

Is Bankruptcy a Viable Option for Financially Distressed Agricultural Producers?

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Introduction

There are a number of bankruptcy chapters:

Chapter 7: liquidation of business and/or household.

Chapter 11: reorganization that addresses the needs of large entities such as corporation or firms with large debts.

Chapter 12: reorganization designed primarily to address agriculture.

Chapter 13: reorganization aimed at wage earners.

Chapter 12 is designed for family farmers/ranchers.

Eligibility criteria:

- 1) Individual or individual and spouse
- 2) Corporation or partnership

Individual or Individual/Spouse

- 1) Actively engaged in production agriculture
- 2) Total debt must not exceed \$3,237,000.
- 3) 50% of debt related to agricultural operation
- 4) 50% of income for prior tax year from agricultural operation

Corporation/Partnership

- 1) 50% or more of outstanding stock or equity owned by one family
- 2) Family must operate the agricultural business.
- 3) 80% of the value of assets related to agricultural business
- 4) Debt not to exceed \$3,237,000
- 5) 50% of corporation/partnership total debt related to the agricultural operation

Other Eligibility Issues

Prior bankruptcy—if during preceding 180 days a prior bankruptcy petition was dismissed

Credit Counseling—must participate or receive credit counseling from approved agency within 180 days prior to filing

Economic Feasibility of Reorganization

Key points to address:

- 1) Prior to filing a Chapter 12, the success of the reorganization must be addressed. (If expectations are dim then filing a Chapter 12 is not appropriate.)
- 2) Can all the payments be made within the plan?
- 3) Development of production and marketing aspects of the business (economic feasibility).
- 4) Meeting day-to-day cash needs of the operation. (cash collateral)
- 5) What will be different in the future?
- 6) Willing to retain and work with agribusiness consultant

A Reorganization Plan is a Requirement—What is it?

- 1) 3- to 5-year cash flow plan detailing how the business will be run including payments to secured creditors (including unsecured payments and trustee fees).
- 2) Accompanying the reorganization plan is a livestock and crop plan. Provides an overview of the acres of each crop, number of livestock, yields and weights, and expected prices for the products to be sold.
- 3) Must work closely with the attorney(s) to ensure accuracy and completeness.

Tax Considerations

Capital gains tax liability treatment