

Federal Legislative Issues

August 10, 2010

Estate Taxes

Estate taxes are repealed for one year, 2010, during which time surviving family members will pay capital gains taxes using carry-over basis on assets that exceed \$5.6 million per couple if inherited farmland and other appreciating assets are sold. In 2011, the estate tax will be reinstated with a \$1 million exemption and a top rate of 55 percent.

The return of estate taxes will strike a blow to farm and ranch operations trying to transition from one generation to the next. A \$1 million exemption is not high enough to protect a typical farm or ranch able to support a family and when coupled with a top rate of 55 percent can be especially difficult for farm and ranch businesses.

Sens. Blanche Lincoln (D-Ark) and Jon Kyl (R-Ariz.) are pressing for consideration of their amendment to raise the estate tax exemption to \$5 million and reduce the top rate to 35 percent phased in over 10 years and then to index it for inflation. Full step-up in basis is contained in the Lincoln/Kyl amendment. Farm Bureau supports this amendment.

Food Safety

Numerous bills have been introduced in the House and Senate to address a variety of food safety related issues; however, only two have moved at all in the legislative process. The *FDA Food Safety Modernization Act of 2009*, S. 510 is a bill approved by the Senate Committee on Health, provides resources to increase risk-based inspections, expand research and training programs, and establish a pilot program for high-risk produce traceability. The House passed the *Food Safety Enhancement Act*, H.R. 2749 last year.

While Farm Bureau supports provisions to increase FDA resources, both internally and through cooperative relationships, we have concerns about language that would increase record-keeping requirements and allow the potential for farm regulation of certain fruits and vegetables.

While food safety legislation seems to be stalled in the Senate, The Food and Drug Administration (FDA) is establishing a nationwide produce safety standard for the growing, harvesting, and packing of fresh fruits and vegetables. The regulation will include safety standards for fresh produce at the farm and packing house, as well as compliance measures. The effective date will be phased-in to allow growers of all sizes adequate time to comply. FDA has announced its intention to publish a proposed rule by October, with a goal of finalizing the rule by the end of 2011.

FDA is working with USDA to ensure that the proposed rule takes into account the wide diversity of farming operations nationwide. In addition to the FDA produce safety comments, the agency will also review and consider comments submitted as part of the USDA Agricultural Marketing Service (AMS)-proposed National Leafy Green Marketing Agreement (NLGMA). Comments submitted on the 2009 publication of draft FDA food safety guidance for tomatoes, melons, and leafy greens will also be automatically included in the formal comments reviewed for this new fresh produce regulation.

Immigration Reform/H2A/Ag Jobs

One major piece of immigration legislation is the Agricultural Job Opportunities, Benefits and Security Act (AgJOBS). Authored by Sen. Diane Feinstein (D-CA), the measure would provide an extensive reform of the H-2A seasonal worker program, as well as establish an "earned adjustment" program for

undocumented farm workers and agricultural guest workers. Companion legislation (HR 2414) has been introduced in the House by Reps. Howard Berman (D-CA.) and Adam Putnam (R-FL.).

Senate Democrats released their vision for comprehensive immigration reform last spring. An AFBF summary of the 26-page document is available. Although Senator Lindsey Graham (R-S.C.) has previously worked with Sen. Chuck Schumer (D-N.Y.) on the issue, the concept paper released last week is not a bipartisan document. It only reflects input from Senate Democrats. It is unclear at this stage whether its release will prompt further bipartisan discussions.

The proposal emphasizes border enforcement, then the legalization of all eligible persons who are in the U.S. unlawfully. Employer mandates are more rigorous than current law, centered on verification of employment eligibility using a fraud-proof biometric social security card. AgJOBS 2009 is included as the agricultural component of the legislation. It appears unlikely that legislation will be enacted in 2010.

Clean Water Act Jurisdiction

Rep. Jim Oberstar (D-Minn.) has introduced H.R. 5088, the *America's Commitment to Clean Water Act*. This legislation results in an expansion of federal authority to virtually all waters in the United States, unnecessarily encroaching on private property and state and local authority. It will create legal and regulatory uncertainties that will undermine economic activity and almost certainly result in increased litigation with little prospect for meaningful environmental benefit.

On the regulatory side, this week, the Environmental Protection Agency (EPA) has proposed a draft National Pollutant Discharge Elimination System (NPDES) permit for pesticide applications.

This proposed permit follows an order by the U.S. Court of Appeals for the 6th Circuit in *National Cotton Council, et al. v. EPA* that rejected the agency's 2006 rule exempting those who apply agricultural pesticides from needing to obtain a NPDES permit under the Clean Water Act (CWA). Despite AFBF, Congress and industry's request for a review of the appellate ruling, the Supreme Court declined the request, clearing the way for EPA to propose its draft permit.

The 6th Circuit ruling means that some pesticide applications are now considered discharges under the clean water act, requiring a permit to avoid liability for unregulated discharges. Farmers were previously exempt from such permits under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

Senators Blanche Lincoln (D-Ark.) and Saxby Chambliss (R-Ga.) introduced legislation on August 6 that clarifies that the lawful application of pesticides under FIFRA does not trigger regulatory requirements in other programs.

The bill, S. 3735, would amend FIFRA by clarifying that additional permits are not needed when a pesticide is applied in accordance with the FIFRA approved label. The legislation is intended to solve many of the problems associated with the new National Pollutant Discharge Elimination System (NPDES) permitting program and the underlying 6th Circuit decision from 2009. AFBF supports the legislation.

Climate Change/Cap & Trade

In June of last year, the House passed H.R. 2454 that would establish a cap-and-trade program to cap emissions and allow emission allowances to be openly traded on a new market platform. The Senate has a bill, S. 1733, which is also a cap-and-trade bill similar in many respects to the House bill. This bill

was passed out of the Environment and Public Works Committee, but no further action has been taken yet.

Additionally, some legislators have entered discussions with affected groups (including Farm Bureau) and others seeking to develop a compromise bill. These efforts are ongoing. Farm Bureau opposes H.R. 2454 and S.1733 and any other legislation that imposes mandatory cap-and-trade provisions. We also oppose any climate legislation that might impose undue costs on farmers and consumers, and that would put U.S. producers at a competitive disadvantage in the international marketplace.

We support a voluntary market-based carbon credit system. Market based solutions are preferable to federal or state emission limits to achieve reductions in GHG emissions from any source. We also support development of clean energy sources, such as nuclear energy, clean coal, and renewable energy sources.

Dairy

In late 2008, converging factors led to an evaporation of the U.S. dairy export market. First and foremost, the global economic recession virtually halted the trade of products, while a stronger dollar also made our products more expensive in the marketplace. Finally, New Zealand was able to regain much of its drought-plagued milk production in late 2008. In addition, dairy producers were caught in a classic "price-cost squeeze" with farm milk prices declining sharply from record highs while feed costs remain high. Dairy prices have risen since 2009, but the nation's 60,000 dairy farmers are still suffering from a tremendous loss of equity in 2008 and 2009.

Farm Bureau supports continuation of the Milk Income Loss Program (MILC program) and modifications in the Federal Milk Marketing Order that will enhance the milk price received by producers.

In early August, the Senate Agriculture Committee approved the *Mandatory Price Reporting Act* (S. 3656). The full Senate approved the bill by unanimous consent the next day. The legislation would extend the mandatory price reporting (MPR) program for another five years, establish an electronic price reporting system for dairy products. Published reports will be required on a weekly and monthly basis. On a weekly basis the secretary must publish a report disclosing prices from the previous week. The all-milk price reporting system, currently in place, would remain unchanged. Farm Bureau supports the MPR reauthorization legislation.

Other Taxes

H.R. 4213, the American Jobs and Closing Tax Loopholes Act would reinstate many tax provisions that expired at the end of 2009. This bill includes an extension of tax incentives for biodiesel and renewable diesel, five-year depreciation for farming business machinery and equipment and a number of other tax deductions. AFBF supports this bill.