

Farm Management

Tax repeal leaves need for planning

Country Counsel

By ROBERT MOORE

THE recent state budget includes a repeal of the Ohio estate tax beginning in 2013. This development is certainly good for Ohio farmers who tend to be "land rich and cash poor." For many Ohio farmers, the estate tax repeal will save tens of thousands of dollars in their estates. With the current federal estate tax exemption at \$5 million per person, a married couple must have more than \$10 million before they are subject to federal estate taxes. Under current state and federal law, the vast majority of Ohio farm estates are not subject to any estate tax.

Estate taxes have been an important motivation for estate planning with farmers. These estate plans have often been trust-based plans to maximize estate tax exemptions. Some farmers may feel they do not need these more elaborate estate plans when the Ohio estate tax is repealed. However, trusts provide more value than just estate tax savings. Farmers should still consider trust-based estate plans.

Benefits of trusts

Trusts will remain valuable estate planning tools due to the uncertainty of future tax laws. The federal estate tax exemption of \$5 million reverts back to \$1 million in 2013 if new legislation is not passed. While



Key Points

- Ohio farmers can be pleased with the recent repeal of the Ohio estate tax.
- Despite the news, farmers can still benefit from trust-based estate plans.
- Poor estate planning will be a bigger problem for farmers than taxes.

this is unlikely, it is possible, and it is also possible that the exemption in 2013 will be something less than \$5 million. A federal estate tax exemption of \$1 million would be devastating for agriculture.

The point is, until a permanent federal estate tax exemption is established, most farmers should consider trust-based estate plans in the event they become subject to federal estate taxes.

Trusts are also extremely useful in succession planning, the process of transfer-

ring a viable farming operation to the next generation. Trusts provide more flexibility and more control over asset distribution than wills. If an heir has financial difficulties or tends to have poor money management skills, his or her inheritance can be held in a trust and managed by a trustee. The heir's assets are protected from being wasted or taken by creditors.

Best chance

Trusts also can provide the farming heir with opportunities that give him or her the best chance to carry on the family farming operation. The farming heir can be given the opportunity to buy land before it goes to off-farm heirs or to rent ground that is not purchased, and jointly owned land can be placed into a limited liability company to avoid an heir forcing a partition of the land. These are but a few of the mechanisms available in trusts to protect assets

for the heirs and farming operation.

Trusts also avoid probate. The administration of a trust-based estate tends to be more efficient and less costly than will-based estates. The probate process is controlled by the county probate court, and all actions of the executor must be approved by the court. It can be a significant challenge and costly to administer a large, complex farm estate through probate.

Conversely, a trust gives authority to the trustee to make decisions regarding distribution of assets and payment of estate obligations. The trustee must follow the directives of the trust but has discretion and flexibility to make decisions to allow for more expedient and efficient distribution of assets to beneficiaries. Trusts also keep the estate administration private while the probate process is public.

These are just a few examples of reasons farmers should continue to have good, thorough estate plans. It is quite likely that more farms have been forced to be sold due to poor estate planning than estate tax liability. The sale of farms to pay estate taxes seems unlikely with recent law changes, but the threat of forced sales still exists due to poor estate planning and disgruntled heirs.

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