



Ontario Federation of Agriculture

Ontario AgriCentre

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January 15th, 2018

Bozena Szymanski
Ministry of Agriculture, Food and Rural Affairs
Farm Finance Branch
1 Stone Road West, Floor 2
Guelph ON
N1G 4Y2

Dear Ms. Szymanski,

Re: EBR 17-MAFRA010 – Proposed amendments to O. Reg. 282/98 to permit the delivery of the Farm Property Class Tax Rate Program by AgriCorp

The Ontario Federation of Agriculture (OFA) is pleased to provide comments on the proposed amendments to O. Reg. 282/98 made under the Assessment Act to enable AgriCorp to deliver the Farm Property Class Tax Rate Program (FPCTRP) and make other farm tax program changes. Unlike most other property tax classes, the Farm Property Class is application based. Farmland owners must apply and meet specified eligibility requirements to have their property considered for inclusion in the Farm Property Class. On behalf of the over 37,000 Ontario farm families we represent, OFA appreciates OMAFRA's efforts to ensure the FPCTRP is delivered effectively and efficiently.

OFA supports the aim to provide a more seamless, 'one-window' customer service experience for program participants. AgriCorp has extensive experience in delivering programs to Ontario farmers. As with administration of any program, computer software updates can be expensive unless economies of scale can be realized. Therefore, we believe a strong business case can be made for the transfer of the FPCTRP delivery from OMAFRA to AgriCorp.

OFA supports the proposed O. Reg 282/98 amendments to provide a multi-year exemption to the Farm Business Registration Number (FBRN) requirement to make it easier for new farmers, and those who have crops that take more than one year to yield a marketable harvest, to participate in the FPCTRP. OFA also supports the proposal to ensure all tree sap processing activities carried out by farmers are treated the same.

To ensure the FPCTRP meets the needs of all farmers, OFA recommends enabling the following program changes:

1. Program information use and disclosure;
2. Eligibility of beneficial owners of farmland;
3. FBRN exemptions for Canadian farmers starting Ontario farming activities; and
4. Administrator-issued certificates as an FBRN alternative.

1. Program information use and disclosure

The FPCTRP was established in 1998. Program data contains a significant amount of information on Ontario farmland owners and farmers. Although O. Reg. 282/98 prescribes the collection of this information, the regulation is silent on the use and disclosure of this information. The privacy of farmland owners and tenants, as well as the proprietary nature of some of this information, must be respected. At the same time, enabling program and policy research purposes is a worthwhile goal and could help answer valuable research questions.

OFA recommends O. Reg. 282/98 be amended to prescribe purposes, requirements, and restrictions on using and/or disclosing FPCTRP information by the Administrator.

2. Eligibility of beneficial owners of farmland

OFA recommends amendments be made to address the FPCTRP eligibility issue facing some beneficial owners of farm property.

Subsection 8.(2)3 states that for farmland to be eligible for the Farm Property Class, the land must be owned by a Canadian citizen/permanent resident or a corporation with more than 50 percent of the voting shares are legally owned by individuals who are Canadian citizens/permanent residents.

As part of succession plans and tax planning purposes many lawyers, accountants and other advisors have been advising Ontario farmers to set up increasingly complex business structures. Some of these structures result in the farmland being held inside one corporation, which is owned by another corporation, which is owned by the farmer. In these situations, the farmer is the “beneficial owner” of the farmland and still controls all management and farming decisions, but since they are not the “legal” owner of the farmland they are being denied access to the FPCTRP.

By design, only Canadian farmers may benefit from the FPCTRP. However, some Canadian farmers are currently not able to participate in the program because shares of their landholding corporations are held by their farm operating corporations. OFA suggests subsection 8.(2)3 could be amended to add that in cases where farmland is owned by a Canadian corporation, which is owned by another (second) Canadian corporation, then more than 50 percent of the voting shares of the second corporation must be legally owned by individuals who are Canadian citizens/permanent residents

These eligibility requirements would allow farmers with legitimate needs for more complex business structures to remain in the Farm Property Class while ensuring that the program is not available to foreign companies or non-Canadian citizens/permanent residents.

3. FBRN exemptions for Canadian farmers starting Ontario farming activities

OFA recommends O. Reg. 282/98 be amended to make Canadian farming business that commence farming activities in Ontario eligible in their first year for a start-up exemption in cases where the farming business has generated annual gross income of the farming business equal to or more than the amount prescribed for the purposes of section 2 of the Farm Registration and Farm Organizations Funding Act, 1993 (FR&FOFA).

Subsection 8.(2)9 of O. Reg 282/98 currently restricts the applicability of FBRN exemptions to farming businesses with annual gross income of the farming business of less than the amount prescribed for the purposes of section 2 of the FR&FOFA or because the farming business commenced during the taxation year.

Subsection 1.(2) of O. Reg. 723/93 under the FR&FOFA prescribes that the annual gross income of a farming business shall be determined in the same manner as the gross income from farming of the farming business is determined under the Income Tax Act (Canada) for the most recent taxation year for which a tax return was filed in relation to the farming business during the eighteen-month period preceding the date on which the annual registration form is required.

As a result, income related to farming activities conducted outside of Ontario is not excluded. The FR&FOFA defines “farming business” to mean a farming business within the meaning of the Income Tax Act (Canada). Canadian taxpayers that declared farm income at or above the annual gross farm income threshold of \$7,000 for income tax purposes are currently expected to have an Ontario FBRN.

OFA recommends amendments be made to allow existing Canadian farmers to be eligible under the FPCTRP in the first year that they start Ontario farming activities.

4. Administrator-issued certificates as an FBRN alternative

OFA recommends O. Reg. 282/98 be amended to give the Administrator the authority to issue an alternative certificate in lieu of having an FBRN, at the Administrator’s discretion. OFA supports the program eligibility requirement that applicants have a valid FBRN. OFA supports continuation of this requirement. However, alternatives should be put in place to ensure the performance of the FPCTRP is not impacted by FBRN program rules. For example, O. Reg. 282/98 was amended (by O. Reg. 288/12) to remove the FBRN eligibility condition for the 2013 taxation year because some properties would have been otherwise removed from the Farm Property Class because the FBRN program rules prevented would be registrants from registering after May 2012 as they could not pay an accredited farm organization. If the Administrator had the discretion to issue an alternative certificate at that time, then O. Reg. 288/12 would not have been needed.

The Administrator might consider using this discretion to address situations where a farmer failed to register the farm business in the previous year. The financial consequences for falling out of the farm tax class into the residential tax class are excessive and can be severe enough to threaten the viability of the farm operation. OFA would support the Administrator issuing an alternative certificate for this purpose as long as it:

- provided administrative ease for both the Administrator and the farm owner;
- allowed the Administrator to confirm the \$7,000 gross farm income threshold was met;
- required the applicant to support an accredited farm organization by holding a membership or making a financial contribution equal to the amount of the Farm Business Registration fee; and
- supported Ontario farmer compliance with the FBRN program by not issuing a certificate to a farmer who was issued a certificate in the previous year.

The Administrator currently has the discretion to consider a late program application up until December 31st of the tax year. However, in most cases, it is not just the application that is late, but the farmer has missed the August 31st deadline for a FBRN. Enabling the Administrator to grant a certificate to farmers who miss the FBRN deadline, due to extenuating circumstances would help farmers avoid a disastrous situation. OFA recommends a late application fee of at



least \$750 should be imposed discouraging the late application process from becoming the “main” process.

OFA appreciates the opportunity to comment on the proposed amendments to O. Reg. 282/98. We are also committed to working with the government to ensure the FPCTRP remains successful.

Sincerely,

A handwritten signature in black ink, appearing to read 'Keith Currie', is written over a light grey circular stamp.

Keith Currie
President

cc: Doug LaRose, Chief Executive Officer, Agricorp
Diane Ross, Director, Assessment Policy & Legislation Branch, Ministry of Finance
OFA Board of Directors