

Woodbury: Farm Family Business

Don't Wait for Congress to Resolve Estate Tax Deadlock



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Bio

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Perhaps you've heard the saying that goes something like this: What's the opposite of the word "pro"? To which most people answer, of course, "con." So what's the opposite of progress? Congress! When it comes to the estate tax, the saying certainly feels applicable.

Since the \$3.5 million federal estate tax exemption expired Jan. 1, estates have been left in legal limbo. There's no federal estate tax on deaths in 2010, but a \$1 million limit is scheduled to reappear in 2011 -- along with a higher tax rates on big estates -- unless Congress acts before year end.



Don't wait for Congress to resolve the estate tax deadlock before tackling emotional issues like identifying a farm successor and the future for your business. (DTN/The Progressive Farmer file photo)

While you may not know the exact estate tax ramifications of Congress' action (or inaction), keep in mind that estate planning is about so much more than taxes. Estate planning, beyond minimizing tax consequences, is about directing whether and how your assets will be kept together or distributed. It's about the impact you want to have on charities. It's about how your heirs will -- or won't -- work together. It's about the legacy you want to leave. Estate planning is ultimately about providing some certainty about what will happen to the business that has been your, and others', livelihood. Yes, taxes are an important part of that certainty, but they are not the only part.

Even if you don't know the outcome on tax policy, a few areas for discussion and planning for you and your family members include the following:

SURVEY THE NEXT GENERATION

How do your heirs see the future? Do they want to be involved with the farm? If so, what do they think that involvement might look like? If they are involved in the farm, are they pleased with their progress? Do you understand what motivates them? What are their expectations of other family members who might want to return? These questions provide an important backdrop to any estate and succession planning you will do in the future, and have almost no relationship to tax questions. Discussing these issues makes sure that as you conduct your estate and asset distribution planning, you are not setting up the next generation to fight or to fail.

CONSIDER YOUR CHARITABLE INTENTIONS

Many business owners who have acquired wealth have some interest in giving to charitable organizations. Whether it is a church, a university or a social service agency, determining how much money you want to leave the not-for-profit, and for what purpose you want the money to be used, takes some time to think and talk through with your spouse. In some families, we use this charitable intent as a way to bring off-farm heirs to the table in a decision-making process. It also is a wonderful way to teach values of philanthropy and stewardship. Changes in the tax code might affect the tools and strategies you use to give money away, but it probably won't change the impact you want to have on a charity or school.

DEVELOP STRATEGIES TO KEEP ASSETS TOGETHER

One of the concerns in modern agriculture is that of size. Will the farm be large enough to capture certain economies of scale so that future generations can earn their livelihood from the business? In order to keep the assets together, particularly in a multi-partner

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operation, serious thought and discussion need to be given to ideas around land holding entities, buy-sell agreements, prenuptial agreements, liquidity, disability issues, rights of first refusal, buy-out financing and other topics. While estate tax issues are certainly on the periphery of the discussion (particularly in terms of liquidity), the central issues are straightforward business issues that owners need to evaluate, especially in light of the capital-intensive nature of farming. Don't use estate tax uncertainty as an excuse to avoid these discussions.

REVIEW THE BALANCE SHEET

I continue to be surprised at how often the key people in the business are not fully aware of the balance sheet that supports the operation. In my opinion, keeping asset values hidden from view of the next generation only serves to support unrealistic expectations and speculation. On the other hand, going over the business' balance sheet -- and the senior generation's balance sheet, which is often the backstop -- can be a great educational experience for the next generation, can spur a sense of ownership in the business and can prevent the development of false expectations among future generations. Understanding the balance sheet and thinking about its trajectory is a form of due diligence that is a prerequisite to good estate planning. Including others in that due diligence, in my opinion, can be quite effective.

What Congress does might affect the strategies you use, but it probably doesn't change the intent you have. Thinking through the issues, talking with your partners, reviewing the balance sheet and having family discussions can give everyone a solid foundation on which to understand and develop the estate tax strategies you might use. But you shouldn't wait for Congress to start this important work.

EDITOR'S NOTE: Lance Woodbury works as a consultant to family owned and closely held businesses in Garden City, Kan., with a special emphasis on business planning, mediation and conflict resolution. He also maintains an interest in his family's western Kansas ranch. E-mail comments or suggestions for this column to lance@lancewoodbury.com.

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