Estate and Gift Taxes

WHERE ARE WE AT AND WHERE ARE WE GOING?

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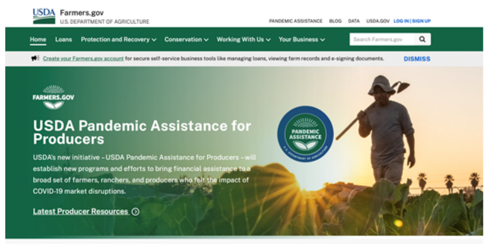
Acknowledgement

This material is based upon work supported by the U.S. Department of Agriculture, under agreement number FSA21CPT0012032. Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Agriculture. In addition, any reference to specific brands or types of products or services does not constitute or imply an endorsement by the U.S. Department of Agriculture for those products or services. USDA is an equal opportunity provider, employer, and lender.

Tax and Financial Education Project

- 3-Year USDA-FSA Funded Project
- Tax and Asset Protection related educational materials:
  - Beginning Farmer/Ranchers
  - Commercial Farmers/Ranchers
  - Socially Disadvantaged Farmers/Ranchers
  - Landowners
  - Others.



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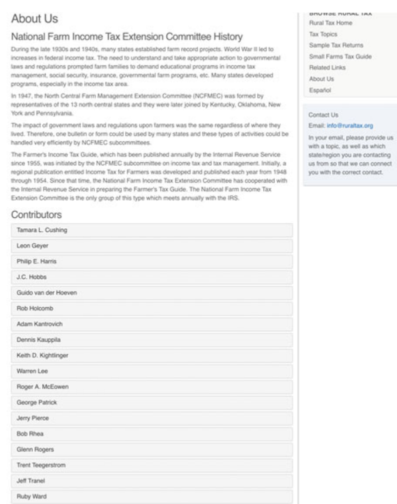

Important Items

- This is not legal, or tax advice and the material presented is for educational purposes only.
- We will not be able to go into detail in any area due to time. This is a general overview.
- Each situation is unique and what may work for one may not work for another.
- Make sure you are working with a good “team” that should include an attorney that specializes in this area, a tax professional, a financial planner/advisor, and possibly a third objective party to assist with the process.
- Just because you may have developed a good plan and have followed all the basics, does not mean the plan will guarantee success.
- All Tax information used is applicable as of Oct. 31, 2023 and can change at any moment!

Topics to be Discussed

- Capital Gain
- Present Estate Tax Law
- Conservation Easements & Tax Challenges
- Resource Links
- Contact Information
- Questions & Answers

How do you acquire an asset?

- Buy it
- Received as a Gift
- Inherit
- Steal it!
- All of the above?

Long-Term Capital Gain Rates

2023 Long Term Capital Gains Rates						
	Single/Individual		Married Filing Jointly		Head of Household	
	Above	Top	Above	Top	Above	Top
0%	$ -	$ 44,625.00	$ -	$ 89,250.00	$ -	$ 59,750.00
15%	$ 44,625.01	$492,300.00	$ 89,250.01	$ 553,850.00	$ 59,750.01	$ 523,050.00
20%	$492,300.01	And Up	$553,850.01	And Up	$ 523,050.01	And Up

Tax Basis

- Buy it: Purchase Price plus other costs of acquisition
- Received as a Gift: The same basis as the person that gifted the asset to you (no adjustments)
- Inherit: Step-up in basis to Fair Market Value date of death
- Steal it: Zero basis
- All of the above: It depends as it is a mixed bag.

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Federal Estate Taxes

- Estate Tax Exemption
  - 2023
    - $12.920 million per person
    - $25.84 million for Spouses electing portability.
  - Portability
    - Surviving spouse may use the unused portion of the deceased spouse’s unused estate tax exemption (must be elected on the estate tax return).
  - Step-up in Basis to FMV as of date of death.

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Spousal Portability Example (Part 1)

- 2023 Estate Tax Exemption = $12.92 million per individual.
- Total estate value $20 million.
- 50/50 value split between Dad and Mom.
- Dad dies in 2023 (his estate is worth $10.0 million).
- Portability of the Deceased Spouses Unused Exemption:
  - $ 12.92 Million Exemption
  - (Minus) $ 10.0 Million Value of Estate
  - (Equals) $ 2.92 Million of Exemption that will remain for Mom to use later.

Spousal Portability Example (Part 2)

- Mom passes in 2025 and her estate value increased from $10.0 million to $15.0 million.
- Assume 2025 Estate Tax Exemption = $13.5 million per individual.
- Without portability, $1.5 million (15.0 - 13.5) of Mom's estate is taxable.
- Mom's Estate Tax Exemption with portability = $16.42 million (13.5 + 2.92 of spouses unused exemption).
- No estate tax is due; Mom's estate in 2025 (15.0 million) is less than the total exemption amount with portability (16.42 million).

Federal Gift Taxes

- 2023: Annual Exclusion for gift tax purposes is $17,000 per recipient.
  - Donor is responsible for the gift tax.
  - Spouses using gift splitting, $34,000 per person who receives a gift.
  - May use the estate tax lifetime exclusion amount and not pay the gift tax.

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Federal Gift Tax Example

- 2023: Annual Exclusion for gift tax purposes is $17,000 per recipient.
- Mom gives daughter a house with a fair market value of $200,000.
- Amount subject to Gift Tax is $183,000 ($200,000 - $17,000).
- Mom can reduce the amount subject to tax by using $183,000 of her estate tax exemption.
- In 2023, mom's remaining estate tax exemption is $12,737,000 ($12,920,000 - $183,000) if she decides to apply the exemption amount.

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State Rules for Estate and Gift Taxes

Be sure to look at your specific state's rules pertaining to:

1. Estate Taxes
2. Gift Taxes

SUCCESSION AND ASSET PROTECTION

Expected Estate Values to be Transferred in the Future

- Silent Generation (1928-1945) expected to transfer about $30 Trillion.
  - Is it too late to develop a plan? No but time is running out.
- Baby Boomers (1945-1964) expected to transfer an excess of $40 Trillion.
  - Running behind, it is time to develop your plan!!!!
- Generation X
  - Expected wealth transfer to be above $70 Trillion between now and 2050.
  - Its time to run, not walk with developing your plan.
- Generation X and Millennials will have a great time.

(Sources: Wall Street Journal, Forbes, and CNBC)

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U.S. Population Estimate by Generation (2020 Census)

- Greatest Generation – 1.33 million
- Silent Generation - 21.78 million
- Baby Boomers – 70.68 million
- Generation X – 64.95 million
- Millennial – 72.26 million
- Generation Z – 67.06 million

Source: Statista Research Department

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What is a Good Plan

- Provides for financial needs of all parties.
- Maintains Family Harmony and or between individuals.
- Creates/provides an *opportunity* for the business successors, a hand-up, not a handout.
- Flexible
- Simple, does not have to be overly complicated.
- Minimize tax liabilities.
- Communication is KEY!
- NOTE: sometimes a good plan does not work and it is important to continually review the plan.

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Five principles

1. By not developing an estate/succession plan, you have still made a choice! Intestate.
2. It's not "if," it's "when" you will die.
3. Silence is deadly.
4. Humans crave options.

By developing a plan you are able to review choices to minimize potential estate settlement costs.

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Estate and Succession Planning

- There are many methods that may be utilized to develop an estate plan and or a succession/transition plan.
- There is not a template that can be used.
- Remember the old physics principle!
  - For every action there is an equal and or greater reaction.
- Some methods may help reduce tax liability while others may increase the tax liability of the estate.
- In some cases, due to the need of income by the senior generation, and or to reduce the value of the overall estate, a conservation easement may be considered. It is important to understand what a conservation easement is, its potential tax **benefits and liabilities**.
  - There are pro's and con's to this and all angles must be evaluated.

Conservation Easements

PDR's: Oh what have I done?

Conservation Easement(s)
(aka Purchase of Development Rights (PDR))

- This is an actual sale and or gifting (donation) of future use rights of the property that you are giving up that will be held in perpetuity by a third party.
- It is just like the sale of land which may initiate a tax liability if you have received any cash payment for the property!

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Basis

- You will need to establish a revised basis in the property. The basis needs to be separated into 2-parts: 1) ag use and 2) development use.
- Easy method is to use the same ratio used to determine the present fair market value (FMV) and apply that to the previously established basis.
- If you cannot establish what the basis is, then the basis is “$0”
- *This is situationally dependent upon the FACTS and CIRCUMSTANCES.
- To determine if there is any tax liability by the owner of the property:
  1. A new basis must be established based on the value of the portion donated, and the amount of cash received for the portion of the property that the PDR was sold.
  2. Then the difference between the newly established basis and previous basis is determined.
  3. The difference in the basis may create a tax liability which should be a capital gain.

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Qualified Farmer

- A Qualified Farmer or rancher as defined by IRC Sec. 170(b)(1)(E)(vi).
    - At least 50% or more of the taxpayer's gross income is derived from farming.
- Why is this definition important?

Donation of PDR (in full or in part)

- If the contributor is a qualified farmer:
    - The contributor may be able to deduct the value of the contribution up to 100% of the taxpayers AGI.
    - Any value that remains above that may be carried forward for up to 15 years or until it is completely used. Any remaining value after the 15-year limitation is lost.
- If NOT a qualified farmer:
    - The allowable tax deduction will generally be limited to either 30% of or 50% of the value of the donation. This is dependent on to whom the donation is made.

States and Conservation Easements

- Determine if there are other state specific tax benefits for property that has been donated or sold into a conservation easement.
- Check with your state to determine if there is a state “Credit Exchange” program, and if the donated portion of the property is eligible for a state credit exchange.

Summary

- Always have formal documentation, even among family members.
- Work with your tax and legal advisors.
- Make sure that all parties involved understand the goals and objectives.
- Revisit the plan as laws and tax provisions will change.

Resources and Links

Rural Tax.org
http://www.ruraltax.org
Land Grant University Tax Education Foundation
https://taxworkbook.com
USDA Farmers Website
https://www.farmers.gov
AgTransition, Univ. of Minnesota, Center for Farm Financial Management
https://agtransitions.umn.edu
Clemson Agribusiness Team Webpage
Farm Transition website link & other useful information
https://www.clemson.edu/extension/agribusiness/index.html
Oklahoma State University Farm Succession
https://extension.okstate.edu/programs/farm-transitions

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The End!!!

Questions

Comments

Thoughts

Ideas

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