

# Landlords, Is It Better to Cash Rent, Crop Share, or Custom Farm?

Published on Sep 5, 2018 by Kyle Walker, AFM, AAC, CAC



By: Paul Neiffer, Principal at CliftonLarsonAllen

Most landlords over the last several years have usually preferred receiving cash rent on their farmland rather than a share of the crop. The cash rent “guarantees” their return and it is usually paid up front versus having to wait to harvest to “cash” in on the crop.

However, the new tax law may change that. We received proposed regulations on the new 20% Section 199A deduction from the IRS in the middle of August and they are not that friendly to cash rent landlords.

Many commentators assumed that all rental income would qualify for the new Section 199A deduction. But the proposed regulations said that the deduction is only for qualified “business” income and rents are not business income. The income can rise to the level of a trade or business if the landlord performs enough services related to the rental. In the normal farm cash rent arrangement, the landlord almost never performs

any services, thus it is not business income.

The bottom line is if you are a cash rent landlord, you will not qualify for the 20% deduction assuming the final regulations follow the proposed regulations.

Now for crop share landlords, it may be a little different. Crop share income qualifies for farm income averaging whereas cash rent does not. Also, some other regulations indicate that if the landlord shares in enough of the expenses of the farm, then it is more likely treated as a joint venture and thus, a trade or business.

We believe that crop share landlords that participate in the expenses of the farm will qualify for the deduction. If they simply receive a share of the crop and pay no share of expenses, it will likely be treated just like cash rent and no deduction.

If you custom farm the land, then this should definitely qualify for the deduction. However, in this case, you may be subject to self-employment tax on the net income which will reduce the benefit of the deduction. The bottom line is that a crop share will likely be better than custom farming from a tax point, but may be less beneficial from an economic position.

What should you do? For now, nothing since these are still proposed regulations. If the final form is the same, you may want to consider changing to a crop share if the deduction is large enough to reduce your taxable income. Remember if your income is over a threshold amount (\$315,000 for married couples and \$157,500 for all others), then no or little deduction will be allowed anyway since you have no wages or qualified property.