

SOUTH DAKOTA  
LEGAL NOTES

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## South Dakota Agricultural Law - Understanding The Farm Partnership

For agricultural producers in South Dakota, deciding how to best organize your business can have a significant impact on your personal and farm liability. There are many different ways to organize your business. This article will discuss the definitions, similarities, and differences between a *general partnership* business organization and a *limited partnership* business organization.

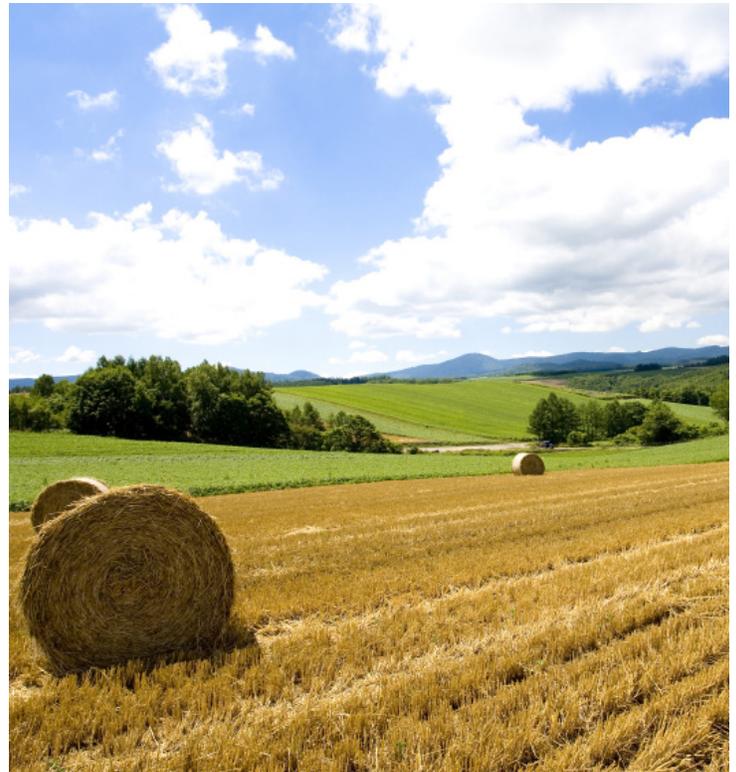
A *general partnership* is formed by default, whenever two people work together on a business in a way that indicates a partnership has been established. Some factors that indicate a partnership formation include: sharing of work, sharing of profits/losses, sharing of business capitalization, and holding the business out as a partnership to the general public. Of course, in addition to a partnership formed by action, a business can also file an official record indicating the formation of a general partnership.

In contrast to a general partnership, a *limited partnership* may only be formed through specific legal filings. These filings are known as a "certificate of limited partnership" and are filed with the South Dakota Secretary of State's Office. The name of the business organization must contain the words limited partnership, or an abbreviation such as LP. A limited partnership must also contain at least one limited partner and one general partner.

In addition to the varying ways in which these two types of partnerships are formed, general and limited partnerships also provide different levels of liability protection to its member partners. In either type of partnership, a "general partner" can be found personally liable for the debts and obligations of the partnership business. In a general partnership, or a limited partnership with more than one general partner, the general partners usually have more responsibility and management control over the partnership. Of course, with this power comes responsibility - general partners are personally liable for not only their share of the partnership's debts and obligations, but the entire amount of debts and obligations of the partnership. This type of liability is known as "joint and several" liability.

On the other hand, a limited partner in a limited partnership cannot usually be personally liable for any debts or obligations of the partnership business. As you can imagine, limited partners usually have less decision making power in the business.

Thinking about these concepts in a farm context, what type of partnership might fit your farm business well? Are you in a situation where every partner wants to be personally liable for the obligations that the farm business takes on? Perhaps some partners want to be involved in the day-to-day operations, but want less personal liability. Perhaps some partners are willing to take on more personal liability, in exchange for greater management authority. If you have any questions regarding these, or any other types of business organizations, feel free to contact Swier Law Firm, for help with all your farm organization planning needs.



# South Dakota Tax Update- 2013 Federal Income Tax Rates

With 2013 coming to a close, most South Dakotans are preparing for the holidays. However, South Dakotans are also getting their finances in order to prepare their annual federal income tax return.

On January 2, 2013 Congress passed the American Taxpayer Relief Act (ATRA). The ATRA made the six Bush-era tax brackets permanent, however the Act also added a seventh income tax bracket of 39.6% on high wage earners. If you are curious where your income falls in the federal income tax brackets, take a look at the tables below.



## 2013 Single Filer

| Taxable Income | Percent |
|----------------|---------|
| \$ 0 - 9K      | 10%     |
| \$ 9 - 36K     | 15%     |
| \$ 36 - 88K    | 25%     |
| \$ 88 - 183K   | 28%     |
| \$ 183 - 398K  | 33%     |
| \$ 398 - 400K  | 35%     |
| \$ > 400K      | 39.6%   |

## 2013 Joint Income Filers

| Taxable Income | Percent |
|----------------|---------|
| \$ 0 - 18K     | 10%     |
| \$ 18 - 72K    | 15%     |
| \$ 72 - 146K   | 25%     |
| \$ 146 - 223K  | 28%     |
| \$ 223 - 398K  | 33%     |
| \$ 398 - 450K  | 35%     |
| \$ > 450K      | 39.6%   |



## South Dakota Tax Update: 2014 Estate and Gift Tax Update

In 2012 Congress passed the American Taxpayer Relief Act (ATRA). ATRA did a variety of things including making permanent the \$5 million estate, gift, and generation-skipping (GST) tax exemptions, as increased for inflation. The table below sets out the new rates for tax exemptions for 2014.

### Tax Exemption Inflation Increases for 2014

- In 2014, the annual gift tax exclusion has not increased from 2013 and stays at \$14,000.
- In 2014, there is 40% top federal estate tax rate on estates larger than \$5,340,000 which is an increase from 2013 (\$5,250,000).
- In 2014, there is a 40% top federal GST tax rate, and there is a \$5,340,000 GST tax exemption up from 2013 (\$5,250,000).
- In 2014, there is a 40% top federal gift tax rate, and the lifetime gift tax exemption is \$5,340,000 increased from 2013 (\$5,250,000).



# Eight Year-End Tax Tips for South Dakota Farmers

## Here are 8 end-of-the-year tax tips for South Dakota farmers and ranchers:

1. Make sure to pay your kids. If you are a "Schedule F" farmer with children under age 18, make sure to pay them what they really earned this year. Children with no other income can earn about \$6,000 this year tax-free and the wages paid are completely deductible and even better, no payroll taxes are owed. Also, the child can take those earnings and contribute to a Roth account. If they put \$5,000 into a Roth IRA at age 17 and let it compound for 48 years until age 65, they will have about \$80,000. That is just for one payment of \$5,000.
2. If you do not itemize and plan on giving money to your church or other charity at year-end, consider giving a commodity gift instead. This helps reduce your taxable income (you are still allowed the standard deduction) and reduces your self-employment tax burden (if a Schedule F farmer or partner).
3. Consider gifting grain to your child. You reduce your self-employment tax and if they hold the grain for at least a year after harvest will qualify for long-term capital gains treatment. If you make this gift, make sure to gift a prior year crop, not the current year crop.
4. If you are 70 1/2 or over and have not taken out your required minimum distribution from your IRA, consider making a direct gift to a charity. This can save taxes by reducing your adjusted gross income and in no case will it increase your tax. The maximum amount allowed is \$100,000.
5. Consider selling some grain on a deferred payment contract. This gives you flexibility after year-end if you need to bring income into 2013.
6. Remember that prepaid expenses must be for a specific quantity of a specific product. If your prepaid simply shows "deposit", have your input company give you a correct invoice reflecting what was actually purchased (assuming you did make a correct prepayment).
7. Section 179 is scheduled to drop to \$25,000 next year. There is a good chance this will be higher, but we may not know until after the mid-term elections. If you need to upgrade equipment, purchase it this year.
8. Review your tax for 2012 to determine if it makes sense to pay an estimated tax payment on January 15 and pay the remainder on April 15, 2014. This may be better than filing and paying all tax owed on March 1.

Source: *Farm CPA Today*

# kids corner

We had a really great Christmas! It was fun to see all of our family and play with all of our cousins. We all had fun but we were ready to go back to school and see our friends once break was over.

Mom and Dad went to Miami over Christmas break and we got to stay in Avon. We made a blanket fort in the living room with Uncle Chris and Aunt Brooke. We watched all the new movies that we got for Christmas. Kate built some of her Legos with Uncle Chris. Will tried out of all his new superhero capes that he got for Christmas. We made bracelets for our friends, too. We had a lot of fun!

I started basketball practices. I get to play in a few basketball tournaments. Kate, Will, and I have been going to lots of Avon Pirate basketball games. It is fun to watch both the boys and girls play.

We are hoping for some good snow the next few weeks so that we can all go sledding!

*By Sarah Swier*



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