# THE REVISED ILLINOIS GRAIN CODE: NEW ASSESSMENTS ON FARMERS AND LENDERS

*December 2003*, by Donald L. Uchtmann and A. Bryan Endres*

***Abstract***: *This article discusses the new assessments imposed on both farmers and lenders under Public Act 93-0225, the 2003 amendments to the Illinois Grain Code. These assessments will restore solvency to the Illinois Grain Insurance Fund, which guarantees the payment of approved claims by farmers and lenders when an Illinois-licensed elevator fails. A link to the full text of the Illinois Grain Code is provided.*

***THE 2003 REVISIONS*** to the Illinois Grain Code (a) create new assessments on sellers of grain and some lenders in order to restore the solvency of the Illinois Grain Insurance Fund and (b) provide more protection to farmers and lenders in the event that an Illinois licensed grain dealer or warehouse fails. This article describes the new assessments on farmers and lenders. A separate, companion article describes the protections provided to farmers and lenders by the Illinois Grain Code in the event an Illinois-licensed grain dealer or elevator fails.

http://www.farmdoc.uiuc.edu/legal/selling_products/ALTB_03-02.pdf

The new assessments were necessitated by the 2001 failure of Minooka-based Ty-Walk Liquid Sales, Inc. ("Ty-Walk"). Ty-Walk, which operated several grain elevators in Illinois, was the largest grain elevator failure in Illinois history. The resulting payment of claims to farmers and lenders exhausted the reserves of the Illinois Grain Insurance Fund and necessitated a $4 million loan from the State of Illinois' general funds to cover the shortfall. The assessments described below are intended to restore the Illinois Grain Insurance Fund to its target balance and to repay the moneys borrowed from the State.

## Illinois Grain Insurance Fund ("IGIF" or "Fund") Assessments

Public Act 93-0225, signed into law on July 21, 2003, increased the target balance of the IGIF from $3 million to $6 million. In addition, the Act authorized the creation of a $2 million "Reserve Fund" to backstop the IGIF, essentially increasing the available funds from $3 million to $8 million. Continued assessments and increased license fees for grain elevators and dealers, as well as new assessments on farmers and lenders, provide the revenue needed to replenish the IGIF to the $6 million balance and pay back the $4 million borrowed from the State of Illinois. A brief description of these new assessments on farmers and lenders, and the continuing assessments on licensees, follows.

***New Assessments on Farmers (First Sellers of Grain):*** Beginning in January 2004, first sellers of grain (e.g., farmers, share landlords) are, for the first time, paying assessments to help fund the IGIF when they "settle for" grain sold at an Illinois location to an Illinois-licensed grain dealer. Grain dealers collect the assessments at the time of settlement at a rate of 0.0004 per dollar (i.e., $4 for each $10,000 of grain "settled for"). Grain dealers remit the assessments quarterly to the Illinois Department of Agriculture ("the Department").

This assessment continues for twelve consecutive months (January 1, 2004 through December 31, 2004), followed by six months of no assessments (January 1, 2005 through June 30, 2005). The twelve months with assessments followed by six months without assessments represents an 18-month assessment cycle.

> *Example 1*: On 1/2/04, Farmer settles with Grain Dealer for grain sold to an Illinois facility and having a "net market value" of $100,000.
> - The assessment is $40.00 ($100,000 x 0.0004)

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- Grain Dealer deducts $40.00 from its payment to Farmer
- Grain Dealer remits all assessments collected during the calendar quarter to the Department by the 20th day of the next quarter (4/20/04)

*Example 2*: On 2/2/05, Farmer settles with Grain Dealer for grain sold to an Illinois facility and having a "net market value" of $100,000.

- No assessment is due.

After the first eighteen months, a second subsequent 18-month assessment cycle is triggered if equity in the IGIF is less than $3 million on an assessment determination date. An assessment determination date is the first working day of a calendar quarter in which a farmer is not already subject to an assessment (but the assessment determination date can be no sooner than the first working day of the fourth full calendar month following the end of the last assessment).

For example, if on April 1, 2005 (the first possible assessment determination date after the January 1, 2004 through December 31, 2004 assessments) the equity in the IGIF remains below $3 million, a second 18-month assessment cycle will begin on July 1, 2005, with assessments continuing through June 30, 2006. On the other hand, if the equity in the IGIF on April 1, 2005 is above $3 million, a second 18-month assessment cycle on first sellers of grain will not start on July 1, 2005.

*Example 3*: On 4/1/05 equity in the IGIF is below $3 million, so a second 18-month assessment cycle on first sellers will start July 1. On 7/10/05 Farmer settles with Grain Dealer for grain sold to an Illinois facility and having a "net market value" of $100,000.

- The assessment is $40.00 ($100,000 x 0.0004)

Once equity in the IGIF reaches $6 million, the trigger for farmer assessments drops from $3 million to $2 million. (As discussed in more detail below, the assessment cycles applying to lenders and grain dealers will continue until the IGIF's balance exceeds $6 million.)

A sample chart of assessments for calendar years 2004 through 2006 is included at the end of this article as **Appendix A.**

Importantly, the collection and remittance of all assessments from farmers (or first sellers of grain) is the sole responsibility of the grain dealer to whom the grain is sold. Although farmers will not be penalized if the grain dealer fails to comply with the assessments, they will have to promptly remit any uncollected assessments upon demand by the elevator. Grain elevators failing to remit the assessments may be subject to fines of up to $1000.

***New Assessments on Lenders:*** Also beginning in January 2004, lenders holding warehouse receipts, issued from an Illinois location on grain owned or stored by an Illinois licensed grain warehouse to secure a loan, will pay assessments to help fund the IGIF. Assessment determination dates for lenders generally track the assessment determination dates for first sellers of grain, and the assessment periods for lenders follow a similar 18-month cycle. For example, the first assessment for lenders will commence on January 1, 2004 and continue for four consecutive quarters, ending on December 31, 2004. Likewise, the next assessment determination date for lenders will occur on April 1, 2005. **Appendix A** indicates the lender assessments for calendar years 2004 through 2006.

The IGIF funding levels that trigger additional assessment cycles for lenders and the amounts assessed, differ markedly from farmers' assessments. The lender assessment is triggered if the equity in the IGIF is less than $6 million on lender's assessment determination date. The Quarterly Lender Assessment per lender is the product of the *number of bushels* covered by the warehouse receipts held by lender as collateral for loans to a licensee, times the *days* during the quarter that the warehouse receipt was held as security, times the *applicable commodity price* per bushel, times *$0.00000055* per day, times the lender assessment *multiplier*, if any. Further discussion of this complicated formula is beyond the scope of this article, except to note that the formula is expected to produce about $250,000 of revenue for the IGIF per assessment cycle (at least beginning with the second 18-month assessment cycle).

***Continuing Assessments on Licensees:*** Under the 2003 amendments to the Illinois Grain Code, Grain Dealers and Warehouses pay "subsequent assessments" in a manner very similar to the "subsequent assessments" paid before the amendments. The pre-existing assessment formula for subsequent assessments on grain dealers/warehouses has not changed and this formula resulted in about $800,000 of revenue for the IGIF for each assessment cycle. But licensees will be paying the "subsequent assessment" for a longer period of time because of the need to replenish the fund to $6 million, not $3 million.

## Concluding Observations

1. The new assessment on sellers ($4 per $10,000 of grain "settled for") will start January 1 and continue initially for twelve months, but the new assessment shouldn't be a factor in the decision about whether to settle for grain before or after January 1.

2. The relative assessment burden placed on first sellers during the initial assessment cycles appears high: Approximately $2,000,000 will be paid by sellers each cycle, compared to ~$800,000 for Licensees and ~$250,000 for Lenders.

3. The seemingly heavy assessment burden on sellers is mitigated by the need to pay during <u>fewer</u> assessment cycles. Sellers will only be assessed during perhaps one or two assessment cycles because the trigger for this assessment is an IGIF below $3 million (below $2 million once the IGIF has reached $6 million). But the assessment cycles for Licensees and Lenders will continue until the IGIF reaches the full $6 million, and then will be triggered again anytime the IGIF falls below $6 million.

4. For individual lenders, the financial costs of the quarterly lender assessments are not great, certainly not more than 0.02% (two hundredths of a percent) per annum of the debt actually secured by the warehouse receipts during the first assessment cycle. And lenders may wind up passing on these assessment costs to their elevator-borrowers. But, in the long run, lenders collectively will contribute about $250,000 to the IGIF each 18-month assessment cycle.

5. Licensed elevators must pay their own assessments, as in the past (approximately $800,000 per 18-month assessment cycle); they also carry the primary administrative burden for the assessments on first sellers of grain (elevators collect and remit), and on lenders (elevators mail the notices to lenders, including calculations of assessments attributable to its warehouse receipts).

6. **Appendix A** should help you grasp the basics of the three assessments (assessments on licensees, on first sellers of grain, and on lenders holding warehouse receipts to secure loans made to licensees).

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The language (unofficial) of the Illinois Grain Code is available on the Internet. Go to http://www.legis.state.il.us/legislation/ilcs/ilcs.asp and CLICK on "CHAPTER 240 WAREHOUSES." Then CLICK on "240 ILCS 40/ Grain Code."

Updates of this article will be on the *farmdoc* Website, in the Law and Taxation section (see http://www.farmdoc.uiuc.edu/legal/index.html).

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## Appendix A: The "12 months on – 6 months off" Ill. Grain Code Assessment Cycles

Prepared by D.L. Uchtmann

In the Table, **months in bold** depict the first two assessment periods under P.A. 93-0225.

- Licensees (Grain Dealers and Warehouses) will pay assessments, generally as in the past.
- Grain sale "settlements" during the assessment periods result in new assessments on first sellers (farmers/share landlords), to be remitted quarterly by Licensees to the Department.
- Holding warehouse receipts to secure Licensee's debt during the assessment periods (shaded quarters) triggers new quarterly lender assessments (QLAs) paid by Lender, or its designee.

**Key dates in 2003** were as follows:

- 10/01/03: Assessment Determination Date* for Licensees, 1st Sellers, and Lenders.
- ~10/20/03: Department notified Licensees that all three assessments begin next quarter.
- ~11/10/03: Licensees notified Lenders that QLAs begin next quarter.

| Calendar Year 2004 | Calendar Year 2005 | Calendar Year 2006 |
|---|---|---|
| **January**<br>*1st: Licensee Assessment is Set*<br>*20th: 1st Licensee Install. Due* | January<br>20th:<br>4th Qtr **Seller** Ass. Due | **January**<br>*20th: 3rd Licensee Install. Due*<br>2nd Qtr **Seller** Ass. Due |
| **February** | February<br>~10th: QLA for 4th Qtr Due?# | **February**<br>~10th: QLA for 2nd Qtr Due?# |
| **March** | March | **March** |
| **April**<br>*20th: 2nd Licensee Install. Due*<br>1st Qtr **Seller** Ass. Due | *April*<br>**1st: Assess. Deter. Date*** | **April**<br>*20th: 4th Licensee Install. Due*<br>3rd Qtr **Seller** Ass. Due |
| **May**<br>~10th: QLA for 1st Qtr Due?# | May | **May**<br>~10th: QLA for 3rd Qtr Due?# |
| **June** | June | **June** |
| **July**<br>*20th: 3rd Licensee Install. Due*<br>2nd Qtr **Seller** Ass. Due | **July**<br>*1st: Licensee Assessment Set*<br>*20th: 1st Licensee Install. Due* | July<br>20th:<br>4th Qtr **Seller** Ass. Due |
| **August**<br>~10th: QLA for 2nd Qtr Due?# | **August** | August<br>~10th: QLA for 4th Qtr Due?# |
| **September** | **September** | September |
| **October**<br>*20th: 4th Licensee Install. Due*<br>3rd Qtr **Seller** Ass. Due | **October**<br>*20th: 2nd Licensee Install. Due*<br>1st Qtr **Seller** Ass. Due | October<br>**1st: Assess. Deter. Date*** |
| **November**<br>~10th: QLA for 3rd Qtr Due?# | **November**<br>~10th: QLA for 1st Qtr Due?# | November |
| **December** | **December** | December |

* If equity in the IGIF is < $6 million, assessments on Licensees and Lenders will start the next quarter and continue for 4 quarters. Also, if equity is < $3 million, assessments on 1st Sellers will start the next quarter and continue for 12 months (trigger is < $2 million if fund had previously reached $ 6 million).

# Assumes a technical correction to the Act, or an interpretation by the Dept. of Ag. that the Quarterly Lender Assessment is due 20 days after notice. The Act says it's due on same date as Seller's Assessment.