



PennState Law

Center for Agricultural
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Legal Issues in Diversification of Farm Income

2022 Pennsylvania Farm Show Agricultural Law Symposium
Thursday, January 13, 2022
1:00pm-2:00pm





Legal Issues in Diversification of Farm Income

- Three Issues:
 - **Agritourism Immunity**
 - Carbon contracts and markets
 - Grid-scale solar project siting controls



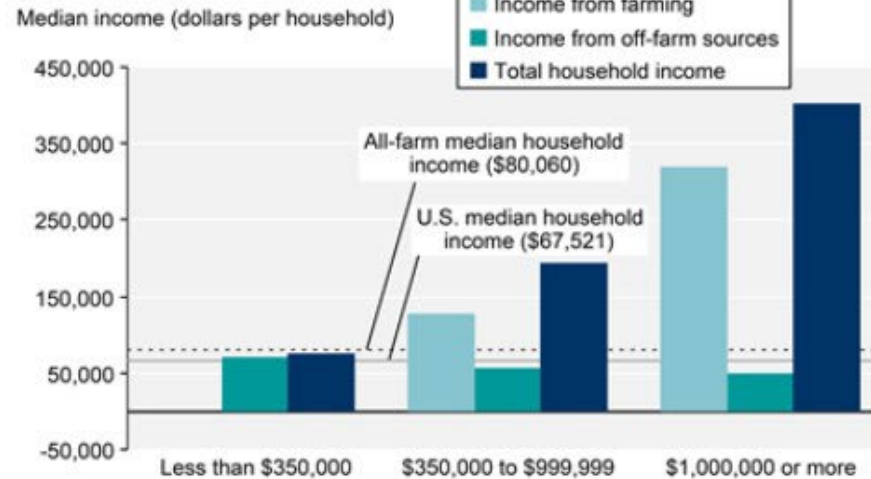
Gallery

Related Topics

[Farm Household Well-being](#)

Most farmers receive off-farm income, but small-scale operators depend on it

Median income of farm households, by income source and farm size, 2020



Related Data

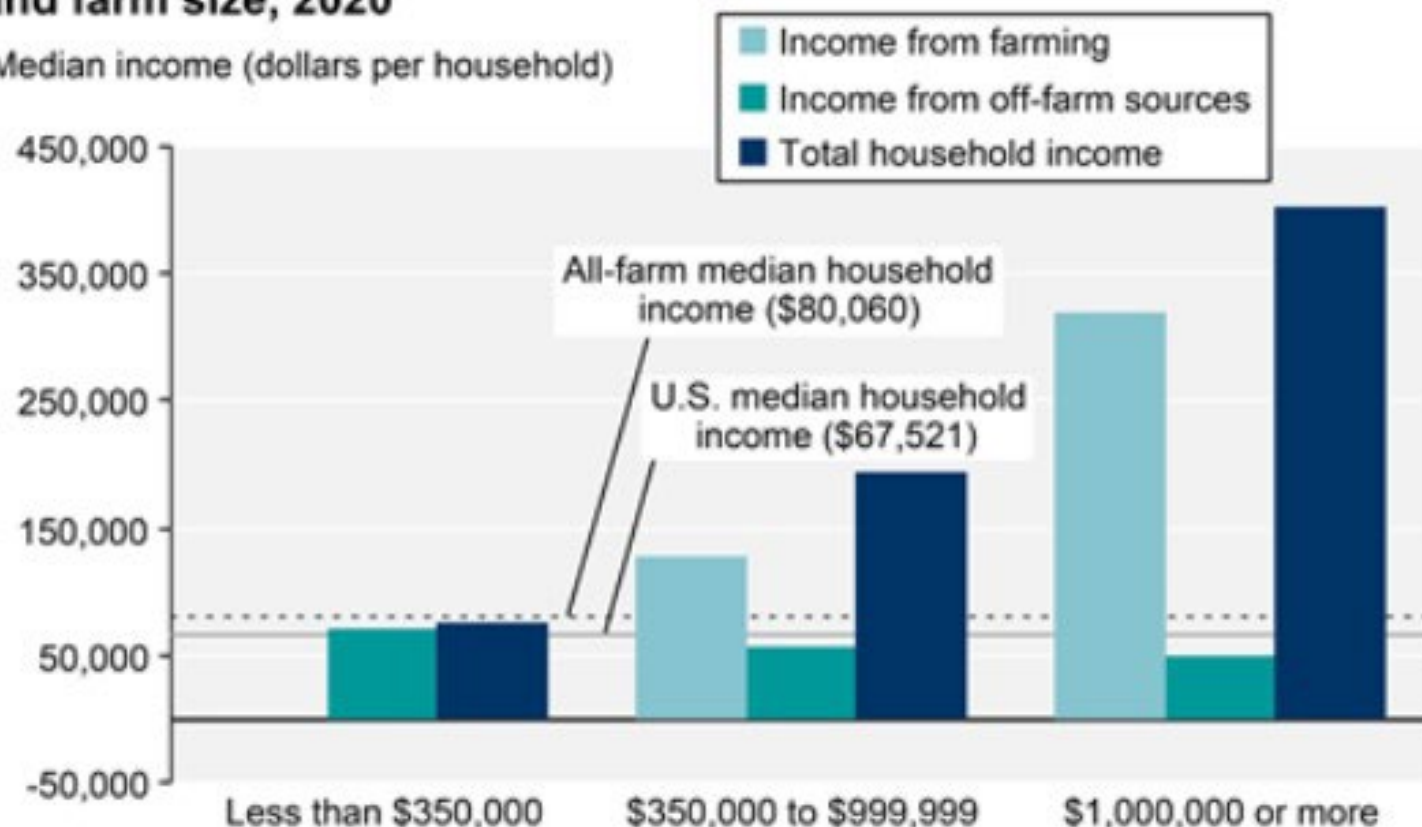
[ARMS Farm Financial and Crop Production Practices](#)

Note: Farm size reflects annual gross cash farm income which includes sales of crops and livestock, Government payments, and other farm-related income (including fees received by operators from production contracts).

Source: USDA, Economic Research Service and National Agricultural Statistics Service, Agricultural Resource Management Survey and U.S. Department of Commerce, Bureau of the Census, Current Population Reports. Data as of December 1, 2021.

Median income of farm households, by income source and farm size, 2020

Median income (dollars per household)



Note: Farm size reflects annual gross cash farm income which includes sales of crops and livestock, Government payments, and other farm-related income (including fees received by operators from production contracts).

Source: USDA, Economic Research Service and National Agricultural Statistics Service, Agricultural Resource Management Survey and U.S. Department of Commerce, Bureau of the Census, Current Population Reports. Data as of December 1, 2021.



Agritourism Activities

- On farm farmers' markets
- You-Pick (fruits/vegetables)
- Hay rides
- Pumpkin patches
- Corn mazes
- Christmas tree farms
- Wineries
- Barn weddings
- On farm petting zoos
- Goat Yoga



Legal Issues:

- Regulations
- Liability
 - Risks
 - Duty of Care
- Protections
 - Insurance
 - Legislation
 - Entity Formation
 - Written releases or waivers



Liability: Risks

- Equipment
- Terrain
- Paths & walkways
- Weather
- Zoonotic diseases
- Animal tendencies
- Driving and parking





Protections

- Waivers /releases
- Assumption of risk
- **Liability Insurance**
- **Entity Formation**
- **State Liability Legislation**



Protections: Liability Insurance

- Insurance may be required by municipality
- Cost Considerations
- Not all companies may be willing to cover all activities
 - Ex: Pumpkin cannon





Protections: Entity Formation

- Examples:
 - Sole Proprietorship
 - Partnership
 - Corporation
 - LLC
 - Non-profit Corporation



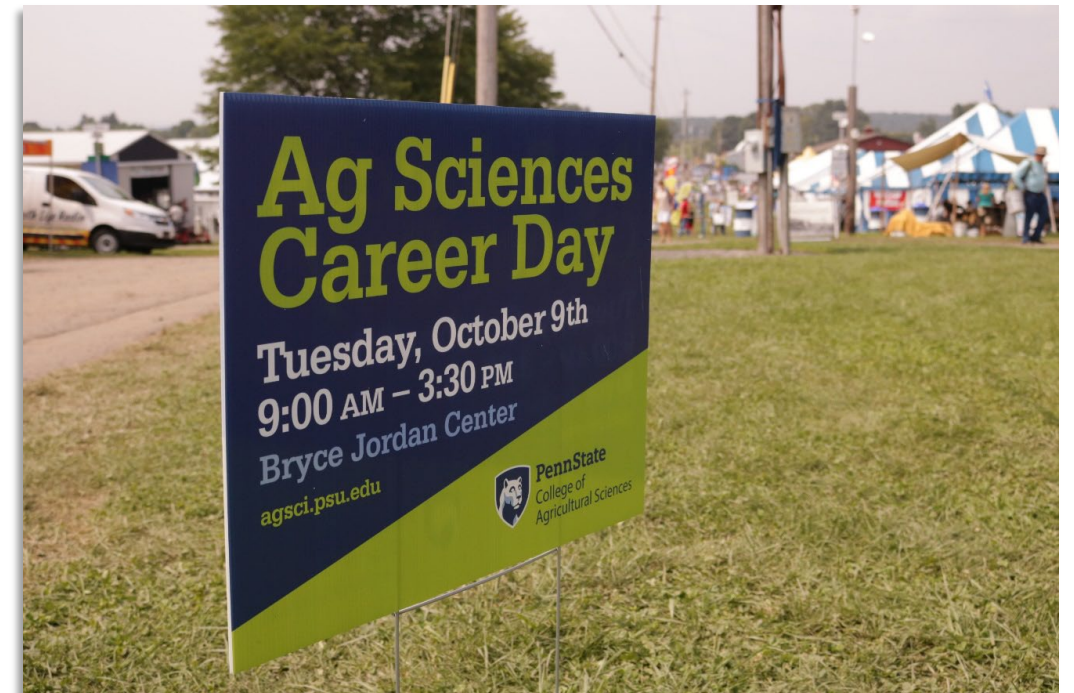
Protections: Entity Formation

- Considerations
 - Liability Protection
 - Tax Treatment
 - Simplicity
 - Control/decision-making
 - Intergenerational Transfers/ Transfers Generally



State Legislation Unrelated to Liability

- Several states have agritourism legislation that does not refer to liability
 - Permit/building requirements
 - Zoning
 - Agricultural promotion





Protections: Liability Statutes

- What does a liability protection statute do?
 - Limits the liability of an agritourism operator
 - Participants “cannot” sue the agritourism operator for injuries sustained from an inherent risk of an activity
 - Ex: What would be an inherent risk at an animal petting zoo?



Protections: Liability Statutes



- 36 States have liability protection statutes
- Main Factors:
 - Definition of Agritourism
 - Signage
 - Age of participant
 - Fee



Protections: Liability Statutes

- Posting Signs
 - General signage requirements for most states:
 - Signs must be clearly visible
 - Located at agritourism site and entrance (or place of payment)
 - Sometimes laws specify sign size and letter height
 - Sometimes laws specify exact language



Agritourism Liability Statutes

New Legislation

- Alaska (2018)
- Iowa (2021)
- Pennsylvania (2021)
- Vermont (2021)
- Washington (2017)
- West Virginia(2018)



Liability Statutes (Ohio)



- § 901.80. Agritourism immunity; warning notice
- (2) “Agritourism” means an agriculturally related educational, entertainment, historical, cultural, or recreational activity, including you-pick operations or farm markets, conducted on a farm that allows or invites members of the general public to observe, participate in, or enjoy that activity



Liability Statutes (New York)



- N.Y. Gen. Oblig. §§ 18-302
 1. **“Agricultural tourism”** means activities, including the production of maple sap and pure maple products made therefrom, farm and winery tours, equine activities both outdoors and indoors but excluding equine therapy, u-pick Christmas trees, hiking, hunting and other forms of outdoor **recreation offered to farm visitors, conducted by a farmer on-farm for the enjoyment and/or education of the public**, which primarily promote the sale, marketing, production, harvesting or use of the products of the farm and enhance the public's understanding and awareness of farming and farm life.”



Liability Statutes (Pennsylvania)



- Agritourism Activity Protection Act
 - (Act 27 of 2021)
 - Effective August 29, 2021
- Provides agritourism providers liability protection from civil liability for injury or damages sustained by a third-party participant in agritourism activity.



Liability Statutes (Pennsylvania)



- Important Exclusions:
 - No liability protection for weddings or concerts
 - No liability protection for overnight stays
 - No liability protection for food and beverage service



Liability Statutes (Pennsylvania)



- In order to receive liability protection, an operator must meet the key elements of the statute:
 - Agritourism definition
 - Farm must be “normal agricultural operation”
 - Written Agreement or Tickets
 - Signage



Liability Statutes (Pennsylvania)



- Agritourism definition:
 - “A farm-related tourism or farm-related entertainment activity that takes place on agricultural land and allows members of the general public, whether or not for a fee, to tour, explore, observe, learn about, participate in or be entertained by an aspect of agricultural production, harvesting, husbandry or rural lifestyle that occurs on the farm.”



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19 HOURS AGO

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Liability Statutes (Pennsylvania)



- Normal Agricultural Operation
 - "The activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities..."
 - 10 acres
 - (if less than 10 acres) Income of \$10,000 or more



Liability Statutes (Pennsylvania)



- Written Agreement or Tickets
 - "AGREEMENT AND WARNING: I understand and acknowledge that, except for limited circumstances listed below, an agritourism activity provider is not liable for any injury to or death of a participant resulting from an agritourism activity. I understand that I have accepted all risk of injury, death, property damage and other loss that may result from an agritourism activity. I understand that an agritourism activity provider is not protected from liability if the provider:
 1. Performs an act in a grossly negligent manner and causes injury or damages to a participant.
 2. Purposefully causes a participant's injury.
 3. Acts or fails to act in a way that constitutes criminal conduct.
 4. Recklessly fails to warn or guard against a dangerous condition that causes injury or damages to a participant. A dangerous condition is a condition that creates an imminent and substantial risk of injury or damages to a participant."



Liability Statutes (Pennsylvania)



- Tickets (alternative to written agreement)
 - Must have “substantially the same language”
 - Must require the tickets for entry to the activity



Liability Statutes (Pennsylvania)



- Signage
 - "WARNING: Read your written agreement or the back of your ticket. Under Pennsylvania law, except for limited circumstances, an agritourism activity provider is not liable for any injury to or death of a participant resulting from an agritourism activity. Do not participate in the activity if you do not wish to waive liability."
 - Every entrance or all locations
 - 3ft by 2ft



Liability Statutes (Pennsylvania)



- Application of the law to minors
 - Parent or guardian must sign on behalf of minor
 - Guardian must sign on behalf of care-dependent person



Liability Statutes (Pennsylvania)



- PA Agritourism Immunity Act
 - <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2021&sessInd=0&act=27>
- Right to Farm Act:
 - https://pennstatelaw.libguides.com/ld.php?content_id=19902751
- PA Farm Bureau resources
 - <https://pfb.com/agritourism-liability/>



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Thank you!

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