be accelerated.

#### **ARTICLE X. RETENTION OF JURISDICTION**

- 10.1 The Court shall retain jurisdiction of this Chapter 12 case pursuant to and for the purposes set forth in 11 U.S.C. § 1229 and as follows:
- a. To hear and determine any and all pending applications for the rejection, assumption, or assignment of executory contracts or unexpired leases or licenses and the allowances of claims resulting therefrom.
  - b. To determine and adjudicate adversary proceedings, contested matters, or other cases and controversies initiated by the Debtors, whether pending before or after the Confirmation Date.
  - c. To determine and adjudicate any and all pending contested matters.
  - d. To hear and determine any objections to claims filed both before and after confirmation, including objections to the classification of any claim or

interest and to allow or disallow any disputed claim in whole or in part.

- e. To determine the amount, priority, and validity and security of any claim asserted by a Secured Creditor.
- f. To hear and determine all applications for compensation of professional persons in reimbursement of expenses under §§ 330 and 331 of the Bankruptcy Code.
- g. To enter and implement such orders as may be appropriate in the event confirmation is for any reason stayed, reversed, revoked, modified, or vacated.
- h. To hear the Debtors' application, if any, to modify the Plan in accordance with §1223 or §1229 of the Bankruptcy Code. After confirmation, the Debtors may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or Confirmation Order, provided that prior notice of such proceedings is served in accordance with the Federal Rules of the Bankruptcy Procedure.
- i. To hear and determine disputes arising in connection with the Plan or its implementation.
- j. To hear any other matters not inconsistent with Chapter 12 or the Bankruptcy Code

#### **ARTICLE XI. MISCELLANEOUS**

- 11.1 Notices. All notices required or permitted to be made in accordance with the Plan shall be in writing and shall be delivered personally or by registered or certified mail:
- a. If to the Debtors at 1234 5th St., Anytown, IA 50000 with copies to Joseph A. Peiffer, Peiffer Law Office, P.C., P.O. Box 11425, Cedar Rapids, IA 52410-1425. No notice to Debtors shall be deemed sufficient or effective under this Plan unless notice is provided to Debtors' counsel.
  - b. If to a holder of an Allowed Claim or allowed interest at the address set forth in its proof of claim or proof of interest or, if none, at its address set forth in the Schedule prepared and filed with the Court pursuant to Rule 1007(b).
  - c. Notice shall be deemed given when mailed. Any entity may change the address at which it is to receive notices pursuant to the Plan by sending written notice pursuant to the provisions of this Section 13.1(a) to the person to be charged of the knowledge of such change.

- 11.2 Successors, Heirs, and Assigns. The provisions of this Plan shall be binding upon all entities and their successors, heirs, and assigns.
- 11.3 Exclusive Collection Action. The means of payment described in this Plan are, absent an event of default of this Plan, the exclusive means of post-petition payment of any and all claims, and no creditor shall take action to collect on any claim, whether by offset or otherwise, unless specifically authorized by this Plan. Any action taken on or between the Petition Date and Confirmation Date shall be reversed and refunded to the appropriate entity if such action is not specifically authorized by this Plan. This paragraph does not curtail the exercise of a valid right of setoff permitted under § 553.
- 11.4 Amendments and Waivers. Except as otherwise specifically set forth in the Plan, any term of the Plan may be amended and the observance of any term of the Plan may be waived provided that all holders of claims who are affected by said amendment or waiver have received notice of said proposed amendment or waiver and have consented in writing to said change. Also, the Plan may be amended as provided by law.
- 11.5 Expenditure Liquidation and Recovery. The Debtors shall not be subject to the administrative burdens of policing creditor compliance with the terms of this Plan, and, if it is determined by the Bankruptcy Court that any entity or party-in-interest has violated any provision or term of this Plan, the Debtors are entitled to and shall recover all costs, fees, and expenses reasonably related thereto. Debtors may submit any claim for costs, fees, and expenses allowed under this section pursuant to Fed. R. Bankr. P. 7054, except that any claim under Fed. R. Bankr. P. 7054(b)(2) may be made up to thirty days after the entry of judgment or order.
- 11.6 Each Provision Material. Each section, provision, and term of the Plan is material to the Plan, and unless otherwise provided by the Plan, any violation of such section, provision, or term of the Plan shall constitute a material breach and default of the Plan. Default by the Debtors and rights and remedies based thereunder are more specifically provided in Article IX.
- 11.7 Reservation of Rights. Neither the filing of this Plan, nor any statement or provisions contained herein, shall (a) be or be deemed to be an admission against interest, and (b) until the Effective Date, be or be deemed to be a waiver of any rights which any creditor might have against Debtors or any of their properties or any other creditor of Debtors, and until the Effective Date all such rights are specifically reserved. If the Effective Date does not occur, neither this Plan, nor any statement contained herein, may be used or relied upon in any manner in any suit, action, proceeding, or controversy within or outside Debtors' Chapter 12 reorganization case.

- 11.8 Governing Law. To the extent that the Plan is considered by federal law to operate as a contract between entities bound by the confirmed Plan, such contract shall be interpreted and construed in accordance with the laws of the State of Iowa, except that no presumption or construction of ambiguities against the drafter shall apply.
- 11.9 Effects of Confirmation. Upon entry of the Confirmation Order, all property of the Estate and that property treated under the Plan shall vest or re-vest in the Debtors, and the Debtors shall assume the management of all of the same.

## **ARTICLE XII. DEFINED TERMS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME**

- 12.1 Defined Terms. Unless specifically defined below, the words used in the Plan are considered to have, and should be understood to have, the meaning set forth in the Bankruptcy Code, 11 U.S.C. § 101, supplemented by their ordinary every day meaning. Specially defined terms are as follows:

Acceleration Notice means a notice served upon Debtors after the expiration of 45 days beyond a properly served notice of default upon the Debtors in the manner prescribed in this Plan.

Administrative Expense means the claims of the Debtors' professionals that are allowed by the Court pursuant to § 330, post-petition claims of unsecured creditors arising in the ordinary course of Debtors' business including ordinary living expenses, wages for employees, post-petition claims owed to a governmental entity, and any actual and necessary expenses of preserving the Debtors' estate and operating the Debtors' business.

Allowed Claim means a claim in which a proof of claim was properly filed with the Court within the applicable period of limitation, to which no objection to the allowance thereof has been interposed within the applicable period of limitation; or an order of this Court, where any such objection has been determined, by order or judgment, to no longer be subject to appeal or certiorari and where there is no further appeal or certiorari proceeding.

Allowed Secured Claim means an Allowed Claim secured by a lien, security interest or other charge against or interest in property of which Debtors have an interest, or that is subject to set-off under 11 U.S.C. §553, to such extent the value (determined in accordance with 11 U.S.C. §506(a)) of the interest of the holder of such Allowed Claim in the Debtors' interest in said property, or to the extent of that amount subject to setoff.

Bankruptcy Case means the Chapter 12 case of the Debtors pending before the United States Bankruptcy Court for the Northern District of Iowa at case number 12-34567.

Bankruptcy Code means Title 11 of the United States Code, as in effect or hereafter amended through the date the Confirmation Order becomes final and non-appealable.

Bankruptcy Court means the United States Bankruptcy Court for the Northern District of Iowa.

Class means any class into which claims or interests are classified pursuant to Article III of this Plan.

Confirmation Date means the date the Bankruptcy Court enters the Confirmation Order.

Confirmation Order means the Bankruptcy Court's Order confirming the Plan.

Court means the United States Bankruptcy Court for the Northern District of Iowa, and any other court of competent jurisdiction to hear appeals or certiorari proceedings therefrom.

Debtors means individuals John Q. Debtor and Jane Q. Debtor.

Disputed Claim means a claim that has not been allowed or disallowed by a final non-appealable order, and as to which either: (i) a proof of claim has been filed or deemed filed, and a party in interest has filed an objection; or (ii) no proof of claim has been filed, and the Debtor scheduled such claim as disputed, contingent, or unliquidated.

Effective Date means (a) if no stay of the Confirmation Order is in effect, the Effective Date shall be the Confirmation Date; or (b) if a stay of the Confirmation Order is in effect, the Effective Date shall be ninety (90) days after the date such stay is vacated or any appeal, rehearing, remand or petition for certiorari is resolved in a manner that does not reverse or materially modify the Confirmation Order.

Estate means the estate created in the Bankruptcy Case pursuant to the Bankruptcy Code.

Option Exercise Date means the first of the month following the date the Debtor's exercise of their option for extended repayment of Class 4 claims by mailing notice of the exercise of their option to the holder of Class 4 claims.

Order means any order, injunction, judgment, decree, ruling, writ, assessment, or arbitration award of a governmental authority.

Order of Discharge means the Order entered pursuant to 11 U.S.C. § 1228 upon the Debtors' eligibility for discharge under Section 7.5.

Petition Date means May 27, 2016.

Plan means this Chapter 12 Plan including any attached schedules and exhibits, and any and all amendments or modifications made thereto.

Rules mean the Federal Rules of Bankruptcy Procedure and any amendments thereto, including the local bankruptcy rules adopted by the Court.

Secured Creditor means any creditor who holds a lien, security interest, or other encumbrance which has been properly perfected as required by law with respect to property owned by the Debtor.

Trustee means the Chapter 12 Trustee appointed to this Bankruptcy Case pursuant to 11 U.S.C. § 1202.

- 12.2 Rules of Interpretation. For purposes of the Plan, unless otherwise provided herein: (i) whenever from the content it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural, and the masculine gender shall include the feminine and neuter and vice versa; (ii) unless otherwise provided in the Plan, any reference in the Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (iii) any reference in the Plan to an existing documents or exhibit filed or to be filed means such document or exhibit, as it may have been or may be amended, modified or supplemented pursuant to the Plan, the Confirmation Order or otherwise; (iv) any reference to an entity as a holder of a claim includes that entity's successors, assigns, and affiliates; (v) all references in the Plan to sections, articles, exhibits, and schedules are references to sections, articles, exhibits, and schedules of or to the Plan; (vi) the words "herein", "hereunder" and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (vii) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (viii) subject to the provisions of any contract, articles of incorporation, bylaws, similar constituent documents, instrument release or other agreement or document entered into or deliver in connection with the Plan, the rights and

obligations arising under the Plan will be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code; and (ix) the rules of construction set forth in § 102 of the Bankruptcy Code will apply to the extent not inconsistent with any other provision of this section.

- 12.3 Computation of Time. In computing any period of time prescribed or allowed by the Plan, the provisions of Federal Rule of Bankruptcy Procedure 9006(a) shall apply.

Dated this 25<sup>th</sup> day of April, 2017.

Respectfully submitted,

PEIFFER LAW OFFICE, P.C.

/s/

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FAX: (319) 200-2059  
E-mail: [joe@peifferlaw.com](mailto:joe@peifferlaw.com)  
ATTORNEY FOR DEBTORS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 25<sup>th</sup> day of April, 2017, a copy of the foregoing document was filed with the Clerk of Court for the United States Bankruptcy Court for the Northern District of Iowa using the CM/ECF system, and served electronically on those participants that receive service through the CM/ECF System. The undersigned further certifies the foregoing document was sent to persons or representatives via electronic mail or U.S. Mail postage pre-paid as set forth below.

Signed: /s/



# 2017 CENTRAL STATES BANKRUPTCY WORKSHOP

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF IOWA								
IN RE:  JOHN Q. DEBTOR and JANE Q. DEBTOR,  Debtor(s)				Chapter 12  Case No. 12-34567  CHAPTER 12 PLAN LIQUIDATION ANALYSIS				
Sch. A/B	Description	Value	Liq. Costs	Footnotes	Exemption	Footnotes	Secured Claim	Avail. For Admin. Prior & Unsec. Cl.
	<b>Real Estate</b>							
1.1	Homestead/Real Estate	\$ 116,420.00	\$ 8,149.40	(1)	\$ 116,420.00	(2)	\$ 103,427.34	\$ -
								\$ -
	<b>Personal Property</b>			(3)				\$ -
3.1	Car/Truck	\$ 4,616.00	\$ 461.60	(4)	\$ 4,616.00		\$ -	\$ -
3.2	Car/Truck	\$ 1,895.00	\$ 189.50		\$ 1,895.00			\$ -
4.1	Homemade Trailer	\$ 500.00	\$ 50.00		\$ 500.00			\$ -
6.1	Household Goods & Furnishings	\$ 7,500.00	\$ 750.00		\$ 7,500.00			\$ -
7.1	Electronics	\$ 495.00	\$ 49.50		\$ 495.00			\$ -
8.1	Collectibles of Value	\$ 70.00	\$ 7.00		\$ 70.00			\$ -
9.1	Instruments/Sport Equip.	\$ 25.00	\$ 2.50		\$ 25.00			\$ -
10.1	Firearms	\$ 1,500.00	\$ 150.00		\$ 1,500.00			\$ -
11.1	Clothes	\$ 1,000.00	\$ 100.00		\$ 1,000.00			\$ -
12.1	Wedding Rings	\$ 1,500.00	\$ 150.00		\$ 1,500.00			\$ -
12.2	Bowling Rings & Masonic Ring	\$ 90.00	\$ 9.00		\$ 90.00			\$ -
13.1	Non-farm Animals	\$ -	\$ -		\$ -			\$ -
14.1	Other Personal/House	\$ -	\$ -		\$ -			\$ -
16.1	Cash	\$ 192.00	\$ -		\$ 192.00			\$ -
17.1	Checking	\$ 2,714.69	\$ -		\$ 2,714.69			\$ -
17.2	Savings	\$ 282.24	\$ -		\$ 282.24			\$ -
17.3	Atty. Trust Account	\$ 17,302.50	\$ -	(5)	\$ 1,298.00		\$ 13,323.73	\$ 2,680.77
18.1	Bonds/Public Stocks	\$ -	\$ -		\$ -			\$ -
19.1	Non-Public Stocks	\$ -	\$ -		\$ -			\$ -
20.1	Negotiable Instruments	\$ -	\$ -		\$ -			\$ -
21.1	IRA/Keogh/401k/Pension	\$ 5,795.11	\$ -		\$ 5,795.11			\$ -
21.2	IRA/Keogh/401k/Pension	\$ 33,092.33	\$ -		\$ 33,092.33			\$ -
22.1	Security Deposits	\$ -	\$ -		\$ -		\$ -	\$ -
23.1	Annuities	\$ -	\$ -		\$ -			\$ -
24.1	Education IRA/ABLE	\$ -	\$ -		\$ -			\$ -
25.1	Trusts/Future Interests	\$ -	\$ -		\$ -			\$ -
26.1	Patents/Copyrights/IP	\$ -	\$ -		\$ -			\$ -
27.1	Permits/Licenses	\$ -	\$ -		\$ -			\$ -
28.1	General Intangibles	\$ -	\$ -		\$ -			\$ -
28.1	Tax Refunds Owed	\$ -	\$ -		\$ -			\$ -
29.1	Alimony, Property Settlements	\$ -	\$ -		\$ -			\$ -

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30.1	Trucking Wages	\$ 385.00	\$ -	\$ 385.00		\$ -
31.1	Health/Life Insurance, HSAs	\$ 2,000.29	\$ -	\$ 2,000.29	\$ -	\$ -
31.2	Health/Life Insurance, HSAs	\$ 5,763.91	\$ -	\$ 5,763.91	\$ -	\$ -
31.3	Auto Insurance	\$ -	\$ -	\$ -		\$ -
31.4	Homeowner's Insurance	\$ -	\$ -	\$ -		\$ -
32.1	Property Due from Death	\$ -	\$ -	\$ -		\$ -
33.1	Claims Against 3rd Parties - Syngenta	Unknown	Unknown	\$ -		\$ -
34.1	Other Claims	\$ -	\$ -	\$ -		\$ -
35.1	Coop 1 Dividends (Yearly)	\$ 400.00	\$ -	\$ 400.00		\$ -
35.2	Coop 2 Dividends (Yearly)	\$ 40.00	\$ -	\$ 40.00		\$ -
47.1	Farm Animals	\$ -	\$ -	\$ -		\$ -
48.1	Crops	\$ -	\$ -	\$ -		\$ -
49.1	Hayrack	\$ 100.00	\$ -	\$ 100.00		\$ -
49.2	14' Disc	\$ 200.00	\$ -	\$ 200.00		\$ -
49.3	Tractor	\$ 500.00	\$ -	\$ 500.00		\$ -
50.1	Farm Supplies, Chemicals & Feed	\$ -	\$ -	\$ -		\$ -
51.1	Other Farm Property	\$ -	\$ -	\$ -		\$ -
53.1	Other Property, Season Tickets, Country Club	\$ -	\$ -	\$ -		\$ -
	<b>Totals</b>	\$ 204,379.07	\$ 10,068.50	\$ 188,374.57	\$ 116,751.07	\$ 2,680.77
	<b>Amount Avail. for Admin. Priority and Unsec. Claims</b>			\$ 2,680.77		
	<b>Ch. 7 Trustee Fees</b>					
	\$0 to \$5,000 -- 25%			\$ 670.19		
	>\$5,000 <\$50,000 -- 10%			\$ -		
	>\$50,000 < \$1,000,000 -- 5%			\$ -		
	>\$1,000,000 -- 3%			\$ -		
	<b>Total Ch. 7 Trustee Fees</b>			\$ 670.19		
	<b>Net Available for Priority &amp; Unsecured Creditors</b>			\$ 2,010.58		
	<b>Ch. 7 Priority Claims</b>					
	2015 Federal Tax			\$ 207,818.00	(6)	
	2015 State Tax			\$ 55,791.00	(6)	
	Other Tax			\$ -	(6)	
	Other Tax			\$ -	(6)	
	<b>Total Ch. 7 Prior. Claims</b>			\$ 263,609.00		
	<b>Antic. Pmt. to Unsec. Cred. in Ch. 7 Liq.</b>			\$ (261,598.42)	(7)	
	<b>Net Dividend to Unsecured Claims in Ch 7</b>			\$ -		
	<b>Cash Available Under the Chapter 12 Plan</b>					
	<b>Payments</b>			\$ 3,600.00		
	<b>Ch. 12 Trustee's Fees</b>			\$ (327.27)		
	<b>Net for Priority &amp; §1222(a)(2)(A) Creditors Under Plan</b>			\$ 3,272.73		
	<b>Net Dividend to Unsec. &amp; §1222(a)(2)(A) Claims Plan</b>			1.10%	(8)	

## 2017 CENTRAL STATES BANKRUPTCY WORKSHOP

Notes:								
1	Liquidation costs for real property are assumed to be 7 %.							
2	Collateral of AnyBank via mortgage.							
3	If no assets are scheduled in a section of Sch. B, it is omitted from the liquidation analysis to eliminate blank space on the worksheet.							
4	Liquidation costs for personal property are assumed to be 10%.							
5	Trust Account Balance has been updated to reflect payment to Law Firm 1, P.C. and balance due to Law Firm 2, P.C. is shown as a secured claim. This claim will increase through confirmation.							
6	The 2015 Federal and State priority tax claims for purposes of a Chapter 7 liquidation analysis represent total anticipated tax claims and will differ from the priority tax owed in a Chapter 12 reorganization.							
7	The Percentage Dividend under Chapter 7 assumes that all priority claims are allowed in full. In this case if all priority claims were allowed in Chapter 7 there would not be any distribution to unsecured creditors.							
8	The Percentage Dividend under Chapter 12 assumes that the priority claims of the governmental bodies are treated as unsecured claims pursuant to §1222(a)(2)(A) along with other timely filed and allowed claims. The number used for the denominator in calculating the total unsecured claims and §1222(a)(2)(A) claims currently on file is \$298,491.65.. To the extent that the total of the claims receiving treatment as general unsecured claims changes, the percentage dividend will also change accordingly.							

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UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF IOWA					
IN RE:		Chapter 12			
JOHN Q. DEBTOR and JANE Q. DEBTOR,		Case No. 12-34567			
Debtor(s)		CHAPTER 12 PLAN FEASIBILITY ANALYSIS			
<b>Farm Income</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Total</b>	<b>FN</b>
Corn	5,460.00	5,701.80	5,928.00	17,089.80	1
Soy	-	-		-	2
Alfalfa	N/A	N/A		-	
Feeder Cattle	N/A	N/A		-	
Fat Cattle	N/A	N/A		-	
Feeder Pigs	N/A	N/A		-	
Lean Hogs	N/A	N/A		-	
Coop Dividend	440.00	440.00	440.00	1,320.00	3
Custom Farm Income	-	-		-	
	5,900.00	6,141.80	6,368.00	18,409.80	
<b>Farm Expenses</b>					
Rent	-	-		-	4
Real Estate Taxes	2,758.00	2,758.00	2,758.00	8,274.00	4
Crop Insurance	143.00	143.00	143.00	429.00	5
Rain/Hail/Other Ins.	-	-		-	
Fuel	162.50	182.81	182.81	528.13	
Seed	938.40	938.40	938.40	2,815.20	
Fertilizer	-	-		-	
Chemicals	1,144.00	1,144.00	1,144.00	3,432.00	
Grain Drying	218.40	218.40	218.40	655.20	
Equipment Rental	-	-		-	
Repairs				-	6
Custom Hire	676.00	676.00	676.00	2,028.00	
Hired Labor	-	-		-	
Electric	-	-		-	
Heat/LP	-	-		-	
Veterinary	-	-		-	
Feed	-	-		-	
	6,040.30	6,060.61	6,060.61	18,161.53	
<b>Off Farm Income</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Total</b>	
Net Wages	22,000.00	22,000.00	22,000.00	66,000.00	7
Social Security	22,572.00	22,572.00	22,572.00	67,716.00	
Rental Income	-	-		-	
Business Income	-	-		-	
<b>Total</b>	44,572.00	44,572.00	44,572.00	133,716.00	

**2017 CENTRAL STATES BANKRUPTCY WORKSHOP**

<b>Off Farm Expenses</b>					
Income Tax/SS/Medicare	2,096.00	2,096.00	2,096.00	6,288.00	8
Living Expenses	31,929.60	31,929.60	31,929.60	95,788.80	
<b>Total</b>	<b>34,025.60</b>	<b>34,025.60</b>	<b>34,025.60</b>	<b>102,076.80</b>	
<b>Feasibility</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Total</b>	
Total Income	50,472.00	50,713.80	50,940.00	152,125.80	
Total Expenses	40,065.90	40,086.21	40,086.21	120,238.33	
Potential Available for Plan Distribution	10,406.10	10,627.59	10,853.79	31,887.48	
Class 1 Direct Payment	Unknown	Unknown	Unknown	Unknown	
Class 2 Direct Payment	Unknown	Unknown	Unknown	Unknown	9
Class 4 Direct Payment	8,258.38!	8,258.38	8,258.38!	24,775.14	
<b>Estimated Funds Showing Feasability of Plan Payments to Chapter 12 Trustee</b>	<b>2,174.72</b>	<b>2,369.21</b>	<b>2,595.41</b>	<b>7,112.33</b>	
<b>Footnotes:</b>					
(1) Corn prices computed and estimated based upon available cash delivery prices advertised by local River Valley Coop and futures settlement prices on the CME Group commodity exchange minus basis adjustments.					
(2) Bean prices computed and estimated based upon available cash delivery prices advertised by local River Valley Coop and futures settlement prices on the CME Group commodity exchange minus basis adjustments.					
(3) Coop dividends assumed to be constant with additional assumption that they may be subject to adjustment or offset as is customary with ordinary coop dividends.					
(4) Assumed constant or subject to deminis adjustments.					
(5) Insurance cost anticipated and attributable to cost to insure corn crop.					
(6) There are no repairs shown as all farming will be handled as custom farming with the custom operator being responsible for repairs.					
(7) Assumed constant, and estimated from net wages (net of wage withholdings) on trucking paychecks received to date in 2017.					
(8) Income taxes shown for Year 2 are based upon the actual income taxes for Debtors as shown on 2016 federal and state income tax returns.					
(9) Deductions already made for ongoing expenses in above line items; estimates of fees and other expenses and claims within Class 2 remain beyond reasonable liquidation as of 4/25/2017 but will hopefully be more established as of the					

# AMERICAN BANKRUPTCY INSTITUTE

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF IOWA											
IN RE:						Chapter 12					
JOHN Q. DEBTOR and JANE Q. DEBTOR,						Case No. 12-34567					
Debtor(s)						CHAPTER 12 FARM YIELD ANALYSIS					

Year 1											
Avg. Corn Seed Cost	\$ 72.18	Drying Cost/point/bu corn		\$ 0.14	Liquid N/ac	\$ 36.00	Chemicals/ac Corn		\$ 88.00		
Avg. Bean Seed Cost	\$ 53.31	Anhydrous Unit N/ac		\$ -	Pellet N/ac	\$ -	Chemicals/ac Bean		\$ 82.07		
Field Description	Rent/ac	Tillable	Rent Total	Historical Yield Corn	Historical Yield Soy	Corn or Beans	Projected Yield (Bu)	Seed Cost	Fertilizer	Chemicals	Drying
Homestead	\$ -	13	\$ -	120	45	C	1560	\$ 938.40	\$ -	\$ 1,144.00	\$ 218.40
Parcel 2	Flat			128	45	C	0	\$ -	\$ -	\$ -	\$ -
Totals		13	\$ -				1560	\$ 938.40	\$ -	\$ 1,144.00	\$ 218.40
				Total Bu Corn			1560				
				Total Bu Bean			0				
				\$/Bu Corn	\$ 3.50	Total Revenue Corn	\$ 5,460.00	(12/2017 CME close 4/21/2017 - River Valley Adj. \$0.32/bu)			
				\$/Bu Bean	\$ 9.60	Total Revenue Bean	\$ -	(Sept. 2017 CME futures close 4/21/2017)			

Year 2											
Avg. Corn Seed Cost	\$ 72.18	Drying Cost/point/bu corn		\$ 0.14	Liquid N/ac	\$ 36.00	Chemicals/ac Corn		\$ 88.00		
Avg. Bean Seed Cost	\$ 53.31	Anhydrous Unit N/ac		\$ -	Pellet N/ac	\$ -	Chemicals/ac Bean		\$ 82.07		
Field Description	Rent/ac	Tillable	Rent Total	Historical Yield Corn	Historical Yield Soy	Corn or Beans	Projected Yield (Bu)	Seed Cost	Fertilizer	Chemicals	Drying
Homestead	\$ -	13	\$ -	120	45	C	1560	\$ 938.40	\$ -	\$ 1,144.00	\$ 218.40
Parcel 2	Flat			128	45	C	0	\$ -	\$ -	\$ -	\$ -
Totals		13	\$ -				1560	\$ 938.40	\$ -	\$ 1,144.00	\$ 218.40
				Total Bu Corn			1560				
				Total Bu Bean			0				
				\$/Bu Corn	\$ 3.66	Total Revenue Corn	\$ 5,701.80	(12/2018 CME close 4/21/2017 - River Valley Adj. \$0.32/bu)			
				\$/Bu Bean	\$ 9.63	Total Revenue Bean	\$ -	(Sept. 2018 CME prior close 4/21/2017)			

Year 3											
Avg. Corn Seed Cost	\$ 72.18	Drying Cost/point/bu corn		\$ 0.14	Liquid N/ac	\$ 36.00	Chemicals/ac Corn		\$ 88.00		
Avg. Bean Seed Cost	\$ 53.31	Anhydrous Unit N/ac		\$ -	Pellet N/ac	\$ -	Chemicals/ac Bean		\$ 82.07		
Field Description	Rent/ac	Tillable	Rent Total	Historical Yield Corn	Historical Yield Soy	Corn or Beans	Projected Yield (Bu)	Seed Cost	Fertilizer	Chemicals	Drying
Homestead		13	\$ -	120	45	C	1560	\$ 938.40	\$ -	\$ 1,144.00	\$ 218.40
Parcel 2			\$ -	128	45	C	0	\$ -	\$ -	\$ -	\$ -
Totals		13	0				1560	\$ 938.40	\$ -	\$ 1,144.00	\$ 218.40
				Total Bu Corn			1560				
				Total Bu Bean			0				
				\$/Bu Corn	\$ 3.80	Total Revenue Corn	\$ 5,928.00	(12/2019 CME close 4/24/2017 - River Valley Adj. \$0.32/bu)			
				\$/Bu Bean	\$ 9.63	Total Revenue Bean	\$ -	(Sept. 2018 CME prior close 4/21/2017)			

<b>Department of the Treasury — Internal Revenue Service</b>		(99)	<b>OMB No. 1545-0047</b>	IRS Use Only — Do not write or staple in this space.
<b>Form 1040 U.S. Individual Income Tax Return</b>		<b>2015</b>		
For the year Jan. 1 - Dec. 31, 2015, or other tax year beginning , 2015, ending , 20			<b>See separate instructions.</b>	
Your first name and initial <b>JOHN Q. DEBTOR -- PRO FORMA</b>			Your social security number XXXX-XX XXXX	
Last name <b>JANE Q. DEBTOR</b>			Spouse's social security number XXXX-XX XXXX	
Home address (number and street). If you have a P.O. box, see instructions. <b>1234 5TH STREET</b>			Apt. no.	▲ <b>Make sure the SSN(s) above and on line 6c are correct.</b>
City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions). <b>ANYTOWN, IA, 50000</b>				
Foreign country name		Foreign province/state/country	Foreign postal code	
<b>Filing Status</b> 1 <input type="checkbox"/> Single                      4 <input type="checkbox"/> Head of household (with qualifying person). (See instructions.) if the qualifying person is a child but not your dependent, enter this child's name here . ▶ 2 <input checked="" type="checkbox"/> Married filing jointly (even if only one had income) 3 <input type="checkbox"/> Married filing separately. Enter spouse's SSN above & full name here . ▶                      5 <input type="checkbox"/> Qualifying widow(er) with dependent child Check only one box.				
<b>Exemptions</b> 6a <input checked="" type="checkbox"/> Yourself. If someone can claim you as a dependent, do not check box 6a.                      Boxes checked on 6a and 6b. No. of children on 6c who: b <input checked="" type="checkbox"/> Spouse ..... c Dependents: (1) First name                      Last name                      (2) Dependent's social security number                      (3) Dependent's relationship to you                      (4) <input checked="" type="checkbox"/> Child under age 19, or disabled adult child (see instructions) If more than four dependents, see instructions and check here ... <input type="checkbox"/> d Total number of exemptions claimed .....				
<b>Income</b> 7 Wages, salaries, tips, etc. Attach Form(s) W-2.                      7 8a Taxable interest. Attach Schedule D if required.                      8a 36. b Tax-exempt interest. Do not include on line 8a.                      8b 9a Ordinary dividends. Attach Schedule B if required.                      9a b Qualified dividends                      9b 10 Taxable refunds, credits, or offsets of state and local income taxes                      10 11 Alimony received                      11 12 Business income or (loss). Attach Schedule C or C-EZ.                      12 13 Capital gain or (loss). Attach Schedule D if required. If not required, check here . <input type="checkbox"/> 13 14 Other gains or (losses). Attach Form 4797.                      14 5,000. 15a IRA distributions.                      15a                      b Taxable amount.                      15b 16a Pensions and annuities.                      16a                      b Taxable amount.                      16b 83,053. 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E.                      17 18 Farm income or (loss). Attach Schedule F.                      18 -99,482. 19 Unemployment compensation                      19 20a Social security benefits.                      20a 31,579.                      b Taxable amount.                      20b 0. 21 Other income. List type and amount.                      21 22 Combine the amounts in the far right column for lines 7 through 21. This is your total income.                      22 -11,393.				
<b>Adjusted Gross Income</b> 23 Educator expenses                      23 24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ.                      24 25 Health savings account deduction. Attach Form 8889.                      25 26 Moving expenses. Attach Form 3903.                      26 27 Deductible part of self-employment tax. Attach Schedule SE.                      27 28 Self-employed SEP, SIMPLE, and qualified plans                      28 29 Self-employed health insurance deduction.                      29 30 Penalty on early withdrawal of savings                      30 31a Alimony paid. b Recipient's SSN                      31a 32 IRA deduction                      32 33 Student loan interest deduction.                      33 34 Tuition and fees. Attach Form 8917.                      34 35 Domestic production activities deduction. Attach Form 8503.                      35 36 Add lines 23 through 35.                      36 0. 37 Subtract line 36 from line 22. This is your adjusted gross income.                      37 -11,393.				

BAA For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions. FD-A0112L 12/30/15 Form 1040 (2015)

# AMERICAN BANKRUPTCY INSTITUTE

JOHN Q. DEBTOR & JANE Q. DEBTOR -- PRO FORMA

Form 1040 (2015)

XXX-XX-XXXX Page 2

## Tax and Credits

### Standard Deduction for -

• People who check any box on line 39a or 39b or who can be claimed as a dependent, see instructions.  
• All others:  
Single or Married filing separately, \$6,300  
Married filing jointly or Qualifying widow(er), \$12,600  
Head of household, \$9,250

38	Amount from line 37 (adjusted gross income)	38	-11,393.
39a	Check <input checked="" type="checkbox"/> You were born before January 2, 1951, <input type="checkbox"/> Blind. <input type="checkbox"/> Spouse was born before January 2, 1951, <input type="checkbox"/> Blind. Total boxes checked <b>2</b> <input type="checkbox"/> <b>39a</b>		
b	If your spouse itemizes on a separate return or you were a dual-status alien, check here <input type="checkbox"/> <b>39b</b>		
40	Itemized deductions (from Schedule A) or your standard deduction (see left margin)	40	15,100
41	Subtract line 40 from line 38	41	-26,493
42	Exemptions. If line 38 is \$14,950 or less, multiply \$4,000 by the number on line 6c. Otherwise, see instrs.	42	8,000
43	Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter 0.	43	0
44	Tax (see instructions). Check if any from: a <input type="checkbox"/> Form(s) 8814 c <input type="checkbox"/> b <input type="checkbox"/> Form 4972	44	0
45	Alternative minimum tax (see instructions). Attach Form 6251.	45	0
46	Excess advance premium tax credit repayment. Attach Form 8962.	46	
47	Add lines 44, 45, and 46	47	0
48	Foreign tax credit. Attach Form 1116 if required.	48	
49	Credit for child and dependent care expenses. Attach Form 2441.	49	
50	Education credits from Form 8863, line 19.	50	
51	Retirement savings contributions credit. Attach Form 8880.	51	
52	Child tax credit. Attach Schedule 8812, if required.	52	
53	Residential energy credits. Attach Form 5695.	53	
54	Other credits from Form: a <input type="checkbox"/> 3800 b <input type="checkbox"/> 8801 c <input type="checkbox"/>	54	
55	Add lines 48 through 54. These are your total credits	55	
56	Subtract line 55 from line 47. If line 55 is more than line 47, enter -0-	56	0

## Other Taxes

57	Self-employment tax. Attach Schedule SE.	57	
58	Unreported social security and Medicare tax from Form: a <input type="checkbox"/> 4137 b <input type="checkbox"/> 8919.	58	
59	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required.	59	
60a	Household employment taxes from Schedule H.	60a	
b	First-time homebuyer credit repayment. Attach Form 5405 if required.	60b	
61	Health care: individual responsibility (see instructions). Full-year coverage <input type="checkbox"/>	61	
62	Taxes from: a <input type="checkbox"/> Form 8999 b <input type="checkbox"/> Form 8960 c <input type="checkbox"/> Instrs; enter code(s)	62	
63	Add lines 56 through 62. This is your total tax.	63	0

## Payments

If you have a qualifying child, attach Schedule EIC.

64	Federal income tax withheld from Forms W-2 and 1099	64	16,233.
65	2015 estimated tax payments and amount applied from 2014 return	65	
66a	Earned income credit (EIC)	66a	
b	Nonrefundable combat pay election. <input type="checkbox"/> <b>66b</b>		
67	Additional child tax credit. Attach Schedule 8812.	67	
68	American opportunity credit from Form 8863, line 8.	68	
69	Net premium tax credit. Attach Form 8962.	69	
70	Amount paid with request for extension to file	70	
71	Excess social security and tier 1 RRTA tax withheld	71	
72	Credit for federal tax on fuels. Attach Form 4136.	72	371.
73	Credits from Form: a <input type="checkbox"/> 2439 b <input type="checkbox"/> Reserved c <input type="checkbox"/> 8885 d <input type="checkbox"/>	73	
74	Add lines 64, 65, 66a, and 67 through 73. These are your total payments	74	16,604.

## Refund

Direct deposit? See instructions.

75	If line 74 is more than line 63, subtract line 63 from line 74. This is the amount you overpaid	75	16,604.
76a	Amount of line 75 you want refunded to you. If Form 8888 is attached, check here <input type="checkbox"/>	76a	16,604.
b	Routing number: XXXXXXXXXXXX c Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings		
d	Account number: XXXXXXXXXXXXXXXXXXXXXXXX		
77	Amount of line 75 you want applied to your 2015 estimated tax	77	
78	Amount you owe. Subtract line 74 from line 63. For details on how to pay, see instructions.	78	
79	Estimated tax penalty (see instructions).	79	

## Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see instructions)? ☒ Yes. Complete below. ☐ No

Designee's name	Phone no.	Personal identification number (PIN)
-----------------	-----------	--------------------------------------

## Sign Here

Joint return? See instructions. Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature	Date	Your occupation	Daytime phone number
Spouse's signature. If a joint return, both must sign.	Date	Spouse's occupation	If the IRS sent you an Identity Protection PIN, enter it here (see inst.)

## Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
Firm's name				
Firm's address				Firm's EIN
				Phone no.

FDIA0112L 12/30/15

Form 1040 (2015)



# 2017 CENTRAL STATES BANKRUPTCY WORKSHOP

## 2015 IA 1040 Iowa Individual Income Tax Form

For fiscal year beginning 2015 and ending 2015

### Step 1: Fill in all spaces. You must fill in your Social Security Number (SSN).

Your last name: DEBTOR, JOHN Q. Your first name/middle initial: -- PRO FORMA

Spouse's last name: DEBTOR, JANE Q. Spouse's first name/middle initial: --

Current mailing address (number and street, apartment, lot, or suite number) or PO Box: 1234 5TH STREET

City, state, zip: ANYTOWN, IA, 50000

Spouse SSN: XXXX-XX-XXXX Your SSN: XXXX-XX-XXXX

Email Address: \_\_\_\_\_

### Step 2 Filing Status: Mark one box only.

- 1 ☐ Single: Were you claimed as a dependent on another person's Iowa return? Yes ☐ No ☒
- 2 ☒ Married filing a joint return. (Two-income families may benefit by using status 3 or 4.)
- 3 ☐ Married filing separately on this combined return. Spouse use column B.
- 4 ☐ Married filing separate returns. Spouse's name: \_\_\_\_\_ SSN: \_\_\_\_\_ Net income: \$ \_\_\_\_\_
- 5 ☐ Head of household with qualifying person. If qualifying person is not claimed as a dependent on this return, enter the person's name and SSN below.
- 6 ☐ Qualifying widow(er) with dependent child. Name: \_\_\_\_\_ SSN: \_\_\_\_\_

Check this box if you or your spouse were 65 or older as of 12/31/15 ☒   
 Residence on 12/31/15: County No. \_\_\_\_\_ School District No. \_\_\_\_\_   
 Dependent children for whom an exemption is claimed in Step 1: \_\_\_\_\_   
 How many have health care coverage? (not Medicaid or Medicare) \_\_\_\_\_   
 How many do not have health care coverage? \_\_\_\_\_

### Step 3 Exemptions

	B. Spouse (Filing Status 3 ONLY)	A. You or Joint
a Personal Credit: Col. A: Enter 1 (enter 2 if filing status 2 or 5); Col. B: Enter 1 if filing status 3 or 4.	<input checked="" type="checkbox"/> x \$ 40 = \$ _____	<input checked="" type="checkbox"/> 2 x \$ 40 = \$ 80.
b Enter 1 for each taxpayer who is 65 or older and/or 1 for each taxpayer who is blind.	<input checked="" type="checkbox"/> x \$ 20 = \$ _____	<input checked="" type="checkbox"/> 2 x \$ 20 = \$ 40.
c Dependents: Enter 1 for each dependent.	<input checked="" type="checkbox"/> x \$ 40 = \$ _____	<input checked="" type="checkbox"/> x \$ 40 = \$ _____
d Enter first names of dependents here	Total \$ _____	Total \$ 120.

### Step 4 Reportable Social Security Benefits as calculated on line 11 of Iowa social security worksheet B Spouse/Status 3

	B Spouse/Status 3	A You or Joint	B Spouse/Status 3	A You or Joint
Step 5 Gross Income				
1 Wages, salaries, tips, etc.	1			
2 Taxable interest income, if more than \$1,500, complete Schedule B	2			36.
3 Ordinary dividend income, if more than \$1,500, complete Schedule B	3			
4 Alimony received	4			
5 Business income (loss) from federal Schedule C or C-EZ	5			
6 Capital gain (loss), federal Sch. D, if required for federal purposes	6			
7 Other gains (losses) from federal form 4797	7			5,000.
8 Taxable IRA distributions	8			
9 Taxable pensions and annuities	9			83,053.
10 Rents, royalties, partnerships, estates, etc.	10			
11 Farm income (loss) from federal Schedule F	11			-99,482.
12 Unemployment compensation. See instr.	12			
13 Gambling winnings	13			
14 Other income, bonus depreciation, and section 179 adjustment	14			
15 Gross Income. Add lines 1-14	15			-11,393.

NOTE: Use only blue or black ink, no pencils or red ink.

Step 5 Adjustments to Income				
16 Payments to an IRA, Keogh, or SEP	16			
17 Deductible part of self-employment tax	17			
18 Health insurance deduction	18			2,905.
19 Penalty on early withdrawal of savings	19			
20 Alimony paid	20			
21 Pension/retirement income exclusion	21			12,000.
22 Moving expense deduction from federal form 3903	22			
23 Iowa capital gain deduction; certain sales only, include IA 100	23			
24 Other adjustments	24			
25 Total adjustments. Add lines 16-24	25			14,905.
26 Net Income. Subtract line 25 from line 15	26			-26,298.

Step 7 Federal Tax Addition and Deduction				
27 Federal income tax refund/overpayment received in 2015	27			
28 Self-employment/other federal taxes	28			
29 Addition for federal taxes. Add lines 27 and 28	29			
30 Total. Add lines 26 and 29	30			-26,298.
31 Federal tax withheld	31			16,233.
32 Federal estimated tax payments made in 2015	32			
33 Additional federal tax paid in 2015 for 2014 and prior years	33			
34 Deduction for federal taxes. Add lines 31, 32, and 33	34			16,233.
35 Balance. Subtract line 34 from line 30. Enter here and on line 36, page 2.	35			-42,531.



IA1040ZL 11/06/15

41-001 (05/02/15) INT

# AMERICAN BANKRUPTCY INSTITUTE

2015 IA 1040, page 2

JOHN Q DEBTOR & JANE Q. DEBTOR -- PRO FORMA

XXX-XX-XXXX

	B Spouse/Status 3    A You or Joint	B Spouse/Status 3    A You or Joint	
Step 8	36 BALANCE. From side 1, line 35.....	36	-42,531.
Taxable Income	37 Deduction. Check one box. <input checked="" type="checkbox"/> Itemized. (Include IA Schedule A) <input type="checkbox"/> Standard <input checked="" type="checkbox"/> .....	37	
	38 TAXABLE INCOME. SUBTRACT line 37 from line 36.....	38	-42,531.
Step 9	39 Tax from tables or alternate tax.....	39	0. Alternate Tax
Tax	40 Iowa lump-sum tax. 25% of federal tax from form 4972.....	40	
Credits	41 Iowa alternative minimum tax. Include IA 6051.....	41	
and	42 Total tax. ADD lines 39, 40, and 41.....	42	
Check-off	43 Total exemption credit amount(s) from Step 1, side 1.....	43	120.
Contributions	44 Tuition and textbook credit for dependents K-12.....	44	
	45 Volunteer firefighter/EMS/reserve peace officer credit.....	45	
	46 Total credits. ADD lines 43, 44, and 45.....	46	120.
	47 BALANCE. SUBTRACT line 46 from line 42. If less than zero, enter zero.....	47	
	48 Credit for nonresident or part-year resident. Include IA 126 and federal return.....	48	
	49 BALANCE. SUBTRACT line 48 from line 47. If less than zero, enter zero.....	49	0.
	50 Out-of-state tax credit. Include IA 130.....	50	
	51 BALANCE. SUBTRACT line 50 from line 49. If less than zero, enter zero.....	51	
	52 Other refundable Iowa credits. Include IA 148 Tax Credits Schedule.....	52	
	53 BALANCE. SUBTRACT line 52 from line 51. If less than zero, enter zero.....	53	
	54 School district surtax or EMS surtax. Take percentage from table; multiply by line 53.....	54	
	55 Total state and local tax. ADD lines 53 and 54.....	55	
	56 TOTAL state and local tax before contributions. Combine columns A and B on line 55 and enter here.....	56	
	57 Contributions will reduce your refund or add to the amount you owe. Amounts must be in whole dollars. Fish/Wildlife 57a <input type="checkbox"/> State Fair 57b <input type="checkbox"/> Firefighters/Veterans 57c <input type="checkbox"/> Child abuse Prevention 57d <input type="checkbox"/> Enter here.....	57	
	58 TOTAL STATE AND LOCAL TAX, AND CONTRIBUTIONS. Add line 56 and line 57 and enter here.....	58	
Step 10	59 Iowa Fuel tax credit. Include IA 4136.....	59	446.
Credits	60 Check One: <input type="checkbox"/> Child and dependent care credit <input type="checkbox"/> OR <input type="checkbox"/> Early childhood development credit.....	60	
	61 Iowa earned income tax credit. 15.0% (.15) of federal credit.....	61	
	62 Other refundable credits. Include IA 148 Tax Credits Schedule.....	62	
	63 Total refundable Iowa credits. ADD lines 59-62.....	63	446.
	64 RESERVED FOR FUTURE USE.....	64	0
	65 Taxpayers trust fund tax credit. The credit for 2015 is \$0.....	65	0
	66 Iowa income tax withheld.....	66	4,058.
	67 Estimated and voucher payments made for tax year 2015.....	67	
	68 TOTAL. ADD lines 63, 65, 66, and 67.....	68	4,504.
	69 TOTAL CREDITS. ADD columns A and B on line 68 and enter here.....	69	4,504.
Step 11	70 If line 69 is more than line 58, Subtract line 58 from line 69. This is the amount you overpaid.....	70	4,504.
Refund or Amount Due	71 Amount of line 70 to be REFUNDED. For a faster refund file electronically. Go to <a href="https://tax.iowa.gov">https://tax.iowa.gov</a> for details.....	71	4,504.
	72 Amount of line 70 to be applied to your 2016 estimated tax.....	72	
	73 If line 69 is less than line 58, Subtract line 69 from line 58. This is the AMOUNT OF TAX YOU OWE.....	73	
	74 Penalty for underpayment of est tax fm IA 2210, IA 2210S, or IA 2210P. Check if annualized income method is used. <input type="checkbox"/> .....	74	
	75 Penalty and interest..... <input checked="" type="checkbox"/> 75a Penalty <input type="checkbox"/> 75b Interest ADD Enter total, 75.....	75	
	76 TOTAL AMOUNT DUE. ADD lines 73, 74, and 75. Enter here.....	76	

Step 12	Political Checkoff -- This checkoff does not increase the amount of tax you owe or decrease your refund. <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Yourself		\$1.50 to Democratic Party <input type="checkbox"/> \$1.50 to Democratic Party <input type="checkbox"/> \$1.50 to Republican Party <input type="checkbox"/> \$1.50 to Republican Party <input type="checkbox"/> \$1.50 to Campaign Fund <input type="checkbox"/> \$1.50 to Campaign Fund <input type="checkbox"/>
IAIA212L 10/08/15			
Step 13	I (We), the undersigned, declare under penalty of perjury that I (we) have examined this return, including all accompanying schedules and statements, and, to the best of my (our) knowledge and belief, it is a true, correct, and complete return. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.		
SIGN HERE	<div style="display: flex; justify-content: space-between;"> <div>             Your Signature _____ Date _____              Spouse's Signature _____ Date _____           </div> <div> <input type="checkbox"/> Check if Deceased    Date of Death _____  <input type="checkbox"/> Preparer's Signature _____ Date _____           </div> </div>		
SIGN HERE	<div style="display: flex; justify-content: space-between;"> <div>             Spouse's Signature _____ Date _____              Spouse's Signature _____ Date _____           </div> <div> <input type="checkbox"/> Check if Deceased    Date of Death _____  <input type="checkbox"/> Firm's FEIN _____           </div> </div>		



Daytime Telephone Number \_\_\_\_\_ Daytime Telephone Number \_\_\_\_\_

This return is due May 2, 2016. Please sign, enclose W-2s, and verify SSNs.  
 You can pay online at <https://tax.iowa.gov>  
 Make check payable to Treasurer, State of Iowa.  
 MAILING ADDRESS: Iowa Income Tax Document Processing,  
 PO BOX 9187, Des Moines IA 50306-9187. 41-001 (09/02/15) INT



**SCHEDULE B**  
**(Form 1040A or 1040)**Department of the Treasury  
Internal Revenue Service (99)**Interest and Ordinary Dividends**▶ Attach to Form 1040A or 1040.  
▶ Information about Schedule B and its instructions is at [www.irs.gov/scheduleb](http://www.irs.gov/scheduleb).

OMB No. 1545-0074

**2015**Attachment  
Sequence No. **08**

Name(s) shown on return

JOHN Q. DEBTOR &amp; JANE Q. DEBTOR -- PRO FORMA

Your social security number

XXX-XX-XXXX

**Part I****Interest**

(See instructions for Form 1040A, or Form 1040, line 8a.)

Note: If you received a Form 1099-INT, Form 1099-DIV, or substitute statement from a brokerage firm, list the firm's name as the payer and enter the total interest shown on that form.

- 1 List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see instructions on back and list this interest first. Also show that buyer's social security number and address ▶

ANYBANK

ANY PAYER

Amount

26.

10.

- 2 Add the amounts on line 1

- 3 Excludable interest on series EE and I U.S. savings bonds issued after 1989. Attach Form 8815

- 4 Subtract line 3 from line 2. Enter the result here and on Form 1040A, or Form 1040, line 8a

Note: If line 4 is over \$1,500, you must complete Part III.

Amount

36.

36.

**Part II****Ordinary Dividends**

(See instructions on back and the instructions for Form 1040A, or Form 1040, line 9a.)

Note: If you received a Form 1099-DIV or substitute statement from a brokerage firm, list the firm's name as the payer and enter the ordinary dividends shown on that form.

- 5 List name of payer ▶

Amount

- 6 Add the amounts on line 5. Enter the total here and on Form 1040A, or Form 1040, line 9a

Note: If line 6 is over \$1,500, you must complete Part III.

Amount

0.

**Part III**  
**Foreign Accounts and Trusts**

(See instructions on back.)

You must complete this part if you (a) had over \$1,500 of taxable interest or ordinary dividends; (b) had a foreign account; or (c) received a distribution from, or were a grantor of, or a transferor to, a foreign trust.

- 7a At any time during 2015, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country? See instructions.

If "Yes," are you required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to report that financial interest or signature authority? See FinCEN Form 114 and its instructions for filing requirements and exceptions to those requirements.

- b If you are required to file FinCEN Form 114, enter the name of the foreign country where the financial account is located ▶

- 8 During 2015, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See instructions on back.

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>

BAA For Paperwork Reduction Act Notice, see your tax return instructions.

FD-1040-11L 01/20/15

Schedule B (Form 1040A or 1040) 2015

# AMERICAN BANKRUPTCY INSTITUTE

## SCHEDULE F (Form 1040)

Department of the Treasury  
Internal Revenue Service (99)

### Profit or Loss From Farming

▶ Attach to Form 1040, Form 1040NR, Form 1041, Form 1065, or Form 1065-B.  
▶ Information about Schedule F and its separate instructions is at [www.irs.gov/schedulef](http://www.irs.gov/schedulef).

OMB No. 1545-0074

## 2015

Attachment  
Sequence No. 14

Name of proprietor

JOHN Q. DEBTOR -- PRO FORMA

Social security number (SSN)

XXX-XX-XXXX

A Principal crop or activity

GRAIN

B Enter code from Part IV

111100

C Accounting method:

☒ Cash ☐ Accrual

D Employer ID number (EIN) (see instr)

E Did you 'materially participate' in the operation of this business during 2015? If 'No,' see instructions for limit on passive losses. ☒ Yes ☐ No

F Did you make any payments in 2015 that would require you to file Form(s) 1099 (see instructions)? ☐ Yes ☒ No

G If 'Yes,' did you or will you file required Forms 1099? ☐ Yes ☐ No

### Part I Farm Income — Cash Method. Complete Parts I and II (Accrual method. Complete Parts II and III, and Part I, line 9.)

1 a Sales of livestock and other resale items (see instructions)	1a		
b Cost or other basis of livestock or other items reported on line 1a	1b		
c Subtract line 1b from line 1a	1c		
2 Sales of livestock, produce, grains, and other products you raised	2		
3 a Cooperative distributions (Form(s) 1099-PATR)	3a	471.	3 b Taxable amount
			3b 471.
4 a Agricultural program payments (see instructions)	4a	20,245.	4 b Taxable amount
			4b 20,245.
5 a Commodity Credit Corporation (CCC) loans reported under election	5a		5a
b CCC loans forfeited	5b		5 c Taxable amount
			5c
6 Crop insurance proceeds and federal crop disaster payments (see instructions)			
a Amount received in 2015	6a	4,694.	6 b Taxable amount
			6b 4,694.
c If election to defer to 2016 is attached, check here: <input type="checkbox"/>	6d	Amount deferred from 2014	6d
7 Custom hire (machine work) income	7		17,642.
8 Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)	8		4,263.
9 Gross income. Add amounts in the right column (lines 1c, 2, 3b, 4b, 5a, 5c, 6b, 6d, 7, and 8). If you use the accrual method, enter the amount from Part III, line 50 (see instructions)	9		47,315.

### Part II Farm Expenses — Cash and Accrual Method. Do not include personal or living expenses (see instructions).

10 Car and truck expenses (see instructions). Also attach Form 4562	10		23 Pension and profit-sharing plans	23	
11 Chemicals	11		24 Rent or lease (see instructions):	24	
12 Conservation expenses (see instructions)	12		a Vehicles, machinery, equipment	24a	
13 Custom hire (machine work)	13		b Other (land, animals, etc)	24b	56,845.
14 Depreciation and section 179 expense (see instructions)	14	215.	25 Repairs and maintenance	25	19,860.
15 Employee benefit programs other than on line 23	15		26 Seeds and plants	26	5,294.
16 Feed	16		27 Storage and warehousing	27	1,090.
17 Fertilizers and lime	17		28 Supplies	28	
18 Freight and trucking	18		29 Taxes	29	
19 Gasoline, fuel, and oil	19	3,774.	30 Utilities	30	890.
20 Insurance (other than health)	20	11,208.	31 Veterinary, breeding, and medicine	31	
21 Interest:			32 Other expenses (specify):	32	
a Mortgage (paid to banks, etc)	21a		a MISC	32a	648.
b Other	21b	31,374.	b PROF FEES	32b	3,975.
22 Labor hired (less employment credits)	22	1,590.	c VEHICLE EXPENSES	32c	10,034.
			d	32d	
			e	32e	
			f	32f	
33 Total expenses. Add lines 10 through 32f. If line 32f is negative, see instructions	33				146,797.
34 Net farm profit or (loss). Subtract line 33 from line 9. If a profit, stop here and see instructions for where to report. If a loss, complete lines 35 and 36.	34				-99,482.

35 Did you receive an applicable subsidy in 2015? (see instructions) ☐ Yes ☒ No

36 Check the box that describes your investment in this activity and see instructions for where to report your loss.

a ☒ All investment is at risk. b ☐ Some investment is not at risk.

BAA For Paperwork Reduction Act Notice, see the separate instructions.

FD-20212L 09/03/15

Schedule F (Form 1040) 2015



<b>Form 4797</b> Department of the Treasury Internal Revenue Service	<b>Sales of Business Property</b> (Also Involuntary Conversions and Recapture Amounts Under Sections 179 and 280F(b)(2)) ▶ Attach to your tax return. ▶ Information about Form 4797 and its separate instructions is at <a href="http://www.irs.gov/form4797">www.irs.gov/form4797</a> .	OMB No. 1545-0184 <b>2015</b> Attachment Sequence No. <b>27</b>
Name(s) shown on return <b>JOHN Q. DEBTOR &amp; JANE Q. DEBTOR -- PRO FORMA</b>		Identifying number <b>XXX-XX-XXXX</b>
<b>1</b> Enter the gross proceeds from sales or exchanges reported to you for 2015 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions) .....		<b>1</b> <b>5,000.</b>
<b>Part I Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft -- Most Property Held More Than 1 Year (see instructions)</b>		
<b>2</b>	(a) Description of property	(b) Date acquired (mo., day, yr.)
	(c) Date sold (mo., day, yr.)	(d) Gross sales price
	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale
	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)	
<b>3</b> Gain, if any, from Form 4684, line 39 .....		<b>3</b>
<b>4</b> Section 1231 gain from installment sales from Form 6252, line 26 or 37 .....		<b>4</b>
<b>5</b> Section 1231 gain or (loss) from like-kind exchanges from Form 8824 .....		<b>5</b>
<b>6</b> Gain, if any, from line 32, from other than casualty or theft .....		<b>6</b>
<b>7</b> Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows: .....		<b>7</b>
Partnerships (except electing large partnerships) and S corporations. Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 9. Skip lines 8, 9, 11, and 12 below.		
Individuals, partners, S corporation shareholders, and all others. If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.		
<b>8</b> Nonrecaptured net section 1231 losses from prior years (see instructions) .....		<b>8</b>
<b>9</b> Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions) .....		<b>9</b>
<b>Part II Ordinary Gains and Losses (see instructions)</b>		
<b>10</b> Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):		
<b>11</b> Loss, if any, from line 7 .....		<b>11</b>
<b>12</b> Gain, if any, from line 7 or amount from line 8, if applicable .....		<b>12</b>
<b>13</b> Gain, if any, from line 31 .....		<b>13</b> <b>5,000.</b>
<b>14</b> Net gain or (loss) from Form 4684, lines 31 and 38a .....		<b>14</b>
<b>15</b> Ordinary gain from installment sales from Form 6252, line 25 or 36 .....		<b>15</b>
<b>16</b> Ordinary gain or (loss) from like-kind exchanges from Form 8824 .....		<b>16</b>
<b>17</b> Combine lines 10 through 16 .....		<b>17</b> <b>5,000.</b>
For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:		
<b>a</b> If the loss on line 11 includes a loss from Form 4684, line 35, column (b)(i), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from "Form 4797, line 18a." See instructions .....		<b>18a</b>
<b>b</b> Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14 .....		<b>18b</b> <b>5,000.</b>
<b>BAA</b> For Paperwork Reduction Act Notice, see separate instructions.		

Form 4797 (2015)

FDZ1001L 02/03/16

# AMERICAN BANKRUPTCY INSTITUTE

Form 4797 (2015) JOHN Q. DEBTOR & JANE Q. DEBTOR --- PRO FORMA

xxx-xx-xxxx

Page 2

## Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255 (see instructions)

19(a) Description of section 1245, 1250, 1252, 1254, or 1255 property:	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)
A MIKE'S TRUCK PAYMENT	Various	12/31/15
B		
C		
D		

These columns relate to the properties on lines 19A through 19D		Property A	Property B	Property C	Property D
20 Gross sales price (Note: See line 7 before completing)	20	5,000.			
21 Cost or other basis plus expense of sale	21	5,000.			
22 Depreciation (or depletion) allowed or allowable	22	5,000.			
23 Adjusted basis. Subtract line 22 from line 21	23				
24 Total gain. Subtract line 23 from line 20	24	5,000.			
25 If section 1245 property:					
a Depreciation allowed or allowable from line 22	25a	5,000.			
b Enter the smaller of line 24 or 25a	25b	5,000.			
26 If section 1250 property: If straight line depreciation was used, enter -0- on line 26g, except for a corporation subject to section 291.					
a Additional depreciation after 1975 (see instrs)	26a				
b Applicable percentage multiplied by the smaller of line 24 or line 26a (see instructions)	26b				
c Subtract line 26a from line 24. If residential rental property or line 24 is not more than line 26a, skip lines 26d and 26e	26c				
d Additional depreciation after 1969 and before 1976	26d				
e Enter the smaller of line 26c or 26d	26e				
f Section 291 amount (corporations only)	26f				
g Add lines 26b, 26e, and 26f	26g				
27 If section 1252 property: Skip this section if you did not dispose of farmland or if this form is being completed for a partnership (other than an electing large partnership).					
a Soil, water, and land clearing expenses	27a				
b Line 27a multiplied by applicable percentage (see instructions)	27b				
c Enter the smaller of line 24 or 27b	27c				
28 If section 1254 property:					
a Intangible drilling and development costs, expenditures for development of mines and other natural deposits, mining exploration costs, and depletion (see instructions)	28a				
b Enter the smaller of line 24 or 28a	28b				
29 If section 1255 property:					
a Applicable percentage of payments excluded from income under section 126 (see instructions)	29a				
b Enter the smaller of line 24 or 29a (see instrs)	29b				

### Summary of Part III Gains. Complete property columns A through D through line 29b before going to line 30.

30 Total gains for all properties. Add property columns A through D, line 24	30	5,000.
31 Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 13	31	5,000.
32 Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4684, line 33. Enter the portion from other than casualty or theft on Form 4797, line 6	32	0.

## Part IV Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less (see instructions)

	(a) Section 179	(b) Section 280F(b)(2)
33 Section 179 expense deduction or depreciation allowable in prior years	33	
34 Recaptured depreciation (see instructions)	34	
35 Recapture amount. Subtract line 34 from line 33. See the instructions for where to report	35	

BAA

FDIC1002L 05/03/15

Form 4797 (2015)

## **How Chapters 11 & 12 Now Work for the Family Farmer & Entity Farmers<sup>1</sup>**

This paper provides a comparison of opportunities for farm debtors available under Chapter 11 and Chapter 12 as they exist under the Bankruptcy Code after the Bankruptcy Abuse Prevention Consumer Protection Act of 2005 BAPCPA. It also covers relevant tax considerations relevant to both chapters for consideration by practitioners.

**Comparison of Chapter 11 and Chapter 12** The following chart summarizes differences in Chapter 11 and Chapter 12 as they apply to farmers:

	<b>Chapter 11</b>		<b>Chapter 12</b>	
	<b>Individual</b>	<b>Non-Individual</b>	<b>Individual</b>	<b>Non-Individual</b>
<b>Debt Limit</b>	None	None	\$4,153,150 <sup>2</sup>	\$4,153,150 <sup>3</sup>
<b>Income Limits</b>	None	None	> 50% from farming either in the tax year before filing or <b>both</b> the second and third tax years before filing. <sup>4</sup>	None
<b>Asset Composition</b>	None	None	None	>80% value of its assets consists of assets related to the farming operation. <sup>5</sup>
<b>Ownership Restrictions</b>	None	None	None	>50% of outstanding stock or equity is held by one family, or by one family and relatives of members of the family and the family or relatives farm. <sup>6</sup>

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<sup>2</sup> 11 U.S.C. §101(18)(A).

<sup>3</sup> 11 U.S.C. §101(18)(B)(ii).

<sup>4</sup> 11 U.S.C. §101(18)(A)(i) & (ii).

<sup>5</sup> 11 U.S.C. §101(18)(B)(i).

<sup>6</sup> 11 U.S.C. §101(18)(B).

## 2017 CENTRAL STATES BANKRUPTCY WORKSHOP

	Chapter 11		Chapter 12	
	Individual	Non-Individual	Individual	Non-Individual
<b>Publicly Traded Stock</b>	DNA	None	DNA	Not Allowed. <sup>7</sup>
<b>Farming Operation Required</b>	DNA	DNA	Yes <sup>8</sup>	Yes <sup>9</sup>
<b>Class Voting</b>	Yes <sup>10</sup>	Yes	No	No
<b>Absolute Priority Applies</b>	Not Always. <sup>11</sup>	Yes <sup>12</sup>	No <sup>13</sup>	No
<b>Discharges Priority Taxes on Sale of Farm Assets</b>	No	No	Yes <sup>14</sup>	Yes <sup>15</sup>
<b>Estate Includes Post-Petition Earnings</b>	Yes <sup>16</sup>	No	Yes <sup>17</sup>	Yes

<sup>7</sup> 11 U.S.C. §101(18)(B)(iii).

<sup>8</sup> 11 U.S.C. §101(18)(A).

<sup>9</sup> 11 U.S.C. §101(18)(B).

<sup>10</sup> 11 U.S.C. §1126(c) provides that an impaired class accepts a plan provided that at least two-thirds in amount **and** more than one-half in number of the allowed claims. §1126(d) provides that a class of interests accepts a plan if holders of at least two-thirds in amount have accepted the plan.

<sup>11</sup> See 11 U.S.C. §1129(a)(15) that provides the following:

**(15)** In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan--

**(A)** the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

**(B)** the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

<sup>12</sup> 11 U.S.C. §1129(b)(2)(B)(ii).

<sup>13</sup> A Chapter 12 Plan is confirmed provided that the statutory requirements for confirmation found in §1225 are met.

<sup>14</sup> 11 U.S.C. §1222(a)(2)(A).

<sup>15</sup> *Id.*

<sup>16</sup> 11 U.S.C. §1115(a).

<sup>17</sup> 11 U.S.C. §1207(a).



# AMERICAN BANKRUPTCY INSTITUTE

	Chapter 11		Chapter 12	
	Individual	Non-Individual	Individual	Non-Individual
<b>Exclusive Period to file Plan</b>	120 days post filing, can be extended to 18 months <sup>18</sup>	120 days post filing, can be extended to 18 months <sup>19</sup>	90 days, can be extended for cause not attributable to debtor <sup>20</sup>	90 days, can be extended for cause not attributable to debtor <sup>21</sup>
<b>Exclusive Period to obtain Confirmation</b>	180 days can be extended to 20 months <sup>22</sup>	180 days can be extended to 20 months		
<b>Small Business Debtor</b>	has aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition or the date of the order for relief in an amount not more than \$2,343,300 <sup>23</sup>	has aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition or the date of the order for relief in an amount not more than \$2,343,300 <sup>24</sup>	Does Not Apply	Does Not Apply
<b>Small Business Case Exclusive Period</b>	180 days post petition with limited extensions up to 300 days post petition <sup>25</sup>	180 days post petition with limited extensions up to 300 days post petition <sup>26</sup>	Does Not Apply	Does Not Apply

The balance of this outline will now focus on comparison of various tax considerations involved with farm debt restructuring.

<sup>18</sup> See 11 U.S.C. §1121(b).

<sup>19</sup> *Id.*

<sup>20</sup> See 11 U.S.C. §1221.

<sup>21</sup> *Id.*

<sup>22</sup> See, 11 U.S.C. §1121(d).

<sup>23</sup> See, 11 U.S.C. §101(51D).

<sup>24</sup> *Id.*

<sup>25</sup> See, 11 U.S.C. §1121(e).

<sup>26</sup> *Id.*

<b>Entity Type</b>	<b>Income Passes Thru to Owner's Return</b>	<b>Income taxed on Entity Return</b>
<b>C-Corp</b>	No	Yes
<b>S-Corp</b>	Yes	No
<b>LLP</b>	Yes	No
<b>LLC</b>	Yes unless treated as a corporation	No unless treated as a corporation
<b>Partnership</b>	Yes	No

Whether the income passes thru the entity's return to the owner's return is of crucial importance to the attorney reviewing a farm debt case. Sometimes liquidation is needed and if the liquidation can occur inside an entity that does not pass its income thru to the owner's return, the tax can be trapped inside the entity. This works very well in the C-corp. It can also work in an LLC that has opted to be treated as a corporation.

#### **Eligibility for Short Year Tax Treatment**

	<b>Chapter 7</b>	<b>Chapter 11</b>	<b>Chapter 12</b>	<b>Chapter13</b>
<b>Corporation</b>	No	No	No	No
<b>Individual</b>	Yes <sup>27</sup>	Yes	No	No
<b>Partnership</b>	No	No	No	No
<b>LLC</b>	No	No	No	No
<b>LLP</b>	No	No	No	No

Short year tax treatment allows an individual debtor in either a Chapter 7 or Chapter 11 bankruptcy to split the year of filing the bankruptcy into two years. The first tax year beginning on the first day of the individual's tax year and ending on the day before filing and the second tax year starting on the date of filing and ending on the last day of the individuals normal tax year. For example, for a calendar year tax payer that files either a Chapter 7 or Chapter 11 bankruptcy on July 1<sup>st</sup> the two tax years would be January 1 to June 30<sup>th</sup> and the second short tax year would be July 1 to December 31<sup>st</sup>.

Short tax years are especially helpful if significant tax has been incurred in the year of filing that could be paid from assets of the estate.

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<sup>27</sup> 26 U.S.C. §1398(d).

**Chapter 12 Opportunities Involving Tax on Sale of Farm Assets Used in the Debtor's Farming Operation**

<b>Chapter 12 Issues Surrounding §1222(a)(2)(A)</b>	<b>8<sup>th</sup> Circuit</b>	<b>9<sup>th</sup> Circuit</b>	<b>10<sup>th</sup> Circuit</b>
<b>Applies to Post-Petition Transactions</b>	<b>No</b> <i>Knudsen v. IRS</i> overruled <sup>28</sup>	<b>No</b> <i>US v. Hall</i> <sup>29</sup>	<b>No</b> <i>In re Ficken</i> overruled <sup>30</sup>
<b>Uses Marginal Methodology to calculate taxes to be treated as unsecured claims</b>	<b>Yes</b> <i>Knudsen v. IRS</i>	<b>No Opinion</b>	<b>Yes</b> <i>In re Ficken</i>
<b>Applies to sales of farm assets that the IRS considers products, not just capital assets</b>	<b>Yes</b> <i>Knudsen v. IRS</i>	<b>No Opinion</b>	<b>Yes</b> <i>In re Ficken</i>

<sup>28</sup> *Hall v. U.S.*, 1392 S. Ct. 1882 (2012) overruled *Knudsen v. United States*, 581 F.3d 696, 104 A.F.T.R.2d 2009-6384, 52 Bankr.Ct.Dec. 24, Bankr. L. Rep. P 81,581, C.A.8 (Iowa), September 16, 2009 (NO. 08-2820, 08-3627)

<sup>29</sup> 617 F.3d 1161, 106 A.F.T.R.2d 2010-5848, 2010-2 USTC P 50,566, Bankr. L. Rep. P 81,830, 10 Cal. Daily Op. Serv. 10,549, 2010 Daily Journal D.A.R. 12,790, C.A.9 (Cal.), August 16, 2010 (NO. 08-17267)

<sup>30</sup> *Hall v. U.S.*, 1392 S. Ct. 1882 (2012) overruled *In re Ficken*, 430 B.R. 663, 105 A.F.T.R.2d 2010-2265, 2010-1 USTC P 50,409, 63 Collier Bankr.Cas.2d 1276, Bankr. L. Rep. P 81,772, 10th Cir.BAP (Colo.), May 07, 2010 (NO. CO-09-042, BKR 05-52940, ADV 08-01687)

**Typical Farm Problem – Individuals.** Austin and Amy Farmer have been farming since 1983. They own 400 acres with two large hog finishing setups on them. In the past, Austin and Amy operated a farrow to finish operation. Today, they are content to operate a custom finishing operation, colloquially known as a “pig bed and breakfast” for Oinkers, Inc. Oinkers, Inc. pays Austin and Amy \$14,000 monthly for the space in the finishing buildings. When pigs are in the buildings, Austin and Amy care for the pigs according to Oinkers’ protocol. Oinkers, Inc. provides the feed, veterinary care and marketing for its pigs. Austin and Amy plan to sell all of their land except their homestead that includes their hog facilities. The tax basis is \$1,000/A.

Austin and Amy also have a crop farming operation on the farm they own as well as on two rented farms, which they operate in conjunction with Michael and David, Austin’s father and brother respectively. They share machinery and labor for the crop operation. Austin and Amy grow corn and soybeans on the portion of their property not occupied by hog buildings. Some of the corn is fed to their pigs while the rest is sold along with the entire soybean crop as a product of the farm. Austin and Amy Farmer’s balance sheet follows:

<b>Assets</b>		<b>Liabilities</b>	
Parcel 1 120 Acres	\$600,000.	Friendly Bank <sup>31</sup>	\$950,000
Parcel 2 40 Acre homestead <sup>32</sup>	529,000.	Friendly Bank	800,000
Parcel 3 240 Acres	960,000.	Farm Credit Services <sup>33</sup>	1,250,000
		Open Accounts	550,000
		Iowa Mills <sup>34</sup>	42,027
Machinery	350,000.	John Deere Credit <sup>35</sup>	325,000
Growing Crops	64,947.	Landlords	8,750
2008 Ford F-350	25,000	Ford Motor Credit <sup>36</sup>	28,000
Other Motor Vehicles	15,000.	Friendly Bank	9,000
Oinkers, Inc. Receivable	14,000.	IRS & IDOR 2004 Taxes <sup>37</sup>	56,700
Government Program Payments	Unknown	Credit Cards	101,000
Stock & Patronage Dividends	29,000.		
Household Goods	3,800.	Other Coop	<u>70,000</u>
Cash & Accounts	<u>540.</u>	<b>Total Liabilities</b>	\$4,540,477
<b>Total Assets</b>	\$3,075,697	Equity	(\$1,464,780)

<sup>31</sup> Friendly Bank has first, second and fourth mortgage liens on the Debtors’ 160-acre farmstead that has been split into Parcels 1 & 2. In addition, Friendly Bank has a blanket security interest in the Debtors’ farm machinery, equipment, harvested crops, growing crops and livestock, as well as on contract receivables and the Debtor’s vehicles.

<sup>32</sup> All the Debtors’ hog facilities are on the homestead.

<sup>33</sup> Farm Credit Services holds a first mortgage on parcel 4.

<sup>34</sup> Iowa Mills has a third mortgage on Parcels 1 & 2 to secure this indebtedness.

<sup>35</sup> John Deere Credit holds a valid, perfected purchase money security interest in the machinery.

<sup>36</sup> Ford Motor Credit holds a valid, perfected purchase money security interest in the Ford F 350.

<sup>37</sup> The 2009 taxes are from Austin and Amy’s sale of sows, fat hogs, farrowing crates and a livestock trailer when the Farmers converted their hog operation from a farrow to finish to a custom finishing operation.

**Opportunities for Austin and Amy Farmer**

<b>Chapter 11</b>	<p><b>Available to Farmers Plan Unconfirmable</b></p> <p>1) Income Taxes on 2009 sales must be paid in full to confirm the plan.<sup>38</sup></p> <p>2) Income taxes on post-petition sales of real estate and machinery will need to be paid as required by §1129(a)(9)(B) that requires either</p> <ul style="list-style-type: none"> <li>(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or</li> <li>(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim</li> </ul>
<b>Chapter 12</b>	<p><b>Unavailable to Farmers Debt Exceeds Limit Of \$4,153,150</b></p>

<sup>38</sup> 11 U.S.C. §1129(a)(9)(C)(ii) requires the taxes to be repaid no more than 5 years after the date of filing.

**Special Problems in Ag-Based DIP Financing and Cash Collateral Use**

By: Mark A. Bogdanowicz  
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**A. Verifying Status of Pre-Petition Perfected Liens on “Farm Products”**

1. **Definition of “Farm Products.”** Section 9-102(a)(34) of the Uniform Commercial Code (“UCC”) defines “farm products” to mean “goods, other than standing timber, with respect to which the debtor is engaged in a farming operation” and that are
  - (A) crops grown, growing, or to be grown, including:
    - (i) crops produced on trees, vines, and bushes; and
    - (ii) aquatic goods produced in aquacultural operations;
  - (B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;
  - (C) supplies used or produced in a farming operation; or
  - (D) products of crops or livestock in their unmanufactured states.
2. **Definition of “Farming Operation.”** Under Section 9-102(a)(35) of the UCC. “Farming operation” means “raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.”

**B. Priority Among Competing Liens**

**1. State law may give superpriority to “Agricultural Liens”**

Revised Article 9 of the Uniform Commercial Code, as adopted in many states, brought agricultural liens within its scope. *See, e.g.*, 810 ILCS 5/9-102(a)(5). Under Section 9-102(a)(5) of the UCC, as adopted in Illinois, an “agricultural lien” is defined as an interest, other than a security interest, in farm products

- (A) which secures payment or performance of an obligation for goods or services furnished in connection with a debtor’s farming operation;
- (B) which is created by statute in favor of a person that in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor’s farming operation; and
- (C) whose effectiveness does not depend on the person’s possession of the personal property.

There are at least three types of statutory liens in Illinois that involve agriculture:

1. agister's lien, 770 ILCS 40/50;
2. thresherman's lien, 770 ILCS 40/50a.; and
3. landlord's crop lien, 735 ILCS 5/9-316.

Of these, only the thresherman's lien and landlord's crop lien fall within the definition of "agricultural lien" under Article 9 of the UCC in Illinois. Consequently, the rules for perfection, priority, and enforcement of these liens would be provided by Article 9. Perfection is achieved by filing with the Secretary of State, and the priority rules of first to file apply. See 810 ILCS 5/9-310(a), 5/9-322.

Crop liens, however, receive special treatment under Illinois law with regard to priority. In 2002 the legislature added the following provision to the section regarding the establishment and treatment of crop liens:

A lien arising under this Section shall have priority over any agricultural lien as defined in, and ***over any security interest arising under, provisions of Article 9 of the Uniform Commercial Code.***

735 ILCS 5/9-316 (emphasis added). Consequently, the landlord's statutory lien for rent against crops grown on leased land continues to be superior to any consensual lien that the tenant may give on the crops, even those created under Article 9. *Schweickert v. Ag Servs. of Am., Inc.*, 355 Ill.App.3d 439, 823 N.E.2d 213, 215, 291 Ill.Dec. 203 (3d Dist. 2005). To the extent that a debtor is not current on rent payments for agricultural land, these statutory liens may need be addressed in the context of adequate protection issues arising in cash collateral and DIP financing motions.

## **2. Statutory Liens May Be Avoided In Bankruptcy**

An interesting dynamic may arise with respect to the potential avoidance of a landlord's statutory lien for unpaid rent. Such a lien may be avoided under the Bankruptcy Code. 11 U.S.C. §§ 545(3) & (4). See *In re Wedemeir*, 237 F.3d 938, 941 (8th Cir. 2001); *Marshall v. Aubuchon (In re Marshall)*, 239 B.R. 193 (Bankr. S.D. Ill. 1999); *Pogge v. Powers (In re Smith)*, 302 B.R. 865 (Bankr. C.D. Ill. 2003). Given that the power to avoid such liens rests with the trustee (or debtor-in-possession) rather than with secured lenders, the application of these provisions naturally points in the direction of multi-party negotiations with respect to the terms of financing orders in order to avoid litigating the interplay of these thorny issues at a critical moment in the bankruptcy case.

## **3. Notice to Buyers of Farm Product - Impact of the Food Security Act**

The Food Security Act of 1985 (FSA), Pub.L. No. 99-198, §1324, 99 Stat. 1354, preempts the farm products rule in the Uniform Commercial Code that otherwise may permit a secured party to follow its lien into the hands of a buyer. 7 U.S.C. §1631(h). Illinois enacted its own provision for notice of secured claims to buyers of farm products. 810 ILCS 5/9-320(f). The purpose of the notice is to protect the secured party and prohibit the buyer of farm products from paying the seller without including the secured party's name on the check.

In order to invoke this protection, the holder of the security interest is required to send notice to the potential buyers of farm products. The notice must contain:

- (I) the name and address of the secured party;
- (II) the name and address of the person indebted to the secured party;
- (III) the social security number, or other approved unique identifier, of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number, or other approved unique identifier, of the debtor; and
- (IV) a description of the farm products subject to the security interest created by the debtor, including the amount of such products where applicable, crop year, and the name of each county or parish in which the farm products are produced or located.

7 U.S.C. §1631(e)(1)(A)(ii).

Illinois state law also provides for fines and criminal penalties for selling to parties other than as disclosed to a secured party. 810 ILCS 5/9-315.02. Similarly, the FSA provides for penalties if the debtor violates the restriction on sale without paying the secured party. 7 U.S.C. §1631(h).

In interpreting the FSA, the Illinois Supreme Court has held that strict compliance with the notice provisions of §1631(e) is required for a secured party to obtain the protection provided by the FSA. *State Bank of Cherry v. CGB Enterprises, Inc.*, 2013 IL 113836, 984 N.E.2d 449, 368 Ill.Dec. 503. In *State Bank of Cherry*, the bank claimed that CGB Enterprises, Inc. failed to protect the bank's security interest in crops that CGB purchased from a farmer. The bank argued that it gave notice of the security interest in the crops to CGB pursuant to the FSA and that CGB violated the FSA by making payment on the crops directly to the farmer without naming the bank on the check. However, neither of the FSA notices at issue included information regarding the names of the county where the farm products were produced or located.

Relying upon *Farm Credit Midsouth, PCA v. Farm Fresh Catfish Co.*, 371 F.3d 450 (8th Cir. 2004), CGB argued that strict compliance with the §1631(e) notice provision is required for a party to recover for failing to protect a security interest in crops. The Eighth Circuit held that FSA "does not contain language indicating the required contents of the written notice are merely permissive or can be satisfied through substantial compliance." *Farm Fresh Catfish*, 371 F.3d at 453. The appellate court adopted the construction of *Farm Fresh Catfish* and concluded that Congress intended strict compliance with the FSA. The Illinois Supreme Court affirmed. As a result, CGB took free of the bank's security interest even though CGB knew of its existence. 2013 IL 113836 at ¶67.

A bankruptcy court ruled that the FSA protections for a grain buyer of corn and soybeans do not extend to the proceeds of those crops. *CNH Capital America LLC v. Trainor Grain & Supply Co. (In re Printz)*, 478 B.R. 876 (Bankr. C.D. Ill. 2012). In *Printz*, the debtors entered into multiple loan and security agreements with CNH Capital America LLC. In addition to filing financing statements to perfect a security interest in the debtors' crop proceeds and other personal property,



CNH sent four separate letters to Trainor Grain and Supply Co., a potential purchaser of the crops, notifying Trainor of CNH's lien on the crops. In addition to entering into sale agreements with Trainor, the debtors also entered into a number of transactions with Trainor pursuant to which Trainor would provide farming inputs.

A dispute arose between CNH and Trainor when Trainor set-off approximately \$362,443.49 from the proceeds of crops sold by the debtors against amounts the debtors owed it for inputs. In response to a complaint to determine the validity, priority, and extent of competing liens, Trainor argued that the notices sent by CNH were deficient because they all failed to include the debtors' social security numbers and a proper description of the crops subject to the security interest. The bankruptcy court agreed that strict compliance is required for the FSA notice and held that Trainor purchased the corn and soybeans free and clear of CNH's security interest. However, the bankruptcy court ruled that the same does not apply to the "proceeds" of the grain. The purpose of the FSA is to protect buyers from liability to lien holders when the debtors fail to remit the proceeds of products sold. The company, in setting off its preexisting debt against the proceeds of the debtors, was acting as a creditor and not as a buyer. In that capacity, Trainor was not entitled to the protection of the FSA.

**4. Evaluation and Protection of Government Payments With Regard to the Collateral Base**

The treatment of government payments may add an additional layer of complexity and uncertainty in determining the extent of a pre-petition lender's secured claim. Are government payments "proceeds" of crops or general intangibles? *See In re Schmaling*, 783 F.2d 680 (7th Cir. 1986) ("payment-in-kind" payments did not constitute crop proceeds). Any security agreement limited to crops can avoid this issue by also taking a security interest either in all general intangibles or specifically in the various programs that a lender seeks as security. *See In re Otto Farms, Inc.*, 247 B.R. 757, 760 (Bankr. C.D. Ill. 2000) (collateral description of "general intangibles, including government payments" was adequate to cover government loan deficiency payments). It is best to avoid litigation as to whether such a payment is "proceeds."

Special care should be taken to specifically identify the program in which borrowers participate and analyze the requirements under those programs. For purposes of solidifying the collateral base, creditors must be aware that some programs prohibit or regulate assignments or security interests. For example, the creation of an enforceable security interest in crop insurance proceeds requires compliance with the statutory requirements for assignment. *See In re Duckworth*, Bankruptcy No. 10-83603, 2012 WL 986766 (Bankr. C.D. Ill. Mar. 22, 2012). In *Duckworth*, the bankruptcy court held that the Federal Crop Insurance Act preempted state law with respect to the attachment of a lien on an insured's right to crop insurance proceeds may be created, adopting the reasoning of *In re Cook*, 169 F.3d 271 (5th Cir. 1999). If the requirements for assignment are not satisfied, the creditor will not be able to obtain a lien or security interest on undisbursed crop insurance proceeds.

**5. The Impact of the Perishable Agricultural Commodities Act**

The Perishable Agricultural Commodities Act (PACA), 7 U.S.C. §499a, *et seq.*, is a federally-created statutory trust. The PACA trust protects persons who sell perishable agricultural commodities that are not paid. The statutory trust arises when the following occur:

1. The commodities sold are “perishable agricultural commodities.” 7 U.S.C. §499a(b)(4). A “perishable agricultural commodity” is defined as fresh fruits or vegetables of every kind and character (whether frozen or packed in ice) and cherries in brine. *Id.*
2. The purchaser of perishable agricultural commodities is one of the following:
  - a. a commission merchant (7 U.S.C. §499a(b)(5));
  - b. a dealer (7 U.S.C. §499a(b)(6)); or
  - c. a broker (7 U.S.C. §499a(b)(7)).
3. The transaction occurs in interstate or foreign commerce. 7 U.S.C. §499a(b)(8).
4. The suppliers, sellers, or agents have not received full payment on the transaction. 7 U.S.C. §499e(c).
5. The suppliers, sellers, or agents preserve their trust rights by giving written notice to the commission merchant, broker, or dealer within the time provided by law. *Id.*

Under the PACA, the purchaser holds all perishable agricultural commodities, all products derived therefrom, and all receivables or proceeds from the sale of such perishables “in a floating trust” for the benefit of the unpaid suppliers, sellers, or agents. *See, e.g., G&G Peppers, LLC v. Ebro Foods, Inc. (In re Ebro Foods, Inc.)*, 449 B.R. 759, 762 (N.D. Ill. 2011). If a debtor is the purchaser, the rights of suppliers, sellers, or agents as trust beneficiaries in all inventory, receivables, or proceeds from the perishable agricultural commodities are statutorily superior. This priority applies even if the creditor holds a perfected security interest in those inventories, receivables, or proceeds. *A & J Produce Corp. v. Bronx Overall Econ. Dev. Corp.*, 542 F.3d 54 (2d Cir. 2008). Consequently, lenders need to ensure that a purchaser-borrower has paid all of its suppliers or to be prepared to deal with these superior claims in extending DIP financing or negotiating the terms of cash collateral use.

There is a parallel statutory scheme known as the Packers and Stockyards Act, 1921, 7 U.S.C. §181, *et seq.*, that provides the same protection for livestock producers. *See, e.g., Weichman Pig Co. v. Jack-Rich, Inc. (In re Jack-Rich, Inc.)*, 176 B.R. 476 (Bankr. C.D. Ill. 1994). Thus, similar analysis will be involved for cases involving this type of collateral.

### **C. Providing “Adequate Protection” for Post-Petition Financing**

#### **1. Special Definition Under Chapter 12**

Debtors operating in Chapter 12 cases have many of the same powers as debtors-in-possession in Chapter 11 cases. Section 1203 of the Bankruptcy Code provides as follows:

Subject to such limitations as the court may prescribe, a debtor in possession shall have all the rights, other than the right to compensation under section 330, and powers, and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4)

of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation.

11 U.S.C. § 1203. Thus, chapter 12 debtors are able to secure post-petition financing, subject to the requirements of Section 364 of the Code, and may continue to use cash collateral subject to the requirements of Section 363(c)(2) of the Code.

In exercising these powers, Chapter 12 debtors are subject to a unique definition of “adequate protection” under Section 1205:

- (a) Section 361 does not apply in a case under this chapter,
- (b) In a case under this chapter, when adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by~
  - (1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of property securing a claim or of an entity's ownership interest in property;
  - (2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of property securing a claim or of an entity's ownership interest in property;
  - (3) paying to such entity for the use of farmland the reasonable rent customary in the community where the property is located, based upon the rental value, net income, and earning capacity of the property; or
  - (4) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will adequately protect the value of property securing a claim or of such entity's ownership interest in property.

11 U.S.C. § 1205.

Absent from this formulation is the “indubitable equivalent” standard set forth in Section 361(3) of the Code. Section 1205, enacted in 1986 along with the rest of Chapter 12, was intended to statutorily overrule the line of cases requiring compensation to secured creditors for “lost opportunity cost” associated with such creditors’ inability to immediately reach their collateral. As a policy matter, Congress was concerned that such a requirement would doom Chapter 12 cases to failure. The Supreme Court overruled this interpretation of “indubitable equivalence” for all bankruptcy cases two years later. *See United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd. (In re Timbers of Inwood Forest Associates, Ltd.)*, 484 U.S. 365 (1988). As noted by a leading commentator, “[t]he *Timbers* decision thus effectively eliminates any

meaningful difference between sections 361 and 1205(b).” 8 COLLIER ON BANKRUPTCY, ¶ 1205.01 (2016).

## 2. Forms that Adequate Protection Can Take

Among the factors in evaluating adequate protection proposed by debtors in chapter 12 cases are the following: (1) identifying the risks to the secured creditor’s value resulting from the debtor’s request for use of cash collateral and (2) determining whether the debtor’s adequate protection proposal protects value as nearly as possible against risks to that value. *In re Martin*, 761 F.2d 472, 476-77 (8th Cir. 1985).

- payment to the prepetition lenders of interest at the non-default rates
- additional replacement security interests and liens upon all crops, whether now existing or hereafter arising
- continuing crop insurance and assignment of interests in the crop insurance to the prepetition lenders so that in the event of a crop failure the lenders’ interests remain protected
- junior liens on real and personal property that is not fully encumbered
- replacement liens on post-petition payments from federal programs, including CRP payments
- a superpriority administrative claim against the debtors as provided for in section 507(b) of the Bankruptcy Code to the extent of any diminution in the value of the prepetition lenders’ interest in the prepetition collateral that the replacement lien fails to cover.

## 3. Liens on Crops To Be Planted in the Future

Debtors can only use cash collateral for their proposed reorganization if they can adequately protect the secured creditor’s interest in the cash collateral. 11 U.S.C. § 363(e). “[I]f a creditor is threatened with a decline in the value of the interest in the estate’s property, the estate must take action to make up the decline[.]” *In re Markos Gurnee P’ship*, 252 B.R. 712, 716 (Bankr. N.D. Ill. 1997). In the context of Section 363(e), the debtor is proposing to consume or use up the collateral so the standard regarding whether the proposed protection is adequate is a strict one. *In re Polzin*, 49 B.R. 370, 371-72 (Bankr. D. Minn. 1985). The burden falls on the debtors to establish that the secured creditor’s position is adequately secured. *Id.* at 372.

As noted by one court, “[a] lien on crops to be planted is not the indubitable equivalent of cash collateral.” *In re Krumm*, 87 B.R. 76, 78 (Bankr. D. Neb. 1988). As the court in *Krumm* observed when discussing replacement liens on future crops:

If the Debtor defaults or becomes unable to perform after having purchased seed, fertilizer, fuel, and paid his rent, but before the crop is planted, the Bank, as of that point in time, certainly would not be secured by the indubitable equivalence of cash collateral. In all events, repayment of the cash collateral is contingent upon there being a crop to harvest.

*Id.* at 77. Future payments to be received by debtors and associated with the harvest are subject to many uncertain variables. Several of these include factors outside chapter 12 debtors' control, such as the weather, commodities prices and the debtors' ability to complete the harvest. There is an additional risk associated with potential defenses raised by contract counterparties related to the purchase of the crops.

Since the existence and value of the replacement collateral is speculative, debtors seeking to use future crops to provide adequate protection often face an uphill battle in contested hearings. Indeed, a majority of reported decisions have concluded that such a replacement lien, standing alone, does not adequately protect the value of creditors' liens on cash collateral. *In re Westcamp*, 78 B.R. 834, 837 (Bankr. S.D. Ohio 1987) (noting that the value to a creditor of a lien on an existing crop is greater than the promise of a lien on a crop to be grown).

Debtors fare much better when a lien on future crops is part of a bundle of additional unencumbered collateral offered as adequate protection for the use of cash collateral. Examples of such collateral include (a) multi-peril, all risk-crop insurance, (b) rights to federal funds from the Agricultural Stabilization and Conservation Service or under any other similar program, and (c) additional sources of income beyond farming operations, such as custom trucking and custom hog feeding. *Id.* at 839.

In evaluating the protection offered by crop insurance, it is essential for secured creditors to carefully review copies of such policies. The creditor must be able to identify the nature, extent or limits of the crop insurance so that it is able to evaluate what losses would be covered and what losses are excluded from coverage. As the court in *Krumm* observed when rejecting insurance as sufficient adequate protection:

However, there are many risks beyond his control in the form of drought, flood, early freeze, insects or accidental injury or death. These risks are not fully covered by the proposed insurance. The premium is deductible from the amount payable to the insured and only if the crops are completely destroyed by hail or fire, would there be sufficient insurance proceeds to repay all of the \$150,000.00 sought to be used. If the crop is entirely lost due to other reasons, the insurance proceeds would not be sufficient to repay all of the \$150,000 cash collateral used.

87 B.R. at 77-78. Likewise, it is important to consider whether the premiums on such policies have been fully funded by existing cash collateral, or whether future premium payments are contemplated. If premiums are to be paid from future revenues, the risk of non-payment is a factor weighing against a finding of adequate protection.

With respect to additional sources of income, such as "custom farming" secured creditors should analyze whether this source of funding is premised upon "smile and handshake"

transactions with close family members or whether it arises out of an enforceable contractual right. If such income falls into the former category, creditors have no additional source of collateral should there be a crop revenue shortfall if family members are unwilling or unable to continue this relationship.

**AMERICAN BANKRUPTCY INSTITUTE**

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*Farm/Agribusiness: Chapter 12 Bankruptcy*

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## **OVERVIEW OF CHAPTER 12**

### **I. Brief History of Chapter 12.**

<sup>1</sup>Chapter 12 of Title 11, United States Code entitled “The Adjustment of Debts of a Family Farmer or Fisherman with Regular Annual Income” (“Chapter 12”) was enacted in 1986 to provide temporary emergency relief to family farmers during a time of low commodity prices, rising input costs and tightening credit. Chapter 12 was designed to enable financially distressed family farmers and fishermen to reorganize through simplified and streamlined reorganization provisions which would allow family farmers and fisherman to propose a three to five year plan of reorganization under which the debtor/farmer could; contract operations through the sale or surrender of assets, reduce or discharge obligations, modify interest rates on debt and re-amortize debt. The Act originally was to have expired in 1993, but was extended several times and was permanently enacted with Bankruptcy Abuse Prevention Act of 2005, effective July 1, 2005. These materials will focus on the application of Chapter 12 to “family farmers”.

### **II. Deficiencies in Chapters 13 and 11 for Farm Cases.**

#### **A. Chapter 13 Deficiencies.**

Prior to the Act, the only method of reorganization for farmers was Chapter 13 of Title 11 United States Code (“Chapter 13”) or Chapter 11 of Title 11 United States Code (“Chapter 11”). Chapter 13 was generally not useful because the debt limits, currently \$394,725 of unsecured debt, and \$1,184,200 of secured debt, are and have always been too low for most farmers to qualify. In addition, under Chapter 13, the plan is due within fourteen days of the petition. This gives very little time to design a plan, test its feasibility and negotiate with creditors. Further, under Section 1322(b)(2) the debtor cannot modify obligations secured only by a lien in the debtor’s principal residence. In addition, under Section 1325(b), the debtor must pay all unsecured debts in full or commit all disposable income, as determined under the “Means Test”, during the plan term. A farmer must commit income to the operation of the business and therefore the “Means Test” may

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<sup>1</sup> Please note that all references throughout this article to “Section(s)” refer to Title 11 of the United States Code unless otherwise specified.



preclude the funding of farming operations under a plan. Finally, Chapter 13 does not contain a provision which would allow the debtor to restructure obligations and repay them beyond the plan term over the objection of the secured lender. In many instances, farmers have substantial debt which would require re-amortization beyond a three or five year plan period. Therefore, prior to Chapter 12, farmers commonly attempted to reorganize under Chapter 11.

**B. Chapter 11 Deficiencies.**

Chapter 11 was also less than satisfactory for a number of reasons. First, Chapter 11, is often too complex and expensive. If an unsecured creditors committee is appointed, the debtor must meet with, provide information to and negotiate plan terms with the committee and its professionals. This is time consuming and expensive since the debtor must pay for the committee's professionals whose main function is to force the debtor to pay more to the unsecured creditors. Often the sale or disposition of property is key to a farmer's contraction and restructuring of the farming operation. This is more difficult under Chapter 11 because, in order to sell property "free and clear of lien" under Section 363(f), the debtor must obtain the secured creditors consent or meet other onerous conditions of sale. The plan confirmation process is more difficult in that the debtor must classify claims and structure the plan so that it will receive the required votes for each class of claims, two thirds in amount and fifty percent in number of those voting in each class, in order to obtain confirmation and avoid a "cram down". Prior to soliciting those votes, the debtor must compile a disclosure statement which must be approved by the court and the contents of which are often the subject of protracted litigation with interested parties. Thereafter, it must be transmitted to all creditors. In Chapter 11, it is extremely important that the farmer avoid a "cram down" of the plan over the objection of unsecured creditors because the "absolute priority rule" contained in Section 1129(b)(2)(B)(ii) precludes a "cram down" of the plan unless the unsecured creditors are fully paid or the debtor retains no property on account of the plan. Since most farmers operate as individuals or with their spouses or other family members, this generally precluded "cram down", especially where a secured creditor was substantially under-secured and could control the unsecured class with its deficiency claim. The only

argument which most farmers had was that they were contributing post confirmation “sweat equity” as new value after confirmation. This argument was lost with the Supreme Court’s decision in *Ahlers*,<sup>2</sup> which held that “sweat equity” was not “new value” and did not satisfy the absolute priority rule. The Chapter 11 confirmation process provides a further obstacle to restructuring in Section 1111(b) election. This election allowed undersecured creditors to preclude the farmer from reducing the secured obligation to the value of the collateral. All of these obstacles to the confirmation process and the ultimate goal of restructuring had a chilling effect on farmers embarking upon the Chapter 11 process. Finally, tax consequences, under both Chapter 13 and Chapter 11, arising from the sale, surrender or other disposition of property pose a significant barrier to contracting operations to meet cash flow through a plan. The farmer often found it necessary to sell or surrender assets in order to reduce secured debt and create a positive cash flow. In many instances, the farmer has the “Hobson’s Choice” of keeping assets, the maintenance of which would challenge feasibility, or sell or surrender those assets and face crushing priority capital gains or recapture taxes arising therefrom. Chapter 11 and 13 provided no relief from these tax issues.

### **III. Chapter 12 Provisions.**

#### **A. Structure and Applicability of Other Code Chapters.**

Chapter 12 is a blend of Chapter 13 and Chapter 11 reorganization concepts, but with additional provisions which seek to remedy some of the special needs of reorganizing farmers which are not met by Chapter 11 and 13. The provisions of Chapter 12 are contained in only nineteen sections of the Code, Sections 1201-1208, dealing with officers, administration and the estate and Sections 1221-1231, concerning the plan. They are not lengthy and each should be carefully reviewed by any practitioner filing a Chapter 12 petition for a client. Because many of the provisions of Chapter 12 appear to mirror the language in like provisions of Chapter 13, it is sometime easy to miss subtle but important differences. In addition, practitioners know that, in most instances, the provisions of Chapters 1, 3 and 5 of the Bankruptcy Code apply, in most instances, to

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<sup>2</sup>*Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 205 (1988).

Chapters 7, 11, 12 and 13 of the Bankruptcy Code; however, there are some important exceptions to this with respect to Chapter 12. By way of example, Section 361 of the Code, defining “adequate protection” is made inapplicable in Chapter 12, pursuant to Section 1205. It is important for practitioners to understand that while there are many similarities between Chapters 13, 11 and 12, there are material differences that may determine the success or failure of the farm client. These differences are well highlighted in the chart developed by the Honorable James P. Smith, United States Bankruptcy Judge for the Middle District of Georgia and his law clerk, Alvin Brown, which, with their permission, is attached to these materials as Appendix A. The chart is an invaluable tool and highlights the differences in a clear and concise manner.

**B. Chapter 12 Relief and Debtor’s Control of the Case.**

How did Chapter 12 provide relief in ways that Chapter 11 and 13 could not? First, Chapter 12 gives the farmer significant control over his destiny after filing. The family farmer has a period of 90 days from the petition in which to file a plan of reorganization. Pursuant to Section 1221 and Bankr. 3015(a), this period can be extended by the court based upon circumstances for which “the debtor should not justly be held accountable”. Under Chapter 12, only the debtor may file a plan of reorganization. Unless the case has already been converted from a case under Chapter 7, 13 or 11, the debtor has an absolute right to dismissal or conversion of the case to a Chapter 7 case. (See Section 1208 (b) and (a) respectively, but note that Section 1208(a) is silent as to debtor’s right to conversion to a Chapter 11 case. Pursuant to Section 1208(d), a Chapter 12 case may only be involuntarily converted to a Chapter 7 case based upon fraud although a case may be dismissed on several grounds, at the request of a party in interest. Taken as a whole, these provisions allow the farmer to file a Chapter 12 case and attempt to reorganize but, absent fraud, the farmer may prevent creditors from forcing the farmer into some other bankruptcy chapter where the farmer will have less control.

**C. Chapter 12 Relief/It’s Easier and Less Expensive.**

Chapter 12 also makes it easier and less expensive for the debtor to operate in Chapter 12 than in Chapter 11. Chapter 12 has no provision for the formation of

creditors' committees, with their continuous requests for information and the attendant professional fees. A Chapter 12 trustee is appointed by the court. In many places, such as Michigan and Wisconsin, this is a standing trustee, sometime the same individual who serves as the Chapter 13 trustee. Chapter 12 trustee oversees the process and advises the court with respect to the progress of the case but is not interested in maximizing the return to the unsecured creditors beyond the requirements of the Bankruptcy Code. The trustee receives compensation in the form of a small percentage of the distribution under the Chapter 12 plan. This method of oversight is both cost effective and less time consuming.

### **1. Adequate Protection.**

Chapter 12 also provides easier methods for fulfilling many of the most important milestones in the reorganization process, the continued use, sale, lease of property and financing for the operations. In most of these cases, the debtor must provide "adequate protection" to the secured lenders in order to accomplish those goals. As stated above, Section 361 is inapplicable in Chapter 12 and Section 1205 supplants it. Under Section 1205, the options to provide adequate protection are increased. Market rent is deemed adequate protection for the use of farmland. Further, the standard for applying the other adequate protection options of Section 1205, which mirror those of the replaced Section 361, may well be reduced. This is because Section 1205 does not require that the adequate protection options provided result in the realization by the protected party of the "indubitable equivalent" of its interest in the property. The term "indubitable equivalent" was first introduced by Judge Learned Hand *In re Murel Holding Corp.*<sup>3</sup>. In that case, the court held that adequate protection must be "completely compensatory". He found that a creditor who fears for the safety of his principal need not be required to settle for only interest on the money or property which is the subject of the adequate protection requirement but must receive the money or the property as adequate protection. Judge Hand held that

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<sup>3</sup> *In re Murel Holding Corp.*, 75 F.2d 941, 942 (2d Cir. 1935).

the creditor should be deprived of his property only upon substitute of the “most indubitable equivalent”. Clearly, the added provision for market rent of farm land as adequate protection in Section 1205 seems contrary to this holding requiring the “indubitable equivalent”. Since this term is completely absent from Section 1205, it can certainly be argued that this standard does not apply to other options proposed by the debtor under Section 1205. Further, Chapter 12 is particularly helpful in those cases where the debtor seeks to sell property “free and clear of lien”. Under Section 1206 of the Code, a debtor may sell farm land or farm equipment, over the objection of the secured lender, without meeting the alternatives to creditor consent found in Section 363(f).

**2. The Claims Process.**

The Chapter 12 claims process mirrors the Chapter 13 process. Unlike Chapter 11, creditors must file claims, regardless of whether the debtor’s schedules correctly schedule the amount of the claim and acknowledge that the claim is liquidated and undisputed. Pursuant to Bankr. 3002(c), the claims bar date for Chapter 12 is the same as that for Chapter 7 and 13 cases. Except with respect to governmental units, claims must be filed not later than 90 days after the first date set for the meeting of creditors called under Section 341. Governmental units have until 180 days after the order for relief to file claims.

**3. Plan Requirements.**

Chapter 12 also simplifies plan requirements and the confirmation process. There is no requirement for a disclosure statement, the creditors do not vote on the plan and hence there are no solicitation requirements nor is there a juggling of classes to obtain the necessary votes in each classes of creditors. The debtor simply proposes a plan pursuant to the much simplified plan content requirements of Section 1222 and confirmation standards in Section 1225. Like Chapter 13, it is important to understand that, under Section 1207, property of the estate includes earning of and property acquired by the debtor after the Chapter 12 petition and prior to the closing of the case. Pursuant to Section 1222(c), the plan

is for three years unless the court authorizes a longer period, not to exceed five years. Under this section, the debtor must provide for the submission of all or such portion of future earnings or other future income of the debtor as is necessary for the plan. This will generally require projections of income and expenses for the term of the plan. Sections 1222 and 1225, the confirmation standards, do not require that all disposable income be committed to the plan unless; (i) the plan proposes to pay less than the full amount of any domestic support priority claims under Section 507(a)(1)(B) over a five year plan, or (ii) the plan is confirmed over the objection of the trustee or an unsecured creditor and the plan is not distributing property equivalent to the debtor's projected disposable income.

Under Chapter 12, unless a priority claimant agrees to other treatment, with two important exceptions, all priority claims must be paid in full during the plan term. As discussed above, the first exception to full payment of priority claims is with domestic support claims under Section 507(a)(1)(B). Pursuant to Section 1222(4), a plan may provide for less than full payment of domestic support claims if the debtor commits all of its disposable income during a five year plan. The second exception to the requirement of full payment of priority claims is for governmental claims arising from the "sale, transfer or exchange of "farming assets". See Section 1222(a)(2). This provisions gives relief from capital gains, recapture and other similar federal and local taxes arising from the sale of a "farming asset" used in the "debtor's farming operation". Those claims are treated as general unsecured claims. While a simple reading of this code section would lead one to believe that the relief is available for governmental claims arising from sales both before and after the bankruptcy petition, **it does not**. The Supreme Court, in *Hall v United States*, has determined that this relief is only available for appropriately timed prepetition sales of farm property<sup>4</sup>. The Court held that Section 1222(a)(2) must be interpreted in conjunction with certain provisions of Title 26 United States Code (the Tax Code) and the provisions of

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<sup>4</sup> *Hall v. United States*, 566 U.S. 506 (2012)

Section 503 of the Bankruptcy Code, which deals with the allowance of administrative claims<sup>5</sup>. This exception has further been limited by the definition of “farming asset” used in the debtor’s farming operation<sup>6</sup>. The scope of these tax relief issues is beyond the scope of this overview and will be discussed in detail by another panelist.

Under Section 1222, like Chapter 13, a plan may modify the terms of both unsecured and secured creditors claims. Unlike Chapter 13 plans, a Chapter 12 plan may modify debts secured by the residence. The plan may also extend and restructure payment terms beyond the term of the plan, without the consent of the secured creditor. As in Chapters 11 and 13, plan may provide for; the sale of property or the surrender of property to a secured creditor, and the rejection, assumption or assignment of executory leases and contracts.

#### **4. Confirmation of the Chapter 12 Plan.**

The confirmation standards of Chapter 12 are very similar to Chapter 13 with several important exceptions which make confirmation easier. Under Chapter 12, in order to confirm a plan with respect to secured creditors; (i) the creditor must consent to the plan, or (ii) retain its lien and receive distributions equal to its claim, or (iii) the debtor must surrender the collateral to the secured creditor. With respect to unsecured creditors, Section 1225(b)(4), requires that the debtor must pay unsecured creditors at least what they would have received under Chapter 7 of the Code. This means that a liquidation analysis should be included with the plan in order to assist the trustee in determining that this code section has been satisfied. Section 1225(b)(1) provides that the if an unsecured creditor or the trustee objects to the plan, the court may still confirm the plan if; (i) the unsecured creditor’s claim is fully paid, or (ii) all of the debtors projected disposable income is committed to payments under a three year plan or such other longer period as the court may approve, or (iii) the value of the property to be distributed under the plan is not less than the debtor’s projected disposable income during the plan

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

term. These are the “cram down” provisions of Chapter 12 with respect to unsecured creditors. Unlike Chapter 13, in a “cram down” the stringent “means test”, is not applied in determining disposable income. Also, importantly, there is no “absolute priority rule”, which would preclude the debtor from retaining property under the plan because of an objection of unsecured creditors. These confirmation standards provide the simplicity of a Chapter 13 plan but the restructuring power of Chapter 11, without the “absolute priority rule”. Finally, there is no Section 1111(b) election under Chapter 12 to foil the efforts of the debtor to reduce the secured debt to the value of the collateral.

**5. The Effect of Chapter 12 Plan Confirmation.**

Under Chapter 12, the confirmation order does not result in the discharge of the debtor. Like Chapter 13, the discharge only occurs after all payments have been made under the plan, unless the court grants a hardship discharge, under Section 1228(b) for failure to make payments under circumstances for which the debtor cannot “justly be held accountable”. The confirmation order does bind the debtor and all parties to the terms of the plan, whether they objected to the plan or not. Further, the confirmation order vests all property of the estate in the debtor, “free and clear of any claim or interest” unless otherwise provided for under the plan. See Section 1227.

**6. Post Confirmation and the Discharge.**

Between the confirmation and the completion of the plan, the debtor makes payments to the Chapter 12 trustee for disbursement according to the plan and the trustee and court continue to monitor the process and, absent a grant of authority to the debtor to obtain credit or sell property without court approval, requested by the debtor in the plan and confirmation order, the court must approve post confirmation financing and sales.

After confirmation, as in Chapter 13, the Chapter 12 plan may be modified at the request of the debtor, the trustee or a party in interest. Section 1229



provides broad options for modification at any time after confirmation, regardless of how much of the plan has been executed by the debtor. This gives the debtor much more flexibility in post confirmation plan modification than under Chapter 11 where, under Section 1127, “substantial consummation” bars such modification and a single payment has been found to constitute “substantial consummation”. Upon the completion of all payments under the Chapter 12 plan, the debtor is discharged under Section 1228 from all obligations except those excepted from discharge under Section 523(a) and obligations, under Section 1228(a)(2) where payment terms extend beyond the life of the plan. The Chapter 12 discharge provisions apply to all debtors, whether individuals or corporations.

**7. Not All Farmers Are Eligible for Chapter 12.**

The provisions of Chapter 12 provide a tremendous advantage to farmers who are eligible to file a Chapter 12 petition; however, not every farmer may be a debtor under Chapter 12. Pursuant to Section 109(f), only a “family farmer” or a “family fisherman” may be a debtor under Chapter 12. Section 101(18) defines “family farmer” and provides for two categories of “family farmers” with different qualifications for each. The first category is defined under Section 101(18)(A) as an individual or and individual and a spouse; (i) engaged in a farming operation, whose aggregate debts do not exceed \$4,153,150; (ii) at least 50% of which (80% for a fisherman) must arise from the farming operation, excluding the debt from the family residence; and (iii) who has received not less than 50% of the debtor’s income in the preceding year or each of the 2<sup>nd</sup> and 3<sup>rd</sup> taxable years preceding the taxable year in which the case was filed. The second category, defined under Section 101 (18)(B), is corporations or partnerships; (i) not publicly traded; (ii) in which 50% or more of the stock or equity in the entity is held by one family or one family and the relatives of such family, which relatives conduct the farming operation; (iii) in which more than 80% of the value of its assets are related to the farming operation; and (iv) its aggregate debts do not exceed \$4,153,150, of which 50% of the aggregate non-contingent, liquidated

debts, excluding one dwelling at which a shareholder or partner maintains a private residence, arises out of the farming operation.

The field of qualification is further limited under Section 101(9)(f). Only a “family farmer or family fisherman with regular annual income” may be a debtor under Chapter 12. The term “family farmer with regular annual income” is defined under Section 101(19), and is somewhat circular in that it requires the debtor to have “income sufficiently stable and regular to enable such family farmer to make payments under the plan”. Apparently, it is not clear if the debtor qualifies as a “family farmer” until the plan is confirmed. Finally, the term “farming operation” is defined in Section 101(21) and “includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.” It is important to note that a “family farmer” must chose to be a debtor, in that a Chapter 12 may be initiated only by a voluntary petition. See Section 303(a).

#### **IV. Conclusion.**

The agricultural industry is once again facing unprecedented challenges. Commodity prices have gone down, input prices have gone up, financing is tight and farm real estate prices could well begin falling from their recent historically high levels. In addition, weather conditions in many parts of the United States have been catastrophic for farming operations. It is unfortunate that Congress has limited the access of farmers to Chapter 12 based upon debt limits which are too low and eliminating more farmers from eligibility every year as farm debt increases to meet the higher prices for land and equipment. For those who are eligible, practitioners still must carefully consider whether a Chapter 12 reorganization is appropriate and what is the correct timing of that filing. Timing is everything when it comes to taking advantage of the priority tax relief provided in Section 1222(2)(A). Further, it is important to time filings so that crops are planted after the petition so that they are unencumbered by creditors’ prepetition liens in crops. Finally, just because your client is a family farmer and can qualify for Chapter 12, does not mean that Chapter 12 is best for your client. Again, many of the mundane processes,

such as the petition, completion of the schedules and statements of affairs and the first meeting of creditors are similar in Chapters 11, 12 and 13; however, the substantive differences discussed above are considerable. The farmers circumstances may be such that; it has the ability to provide adequate protection under Section 361 for post-petition activities without the special help of Section 1205, the contemplated reorganization may not require a “cram down” and, the special relief from priority taxes arising with respect to disposition of property is unnecessary. In those cases, a Chapter 11 may be a better approach. The Chapter 11 will not result in trustee’s fees post confirmation, post-petition income is not property of the estate, the debtor will have more time to propose a plan and, if the debtor is not an individual, it will be out of bankruptcy upon confirmation. It is incumbent upon the attorney to understand the differences, discussed in this presentation, between Chapter 11 and Chapter 12 in order to know how they may impact the particular circumstances of the client in order to choose which is the appropriate reorganization chapter and when the case should be filed.

## **APPENDIX A**

Eligibility	Chapter 11	Chapter 12	Chapter 13
Who can be a debtor	Any person except a bank, insurance company or government unit §109(d)	Family farmer Family fisherman §109(f)  Individual Individual and spouse Partnership or corporation if controlled by one family (and its relatives) and more than 80% of value of assets are related to farming or fishing operations §101(18), (19A&B)	Individual Individual and spouse §109(e)
Special income requirements	None	Must have regular annual income §§101(19), (19B), 109(f)  More than 50% of gross income must come from farming operations or commercial fishing operations §101(18)(A), (19A)(A)(ii)	Must have regular income §109(e)

Debt limit	None	<p>Family farmer \$4,153,150 at least 50% must arise from farming operations (exclusive of principal residence debt) §101(18)(A)</p> <p>Family fisherman \$1,924,550 at least 80% must arise from commercial fishing operation (exclusive of principal residence debt) §101(19A)(i)</p>	<p>Unsecured debt \$394,725 Secured debt \$1,184,200 §109(e)</p>
Prior case pending within 180 days and dismissed by court for willful failure to obey court order, failure to appear to prosecute case, or on debtor's motion after a request for automatic stay relief was filed	Individual debtor ineligible §109(g)	<p>Individual and family farmer ineligible</p> <p>Family fisherman is eligible §109(g)</p>	Ineligible §109(g)
Other definitions	§1101	<p>Farming operation §101(21)</p> <p>Commercial fishing operation §101(7A)</p>	Individual with regular income §101(30)
<b>Filing the petition</b>	<b>Chapter 11</b>	<b>Chapter 12</b>	<b>Chapter 13</b>
Joint petition filed by individual debtor and spouse allowed	Yes §302	Yes §302	Yes §302

Involuntary petition allowed	Yes if debtor not generally paying debts as they come due or a custodian has been appointed §303(a)	No §303(a)  Note: Involuntary petition not permitted under any chapter against a farmer, family farmer or individual and spouse (no involuntary joint petitions). §303(a)	No §303(a)
Credit counseling course (completed within 180 days prepetition) required unless exceptions apply §§109(h), 521(b), BR 1007c)	Yes, if debtor an individual §109(h) No, if debtor a partnership or corporation	Same as chapter 11 §109(h)	Yes §109(h)
Statement of current monthly income required	Yes, if debtor is an individual BR 1007(b)(5)	No	Yes BR 1007(b)(6)
<b>Dismissal or conversion</b>	<b>Chapter 11</b>	<b>Chapter 12</b>	<b>Chapter 13</b>
Voluntary dismissal by debtor BR 1017(f)	Best interests test §1112(b)(1)	Absolute right unless present case was a conversion from chapter 7 or 11 §1208(b) BR 1017(f)(3)	Absolute right unless present case was a conversion from chapter 7, 11 or 12 §1307(b) BR 1017(f)(3)
Conversion by debtor to Chapter 7 BR 1017(f)	Absolute right if three exceptions do not apply §1112(a)	Absolute right §1208(a),	Absolute right §1307(a)
Conversion by debtor to a chapter other than chapter 7 BR 1017(f)	Yes, if prior to discharge §1112(d)	No specific code authority But see 1208(e)	Yes, if prior to confirmation §1307(d)

Involuntary conversion to chapter 7 or dismissal of case	Yes Best interests test, for cause §1112(b)(1),(2) No involuntary conversion if debtor is a farmer §1112 (c)	Yes, dismissal for cause §1208 (c) Dismissal or conversion if debtor committed fraud in connection with the case §1208(d)	Yes, dismissal or conversion for cause §1307 (c) but no conversion if debtor is a farmer §1307(f)
Involuntary conversion to a chapter other than chapter 7	No specific authority, but see § 1112(f)	No specific authority, but see § 1208(e)	Yes, §1307(d), but cannot convert if debtor is a farmer §1307(f)
<b>Preconfirmation matters</b>	<b>Chapter 11</b>	<b>Chapter 12</b>	<b>Chapter 13</b>
Employment of debtor's attorney and other professionals—court approval required	Yes §§1107(a), 327	Yes §§1203, 327	No §1303
Professional compensation—court must award	Yes §330	Yes §330	No. But court reviews under §329. District may have a customary fee
Property of estate includes property acquired postpetition and earnings from services performed postpetition	Yes, if debtor is an individual §1115	Yes §1207	Yes §1306
Official creditors' committee appointed	Yes §1102	No	No
Case trustee appointed in every case	No, unless DIP removed §1104	Yes Standing Chapter 12 trustee	Yes Standing chapter 13 trustee
Codebtor stay protects individuals on consumer debts	None	Yes §1201	Yes §1301



Proof of claim deemed filed if scheduled by debtor and not shown as disputed, contingent or unliquidated	Yes §1111(a) BR 3003(c)(2)	No Creditor must file proof of claim to participate in distribution BR 3002(a)	No Creditor must file proof of claim to participate in distribution BR 3002(a)
Debtor must file periodic business operating reports including statement of receipts and disbursements	Yes §§704(a)(8), 1107(a), BR 2015(a)(3)	Yes §§704(a)(8), 1203 & BR 2015(a)(3), (b)	Yes, if debtor operates a business §§704(a)(8), 1304 (c) BR 2015(c)(1)
Rights, powers and duties of debtor or DIP	DIP has most of the powers of trustee §1107	Debtor has most of the powers of trustee §1203	Debtor has limited powers of trustee §§1303, 1304
Automatic stay limited if <u>individual</u> debtor had one prior chapter 7, 11, or 13 case pending within previous year that was dismissed (except certain exceptions for dismissal under §707(b))	Stay terminates “with respect to the debtor” on the 30 <sup>th</sup> day unless extended by court §362(c)(3)	No limitation	Same as chapter 11 §362(c)(3))  Codebtor stay not subject to the stay limitation.
No automatic stay if <u>individual</u> debtor had two or more prior cases under any chapter of title 11 pending within the previous year that were dismissed (except certain exceptions for dismissal under §707(b))	No stay in effect except by court order §362(c)(4)	Same as chapter 11  Codebtor stay not subject to the stay limitation	Same as chapter 11  Codebtor stay not subject to the stay limitation

Plan of Reorganization	Chapter 11	Chapter 12	Chapter 13
Disclosure statement required	Yes Small business case exception §1125(b),(f)	No	No
Who can propose plan	Debtor only during first 120 days unless court orders otherwise; then debtor or party in interest unless court grants debtor an extension of time §1121	Debtor only must file plan within 90 days unless extension granted §1221 BR 3015(a)	Debtor only can file plan with petition or within 14 days thereafter §1321; BR 3015(b)
Term of plan	No minimum or maximum term	3 or less years unless court approves a longer term 5 year maximum term §1222 (c)	3 years if below median income debtor, court can extend up to 5 years §1325(b)(4)(A)(i), (B)  5 years if above median income debtor §1325(b)(4)(A)(ii), (B)
Modify rights of holders of claims secured only by debtor's principal residence	No §1123(b)(5)	Yes §1222(b)(2)	No §1322(b)(2)
Modify mortgage on debtor's principal residence if last payment is due before final plan payment	No	Yes	Yes §1322(c)(2)

§506 valuation on 910 motor vehicle claims and one year on other secured claims	Yes	Yes	No §1325(a) hanging paragraph
§506(a)(2) valuation of personal property is replacement value	N/A Case law may give same result, depending on the facts	N/A Same as Chapter 11	Yes §506(a)(2)
Liquidating plan allowed	Yes §1123(a)(5)(D)	Yes §1222(b)(8)	Yes §1322(b)(8)
Absolute priority rule applies	Individual debtor Yes-majority view No-minority view  Yes-all other debtors §1129(b)(2)(B)(ii)	No	No
Section 1111(b) election available to secured creditors	Yes	No	No
<b>Confirmation hearing</b>	<b>Chapter 11</b>	<b>Chapter 12</b>	<b>Chapter 13</b>
Time for holding hearing	No deadline or limits except for small business cases. § 1129(e)	Except for cause, confirmation hearing must be concluded no later than 45 days after plan filed §1224	Within 20 to 45 days after §341 meeting of creditors, unless the court, without an objection, determines an earlier meeting is in best interest of creditors or estate § 1324(b)
Notice of hearing on confirmation	28 day notice unless enlarged or reduced for cause BR 2002(b),(d) ; 9006(b), (c)	21 day notice unless enlarged or reduced for cause BR 2002(a)(8), 9006(b), (c)	Same as chapter 11

Creditors vote to accept or reject proposed plan	Yes §1126	No	No
<b>Discharge</b>	<b>Chapter 11</b>	<b>Chapter 12</b>	<b>Chapter 13</b>
When granted or received	Individual debtor- upon completion of plan payments §1141(d)(5)(A)  Partnership or corporation- confirmation of plan §1141(d)(1)	After completion of plan payments §1228(a)	After completion of plan payments §1328(a)
No discharge for debtor corporation	(1) Plan provides for liquidation of all or substantially all of property of estate (2) debtor does not continue in business, and (3) debtor would be denied a discharge under §727(a) if this case were a chapter 7 case §1141(d)(3)	No similar limit	No corporate chapter 13 case allowed
Debts excepted from discharge	Individual debtor-all debts excepted from discharge under §523 §1141(d)(2)  Corporation debtor- certain debts excepted § 1141(d)(6)	All debts excepted from discharge under §523(a) and long term debts §1228(a)(2)	Certain, but not all, designated debts excepted from discharge under §523(a) and long term debts §1328(a)

Effect of discharge in a prior case on obtaining a discharge in present case	None	None	<p>Discharge denied if debtor obtained a discharge in a prior chapter 7, 11 or 12 case within past four years</p> <p>Discharge denied if debtor obtained a discharge in a prior chapter 13 case within past two years §1328(f)</p>
Effect of discharge in present case on obtaining a discharge in a subsequent case	None	<p>None if subsequent case is under chapter 11 or 12</p> <p>Discharge denied in subsequent chapter 7 case filed within six years if chapter 12 case payments on allowed unsecured claims totaled less than 70% §727(a)(9)</p>	<p>Discharge denied in subsequent chapter 13 case filed within four years. §1328(f)(2)</p> <p>Discharge denied in subsequent chapter 7 case filed within six years if chapter 13 case payments on allowed unsecured claims totaled less than 70% §727(a)(9)</p>
Hardship discharge if debtor is an individual	Yes-if (1) distribution to unsecured creditors are equal to a chapter 7 liquidation, and (2) modification of plan not practical §1141(d)(5)(B)	Yes-same two requirements as chapter 11 plus (3) debtor's failure to complete plan payments is due to circumstances which he should not be justly held accountable §1228(b)	Yes- same as chapter 12 §1328(b)

Postpetition personal financial management course required	Yes, if debtor is an individual, confirmed plan is a liquidation plan, debtor does not engage in business postconfirmation and would be denied a discharge under §727(a) if the case were a chapter 7 case. §§1141(d)(3), 727(a)(11) BR 1007(b)(7)(B)	No	Yes §1328(g)(1) BR 1007(b)(7)(A)
<b>Postconfirmation matters</b>	<b>Chapter 11</b>	<b>Chapter 12</b>	<b>Chapter 13</b>
Modify plan postconfirmation	Yes, until substantial consummation of plan §1127(b)	Yes §1229 (c)	Yes §1329
Remedy for default on plan payments or other plan provisions	Sue for breach in nonbankruptcy court	Modify plan Dismiss or convert case Relief from stay	Modify plan Dismiss or convert case Relief from stay
Revocation of confirmation	Must request within 180 days of confirmation Confirmation obtained by fraud Revoke discharge of debtor §1144	Must request within 180 days of confirmation Confirmation obtained by fraud Debtor can propose a plan modification §1230	Same as chapter 12 §1330
Special tax provisions	Yes §§1146, 346	Yes §§1231, 346	Yes §346