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FIRST SYNGENTA VERDICT

The jury returned a big verdict against Syngenta this morning in the first trial of the massive Syngenta GMO litigation. This case was presented on behalf of a class of more than 7,000 Kansas corn producers, specifically those **Kansas producers who priced corn for sale after November 18, 2013, and who did not purchase Viptera or Duracade corn seed**. Any Kansas producers who met that definition and did not affirmatively opt out of the class were automatically part of this action.

After a relatively short deliberation, the jury determined that Syngenta was negligent in the timing, scope, and manner in which it commercialized its Viptera and Duracade GMO corn, specifically by selling it before receiving import approval from China. The jury determined that China's rejection of the corn was not a superseding cause of the plaintiffs' damages. The jury assessed \$217.7 million in compensatory damages against Syngenta, which was the amount the Kansas class requested. The jury chose not to award punitive damages, finding that Syngenta did not act in a "wanton" manner (with reckless disregard to the probable consequences) toward the producers.

Seven other state class actions remain pending in the Kansas multi-district litigation: Iowa, Arkansas, Missouri, South Dakota, Illinois, Nebraska, and Ohio. The nationwide class claims have been dismissed. Judge Lungstrum suggested in a hearing this morning that the next trial in the Kansas MDL will likely take place in January or February. The plaintiffs are asking to consolidate the seven classes into three trials. Briefing on that issue is underway.

The MDL plaintiffs have not yet sought class certification for state claims filed on behalf of producers from Alabama, Colorado, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, North Dakota, Oklahoma, Tennessee, Texas, and Wisconsin. On a different front, a class action filed on behalf of Minnesota

corn producers and approximately 60,000 individual claims against Syngenta remain pending in the Fourth Judicial District of Hennepin County, Minnesota. The bellwether trial in that set of state cases is currently scheduled for July 10 (delayed from an original April trial date).

Syngenta has stated that it will appeal the judgment, a verdict which has just provided great momentum to the thousands of claims pending throughout the country.

Iowa producers **who priced corn for sale after November 18, 2013, and who did not purchase Viptera or Duracade corn seed**, are automatically part of the Iowa class if they did not affirmatively opt out of the class litigation. It is unknown when those claims will be tried. The result of each bellwether trial will be crucial to considerations of a possible settlement. But Syngenta will likely want to hear what the Tenth Circuit Court of Appeals has to say about today's verdict before moving forward with any kind of settlement. And appeals can take years. In other words, this litigation will not be over anytime soon. Nor will any checks soon be in the mail for today's prevailing Kansas farmers.

In the meantime, in a somewhat ironic development, a merger between Syngenta AG and state-owned China National Chemical Corp (ChemChina) is virtually complete. The takeover by ChemChina was valued at \$43 billion.

- It was a splendid summer morning and it seemed as if nothing could go wrong. – John Cheever

MISSOURI TAX RATES TO GO DOWN IN 2018

A majority of Missouri residents and small business owners will see their personal income tax bills go down in 2018, according to Missouri Senator Will Kraus. Pursuant to S.B. 509, Laws 2014, beginning in 2017, if net general revenue collected in the previous fiscal year exceeds the amount collected in any one of the three

previous years by at least \$150 million, the top Missouri personal income tax rate will go down by 0.1%, and a personal income tax deduction will be allowed equal to 5% of business income. The trigger point for these tax cuts was recently met. The legislation provides for increasing tax cuts over a five-year period, provided the revenue target continues to be met each year. In the event of another economic downturn, the tax cuts will stop until revenue increases again.

- A lot of parents pack up their troubles and send them off to summer camp. – Raymond Duncan

KANSAS TAX INCREASE FOR 2017

Kansas legislators recently voted to put an end to the tax-cutting experiment that brought Governor Sam Brownback national attention. In fact, several fellow Republicans joined Democrats in voting to override his veto, reversing many of the income tax reductions he championed in recent years as a way to fix the cash-strapped state's budget.

The Senate's vote to override 27-13 was exactly the two-thirds majority required. The vote in the House was 88-31, giving supporters of the bill four votes more than a two-thirds majority.

The state will increase its personal income tax rates and end an exemption for more than 330,000 Kansas farmers and business owners. Legislators expect the changes to raise \$1.2 billion in new revenue over two years to close projected budget shortfalls totaling \$889 million through June 2019 and also provide additional funds for public schools.

Under the new tax laws, Kansas will return to having a third income tax bracket for its wealthiest filers, something cuts in 2012 eliminated. The top rate will be 5.7 percent, as opposed to the 4.6 percent in place previously.

In response, the Kansas Department of Revenue has issued a notice explaining how the personal income withholding tax tables have been amended as a result of recently enacted legislation that increased personal income tax rates retroactively for tax year 2017, and further increased them for tax year 2018 and later years. The updated withholding tables are available on the department's website.

Under Kansas law, the Kansas Secretary of Revenue is required to prepare tables, and/or to prescribe schedules or rates, for withholding tax that will approximate an employee's annual tax liability during a calendar year. However, because the new legislation changed the personal income tax rates effective July 1, 2017, many employees will not have had enough tax withheld for the

year. Additionally, personal income tax rates will increase further for tax year 2018. In order to allow most employees to catch up on their withholding for tax year 2017 and not require an additional change to the amount of withholding again in six months, the department has updated the withholding tax tables to reflect the higher 2018 tax year withholding tax rates.

The department also notes that the legislation included a provision stipulating that a penalty will not be imposed if all of the tax that was underpaid as a result of the rate increase is paid by April 17, 2018, which is the due date of 2017 calendar year income tax returns. The notice also includes the increased Kansas personal income tax rates for tax year 2017 and later years.

The governor endorsed less aggressive income tax increases and proposed raising cigarette and liquor taxes and annual filing fees for for-profit businesses. But his proposals wouldn't have raised enough money to cover the spending increases for schools contemplated by lawmakers.

The tax increase was designed to also cover extra aid to the state's 286 local public school districts because the state Supreme Court ruled in March that education funding is inadequate. The state spends about \$4 billion a year on its schools and lawmakers passed a plan Monday night to phase in a \$293 million increase in education funding over two years.

Brownback's remaining legislative allies, like him, suggested that the tax increase will ruin the economy, and they argued that Kansas has done little to control its spending — a point many Democrats and GOP moderates disputed.

- Sun is shining. Weather is sweet. Make you wanna move your dancing feet. – Bob Marley

TAX IMPLICATIONS OF FARMLAND LEASE

The decision to lease farm ground comes with many choices: cash rent, crop share, or some combination thereof. Parties to a lease must understand that each option has distinct income tax implications. This fact sheet provides a brief overview of several key tax considerations associated with farmland leases, as they apply to individual landowners. We will post a more comprehensive review of this topic in the next couple of months.

Cash Rent Lease

Under a cash rent lease, the farm tenant generally pays a cash sum (usually on a per acre basis) to the landlord for the privilege of renting the farm ground. Rent

received by a landlord under a typical cash rent lease is *rental* income, not subject to self-employment tax. This means also that the income will not be credited as net earnings from self-employment for social security eligibility purposes. Individual cash rent landlords report their rental income on Schedule E, IRS Form 1040.

Cash rent landlords are generally not considered to be in the business of farming for tax purposes. Consequently, they face limitations with respect to expenses and losses they can offset against their income. Cash rent landlords, for example, do not qualify for the following tax breaks:

- IRC § 179 Expense Deduction
- IRC § 175 Deduction for Soil and Water Conservation Expenses
- IRC § 1301 Farm Income Averaging
- IRC § 6654 Special Rule for Estimated Tax Payments

This means, for example, that cash rent landlords cannot use Section 179 to immediately expense the cost of field tile. They are, however, allowed to depreciate the cost of the tile over a 15-year period. Likewise, cash rent landlords are not eligible to presently deduct the cost of soil and water conservation improvements, such as terracing. They must instead *capitalize* those expenses (add the cost of the improvement to the basis of the land).

Cash rent landlords may generally deduct the cost of ordinary and necessary expenses relating to the production of the rental income. These expenses might include taxes, interest, repairs, insurance, management fees, agents' commissions, and depreciation. Because rental income, however, is *passive* income, cash rent landlords are subject to special passive loss rules. The cash rent income is also net investment income, subject to the 3.8% net investment income tax for higher income earners.

Crop Share Lease

A crop share lease is generally an arrangement under which the landlord agrees to rent the farm ground to the tenant in exchange for a share of the crop. The tax treatment of income earned by a landlord under a crop share lease is largely dependent upon the landlord's level of participation in the farming activities governed by the lease. If the landlord *materially participates* under the lease, any income from the lease is **subject** to self-employment tax. The landlord will report the income and expenses on Schedule F, IRS Form 1040. If the landlord does not materially participate, the income is **not subject** to self-employment tax, and the landlord will report the income and expenses on IRS Form 4835.

Any *net* income or loss will be carried to Schedule E, IRS Form 1040.

A landlord *materially participates* in a lease if (A) the landlord has an arrangement with the tenant requiring the landlord to materially participate in the production or the management of the production of the commodities **AND** (B) the landlord meets one or more of the following four tests:

- Test 1.** The landlord does at least *three* of the following.
- a. Pays, using cash or credit, at least half the direct costs of producing the crop.
 - b. Furnishes at least half the tools and equipment used in the production activities.
 - c. Advises or consults with the tenant.
 - d. Inspects the production activities periodically.

Test 2. Regularly and frequently makes, or takes an important part in making, management decisions substantially contributing to or affecting the success of the enterprise.

Test 3. Works 100 hours or more spread over a period of 5 weeks or more in activities connected with agricultural production.

Test 4. Does things that, considered in their totality, show that the landlord is materially and significantly involved in the production of the farm commodities.

Unlike cash rent landlords, crop share landlords, **whether or not they materially participate** under the lease, *may* be eligible for the following tax breaks:

- IRC § 179 Expense Deduction (but watch for noncorporate lessor rule)
- IRC § 175 Deduction for Soil and Water Conservation Expenses
- IRC § 1301 Farm Income Averaging
- IRC § 6654 Special Rule for Estimated Tax Payments

Non-materially participating crop share landlords *are* generally subject to the passive loss rules in the same manner as cash rent landlords. Their income may also be subject to the net investment income tax.

- *A perfect summer day is when the sun is shining, the breeze is blowing, the birds are singing, and the lawn mower is broken. – James Dent*



MAKING CORPORATE ESTIMATES AND TAX PAYMENTS

1. Go to <http://www.eftps.com>
2. Select **Make A Payment**
3. Login using **EIN, PIN** and **Internet Password**
4. Enter Tax Form Number **1120 <Next>**
5. Tax Type Selection – Either **Federal Tax Deposit** or **Balance due on return or notice** depending on what the payment is for **<Next>**
6. Payment Amount (**enter the amount that is due, in dollars and cents.**)
7. Year (**enter the year that the tax estimate or final payment is for**)

This is where most people have trouble. For this purpose the year is always the tax period in which the corporation's fiscal year **ENDS**.

Example: If the corporate tax year is...

| Beginning Date | Ending Date | Enter the year as |
|----------------|--------------|-------------------|
| Jan 1, 2016 | Dec 31, 2016 | 2016 |
| Feb 1, 2016 | Jan 31, 2017 | 2017 |
| Mar 1, 2016 | Feb 28, 2017 | 2017 |
| Apr 1, 2016 | Mar 31, 2017 | 2017 |

| | | |
|--------------|--------------|-------------|
| May 1, 2016 | Apr 30, 2017 | 2017 |
| Jun 1, 2016 | May 31, 2017 | 2017 |
| July 1, 2016 | Jun 30, 2017 | 2017 |
| Aug 1, 2016 | Jul 31, 2017 | 2017 |
| Sep 1, 2016 | Aug 31, 2017 | 2017 |
| Oct 1, 2016 | Sep 30, 2017 | 2017 |
| Nov 1, 2016 | Oct 31, 2017 | 2017 |
| Dec 1, 2016 | Nov 30, 2017 | 2017 |

8. Settlement Date (**enter the date that you want to have the money withdrawn from your account.**) **<Next>**
9. Verify payment Information. If corrections are needed select **previous** and make any corrections.
10. After verifying the entered information select **Make Payment**
11. The next page will acknowledge your payment and show a confirmation number. **Always print the page showing your confirmation number and keep it with your records.**
12. Be sure to **Logout** when you exit the site. **<Accept>**
- Summertime and the livin' is easy. – Porgy and Bess

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