

Agricultural Law Update

The Official Newsletter of the



A nonprofit, professional organization focusing on the legal issues affecting agriculture throughout the United States for over 28 years.

VOLUME 25, NUMBER 10, WHOLE NUMBER 299

OCTOBER 2008

Agricultural Law Update

The official newsletter of the American
Agricultural Law Association

Editor

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THE EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

by Neil E. Harl*

After a narrow rejection by the U.S. House of Representatives on September 29, approval by a comfortable margin by the U.S. Senate on October 2 and passage by the House on October 3 in a turn around from the September 29 vote, the Emergency Economic Stabilization Act of 2008 became law with the President's signature on October 3, 2008.¹ The shift in the House occurred with sharply deteriorating stock markets globally which convinced a group of hold outs that passage was in the national interest. What had started out as a crisis in the U.S. housing sector several months earlier had escalated into a credit crisis with credit markets spiraling rapidly downward as liquidity evaporated and risky strategies long pursued world-wide became a threat to economies around the globe.²

In order to induce some House members to switch positions on the legislation, the bill was expanded in intense negotiations to include several additional provisions, some of which were tax-related. Thus, the initial estimate of a \$700 billion cost became considerably more expensive with the final cost largely unknown. Depending upon how successful the Department of the Treasury is in selling the "bad" paper acquired and propping up banks (cont. on page 2)

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“PRENDRE LA CHEVRE” - WHEN THE STATE “GETS YOUR GOAT”¹

by L. Leon Geyer* and Courtney Mitchell**

This article could be titled “Is your hollow-horned, bearded ruminant genus *Capra* a companion animal or livestock?” With increasing urbanization of parts of the country, conflict over animal usage is on the rise.² A part of the District of Columbia until 1846,³ Arlington is currently a part of the Commonwealth of Virginia. Known today as the home of the eternal flame of JFK,⁴ Arlington National Cemetery,⁵ Iwo Jima Memorial,⁶ Crystal City,⁷ Roslyn⁸ (home of trade groups and lobbyist), and the Pentagon,⁹ Arlington is bound by urban areas of the Potomac River (Washington DC), Fairfax, and Alexandria, Virginia. One would not expect to find livestock within ten minutes of the White House. Surprisingly goats as livestock are allowed in Arlington subject to space requirements, but pet goats are not. Thinking locally for food production¹⁰ and recalling the pot belly pig conflict¹¹ of pet vs. bacon, Arlington County is engaged in the definition of goat and the application of zoning laws.¹² Livestock or companion pet is being played out in many communities across the country. We use the Arlington example of words matter in zoning as society confronts livestock (kept down on the farm) or pets (kept in the house and shady suburban yard).

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and other financial institutions, which is related heavily to when investor confidence is restored, the net cost ultimately could be significantly under \$700 billion. On the other hand, the cost could well exceed estimates if the steps taken do not restore confidence in the financial system.

Emergency economic stabilization

The legislation gives the United States Treasury \$250 billion to expend immediately and requires the President to certify if an additional \$100 billion is necessary. An additional \$350 billion may be disbursed with Congressional approval. The Department of the Treasury is to report on the use of funds and the progress made in addressing the financial crisis. An oversight board and a special inspector general are to be created to watch over the moves of the Department of the Treasury.

Foreclosure mitigation efforts. The 2008 Act specifies that, to the extent that "... the Secretary [of the Treasury] acquires mortgages, mortgage-backed securities, and other assets secured by residential real estate... the Secretary shall implement a plan that seeks to maximize assistance for homeowners and use the authority of the Secretary to encourage the servicers of the underlying mortgages, considering net present value to the taxpayer, to take advantage [of programs], ... to minimize foreclosures." Note that the legislation only "encourages" servicers to take advantage of programs to minimize foreclosures. **Act § 109(a).**

The Secretary is to consent, where appropriate, to reasonable requests for loss mitigation measures such as term extensions, rate reductions or principal write-downs. Note: again the Secretary is not given strong encouragement to address the plight of homeowners facing foreclosure. **Act § 109(c).**

Ordinary loss treatment for Fannie Mae and Freddie Mac stock. The 2008 Act grants ordinary income and ordinary loss treatment to preferred stock in the Federal National Mortgage Association³ and the Federal Home Loan Mortgage Corporation⁴ that has been held by financial institutions. That is the case if the preferred stock was held on September 6, 2008 or the stock was sold on or after January 1, 2008 and before September 7, 2008. The effective date is for sales or exchanges occurring after December 31, 2007, in tax years ending after 2007. **Act,**

§ 301, Div. A, Title III.

Limit on compensation. The Act imposes a \$500,000 limit on income tax deductions for compensation paid to the CEO or the chief financial officer and the top three employees of institutions participating in the bail-out. The provision applies to companies with more than \$300 million of assets purchased by the Department of the Treasury. **Act § 302, Div. A, Title III, adding I.R.C. § 162(m)(5)**

Mortgage debt forgiveness. The Act extends the relief on discharge of indebtedness of cancelled debt on a qualified principal residence through December 31, 2012. The forgiveness of indebtedness is limited to the acquisition indebtedness with the amount boosted for purposes of this provision to \$2,000,000 on a joint return, \$1,000,000 for a separate return. The discharge amount may be applied to reduce the income tax basis of the principal residence (but not below zero). The provision applies to discharges of indebtedness occurring on or after January 1, 2010. **Act § 303, Div. A, Title III, amending I.R.C. § 108(a)(1)(E).**

Energy improvement

Renewable energy credit. The Act extends for one additional year (through 2009) the credit for wind and a two year extension (through 2010) for certain other facilities. **Act § 101(a), Div. B, amending I.R.C. § 45(d).**

Small wind energy property. The legislation provides for a credit of up to \$4,000 for qualified wind energy property. **Act § 104, Div. B, Title I, Subtitle A, amending I.R.C. § 48(a).**

Residential alternative energy credit. The 2008 Act extended the non-refundable credit through 2016 (which helps individual taxpayers pay for specific residential alternative energy equipment installed on or in connection with a dwelling unit) and expanded the credit to include expenditures for small wind energy property and qualified geothermal heat pump property placed in service in 2008 through 2016. The \$2,000 maximum annual credit limit for qualified solar electric property expenditures is eliminated after 2008. The residential alternative energy credit may be offset against regular tax and alternative minimum tax liabilities in 2008. **Act § 106, Div. B, amending I.R.C. § 25D.**

Credits for biodiesel and renewable diesel. The Act extends the credit for biodiesel and renewable diesel for an additional year through 2009. **Act § 202, Div. B, Title II, amending 40A(g).**

Alternative fuel credit. The Act extended the alternative fuel credit for three months, through December 31, 2009. The alternative fuel mixture credit is extended by three months, also, through 2009. **Act § 204, Div. B, Title II, amending I.R.C. § 6426(d), (e).**

Plug-in electric drive motor vehicle credit. The Act enacts a new credit for tax years beginning after December 31, 2008, for new qualified plug-in electric drive motor vehicles placed in service after 2008 through 2014. The maximum amount of the credit is \$2,500 plus \$417 for each kilowatt hour of traction battery capacity in excess of four kilowatt hours. The provision is effective for tax years beginning after 2008 and for eligible property purchased before 2015. The provision is subject to the "sunset" rules as included in the 2001 tax act (EGTRRA) **Act § 205, Div. B, Title II, amending I.R.C. § 30D.**

Energy-efficient deduction for commercial buildings. The 2008 Act extends the energy-efficient commercial buildings deduction through 2013. **Act § 303, Div. B, Title III, amending I.R.C. § 179D(h)**

Energy-efficient improvements for new homes. The 2008 legislation extends the credit for energy-efficient improvement to new homes through 2009. **Act § 304, Div. B, Title III, amending I.R.C. § 45L(g).**

Energy-efficient appliance credit. The Act modifies and extends the energy-efficient appliance credit through 2010. The modifications apply to appliances produced after December 31, 2007. **Act 305, Div. B, Title III, amending I.R.C. § 45M(b).**

Extension of FUTA surcharge. The legislation extends the 0.2 percent FUTA surcharge on wages paid after December 31, 2008 through calendar year 2009. The tax rate is 6.2 percent through 2009 and 6.0 percent for 2010 and thereafter. The changes apply to wages paid after December 31, 2008. **Act § 404, Div. B, Title IV, amending I.R.C. § 3301.**

Tax provisions

Alternative minimum tax. The legislation includes an increased exemption amount

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for alternative minimum tax (AMT) for 2008. Under the new law, the exemption is \$69,950 for those married and filing jointly, \$46,200 for single taxpayers and \$34,975 for married taxpayers filing separately. That represents an increase over the figures for 2007 filing—\$66,250 for those married filing jointly, \$44,350 for single taxpayers and \$33,125 for married taxpayers filing separately. **Act § 102, Div. C, Title I, amending I.R.C. § 55(d)(1).**

For the tax year 2008, an individual taxpayer's entire regular tax liability and the alternative minimum tax liability may be offset by the non-refundable personal tax credits. **Act § 101, Div. C, Title I, amending I.R.C. § 26(a)(2).**

Depreciation classification for new farm machinery and equipment. For property placed in service after December 31, 2008 and before January 1, 2010, the classification has been changed statutorily from seven-year property to five-year property for new farm machinery and equipment used in a farming business as defined in I.R.C. § 263A(e)(4) (other than grain bins, cotton ginning assets, fences and land improvements). The original use for the property must commence with the taxpayer. Used machinery and equipment, grain bins, cotton ginning assets and farm fences remain as seven-year property. Land improvements remain as 15-year property with single purpose agricultural and horticultural property remaining as 10-year property. The ADS life remains at 10 years for new machinery and equipment. **Act § 505, Div. C, Title V, amending I.R.C. § 168(e)(3)(B).**

Charitable giving. The bill also includes a two-year extension (through 2009) of the provision allowing taxpayers aged 70 ½ or older to transfer as much as \$100,000 per year directly from an IRA to a charitable organization without triggering income tax on the contribution as income in respect of decedent. The amount transferred under the provision is not included in the donor's adjusted gross income. That is important because higher AGI levels can lead to loss of part of the itemized deductions and personal exemption amounts. **Act § 205, Div. C, Title II, amending I.R.C. § 408(d)(8).**

State and local taxes. The 2008 law revives a provision allowing taxpayers who itemize their deductions to deduct their state and local sales taxes, rather than state and local income taxes, but not both. The

amended provision is effective for 2008 and 2009. Taxpayers have a choice in how they calculate the deduction. They can claim the actual amount of sales tax paid, assuming that good records are kept, or taxpayers can deduct the amount shown on IRS tables – plus taxes paid on certain items such as an automobile. **Act § 201, Div. C, Title II, amending I.R.C. § 164(b)(5).**

Deduction for tuition and fees. The new legislation extended, through 2009, a provision allowing a deduction for higher-education tuition and fees, which has been available up to a \$4,000 maximum deduction, depending upon the level of income. This deduction can be claimed whether or not the taxpayer itemizes the deduction – it is an “above-the-line” deduction. **Act § 202, Div. C, Title II, amending I.R.C. § 222(e).**

Child tax credit. The Act reduced the refundable threshold of the child tax credit from \$12,050 to \$8,500, effective for tax years beginning after December 31, 2007. **Act § 501, Div. C, Title V, Subtitle A, amending I.R.C. § 24(d)(4).**

Preparer standard. The standard for preparers for most undisclosed positions is reduced by the Act to substantial authority. The amendment conforms the standard to the taxpayer standard under I.R.C. § 6662. The preparer standard for disclosed positions as to whether the preparer has a “reasonable basis” except for listed transactions and reportable transactions with significant avoidance or evasion purposes was not amended – the tax preparer must have a reasonable belief that the position would more likely than not be sustained on the merits. The provision is effective retroactively to May 25, 2007 except for positions described in I.R.C. § 6694(a)(2)(C) for which the effective date is October 3, 2008. **Act § 506, Div. C, Title V, Subtitle A, amending I.R.C. § 6694(a).**

Temporary (one-year) increase in casualty losses from non-business property. The \$100 floor for non-business casualty losses was raised for 2009 to \$500 with the floor reverting to \$100 after 2009. **Act §§ 706(c), Div. C, Title VII, Subtitle B, amending I.R.C. § 165(h)(1).**

Expenditures incurred by elementary and secondary school teachers. The deduction of up to \$250 for designated expenditures in connection with calculation of adjusted gross income that are incurred

by elementary and secondary teachers was extended through 2009. **Act § 203, Div. C, Title II, amending I.R.C. § 62(a)(2)(D).**

Additional standard deduction for real property taxes. The 2008 Act extended through 2009 the additional standard deduction for real property taxes for taxpayers who do not itemize. The provision applies to taxable years beginning after December 31, 2007. **Act § 204, Div. C, Title II, amending I.R.C. § 63(c)(1)(C).**

Basis adjustment for S corporations making charitable contributions. The Act extended the provisions providing for an income tax basis adjustment for S corporations making charitable contributions. The provision is effective for contributions made in taxable years beginning after December 31, 2007. **Act § 307, Div. C, Title III, amending I.R.C. § 1367(a)(2).**

The enhanced charitable deduction. The legislation extended the enhanced charitable deduction for food inventory through 2009. The Act eliminates, temporarily, the percentage limitation for contributions made by certain farmers and ranchers after December 31, 2007 through December 31, 2008. The deduction is limited to twice the taxpayer's basis in the food inventory (which is often zero for farmers and ranchers). The provision is effective for contributions after 2007. **Act § 323, Div. C, Title III, amending I.R.C. § 170(e)(3)(C).**

Environmentally contaminated sites. The 2008 Act extends the provision allowing the expensing of costs stemming from cleaning up environmentally contaminated sites, through 2009. The provision is effective for expenditures paid or incurred after December 31, 2007. **Act § 318, Div. C, Title III, amending I.R.C. § 198(h).**

ENDNOTES

¹ Pub. L. 110-343, 110th Cong., 2d Sess. 2008).

² See generally Harl, “Will the Bail-out Halt Financial Panic?” *AgLender* Vol. 12, Issue 11, pp. 8-9, Nov., 2008; Elbert, “ISU's Harl: Finances Worse Than We Thought,” *Des Moines Sunday Register*, September 28, 2008.

³ 12 U.S.C. § 1716 *et seq.*

⁴ 12 U.S.C. § 1451 *et seq.*

When someone chooses to add a pet to their family, few end up with a goat in their backyard, but some people do. These people are usually looking for an active, interesting companion animal that will be happiest outside, though some goats have supposedly been house trained.¹³ Certain smaller species of goat such as the dwarf or pygmy varieties make wonderful pets as they are extremely friendly, curious, intelligent, and peaceful creatures.¹⁴ Other benefits that some pet goat owners take advantage of include grass cutting, yard waste disposal, or even daily access to fresh goat milk.¹⁵ Goats are emotionally and physically sensitive so it is recommended that owners be gentle and caring and provide their pet goats with shelter and veterinary care.¹⁶ When deciding what kind of pet to get, many people decide that a goat is the right choice for them

The American Heritage Dictionary defines a pet as an animal kept for amusement or companionship.¹⁷ The Code of Virginia defines a companion animal as “any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person.”¹⁸ This portion of the Virginia definition seems to be leaving room for interpretation based on the use of an animal but the next line confirms otherwise and is written as follows: “Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purposes of this chapter.”¹⁹

In order to interpret this statement, one must define the terms used. The Agricultural Title of the Code of Virginia defines agricultural animals as “all livestock and poultry.”²⁰ The Code then defines livestock as “all domestic or domesticated: bovine animals; equine animals; ovine animals; porcine animals; cervidae animals; caprae animals; animals of the genus *Lama*; ratites; ...or any other individual animal specifically raised for food or fiber, except companion animals.”²¹ The scientific classifications used refer to oxen, cows, buffalo, horses, asses, zebras, sheep, pigs, hogs, deer, reindeer, moose, elks, goats, llamas, ostriches and emus.

The dictionary definition and the Virginia

legal definition differ as the first is a use-based definition while the latter focuses on the species of an animal. Therefore, in Virginia, the way an animal is used does not play a role in how it is defined. Instead, the scientific classification of an animal determines its legal classification. A goat, for example, is considered livestock even if it is not raised for human food or fiber. Additionally, just because a livestock animal is treated like a companion, it is not legally considered a pet. Since the raising of livestock is considered a more rural practice, keeping a pet goat is only a problem when someone in a city or suburb attempts to do so because of the zoning laws in such areas.

Zoning laws exist in order to prevent different land uses from conflicting.²² For example, zoning laws are what keep junkyards or waste transfers stations safe distances away from people’s homes. The Virginia state government allows the governing body of any county, city or town to enact its own zoning laws.²³ This means that each locality can create its own definition of livestock and determine which areas are allowed to keep livestock animals. Therefore, these laws differ throughout the state. Code Compliance requires the assistance of area residents who can report violations.²⁴

The zoning code of Arlington County does not provide a definition for livestock or companion animal. This county, like others that do not provide their own definitions, relies on the definitions provided by the Code of Virginia in the Agricultural Title that were referenced earlier.²⁵ There are no agriculturally zoned districts in Arlington County²⁶ but the ordinance allows livestock to be kept on some areas that are zoned residential. It states that “provided, any livestock or poultry shall be kept in a building, structure or yard for the raising, housing or sale thereof which shall be located no less than one hundred (100) feet from any street or lot line.”²⁷

This is a difficult requirement to meet. The space needed per goat is approximately 200 square feet of yard space.²⁸ This space needed would have to be doubled as it is recommended to keep at least two goats since goats are herd animals.²⁹ The average lot size in Arlington County is 8,712 square feet³⁰ and the average home living area is 1,706 square feet.³¹ This leaves an average of 7,006 square feet of yard space which is

more than enough space for multiple goats. However, the 100 foot boundary requirement that goat owners need would require a lot to be at least 48,400 square feet. As this is much larger than the average lot size in Arlington, most people who want to keep pet goats would legally not be able to. As miniature goats create almost no noise, do not smell, and are smaller than dogs, some people do not see why dog owners do not have to follow the same regulations as goat owners. The answer is though someone may treat their goat just like a pet dog, goats are legally considered livestock in Arlington County.

Chesterfield County’s zoning ordinance does not provide its own definition of companion animals either, but it does utilize the term stock animals, as opposed to livestock, and defines this term as “cows, sheep, goats, horses, chickens or other fowl, rabbits or other small-domesticated livestock or other farm animals.”³² The zoning laws in this county that apply to residential areas do not permit goats at all.³³ In order to have a goat in Chesterfield County, a person would be required to live on 3 acres of agriculturally zoned land.³⁴ A hearing before the Board of Supervisors would be required to grant an exception to the zoning, but they do not generally grant exceptions in residential communities.³⁵ Just as Chesterfield County’s zoning laws differ from Arlington County’s, the rules and regulations of different zoning ordinances vary greatly throughout all of the different areas of Virginia.

Consequences of violating zoning laws by owning a pet goat include monetary fines until the animal is removed or immediate seizure of the animal. There have been several instances of pet goat owners in Virginia attempting to change zoning laws in their areas. Some suggestions include individual permits for pet goats or simply reclassifying certain goat species as companion animals.³⁶ Though localities have the authority to make their own definitions, the research conducted for this report found no ordinances in Virginia that consider goats as companion animals. However, there are still people who are fighting to change the laws in Virginia.³⁷ These people are inspired by successes in places like Seattle, Washington whose City Council approved a measure on September 24, 2007 that allows homeowners to keep miniature goats as pets.³⁸ Currently, there are a few legal pet goat owners in residentially

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zoned areas of Virginia and many legal owners in rural areas. However, there are numerous illegal goat owners throughout urban and suburban areas of the state who are paying fines, fighting notices with appeals, or whose neighbors have not notified authority.³⁹

ENDNOTES

¹ If someone has GOT YOUR GOAT you are likely to be annoyed. The expression may come from putting a goat with a horse of a highly-strung nature as a way of calming the horse, especially a thoroughbred horse before a race. The legend has it that rivals and crooks deliberately betting against that horse, would steal the goat, resulting in the horse being upset and less able to race. Such practices are uncommon these days, although it was said to be common in America in the early 20th Century. The old French phrase “prendre la chèvre” “to get your goat” or “to take away the goat” suggest the origin from old times a person’s goat would be their only source of milk. A person would be understandably miffed if someone took their goat. <<http://www.zyra.org.uk/getgoat.htm>>.

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¹⁸ Section 3.1-796.66. Code of Virginia. <<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+3.1-796.66>>

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²⁰ *Id.*

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²² Code Compliance Brochure. Chesterfield County, Virginia. page 2. <<http://www.co.chesterfield.va.us/communitydevelopment/planning/CodeCompliance/CodeCompBro03.pdf>>

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SEEKING PAPERS - MONTANA LAW REVIEW

The Montana Law Review will be dedicating our summer issue to articles dealing with rural law. We are currently requesting article submissions. Articles may be submitted by e-mail at montanalawreview@gmail.com.

Additionally, the Montana Law Review will be hosting a Rural Law Symposium in the Spring of 2009. If you are interested in attending or presenting at this symposium, please contact the law review at the above e-mail address.

2008 AALA AWARD WINNERS

Jesse Richardson, chair, Awards Committee announced the following awards at the 2008 Annual conference in Minneapolis, MN:

2008 Distinguished Service Award: **L. Leon Geyer**

* * *

2008 Student Scholarship: **Jackson S. Davis**

“Fast Food, Zoning and the Dormant Commerce Clause: Was It Something I Ate?” 35 *Boston College Environmental Affairs L. Rev.* 259 (2008).

* * *

2008 Professional Scholarship: **Margaret Rosso Grossman**

“Anticipatory Nuisance and the Prevention of Environmental Harm and Economic Loss from GMOs in the United States,” 18 *Journal of Environmental Law and Practice* 107 (2008).

* * *

The Awards Committee accepts nominations for these awards throughout the year. Please contact Jesse Richardson at jessej@vt.edu

From the Executive Director:

2008 Annual Conference

The AALA 29th Annual Agricultural Law Symposium in Minneapolis is history and it was the highest attended conference in AALA history. Ted Feitshans is the new President-elect and Bryan Endres and Nancy Bryson are the new board members for 2009-2011.

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If you are still receiving the AALA Update in the printed format, remember that the *Agricultural Law Update* is available by e-mail, often sent up to a week before the printed version is mailed. The e-mail version saves the association substantial costs in printing and mailing. Please send an e-mail to RobertA@aglaw-assn.org to receive a sample copy and to change your subscription to e-mail.

2009 Annual Conference

Mark your calendars now for October 16-17, 2009 when the AALA will hold its 30th Annual Agricultural Law Conference in Williamsburg, VA. President-elect Ted Feitshans is already looking for ideas for presentations and speakers. If you would like to help with a presentation, contact Ted at ted_feitshans@ncsu.edu.

Robert P. Achenbach, Jr., AALA Executive Director