Top Ag Law and Tax Developments of 2022 – Part 2

Roger McEowen (roger.mceowen@washburn.edu) – Washburn University School of Law
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Overview

Today's blog article continues the series that began earlier this week reviewing the top ag law and tax developments of 2022. I am working my way through those developments that were significant, but not quite of national significance to make the "Top Ten" of 2022.

More ag law and tax developments of 2022 – it's the topic of today's post.

Regulation of Agricultural Activities on Wildlife Refuges

Tulelake Irrigation Dist. v. United States Fish & Wildlife Serv., 40 F.4th 930 (9th Cir. 2022)

This case involves the management of six national wildlife refuges in the Klamath Basin encompassing over 200,000 acres. The court faced the specific question of whether the federal government can regulate agricultural activities on leased land within the refuges. The plaintiffs, an irrigation district and associated agricultural groups, sued the defendant, U.S. Fish and Wildlife Service, claiming the defendant violated environmental laws by regulating leased farmland in the Tule Lake and Klamath Refuge. The trial court granted summary judgment in favor of the defendant. The plaintiffs appealed. The appellate court noted that the Kuchel Act and the Refuge Act allow the defendant to determine the proper land management practices to protect the waterfowl management of the area. Under the Refuge Act, the defendant was required to issue an Environmental Impact Statement (EIS) and Comprehensive Conservation Plan (CCP). The defendant did issue an EIS and CCP for the Tule Lake and Klamath Refuge area, which included modifications to the agricultural use on the leased land within the region. The EIS/CCP required the leased lands to be flooded post-harvest, restricted some harvesting methods, and prohibited post-harvest field work, which the plaintiffs claimed violated their right to use the leased land. The plaintiffs argued that the language, "consistent with proper waterfowl management," within the Kuchel Act was "nonrestrictive" and was not essential to the meaning of the Act. The appellate court held it was improper to read just that portion of the Act without considering the rest of the Act to understand the intent. The appellate court found the Kuchel Act was unambiguous and required the defendant to regulate the leased land to ensure proper waterfowl management. The Refuge Act allows the defendant to regulate the uses of the leased land, but the plaintiffs argued the agricultural practices were a "purpose" rather than a "use" so the defendant could not regulate it under the Refuge Act. The appellate court found the agricultural activity on the leased land was not a "purpose" equal to waterfowl management. The appellate court also held the language of the Act was unambiguous and determined that agricultural activities on the land were to be considered a use that the defendant could regulate. As such, the conditions needed to benefit

waterfowl trumped ag considerations under both the Refuge Act and the Kuchel Act and, as the court stated, if the defendant determined that "an ag use is not consistent with proper waterfowl management, the Service must be allowed to restrict agricultural use. Accordingly, the appellate court affirmed the trial court's award of summary judgment for the defendant.

Minnesota Farmer Protection Law Upheld

Pitman Farms v. Kuehl Poultry, LLC, et al., 48 F.4th 866 (8th Cir. 2022)

In early 1988, the Minnesota Legislature directed the Minnesota Department of Agriculture (MDA) to put together a task force to study the issue of agricultural contract production and recommend to the legislature how it might provide additional legal and economic protection to contract growers. The MDA's Final Report was issued in February of 1990. During the 1990 legislative session, the Minnesota legislature approved various economic protections for farmers based on the task force recommendations focusing particularly on parent liability. As signed into law, MN Stat. §17.93 provides as follows:

"Parent company liability. If an agricultural contractor is the subsidiary of another corporation, partnership, or association, the parent corporation, partnership or association is liable to a seller for the amount of any unpaid claim or contract performance claim if the contractor fails to pay or perform according to the terms of the contract."

In addition, MN Stat. §17.90 specified as follows:

"'Producer" means a person who produces or causes to be produced an agricultural commodity in a quantity beyond the person's own family use and: (1) is able to transfer title to another; or (2) provides management input for the production of an agricultural commodity."

The MDA then prepared at "statement of need and reasonableness" (SONAR) to implement the new statutory provision. The SONAR referred to the legislation as the "Producer Protection Act" (PPA) and the MDA's implementing rule (MN Rule 1572.0040) for MN Stat §17.93 which went into effect on March 4, 1991, read as follows:

"A corporation, partnership, sole proprietorship, or association that through ownership of capital stock, cumulative voting rights, voting trust agreements, or any other plan, agreement, or device, owns more than 50 percent of the common or preferred stock entitled to vote for directors of a subsidiary corporation or provides more than 50 percent of the management or control of a subsidiary is liable to a seller of agricultural commodities for any unpaid claim or contract performance claim of that subsidiary."

During the same 1990 legislative session the Minnesota legislature approved, and the governor signed into law MN Stat. §27.133. This new law stated as follows:

"Parent company liability. If a wholesale produce dealer is a subsidiary of another corporation, partnership, or association, the parent corporation, partnership, or association is liable to a seller for the amount of any unpaid claim or contract performance claim if the wholesale produce dealer fails to pay or perform in according to the terms of the contract and this chapter."

Concerning this provision, the legislature stated, "It is therefore declared to be the policy of the legislature that certain financial protection be afforded those who are producers on the farm…."

Also, under both MN Stat. §17.93 and MN Stat. §27.133, "contractor" and "wholesale produce dealer" were defined as "persons" and "person" was to be applied to corporations, partnerships and other unincorporated associations." *MN Stat. §665.44, sub. 7.*

In 2017, the defendants entered into chicken production contracts with Prairie's Best Farm, Inc. to grow chickens in exchange for monthly payments and bi-monthly bonus payments. In late 2017, Simply Essentials bought the assets of Prairie's Best and assumed the grower contracts. Simply Essentials, incorporated in Delaware and headquartered in California, was the subsidiary of the plaintiff, Pitman Farms, which owned more than 50 percent of Simply Essentials. Shortly thereafter, the plaintiff bought Simply Essentials' membership interests and became its sole owner. In 2019, Simply Essentials encountered financial trouble, ceased processing activities and notified the defendants that it was terminating the contracts effective three months later. The defendants' demands for payment in excess of $6 million from the plaintiff for breach of contract failed. Both parties sought a declaratory judgment concerning the application of the PPA to the contracts.

The plaintiff claimed that the PPA did not apply because the defendants were not "sellers" and, even if they were, the PPA didn't apply because Simply Essentials was an LLC rather than a "corporation, partnership, or association. The plaintiff also asserted that the PPA's parent company liability provisions didn't apply to it because Delaware law applied, and that applying Minnesota law would violate the Dormant Commerce Clause. The defendant's counterclaim made the opposite arguments.

The trial court ruled for the plaintiff, finding that the PPA did not apply by its terms because the defendants were not "sellers" and because Simply Essentials was an LLC rather than a "corporation, partnership, or association."

On appeal, the appellate court unanimously reversed. The appellate court read the various statutes together to determine the legislature's purpose and intent. The appellate court noted that the parent company liability statute of MN Stat. §27.133, the PPA of §§17.90-17.98 and the MDA's implementing rule all arose from the same legislative session, addressed the same issue, and contained nearly identical language. Accordingly, the appellate court determined that the trial court should have looked to MN Stat. §27.133 when construing the meaning of "seller" contained in MN Stat. §17.93 and in MDA Rule 1572.0040. When the various provisions were taken together, the appellate court determined that "seller" can include "producer" under the PPA and the MDA's implementing regulation.

The appellate court also concluded that the trial court erred in finding that "seller" was limited to transferors of title. Because the defendants did not have title to the chickens and could not therefore transfer title, the trial court held that the PPA did not apply. The appellate court held that such a construction was plainly contrary to the legislature's intent in creating the PPA which was to provide financial protections to agricultural producers in general and not merely agricultural commodity sellers. Further, because the appellate court determined that "seller" included "producer," the defendants were covered by the PPA as providing management services in accordance with MN Stat.

§17.90 (2) for the growing of the chickens under contract. In addition, the appellate court held that the growers were also "sellers" for purposes of the parent company liability provision of MN Stat. §27.133.

The plaintiff also asserted that "subsidiary of another corporation, partnership or association" contained in MN Stat. §17.93 and §27.133 meant that both the parent and the subsidiary had to be either a corporation, partnership or an association. The trial court agreed with this interpretation. The appellate court also agreed but pointed out that LLCs (which Simply Essentials was) did not exist in Minnesota when the PPA was enacted and, as such, the legislature had not purposefully excluded them from the statute. The appellate court also noted that an LLC had been found to be a "person" for purposes of the Minnesota Human Rights Act. That law defined "person" to include a partnership, association, or corporation. In addition, an unpublished decision of the Minnesota Court of Appeals had previously held that an LLC was an "association" for purposes of a Minnesota oil transportation statute. Thus, there was no apparent reason why the legislature would have singled out LLCs to not be covered under the parent company liability provisions of the PPA.

The appellate court also noted the strong public policy statement of the Minnesota legislature in enacting the PPA – to protect producers of agricultural commodities from economic harm due to parent business entities using their organizational form to avoid liability for their subsidiaries' actions.

Conclusion

I will continue my journey through the top developments in ag law and tax in a subsequent post.