

# Prevented Planting: Crop Insurance Options & Insurance Indemnity Payment Tax Considerations

## Agricultural Business Management

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### Introduction and Background:

Heavy spring rains resulting in flooded fields can delay or prevent planting or drown out already planted crops for many farmers in Minnesota.

USDA's Risk Management Agency (RMA) defines prevented planting as a failure to plant an insured crop with the proper equipment by the final planting date designated in the insurance policy's actuarial documents or during the late planting period, if applicable, due to an insured cause of loss that is general to the surrounding area and that prevents other producers from planting acreage with similar characteristics. If farmers have federal crop insurance and have not been able to plant by a given crop's final planting date or have drowned out areas in fields, they do have options.

For most of Minnesota, the final planting date for corn is May 31. For northern counties it is May 25. The final planting date for soybeans in Minnesota is June 10. The late planting period extends for 25 days after the crop's final planting date.

Additional RMA information on final planting dates for specific crops throughout Minnesota and other crop insurance information can be found at the following website:

[www.rma.usda.gov/aboutrma/fields/mn\\_rso/](http://www.rma.usda.gov/aboutrma/fields/mn_rso/).  
Once on the site, select "final planting dates - 2014".

Eligibility for a prevented planting payment is determined on a case-by-case basis. An insured cause of loss must have occurred within the

insurance period on eligible acreage. To be eligible, acreage must be normally physically available for planting, must have been planted in at least **1 of the 4 most recent years** and must meet all other applicable policy provisions.

The prevented planting guarantee for most crops is 60 percent of the production guarantee for timely planted acreage (65 or 70 percent payment guarantee is available if purchased by sales closing date, subject to certain provisions).

For both yield and revenue protection, prevented planting payments are based upon projected price. There is no prevented planting coverage for Group Risk Plan, Group Risk Income Protection or for policies insured at the Catastrophic Risk Protection coverage level.

### Notice of Prevented Planting:

**Farmers are required** to provide a notice that they are prevented from planting an insured crop. The notice has to be given within 72 hours after:

- (a) The final planting date, if you do not intend to plant the insured crop during the late planting period or if a late planting period is not available; OR
- (b) You determine you will not be able to plant the insured crop within an available late planting period.

### Crop & Insurance Options:

If a farmer is prevented from planting by the final

planting date and meets all the criteria of their insurance policy, they have choices available to them. The farmer may:

- Plant the insured crop during the late planting period, if applicable. The late planting period is generally 25 days after the final planting date but varies by crop and area of state, as specified in the insurance policy. For most crops, the timely planted production guarantee is reduced 1 percent per day for each day planting is delayed after final planting date. (Note: planting corn after June 10 is not recommended due to potential frost before harvest).
- Plant the insured crop after the late planting period (or after the final planting date if a late planting period is not available), in which case the insurance guarantee will be the same as the insurance guarantee provided for prevented planting coverage which is 60%.
- Leave the acreage idle (black dirt) and receive a full prevented planting payment. Conservation improvements are allowed.
- Plant a cover crop and receive a full prevented planting payment (but do not hay or graze this cover crop **before November 1** or otherwise harvest it at any time).
- Plant another crop (second crop) after the late planting period or after the final planting date if no late planting period is available. You may also hay or graze a cover crop after the end of the late planting period or after the final planting date if no late planting period is available but before November 1. You may also harvest the second crop any time, and receive a prevented planting payment equal to 35 percent of the prevented planting guarantee.

#### **Payment Reductions May Not Apply:**

If you meet the double-cropping requirements of your policy, the 65 percent payment reduction does not apply to a prevented planting payment for the first insured crop when:

- (a) A second crop is planted; OR

- (b) A cover crop is hayed, grazed, or otherwise harvested.

The double-cropping requirements specified in the policy are:

- (a) The practice of planting two or more crops for harvest in the same year on the same acreage is generally recognized by agricultural experts (including organic agricultural experts) for the area;
- (b) The second or additional crops are customarily planted after the first insured crop for harvest on the same acreage in the same year in the area;
- (c) Additional coverage insurance offered under the authority of the Federal Crop Insurance Act is available in the county on the two or more crops that are double cropped; and
- (d) You provide records showing the number of acres double-cropped in 2 of the last 4 years the first insured crop was planted.

#### **How to Proceed:**

The first step for farmers is to contact their crop insurance agent and review their policy and options before making a decision.

Keep good records from the beginning. Good documentation is key to receiving prevented planting payments. Work with your crop insurance agent to determine the documentation needed

#### **Additional Resources:**

Farmers and their advisers can use a worksheet developed by Iowa State University and adapted for Minnesota by Kent Olson, U of MN Extension Economist, to evaluate their options when prevented from planting. The worksheet also helps in the evaluation of whether to replant or not. The worksheet template is available at: <http://z.umn.edu/mr5>.

Additional information and details regarding federal crop insurance rules and guidelines can

be found on USDA's RMA website located at:  
[www.rma.usda.gov](http://www.rma.usda.gov).

For agronomic information related to crops, late planting and the effect on yields, late planting rates and maturities, cover crops, etc. go to the University of Minnesota Extension Crops website at [www.extension.umn.edu/agriculture](http://www.extension.umn.edu/agriculture). Under the overall crops section, click on "Commodity Crops". On the next page under "New Resources" on the right side of the page, select "Early Summer Hail and Flooding" and search for fact sheets specific to your situation.

### **Tax Treatment of Disaster and Crop Insurance Indemnity Payments:**

Any crop insurance proceeds you receive need to be included as income on your tax return. You generally include that income in the year received. Crop insurance includes the crop disaster payments received from the federal government as the result of destruction or damage to crops, or the inability to plant crops, because of drought, flood, or any other natural disaster.

You can postpone reporting crop insurance proceeds as income until the year following the year the damage occurred if you meet **all** the following conditions:

- (a) You use the cash method of accounting.
- (b) You receive the crop insurance proceeds in the same year the crops are damaged.
- (c) You can show that under normal business practice you would have included income from the damaged crops in any tax year following the year the damage occurred.

Please note that ambiguities do exist with respect to crop insurance deferrals. Must the taxpayer show that all income from a crop would have been deferred or only a portion? Does the election apply to all payments or only to those for crops that would have been sold in the following year?

In order to discuss this issue, we must examine some of the tax authority surrounding crop insurance deferrals. IRS Code Section 451 is the

principle authority with respect to crop insurance. However, Section 451 is silent regarding the questions listed in the prior paragraph. One additional piece of authority is Nelson vs. Commissioner. This was a 2009 court case decided in the 8<sup>th</sup> Circuit Court of Appeals. The court found that all crop insurance was deferrable if a substantial portion of the crop was sold the following year. The court further defined "substantial portion as > 50%." Furthermore, the Nelson case says the 50% test needs to apply to EACH crop. Nelson is unclear as to deferral of individual crops and implies the deferral is an all or none proposition.

In Rev. Ruling 74-145 the IRS referred to the necessity for a substantial part of the crops to have been carried over from the year of production historically and more than 50% was viewed as substantial. Several income tax scholars have indicated that under Rev. Ruling 74-145, this is an all or none proposition.

There are other authorities which COULD be interpreted as allowing a partial deferral. Congressional intent is a low-level criteria for tax law authority, but to assume that type of position on a tax return would require a disclosure statement in order to avoid potential preparer penalties.

Under the Nelson Court case and Rev. Ruling 74-145, the substantial portion test (over 50% of each crop sold in the following year) may be applied to current year crop sales to determine if a crop insurance deferral is possible.

Generally, farmers are able to establish their practice of reporting crop income in a following taxable year by reference to their prior year's sale records. In order for a payment to constitute insurance for the destruction of or damage to crops, the insured must suffer actual physical loss. Agreements with the insurance companies that provide for payments without regard to actual losses by the insured, such as payments in the event that county average yield is less than a specified amount, are not payments for the destruction of or damage to crops. Such payments do not qualify for deferral under I.R.C. § 451(d). Also, payments made for a decline in the price of the commodity, rather than

a physical loss, do not qualify for deferral. An indemnity payment from a Revenue Protection (RP) policy is based on price as well as quantity and quality of the commodity produced. **Only the payment for destruction or damage (yield loss) is eligible for deferral.** A farmer who receives compensation from a RP policy must determine the portion of the payment that is due to crop destruction or damage rather than due to a reduced market price.

An insurance payment received from a prevented planting policy does qualify for crop insurance deferral (assuming the taxpayer meets all other requirements for deferral). This provision is

addressed specifically in IRS code section 451(d).

A RP policy guarantees a minimum amount of revenue per acre for the insured farmer. The policy provides a formula for computing the deemed revenue the insured received from the crop that was produced. Taken into account is price of the commodity at the time of harvest, the quantity the insured farmer harvested and the quality of the commodity harvested. This deemed revenue is compared with the guaranteed minimum revenue. The excess of the guaranteed minimum over the deemed revenue received is the amount paid to the insured farmer.

**Note:** *This information piece is offered as educational information only and is not intended to be tax, legal or financial advice. For questions specific to your farm business or individual situation regarding crop insurance and insurance indemnity payments, consult with your crop insurance agent and tax preparer.*