

## Ag Law and Tax Topics – Miscellaneous Topics

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I haven't been able to write for the blog recently given my heavy travel and speaking schedule, and other duties that I have. But that doesn't mean that all has been quiet on the ag law and tax front. It hasn't. Today I write about several items that I have been addressing recently as I criss-cross the country talking ag law and tax.

### What if TCJA Isn't Extended?

Tax legislation that went into effect in 2018 is set to expire at the end of 2025. For many, this could have a significant impact starting in 2026. Do you have a plan in place if the tax law changes dramatically at that time?

If Congress allows the 2017 tax law to expire, how might it impact you? For starters, tax rates will increase, and those currently in the 12 percent federal bracket will see a 25 percent increase in their tax rate. Currently, the 12 percent bracket for married persons filing joints applies to taxable incomes from \$22,000-\$89,450. So, for instance, a married couple with \$75,000 of taxable income would see their tax bill raise from \$8,560 to approximately \$10,350.

In addition, the standard deduction will be reduced (essentially cut in one-half), but personal exemptions will be restored. Also, the child tax credit will be reduced from \$2,000 per qualifying child to \$1,000, refundability will be reduced and the credit will be eliminated entirely for some families. For homeowners, the current limit on the mortgage interest deduction will be removed.

The 2017 law removed the penalty for not getting government health insurance, but that will be restored starting in 2026, as will the deduction for state and local taxes. In addition, the lower limit on charitable deductions will be reinstated. For businesses that aren't corporations, the 20 percent deduction on business income will go away.

The estate tax exemption will be essentially cut in half, (from about \$14 million in 2025 to about \$7 million in 2026). For larger estates, making gifts now might make some sense.

It might be time to start thinking about the changes that could occur starting in 2026 and putting a good plan in place to handle what could happen. If you operate a business, think of higher taxes as an additional cost that needs to be managed.

### Buying Farmland with a Growing Crop

Buying farmland with a growing crop presents unique tax issues. It has to do with allocating the purchase price and the timing of deductions.



When you buy farmland with a growing crop on it the tax Code requires that you allocate the purchase price between crops and land based on their relative fair market values. You can't deduct the cost of the portion of the land purchase allocated to the growing crop. While the IRS has not been clear on the issue, the costs should be capitalized into the crop and deducted when the income from the crop is reported or fed to livestock, which may be in a year other than the year in which the crop is sold.

If you buy summer fallow ground, you can't deduct or separately capitalize for later deduction the value of costs incurred before the purchase. Additional costs incurred before harvest such as for hauling are deductible if you're on the cash method.

One approach to consider that could lead to a better tax result might be to lease the land before the purchase. That way you incur the planting costs and can deduct them rather than the landlord that will sell the farmland to you.

If your considering buying farmland with a growing crop talk with your farm tax advisor so you get the best tax result possible for your particular situation.

### **What is Livestock?**

The definition of "livestock" can come up in various settings. For example, sometimes the tax Code says that bees are livestock for one purpose but are not for other purposes. The issue of what is livestock can also arise in ag lending situations, ag contracts as well as zoning law and ordinances.

What is "livestock"? The definition of "livestock" for purposes of determining whether an asset is used in a farming business includes "cattle, hogs, horses, mules, donkeys, sheep, goats, fur-bearing animals and other mammals." It does not include "poultry, chickens, turkeys, pigeons, geese, other birds, fish, frogs, and reptiles." While that definition normally does not include bees and other insects as livestock, the IRS has ruled that honeybees destroyed due to nearby pesticide use qualify for involuntary conversion treatment.

When pledging livestock as collateral for an ag loan, it should be clear whether unborn young count as "livestock" subject to the security agreement. From a contract standpoint, semen is not livestock unless defined as such.

For zoning laws and ordinances, clarity is the key. Is a potbellied pig "livestock" or a pet"? Will an ordinance that bans livestock prohibit the keeping of bees in hives? It probably won't unless it specifically defines bees as "livestock."

### **Partition of Farmland**

If your estate plan is to simply "let the children figure it out," it's likely instead that a judge will. Indeed, one of those situations where a judge gets involved is when the parents have left farmland in co-equal ownership to multiple children after the last of the parents to die. That often leads to a partition and sale with the proceeds being split among the children.

Partition and sale of land is a legal remedy available if the co-owners cannot agree on whether to buy out one or more of them or sell the property and split the proceeds. It's often the result of a poorly



planned estate where the surviving parent leaves the land equally to all of the children and not all of them want to farm or they simply can't get along. Because they each own an undivided interest in the entire property, they each have the right of partition to parcel out their interest. But that rarely is the result because they aren't able to establish that the tract can be split exactly equally between them in terms of soil type and slope, productivity, timber, road access, water and the like. So, a court will order the entire property sold and the sale proceeds split equally. That result can devastate an estate plan where the intent was to keep the farm in the family for future generations.

A little bit of estate planning can produce a much better result.

### **Crop Insurance Proposal**

For many farmers, crop insurance is a key element of an effective risk management strategy. Private companies sell and service the policies, but taxpayers subsidize the premiums. That means the public policy of crop insurance is a component of Farm Bill discussions. There's a current reform proposal on the table.

A crop insurance reform proposal has been introduced in the U.S. House. Its purpose is to help smaller farming operations get additional crop insurance coverage. But its means for doing so is to eliminate premium subsidies for large farmers without providing additional coverage for smaller producers.

The bill caps annual premium subsidies at \$125,000 per farmer and eliminates them for farmers with more than \$250,000 in adjusted gross income. The bill also reduces the subsidies to crop insurance companies which is projected to reduce their profit from 14 percent to about 9 percent.

In addition, the bill eliminates subsidies for Harvest Price Option and requires the USDA to disclose who gets subsidies and the amount. It also restricts crop insurance to active farmers.

The bill represents a dramatic change to the crop insurance program. There's not really anything in the bill to help smaller farming operations, and if the bill passes all farmers would see an increase in crop insurance premiums.

### **Veterinarian's Lien**

A lien gives the lienholder an enforceable right against certain property that can be used to pay a debt or obligations of the property's owner. Most states have laws that give particular persons a lien by statute in specific circumstances. These statutory liens generally have priority over prior perfected security interests.

The rationale behind statutory liens is that certain parties who have contributed inputs or services to another should have a first claim for payment. But you have to be able to prove entitlement to the lien.

In a recent case, a veterinarian treated a rancher's cattle. The rancher didn't pay the vet bill and while the bill remained outstanding, the vet came into possession of cattle that the rancher was grazing for another party. The vet cared for the cattle for over two months and then filed a lien for his



services. Ultimately the cattle were sold at a Sheriff's sale and the rancher's lender claimed it had a prior lien on the proceeds. Normally, the veterinarian's lien would beat out the lender's lien, but the court concluded that the veterinarian couldn't establish who actually delivered the cattle to him or that the rancher requested his services.

The court said the vet didn't meet his burden of proof to establish that the lien was valid. While liens have position, their validity still must be established.

### **Digital Assets and Estate Planning**

One often overlooked aspect of estate planning involves cataloguing where the decedent's important documents are located and who has access to them. The access issue is particularly important when it comes to the decedent's digital assets such as accounts involving email, banks, credit cards and social media.

Who has access to a decedent's digital assets and information? Certainly, the estate's fiduciary should have access, but it's the type of access that is the key. The type of access, such as the ability to read the substance of electronic communications, should be clearly specified in the account owner's will or trust. If access to digital assets and information is to be granted to a third party before death, the type and extent of access should be set forth in a power of attorney.

But, even with proper planning, it is likely that a service provider will require that the fiduciary obtain a court order before the release of any digital information or the granting of access.

Digital assets are a very common piece of a decedent's estate. Make sure you have taken the needed steps to allow the proper people to have access post-death. Doing so can save time and expense during the estate administration process.

There are also tax consequences of exchanging digital assets after death.

### **Conclusion**

These are just a few items of things that have been on my mind recently. I am sure more will surface soon.

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