Woodbury: Farm Family Business

A New Affliction

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Bio

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In my consulting activity the last few months of 2012, I saw the emerging symptoms of a new disorder in many land and agriculture business owners: post-traumatic gift disorder (PTGD). This condition is prone to affect parents who have just completed, or are about to complete, significant gifts to the next generation, and who then, over the ensuing weeks, find themselves wondering if they made the right decisions. This article is my attempt to remind and reassure parents and families that they indeed are making progress, despite the pains of PTGD.

COMPLEXITY IS A TRADEOFF

With high commodity prices and skyrocketing land values come increased net worth statements. It takes surprisingly few acres of good farm or pasture ground to find oneself above the new $5.25 million dollar gift and estate tax exemption. The big picture choices at that point become pretty clear: Plan to pay estate tax or look for strategies to lessen the estate tax burden. Either option will cost money -- the only question is when, who and how much you will pay for your choice.

There's no medication for regrets if you've gifted part of your estate recently, but this complexity is a tradeoff for the taxes you would have paid. (Photo by Charles Williams, CC SA 2.0)

If you choose to lessen the tax burden, you generally have to enter a paradigm of more complexity. New legal entities and their associated bylaws or operating agreements, the transactions that will need to take place between those entities, individuals or trusts, and the explanation of those entities to other interested parties such as your lender all combine to make it feel harder to do business. To some degree, you may also become more dependent on the advisers that have helped with your strategy. This sometimes causes people to look at paying the tax or life insurance bill instead of making their business more complex. Rest assured, however, that the complexity is a necessary part of transitioning an agricultural business if you are trying to lessen the tax burden.

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UNCERTAINTY REQUIRES A PROCESS

There was no shortage of frustration with Congress at the end of 2012, as family members rushed to complete gifting strategies, only to find that they could have slowed down a bit since Congress did not reduce the estate and gift tax exemption in the new year.

In order to relieve PTGD elements of frustration, family members should view estate planning as a process, not an event. That is, families should expect uncertainty, should expect a need for changes to their current estate plan, and should expect to sit down every one to three years to evaluate their current estate and ownership transition plan. Instead of having the goal of "getting it all done," families should reframe the goal to one of "taking advantage of certain tax law provisions at this point in time," knowing they will need to revisit and change their plans based on political winds and market forces.

CULTIVATE FAMILY MEMBER APPRECIATION

In a number of cases, parents do a tremendous amount of work with their year-end gifting and estate planning -- often making the next generation multi-millionaires -- only to face a lack of understanding, a sense of indifference or an absence of gratitude in their adult children.

Part of the reason may be that the gifting has been done with a focus on what it means to the senior generation: lessening the estate tax burden. The next generation may simply not have a full understanding of what the gift means to them. Furthermore, if the gift came in the form of partnership units or shares (as part of a landholding entity, for example), the next generation may not have any control, and because they were gifted a minority interest in a closely held company, the asset may not hold much value in the eyes of a lender or other outside party looking at their balance sheet. To top it off, they may have to pay income taxes on the income associated with the gift in future years, so any immediate financial gain is offset by a tax bill!

I believe the answer to this particular symptom of PTGD lies in the education and dialogue family members have both before and after the gift. Use your advisers to educate family members about what the strategy means to the whole family. (After all, you've just saved the goose that lays the golden eggs!) Have a series of family meetings to go over the structure, answer questions and even get input about the future of the asset. Use your advisory board or close peers to affirm your strategy with your family. The point is to keep the family conversation alive; the gift presents a wonderful opportunity to engage your family in thinking about how to secure a business opportunity for future generations.

Post-traumatic gift disorder may be characterized by sleeplessness, feelings of regret, astonishment at legal and accounting fees, stacks of documents, lender questions, or concerns about multimillionaire kids' spending habits. But the answer to these

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symptoms lies not in any wonder drug. The cure is how you consider the estate planning process and how you approach the conversation about your gifting strategy with your family members and business partners.

EDITOR'S NOTE: Lance Woodbury has spent 20 years as a consultant to farms and family owned businesses in Garden City, Kan., with a special emphasis on mediation and conflict resolution. He is also the author of "The Enduring Legacy: Essential Family Business Values." E-mail suggestions for this column to lance@lancewoodbury.com

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