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Burley growers win lawsuit

Co-op must share \$130 million buyout

By Janet Patton

HERALD-LEADER STAFF WRITER

Burley tobacco farmers could get up to \$130 million after a Fayette Circuit judge resolved a dispute with the growers' cooperative in their favor.

In a ruling Thursday, Judge Pamela Goodwine ordered the Burley Tobacco Growers Cooperative in Lexington to give farmers the proceeds from sales of surplus leaf that the co-op received as part of the 2004 tobacco buyout.

In January 2006, the co-op sold 59.7 million pounds of the surplus tobacco for almost \$118 million but kept the proceeds instead of distributing them to members. Goodwine ordered the co-op to sell the remaining 3.6 million pounds, worth \$12 million, "as soon as practicable given current market conditions."

The co-op must distribute the proceeds to members in Kentucky, Ohio, Indiana, Missouri and West Virginia.

A large majority of the co-op's roughly 200,000 members in those states are from Kentucky. Everyone will receive equal payments.

"It certainly will be beneficial to us in terms of making it through another year," Fayette County farmer Jim Barton, one of the plaintiffs, said in a statement.

"A cooperative is supposed to work in the best interest of its members. It doesn't matter if it's an agricultural co-op or a utility co-op. This order does the right thing by giving farmers back their money."

The co-op also has to pay out any interest or the proceeds from investments earned off the money.

Roger Quarles, president of the co-op, said the board was surprised at the ruling. "We thought it was very plain (Congress had) given us authority to do whatever with it -- dispose of it, sell it, burn it, whatever," Quarles said.

It's not clear how much of that \$130 million the farmers will get.

The court will allow the co-op to deduct from the gross proceeds certain credits, such as the \$10 million the co-op put up to supplement Kentucky Phase II tobacco payments and the \$30 million in federal taxes it paid on the sales proceeds.

The co-op will file an amended return after final ownership of the money is decided and will petition the IRS to return the money to the farmers.

A hearing Wednesday will begin to determine which credits will be allowed.

The co-op can keep 1 percent of the proceeds plus costs and expenses. By the co-op's reckoning, that amounts to \$30 million, but the farmers contend the co-op deserves \$1.3

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million, said Brent Caldwell, an attorney for the plaintiffs.

Goodwine ruled that trying to distribute the money to growers and former quota holders based on what they actually grew faced "insurmountable problems." So the money will be paid on a per capita basis to "producer-members" from 2002-04.

The co-op and the farmers have 30 days to propose a distribution method. Caldwell said yesterday that, if neither party appeals the final order, the money could be distributed before the end of the year.

The farmers lost on one key point. On March 12, Goodwine ruled that the co-op does not have to pay out \$25 million in proceeds from a 1982 tobacco sale.

Overall, the farmers are "very pleased" with the rulings, Caldwell said. "They fought long and hard for over three years."



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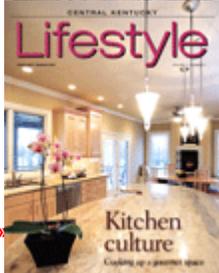
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