Farm & Estate Tax Laws - Planning for an Uncertain Future

Chris Bruynis  
Associate Professor  
bruynis.1@osu.edu  
740-702-3200

David Marrison  
Associate Professor  
marrison.2@osu.edu  
440-576-9008

Teaching Objectives

- Uncertainty Ahead
- Estate Tax Update
- PATH ACT
- Depreciation Update
- Proposed Tax Changes
- Impact of Repeal & Replace
- Business Tax Proposals
- 1099 Reporting Requirements
- CRP Update

Circular 230 Disclosure

Pursuant to the requirements of the Internal Revenue Service Circular 230, we inform you that, to the extent any advice relating to a Federal tax issue is contained in this communication, it was not written or intended to be used, and cannot be used, for the purpose of (a) avoiding any tax related penalties that may be imposed on you or any other person under the Internal Revenue Code, or (b) promoting, marketing or recommending to another person any transaction or matter addressed in this communication.

The information provided in this presentation is for educational purposes only. This presentation is designed to provide accurate and authoritative information concerning the subject matter covered, but it is communicated with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.
Planning for an Uncertain Future

President Donald Trump

Paul Ryan – Speaker of House
Sonny Perdue – The New Secretary of Ag

What Is Seen in the Crystal Ball?

First On the Radar?

- Taxes
- Regulations
- Obamacare
- The Wall?
Tax Reform

• Most predict that we will see the most comprehensive tax reform since President Ronald Reagan signed the “Tax Reform of 1986.”
• A lot of moving parts so reform may take awhile.

Federal Estate & Gift Tax

➢ American Taxpayer Relief Act of 2012 (Fiscal Cliff Legislation) has made estate planning easier.
➢ Set permanent limit indexed for inflation.
➢ Includes portability to spouse.
➢ Is $5,490,000 for 2017.
➢ Excess taxed at maximum of 40%.

Ohio Estate Tax

➢ As of January 1, 2013, the Ohio Estate Tax has been repealed.
Future of Estate & Gift Tax

- President Trump is advocating for elimination of the “death tax.”
- Only 0.2% of US Citizens pay federal estate tax.
- If estate tax is repealed will we have a step up of basis?
- If this is eliminated, it will be a significant loss for agriculture.

Step Up

- At death all assets currently receive a step up in tax basis.
- Heir receives $500,000 of machinery from deceased parent. May have had a $0 tax basis for parents.
- The heir’s tax basis however is stepped up to its market value of $500,000.
- Heir can re-depreciated the machinery again.
  - but no section 179 or bonus depreciation

While talking about basis, what are the current levels for Section 179 Depreciation and Bonus Depreciation?
P.A.T.H Act

- Protecting Americans from Tax Hikes (PATH) of 2015
- Made permanent many of the individual and business tax extenders.

Bonus Depreciation Rules

Bonus Depreciation Requirements:
- Recovery period < 20 year
- Original use commenced with TP
- Placed in service before 1/1/2020
- ADS must not be required method
- Taken on Form 4562

Bonus Depreciation Changes

Bonus Depreciation Rules
- 50% deduction allowed through 2017
- 40% for 2018
- 30% for 2019
- 0% for 2020 and later
Section 179-Equipment Expensing

- I.R.C. § 179 deduction is $500,000 for 2016 with $2,010,000 phase-out limit ($1 for $1).
- Will be indexed for inflation for future years.

Section 179-Equipment Expensing

- Can expense new or used equipment in year of purchase.
- Cannot exceed the taxable income derived from the business.
- Cannot create a loss.
- Excess can be carried forward.

Future of Depreciation?

- There has been talk of allowing the complete expensing in the year of purchase.
- De Minimis Safe Harbor limit was recently increased to $5,000.
- Complete expensing could put farm business into greater tax liability situation.
Proposed Tax Changes

- Simplify Tax Filing Process
- Reduce Number of Tax Brackets
- Increase the Standard Deduction
- Itemized Deduction Cap
- Add a Tax Deduction for Child Care Costs

Will There Be a Different Form?

A BETTER WAY FORWARD ON TAX REFORM
SIMPLE, FAIR “POSTCARD” TAX FILING

1. Earned income
2. Add 1/2 of investment income
3. Subtract contributions to specified saving plans
4. Subtract student loan interest
5. Subtract mortgage interest deduction
6. Subtract charitable contribution deduction
7. Wages Income
8. Preferential tax (2/3 of tax liability)
9. Subtract child credit
10. Subtract earned income credit
11. Subtract higher education credit
12. Total tax
13. Subtract taxes withheld
14. Refund due (taxes owed)

OHIO STATE UNIVERSITY EXTENSION
**Reduction of Tax Brackets?**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 – $9,325</td>
<td>$0 – $18,650</td>
<td></td>
<td>10%</td>
<td>12%</td>
</tr>
<tr>
<td>$9,325 – $37,950</td>
<td>$18,650 – $75,900</td>
<td></td>
<td>15%</td>
<td></td>
</tr>
<tr>
<td>$37,950 – $91,900</td>
<td>$75,900 – $153,100</td>
<td></td>
<td>25%</td>
<td>25%</td>
</tr>
<tr>
<td>$91,900 – $191,650</td>
<td>$153,100 – $233,350</td>
<td></td>
<td>28%</td>
<td></td>
</tr>
<tr>
<td>$191,650 – $416,700</td>
<td>$233,350 – $416,700</td>
<td></td>
<td>33%</td>
<td></td>
</tr>
<tr>
<td>$416,700 – $418,400</td>
<td>$416,700 – $470,700</td>
<td></td>
<td>35%</td>
<td></td>
</tr>
<tr>
<td>$418,400 +</td>
<td>$470,700 +</td>
<td></td>
<td>39.6%</td>
<td></td>
</tr>
</tbody>
</table>

**Impact of Repeal & Replace?**

- **Net Investment Income Tax (NIIT)**
  - 3.8% surtax on investment income for $ amount over $200,000 (single) or $250,000 (MFJ).
- **Medicare Surtax**
  - An additional 0.9% medicare tax was added, if over the threshold of $200,000 (single) or $250,000 (MFJ).

**Simplification of Family Tax Benefits**

<table>
<thead>
<tr>
<th>Current Law</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Standard Deduction</td>
<td>Larger Standard Deduction</td>
</tr>
<tr>
<td>Additional Standard Deduction</td>
<td></td>
</tr>
<tr>
<td>Personal Exemption for Taxpayer and Spouse</td>
<td></td>
</tr>
<tr>
<td>Child Tax Credit</td>
<td>Larger Child &amp; Dependent Tax Credit</td>
</tr>
<tr>
<td>Personal Exemption for Children and Dependents</td>
<td></td>
</tr>
</tbody>
</table>
Business Tax Rate Structure

- Proposal puts a tax ceiling at 25% for small business, sole proprietorship and pass through businesses (partnerships, LLC, S Corp).
- C Corp Tax Rate would drop from 35% to 20% (R) or 15% (D.T.)

Other Proposed Tax Changes

- Elimination of the Alternative Minimum Tax (Individual & Corporate).
- NOL would be allowed to be carried forward indefinitely.
- Border Adjustment TAX (BAT) to tax products where they are consumed not produced.

Form 1099

- 1099 G – for government payments, unemployment, state/local tax refunds, & taxable grants.
- 1099-MISC – for miscellaneous income.
- 1099-INT – for interest income.
- 1099-DIV- for dividends & distributions.
- 1099-R – for retirement distributions.
NEW Reporting Requirements for W-2 & 1099-Misc

- To the recipient by January 31 & to IRS by February 28 by January 31, 2017.
- Applicable to all W-2 (by paper or electronic)
- Applicable to 1099-Misc if reporting amounts in Box 7: Nonemployee Compensation.
- If don’t have Box 7, than the deadline remains February 28 for paper filings or March 31 for electronic filings.

When is a 1099-MISC Issued?

- Farm rental payments which are over $600 to an individual (combined or individual). This includes LLC unless they choose to be taxed as a corporation (Form 8832).
- Crop Insurance proceeds over $600 or royalties over $10.
- Payments for services performed valued at $600 or more. These could include someone painting the barn, hoof trimmers, certified crop consultants or attorneys.
- 1099 forms are not required for the purchase of feed, seed, fertilizer or equipment parts.
Reporting Requirements

- Services from a medical service provider (including veterinary services) are required to issue a form 1099 even if the business is a corporation.
- Not needed if services from a corporation or if payments made in connection with the trucking or hauling of livestock, grain or other farm produce.
- Not needed if payment made to government agency or tax-exempt organization.

Payments shown on Form 1099-MISC are generally not subject to FICA. If the party receiving payment does not provide the farmer with a valid social security number, the farmer is required to withhold 28% of the payment in the form of “backup withholding” for income tax.
- If a contractor who is not a dealer in supplies performs a service and also provides the supplies required, the farmer must report the entire payment for supplies and services on the Form 1099 that is prepared for the contractor.
Conservation Reserve Program (CRP) Payment

- The Conservation Reserve Program (CRP) is a land conservation program administered by the Farm Service Agency (FSA). (Reagan-1985)
- In exchange for a yearly rental payment, farmers/landowners enrolled in the program agree to remove environmentally sensitive land from agricultural production and plant species that will improve environmental health and quality.
- Contracts for land enrolled in CRP are 10-15 years in length. The long-term goal of the program is to re-establish valuable land cover to help improve water quality, prevent soil erosion, and reduce loss of wildlife habitat.

Should Landowners Pay SE on CRP Ground?

- Participation in a CRP contract is a trade or business so both farmer and non-farmer are subject to SE tax.
- 2008 Farm Bill Excludes CRP payments from the definition of net earnings from self-employment if owner is receiving:
  - Old age or survivor’s benefits or
  - Disability benefits.
Morehouse v Commissioner

- Tax Court followed IRS reasoning and held CRP payments subject to SE tax
- 8th Circuit reversed and held that CRP payments are rent
  - Not subject to SE tax because taxpayer did not materially participate

Conservation Reserve Program (CRP) Payment

CRP, NIIT & Additional Medicare Tax

- NIIT applies to income reported as rent – CRP on Sched E
- Additional Medicare tax applies to self-employment income – CRP on Sched F
- Neither if TP collecting social security as CRP not in SE income & not rents

Questions?