



2023 Legal and Regulatory Developments for Agribusinesses

Michael C. Zahrt

Foster Swift Agricultural Law News

August 30, 2023

2023 has been a mixed bag for the agricultural sector in Michigan and throughout the country. Rising input costs, irregular weather and trade disruptions continue to challenge agri-business again this year.

But there is also good news as the U.S. Department of Agriculture (USDA) has reported that total 2023 farm income is expected to reach \$113.4 billion, a 17 percent increase over 2022.

From a legal and regulatory perspective, 2023 brought several new measures and developments which are applicable to and will impact most of the state's agricultural businesses, including:

- Corporate Transparency Act
- Inflation Reduction Act
- SECURE Act 2.0
- Solar Leases
- Drone Use Guidelines
- Tax Issues

An explanation of the new laws, regulations and related developments and what they mean for agricultural concerns is provided below.

Corporate Transparency Act

The Corporate Transparency Act (CTA) is a federal law which requires certain corporations, limited liability companies and other business entities in the U.S. to disclose information regarding their beneficial owners to the Department of Treasury's Financial Crimes Enforcement Network (FinCEN). For organizations required to report, which will include about 90 percent of domestic business entities, the deadline for supplying information to FinCEN is January 1, 2024.

Under the CTA, a corporation, limited liability company or similar entity must report if it was created by filing a formation document with a secretary of state or similar office under state or tribal laws *or* formed under the law of a foreign company and registered to conduct business

AUTHORS/ CONTRIBUTORS

Michael C. Zahrt

PRACTICE AREAS

Agri-Business

Employee Benefits

Estate Planning

Federal Taxation

Renewable Energy

Tax Law

Technology Law

Zoning & Land Use



in the U.S.

Companies which meet the reporting criteria are to deliver a report to FinCEN including the following information on the entity itself, each beneficial owner and company applicant:

Required Company Information

- Legal name of company, including DBAs, etc.
- Street address of principal place of business
- Jurisdiction of formation and registration
- Tax identification number, Dun & Bradstreet Data Universal Numbering System (DUNS) or legal entity identifier (LEI)

Required Beneficial Owner & Company Applicant Information

- Full legal name
- Date of birth
- Current residential or business street address
- A unique identifying number from a non-expired acceptable document such as a U.S. passport; driver's license; state or tribal ID card. A foreign passport is also acceptable.

The CTA broadly defines a beneficial owner of a reporting company as "any individual who, directly or indirectly, through any contract or arrangement, understanding, relationship or otherwise exercises 'substantial control' over the entity and owns or controls not less than 25 percent of the company."

Reporting is not required for companies with:

- More than 20 full-time employees
- More than \$5,000,000 in gross receipts or sales (as indicated in previous year's tax return) and a U.S.-based office
- Heavily regulated companies, including banks, brokers, publicly traded companies and certain subsidiaries
- Certain service providers
- Inactive businesses

Inflation Reduction Act

The Inflation Reduction Act (IRA) includes several provisions that are applicable to businesses in the agricultural industry. This includes \$20 billion in assistance for agricultural conservation programs; \$14 billion investment to help farms and rural electric co-ops transition to clean energy infrastructure; and \$19.5 billion to support the USDA's conservation programs which yield climate change mitigation benefits.



The IRA provides for a 6 percent base credit for agricultural, biogas and solar investments, which can be upgraded to 30 percent if the taxpayer meets certain requirements (hiring registered apprentices, paying prevailing wages, meeting energy community requirements, etc.) There are also 10 percent bonuses for domestic content and investment in an “energy community.”

The law also extends the excess business loss rule (limiting amount of deduction for business losses) and indexes the deduction threshold to the inflation rate, enabling taxpayers to deduct more as inflation increases.

Increased tax rates are also part of the IRA, which will raise an additional \$300 billion over a decade by requiring large corporations to pay a 15 percent minimum tax on their profits and by enacting a 1 percent excise tax on stock buybacks and redemptions.

The IRA is a comprehensive piece of legislation that was designed to address the ongoing challenges facing the agriculture industry.

SECURE Act 2.0

The SECURE (Setting Every Community Up for Retirement Enhancement) Act 2.0, which was passed in late 2022, was designed to improve the retirement security of Americans by making it easier for them to save for retirement and by providing more flexibility in retirement and estate planning. Some of the new measure’s provisions include:

- Increases the age when retirees must start taking required minimum distributions (RMDs) from retirement accounts from 72 to 75, giving retirees’ savings additional time to grow before RMDs begin.
- Allows people 50 and older to make catch-up contributions from \$1000 to \$7500 to 401(k), 403(b), 457(b) plans and SIMPLE, Roth & SEP IRAs.
- Allows for converting a 529 plan to a Roth IRA if the plan has been open 15 years; if the beneficiary of the 529 is the same as the owner of the Roth IRA; and if several other conditions are met.
- Requires beneficiaries of inherited IRAs to withdraw entire account balance within 10 years of original owner’s death.

These are just a few of the 90+ new or modified provisions in the SECURE Act 2.0 of 2022, which makes it critical to review the new measure’s potential impact on your organization with a financial advisor or attorney.

Solar Leases

The amount of agricultural land leased for solar projects continues to increase at a rapid pace. The Solar Energy Industries Association (SEIA) projects that 100 million acres of land will be leased for solar power installations by 2030.

According to the SEIA, large solar installations on rented agricultural land can provide farmers and landowners with a new source of revenue that can generate a significant amount of fixed, guaranteed annual revenue over a multi-year contract term.



Overall, the solar lease market is still evolving and a uniform, one-size-fits-all approach has yet to be developed. There are, however, guidelines that are relatively common in the world of solar leasing, including:

- Option periods – This is the period during which the solar company has the right to lease the land but is not obliged to do so. The option period is typically 1-2 years, but can be longer.
- Renewal periods – This is the period after the option expires during which the solar company can renew the lease. Renewal periods are typically 10-20 years.
- Property taxes – The landowner is responsible for paying property taxes on the land, although the solar company may agree to reimburse the owner for a portion or all the tax.
- Restoration of property – When the solar project ends, the solar company is responsible for restoring the land to its original condition.

Landowners and farmers who are considering leasing property for solar energy projects should also take into consideration their potential for noise and light pollution and other environmental impact, which can be key considerations in planning.

Michigan doesn't currently have any specific rules for the rental of farmland for solar installations, however there are several laws and regulations that may apply to solar projects, including:

- Michigan Zoning Enabling Act – This law gives local governments the authority to regulate land use, including solar projects.
- Michigan Environmental Protection Act – This law protects the state's environment and may apply to solar projects which could impact the environment.
- Michigan Farmland and Open Space Preservation Act – This law provides financial incentives to keep land in agricultural production.
- Michigan Public Service Commission – The agency regulates state utilities and may be involved in approving projects which connect to the electrical grid.

Agricultural Drones and the FAA

The use of drones in agriculture has literally taken off over the past several years. Many farms are utilizing this versatile tool to improve efficiency and sustainability in agriculture. Drones are currently being used in a variety of ways by agricultural interests, including crop and livestock monitoring, plant health assessment, soil analysis, fertilization, disease management, wildlife oversight and precision irrigation.

In Michigan, there are several Federal Aviation Administration (FAA) and state registrations and permits required to operate a drone for agricultural purposes:

- Recreational drone operation – To fly a drone in Michigan for recreation (or to take video or photos of your property) the FAA requires that you take the Recreational UAS Safety Test and register your drone. (\$5 fee) There are a few additional guidelines for operating a drone, but if your needs are limited to property and crop surveillance, this is where to start.
- Commercial drone operation -- To fly a drone for commercial uses (monitoring stand counts, diseases, weeds, wet spots, etc.) you are required to follow the FAA's Part 107 Small UAS Rule, which includes passing the FAA's Aeronautical Knowledge Test to obtain a remote pilot certificate.

- Dispensing of chemicals and agricultural products by drone – To operate a sprayer drone weighing more than 55 pounds, an FAA Part 137 UAS Certificate is also required.
- Remote ID required for all drones – All drone pilots must operate in accordance with the rule on Remote ID and register their drones with the FAA. Drones can be registered online or via mail.
- State of Michigan agricultural drone regulation – The Michigan Department of Agriculture and Rural Development (MDARD) oversees the aerial application of agricultural products by drone. MDARD requires certification for certain agricultural uses, including aerial pesticide application.

Tax Issues and Considerations

The Tax Cuts and Jobs Act (TCJA), which made sweeping changes to the U.S. tax code for businesses and individuals, is scheduled to expire on December 31, 2025. Some important tax issues to consider as the sunset date approaches include:

- Standard deduction – The standard deduction will be reduced to \$12,000 (down from \$24,000), which means that more taxpayers may be itemizing deductions again.
- Estate tax changes -- The TCJA doubled the per person federal estate and gift tax exemption to \$12.9 million per person. That exemption is set to revert, when adjusted for inflation, back to somewhere around \$6.5 million per person beginning in 2026.
- State and local tax deduction – Deductions for state and local tax deductions had been capped at \$10,000. That cap will be repealed in 2026.
- Child tax credit – The child tax credit will revert to its pre-TCJA level of \$1000 per child.
- Mortgage interest deduction – The mortgage interest deduction will be capped at \$1 million for new mortgages.
- Medical expense deduction – Out-of-pocket medical costs above 10 percent of adjusted gross income can be deducted. The TCJA had allowed deduction of out-of-pocket health costs above 7.5 percent of adjusted gross income.

These are a few of the takeaways regarding tax rates which will end in 2026. It's important to be aware of these changes and to plan accordingly. If you have any questions about how the TCJA sunset will affect your taxes, consult with an attorney or tax advisor.

If you have any questions or need more information on any of these topics, please contact Michael Zahrt (mzahrt@fosterswift.com/616-726-2223) of the Foster Swift Agri-Business Law Practice Group.