

Batting 500.24 for the Family Farm – Part I

By Wendell E. Engelstad, SAMA
Dodge County Assessor



Introduction

Production decisions are no longer the only major decisions that cash crop and livestock producers need to make. The profitability and even the survival of the larger farming enterprises are often determined by the ownership structure of the farm operation and how title to the real property is held. The ownership level at which income is taxed, personal liability of the owners, and the ease of transfer to successive generations and outside interests are all significant considerations. Almost all forms of ownership pass income taxation through to the individual owners, except that standard or Subchapter C Corporations are taxed at the corporate level. On the other hand, sole proprietorships and general partnerships do not provide limited liability for their owners, but most other forms of ownership do. Estate or succession planning is generally simpler and more seamless for those ownership entities in which there are shares or partial interests to be transferred, as opposed to sole proprietorships. Minnesota farmers, just as in many other states, must also navigate the complex regulations and restrictions of the Corporate Farm Law. After all of these considerations, eligibility for property tax homestead classification falls further down the list of needs when choosing how to title agricultural real property, but it can be equally as complex.

Background

Minnesota Statutes Section 500.24, also known as the Minnesota Corporate Farm Law, was passed by the Minnesota Legislature and signed by the Governor in 1973. The law placed limitations on the ownership of “agricultural land and land capable of being used for farming,” but it grandfathered then-existing corporate land owners and

authorized new farmland ownership by *family farm corporations* and *authorized farm corporations*. Besides the restrictions on direct ownership, limits were placed on the corporate leasing of farmland.¹ In 1988, the Minnesota Legislature imposed a 1,500 acre maximum ownership limitation for *authorized farm corporations* and *authorized farm partnerships* and expanded the law to add *limited partnerships* to the excepted entities. The Legislature also reduced the period for most corporations to own farmland from ten years to five. The Corporate Farm Law was amended again in 1994 to expand the definition of *authorized farm corporation*.²

Definitions

The preamble to the Minnesota Corporate Farm Law states that its purpose is “to encourage and protect the family farm as a basic economic unit, to insure it as the most socially desirable mode of agricultural production, and to enhance and promote the stability and well-being of rural society in Minnesota and the nuclear family.” MS 500.24 defines “*agricultural land*” as real estate used for farming or capable of being used for farming in this state.³ It further defines “*family farm*” as an unincorporated farming unit owned by one or more persons residing on the farm or actively engaging in farming.⁴ A “*family farm corporation*” is defined as a corporation founded for the purpose of farming and the ownership of agricultural land in which:

1. The majority of the stock is held by and the majority of the stockholders are persons, the spouses of persons, or current

¹ Minnesota Legislature, Report of the Minnesota Corporate Farm Law Task Force (St. Paul: 1995), p. 10.

² Minnesota Legislature, p. 11.

³ 2007 Minnesota Statutes 500.24, Subd. 2(g).

⁴ 2007 Minnesota Statutes 500.24, Subd. 2(b).

beneficiaries of one or more family farm trusts in which the trustee holds stock in a family farm corporation, related to each other within the third degree of kindred according to the rules of civil law;

2. At least one of the related persons is residing on or actively operating the farm; and
3. None of the stockholders are corporations.⁵

An “*authorized farm corporation*” means a corporation meeting the following standards:

1. It has no more than five shareholders, provided that for the purposes of this section, a husband and wife are considered one shareholder;
2. All of its shareholders, other than any estate, are natural persons or a family farm trust;
3. It does not have more than one class of shares;
4. Its revenue from rent, royalties, dividends, interest, and annuities does not exceed 20 percent of its gross receipts;
5. Shareholders holding 51% or more of the interest in the corporation reside on the farm or are actively engaging in farming;
6. It does not directly or indirectly own or otherwise have an interest in any title to more than 1,500 acres of agricultural land; and
7. None of its shareholders are shareholders in other authorized farm corporations that directly or indirectly in combination with the corporation own more than 1,500 acres of agricultural land.⁶

An “*authorized livestock farm corporation*” means a corporation formed for the production of livestock and meeting the following standards:

1. It is involved in the production of livestock other than dairy cattle;
2. All of its shareholders, other than any estate, are natural persons, family farm trusts, or family farm corporations;
3. It does not have more than one class of shares;

4. Its revenue from rent, royalties, dividends, interest, and annuities does not exceed 20% of its gross receipts;
5. Shareholders holding 75% or more of the control, financial, and capital investment are actively engaged in livestock production;
6. It does not directly or indirectly own or otherwise have an interest in any title to more than 1,500 acres of agricultural land; and
7. None of its shareholders are shareholders in other authorized farm corporations that directly or indirectly in combination with the corporation own more than 1,500 acres of agricultural land.⁷

A “*family farm partnership*” is a limited partnership formed for the purpose of farming and the ownership of agricultural land in which:

1. The majority of the interests in the partnership is held by and the majority of the partners are natural persons or current beneficiaries of one or more family farm trusts in which the trustee holds an interest in a family farm partnership related to each other within the third degree of kindred according to the rules of civil law;
2. At least one of the related persons is residing on the farm, actively operating the farm, or the agricultural land was owned by one or more of the related persons for a period of five years before its transfer to the limited partnership, and
3. None of the partners is a corporation.⁸

A “*family farm limited liability company*” is a limited liability company founded for the purpose of farming and the ownership of agricultural land in which:

1. The majority of the membership interests is held by and the majority of the members are natural persons, or current beneficiaries of one or more family farm trusts in which the trustee holds an interest in a family farm limited liability company related to each other within the third degree of kindred according to the rules of civil law;

⁵ 2007 Minnesota Statutes 500.24, Subd. 2(c).

⁶ 2007 Minnesota Statutes 500.24, Subd. 2(e).

⁷ 2007 Minnesota Statutes 500.24, Subd. 2(f).

⁸ 2007 Minnesota Statutes 500.24, Subd. 2(j).

2. At least one of the related persons is residing on the farm, actively operating the farm, or the agricultural land was owned by one or more of the related persons for a period of five years before its transfer to the limited liability company; and
3. None of the members is a corporation or a limited liability company.⁹

An “*authorized farm limited liability company*” is a limited liability company in which:

1. All of its members, other than any estate, are natural persons or family farm trusts;
2. There is only one class of membership interests;
3. Revenues from rents, royalties, dividends, interest, and annuities does not exceed 20 percent of its gross receipts;
4. Members holding 51% or more of both the governance rights and financial rights reside on the farm;
5. It does not directly or indirectly own or otherwise have an interest in any title to more than 1,500 acres of agricultural land; and
6. None of its members are members in other authorized farm limited liability companies that directly or indirectly in combination with the authorized farm limited liability company own more than 1,500 acres of agricultural land.¹⁰

Minnesota Corporate Farm Law

All corporations, limited partnerships (and therefore, limited liability limited partnerships), limited liability companies, pension or investment funds, and business trusts are prohibited from engaging in farming or having a leasehold or fee interest in agricultural land unless the entities meet certain requirements under Minnesota Statutes Section 500.24.¹¹ This section does not regulate general partnerships and limited liability partnerships, so these entities can legally engage in farming and have an interest in agricultural land without having to meet any further statutory requirements.

⁹ 2007 Minnesota Statutes 500.24, Subd. 2(l).

¹⁰ 2007 Minnesota Statutes 500.24, Subd. 2(m).

¹¹ 2007 Minnesota Statutes 500.24, Subd. 3(a).

Any agricultural land, corporation, limited partnership, trust, limited liability company, or pension or investment fund that meets a definition for one of the following is specifically exempted from the aforementioned prohibition against engaging in farming or having an interest in agricultural land:

1. *Family farm,*
2. *Family farm corporation,*
3. Family farm trust,
4. *Authorized farm corporation,*
5. *Authorized livestock farm corporation,*
6. *Family farm partnership,*
7. *Authorized farm partnership,*
8. *Family farm limited liability company,*
9. *Authorized farm limited liability company,*
10. Research or experimental farm,
11. Breeding stock farm,
12. Aquatic farm,
13. Religious farm,
14. Utility corporation,
15. Development organization,
16. Exempt land (*agricultural land* owned or leased by a corporation prior to May 21, 1973),
17. Gifted land,
18. Repossessed land,
19. Nonprofit corporation,
20. De minimis (an interest in 40 acres or less of agricultural land with less than \$150 per acre in gross revenue)
21. Commissioner’s exemption (doesn’t meet previous exemptions, doesn’t contradict purpose, and doesn’t have significant impact on agriculture industry)

Reporting

The chief executive officer of every pension or investment fund, corporation, limited partnership, limited liability company, or entity that is seeking to qualify for an exemption from the prohibitions contained in M.S. 500.24 must file an application with the Commissioner of Agriculture prior to taking an interest in agricultural land or starting farming activities. This Corporate Farm Application and answers to questions can be obtained from:

Doug Spanier, State Program Admin. Mgr.
Minnesota Department of Agriculture
625 North Robert Street
St. Paul, MN 55155

(651) 201-6166 or (800) 967-2474
douglas.spanier@state.mn.us

Once approved, the Department of Agriculture will send a notice to each entity in February of each year reminding them of the annual report which needs to be filed by the following April 15th. Entities which fail to file an annual report by April 15th must pay a \$500 civil penalty, which is a lien on the land until it is paid. Failure to file or the willful filing of false information is a gross misdemeanor.¹²

Enforcement

If there is reason to believe that a corporation, limited partnership, limited liability company, trust, or pension or investment fund is engaging in farming or holding an interest in *agricultural land* in violation of Minnesota's Corporate Farm Law, the Attorney General of Minnesota shall commence an action in the district in which a substantial part of the lands are situated. If the court finds that the lands in question are being held in violation of subdivision 3, it shall file an order so declaring with the county recorder or registrar of titles. The corporation, limited partnership, limited liability company, trust, or pension or investment fund owning such land shall have a period of five years from the date of such order to divest itself of such lands. Any lands not so divested within the time prescribed shall be sold at public sale in the manner prescribed by law for the foreclosure of a mortgage by action.¹³

Verifying Family Farm Certification

Generally speaking, only *agricultural land* owned by natural persons can receive an agricultural

homestead classification, except for certain *authorized entities* which are organized under the auspices of Minnesota's Corporate Farm Law. These family farm corporations, family farm trusts, family farm partnerships, or family farm limited liability limited partnerships must first of all be "certified" by the Minnesota Department of Agriculture, as evidenced by a Letter of Certification from the DOA. If this certification is not readily available from the owner, the Department of Agriculture website now offers a tool to determine which entities in any county have filed with the DOA and have been certified:

1. Go to <http://www.mda.state.mn.us/licensing/corpfarmreport.htm>;
2. Click on "Corporate Farm Search" on the left side of the screen;
3. Enter the entity name and click on "Search" or
4. Enter a county name and click on "Search;"

Conclusion

Fortunately, the determination as to whether an entity can be defined as a *family farm corporation*, *joint family farm venture*, or *family farm* operated by a partnership within the definitions of M.S. 500.24 is done by the Minnesota Department of Agriculture. "Batting 500.24 for the Family Farm – Part II" will deal with taking the DOA certification information and making agricultural homestead benefit determinations for *authorized entities* based on Minnesota Statutes Section 273.124, Subdivision 8(a) and M.S. 273.124, Subd. 14(g).

Wendell has been a MAAO member since 2000. He can be contacted at (507) 635-6245 or wendell.engelstad@co.dodge.mn.us.

¹² 2007 Minnesota Statutes, 500.24, Subd. 4(b).

¹³ 2007 Minnesota Statutes 500.24, Subd. 5