



2008 FARM CONSERVATION TAX UPDATE

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American Farmland Trust's estate planning guide, *Your Land is Your Legacy*, helps farmers, ranchers and their families plan for the future of their farms and ranches. Frequent changes in the tax laws highlight the need for sound estate planning that is tailored to individual circumstances and addresses the uncertainty about future tax legislation. Knowledge of basic strategies and conservation options is essential; estate planning continues to be important for farm and ranch families, their businesses and their land.

The recently approved Farm Bill—the Food, Conservation and Energy Act of 2008—extends through 2009 the incentives authorized by the Pension Protection Act of 2006. Landowners may continue to deduct the value of donated conservation easements up to 50 percent of their Adjusted Gross Income (AGI). The unused portion of the easement value may be carried forward for up to 15 years.

The tax benefits extended under the 2008 Farm Bill for donating conservation easements are even more significant for “qualified farmers and ranchers,” defined as taxpayers who earn more than 50 percent of their gross income from the business of farming in the taxable year in which the conservation easement is donated. These qualified farmers and ranchers can deduct up to 100 percent of their AGI and carry the unused deduction forward for up to 15 years. Easements must cover property that is available for agricultural or livestock production and must contain provisions requiring land to remain available for these uses. Additionally, corporations that meet the above requirements (50 percent of gross income from farming) can deduct up to 100 percent of AGI, a tenfold increase. This legislation provides an important incentive for farmers and ranchers who want to conserve their agricultural land.

The Jobs and Growth Tax Relief Reconciliation Act of 2003 continues to impact farm estate planning and transfer primarily because it decreased taxes on capital gains from 20 to 15 percent for higher-bracket taxpayers through 2008 and from 10 to 5 percent for lower-bracket taxpayers with a capital gains tax holiday in 2008. The reduced rates are retroactive to January 1, 2003. The legislation also accelerated income tax reductions and dramatically reduced taxes on dividends to match the reduced capital gains tax rates—a reduction in rates by half for some taxpayers.

Previously, the Economic Growth and Tax Relief Reconciliation Act of 2001 reduced estate and gift tax rates, increased exemptions for estate and gift taxes, and repealed the estate tax for 2010. A sunset provision in the law means that the estate tax is effectively repealed *only* for 2010.

Lower Estate Tax Rates

Estate tax rates for 2008 and 2009 will be 45 percent.

Increased Exemptions

For 2008 the estate tax exemption is \$2 million and in 2009 it will increase to \$3.5 million. The gift tax exemption will remain at \$1 million. Until 2009 there will no longer be a “unified” exemption system that applies to both estate and gift taxes.

Repeal for 2010

The estate tax repeal for 2010 brings two major changes: a system of modified carryover basis to tax capital gains on inherited property and a reduction of the highest gift tax rate to 35 percent. There is no change in the basis rules until the estate tax is repealed in 2010. At that time, property transferred at death, similar to a lifetime gift, will receive the adjusted basis of the decedent/donor. In 2010, an estate may increase the basis of appreciated assets up to \$1.3 million in value. In addition, \$3 million in assets transferred directly to a surviving spouse or to a qualified trust will also receive a “stepped-up” basis at death. These structural changes are intended to maintain a transfer tax system that captures revenue from transfers of appreciated assets. However, carryover basis will create record keeping challenges and may prove unpopular with taxpayers.

Uncertainty After 2010

The sunset provision in the law has made it unclear what will happen to estate and transfer taxes after 2010. Following the passage of the 2001 legislation, Professor Roger A. McEowen of Kansas State University stated in the *Agricultural Law Update*, “Certainly what has been accomplished has been the injection of tremendous uncertainty in estate planning for perhaps the next 10 years.” As 2010 approaches, the uncertainty remains about what Congress will do regarding estate and transfer taxes.

Estate planning remains a critical farmland conservation issue because estate taxes (reduced or repealed) are only part of farm and ranch transfer equations. The issues of developing management capacity, transferring management and ownership of the agricultural operation, treating children fairly and ensuring financial security all remain critical components of comprehensive transfer and estate plans. As a result, good estate planning will continue to be essential for farmers and ranchers who want to keep their land in agriculture and pass it on to the next generation.

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