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RIGHTRISK™

RIGHTRISK NEWS

DATES TO REMEMBER

NAP Coverage (Spring-planted crops)
- county specific deadlines

Under the 2018 Farm Bill, the Annual Forage pilot program now offers a Dual Use Option in select states and counties. For more see: RMA.usda.gov.

The 2018 Farm Bill enhanced MPP-Dairy and created the Dairy Margin Coverage (DMC) program. For more see: FSA.usda.gov.

For more information see:
http://www.rma.usda.gov
http://www.fsa.usda.gov

How Much Risk is Right for You?

Structuring the Business for Estate Planning

What legal entity is best for estate planning? is a question often asked by farmers and ranchers. The best answer is that it depends on the owners needs while they are still operating the business and in retirement, personal wealth (monies held personally or outside the business), goals for the business into the future, the interest and abilities of the owners to transfer ownership of the business to the next generation, etc. In other words, it is a very complicated question to answer. Owners should first decide what will happen to the business after they are gone and then seek qualified legal counsel to carefully consider the alternatives.

Often, all business assets are transferred when a farmer or rancher forms a legal business entity. Business assets are owned by the legal entity and not by an individual. The farmer simply owns the business. Consequently, the ways in which the business may be transferred to others (while the owner is alive) or heirs (after the owner passes) is different than if the farmer owns the assets. Also, the estate tax ramifications vary, depending on the state where the business operates.

The ownership of each asset must be transferred individually in situations where a farmer or rancher owns each specific asset (such as a sole proprietorship). The process can be tedious and may cause problems with future business sustainability if the farmer chooses to transfer ownership while he or she is alive. All assets not transferred during the lifetime of the owner become a part of the person's estate and will be divided according to the will or orders of the probate court.

The owner can transfer shares of stock during his or her lifetime or appropriately distribute the shares upon the owner's death in cases where the legal business entity issues stock ("C" corporation or "Subchapter S" corporations). Transferring shares may cause less disruption to business operations because ownership is of the whole business and not specific assets.

Some legal entities (partnerships and LLCs) have percentages of ownership. Thus, the owner can transfer ownership of the business to another person, or in some cases another legal entity, based on the percentage of the business the owner holds title to. In such cases, it is important that the owner maintain an accurate balance sheet or statement of net worth.

Current federal tax law allows each person to gift $15,000 each year (cash, parcels of land, equipment, animals, etc.) to as many people as he or she chooses without any taxes. Such gifts do not even need to be reported, although transfer of ownership of specific, titled assets must be appropriately registered. A gifted parcel of land may need to be surveyed, appraised, and the title transferred to assure that the gifted parcel of land has a value of $15,000 or less.

In addition, current federal tax law allows a person to utilize the "lifetime exemption" to gift up to $11.18 million (in 2019 with increases in the exemption in future years) to one or more people without the requirement to pay gift tax. The gift can be made as a single transaction or made over a period of years. However, the person making the gift must file the applicable gift tax returns with the Internal Revenue Service and some states may require additional, specific reports.

Example 1. *Farmer Sue operates her farm as a sole proprietorship and gives a tractor to Child 1 and a few cows to Child 2. The children now own the specific assets. If the assets are titled property, the transfer of ownership must be appropriately registered at the courthouse or other government agency. Remember that breeding livestock are titled property, especially in states with brand laws.*

Example 2. *Rancher Juan operates his ranch under a corporate structure. He gifts some of his shares in the ranch business to each of his children. The children now own shares of the ranch, rather than any specific assets. This strategy may be especially useful and less disruptive to the operation where specific assets are held under multiple legal entities. Juan could choose to gift all of his shares of the ranch business to his children at one time and utilize the lifetime exemption in order to not pay gift tax as long as the shares do not exceed $11.18 million in value.*

Example 3. *Farmer Rula owns fifty percent of a business worth $800,000. She can transfer ownership of her share of the business ($400,000) to each of her four children over a period of several years and not pay gift taxes on the value of the gifts. Thus, each child receives an increasing ownership of the business and all its assets.*

A farmer or rancher should consider not only the immediate tax ramifications but also his or her needs for estate planning when choosing a form of business structure. This requires long term planning, among several other factors. The most important factor is what goals the farmer or rancher has for the sustainability of the business and the assets for future generations.

The farmer should seek qualified professional counsel after discussing the future with his or her family. Legal and tax advice are essential to a smooth transition of ownership, to minimize any taxes (income, capital gains, gift, and estate taxes) and other costs, and to the success of the business into the future.

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How much risk is right for you and your operation?

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