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IRS Portability Rule

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Cornhusker Economics

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Market Report	Year Ago	4 Wks Ago	2/24/17
Livestock and Products, Weekly Average			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight.	*	NA	124.33
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb.	199.98	159.85	154.87
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb.	163.33	134.77	132.36
Choice Boxed Beef, 600-750 lb. Carcass.	216.51	192.09	194.48
Western Corn Belt Base Hog Price Carcass, Negotiated	61.93	65.14	68.06
Pork Carcass Cutout, 185 lb. Carcass 51-52% Lean.	74.56	82.06	80.86
Slaughter Lambs, woolled and shorn, 135-165 lb. National.	137.07	NA	141.13
National Carcass Lamb Cutout FOB.	347.25	345.37	328.04
Crops, Daily Spot Prices			
Wheat, No. 1, H.W. Imperial, bu.	3.65	2.88	3.22
Corn, No. 2, Yellow Columbus, bu.	3.32	3.14	3.14
Soybeans, No. 1, Yellow Columbus, bu.	8.10	9.23	9.14
Grain Sorghum, No.2, Yellow Dorchester, cwt.	5.42	4.87	4.92
Oats, No. 2, Heavy Minneapolis, Mn, bu.	2.24	2.96	3.16
Feed			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton.	190.00	145.00	137.00
Alfalfa, Large Rounds, Good Platte Valley, ton.	77.50	70.00	67.50
Grass Hay, Large Rounds, Good Nebraska, ton.	85.00	67.50	65.00
Dried Distillers Grains, 10% Moisture Nebraska Average.	131.50	106.50	100.00
Wet Distillers Grains, 65-70% Moisture Nebraska Average.	51.50	42.00	42.00
* No Market			

A 2013 tax law change—the *portability rule*—can simplify farm and ranch estate planning. But farm and ranch families still need to do estate planning to develop and implement farm or ranch business transition plans so that the farm or ranch can continue to be successfully operated by the next generation.

What is the portability rule? This is a fairly recent tax law that makes it easier for married couples to get a double federal estate tax exemption, currently from \$5.49 million to \$10.98 million per estate.

How does that work? All estates have an exempt amount of \$5.49 million in 2017. This means that less than 1% of all U.S. estates have to pay any estate tax each year.

So, the portability rule is most important for families where the estate is greater than \$5.49 million? That’s correct. Before the portability rule was adopted, families needed to see an attorney and do estate planning to protect more of their estate from federal estate tax liability.

How did that work? Historically, a parent would typically leave their share of the farm or ranch to the surviving spouse, so the kids would only get the benefit of one exempt amount when the second parent died. For larger operations this could leave the kids with a significant federal estate tax bill.

How did attorneys deal with that problem? The common approach was to split the estate between Mom and Dad and for Mom and Dad to each leave their share of the estate not to each other but in trust for the kids. So if Dad died first, his share of the farm or ranch would be put into a trust for the kids, but Mom would typically receive the trust income. When Mom died her share would go to the kids (assuming all the kids are adults) and the trust would be dissolved.

So, this way, the kids got an exemption on both Mom and Dad's share of the farm or ranch? That's right! Now, this approach required estate planning with an attorney, and many families find it emotionally difficult to take that step. The portability rule enacted by Congress makes it easier for married couples to receive the double exemption without needing to split the estate between Mom and Dad, set up the trust for the kids, and so on.

So, how does portability work? Basically when the first parent dies, a federal estate tax return must be filed even if no estate tax is due—your attorney can assist you with this. Then when the second parent dies, the estate can claim the unused exemption remaining from the first parent's estate, plus another exemption for the second parent's estate.

How would this work? We will do it three ways to show the effect of portability on farm or ranch family estate planning. **First**--no estate planning before portability was available. I will use a \$5 million exempt amount to keep the math simpler even though the current exempt amount is higher. Dad dies first, leaving the farm to Mom. Mom pays no federal estate tax as a surviving spouse. Mom dies later, leaving the farm to the kids. The farm is worth \$8 million and Mom's exemption is \$5 million. So the kids owe federal estate tax of around \$1.1 million. Ouch!

What is the second example? Estate planning before portability was available. Same as first example, except Mom and Dad do estate planning with their attorney--splitting the estate and leaving their share to the kids in trust not to each other. Dad dies first and leaves his \$4 million half of the farm to the kids in trust with the income to Mom. When Mom dies her \$4 million share goes to the kids and the trust is dissolved (assuming all the kids are adults). Federal estate is due on neither Mom or Dad's share because both are less than the \$5 million exempt amount. The kids save

about \$1.1 million in federal estate taxes through estate planning.

What is the last example? No estate planning with portability. Dad dies first and he leaves the farm to Mom. Mom's attorney prepares a federal estate return on her \$8 million inheritance from Dad, and Mom properly files the estate tax return with the IRS. Mom dies later. The whole \$8 million farm goes to the kids and no federal estate tax is due because the kids can use both parents' \$5 million exempt amount or \$10 million total.

So, the portability rule is a pretty good thing! Yes—it will ease estate planning for many farm and ranch families. But you need to work closely with an attorney otherwise you can lose the benefit of portability.

Do farm and ranch families still need to do estate planning? Absolutely! They need to have a plan to transition the new generation into operating and managing the farm or ranch business. They need to wrestle with how to divide the farm or ranch among on-farm and off-farm heirs. They need to address a variety of end-of-life issues and estate planning is a very good way to do that. But if they don't, the portability rule should at least lessen any federal estate taxes due. The farm or ranch might end up being auctioned off because no farm transition plan is in place, but at least the federal estate taxes will be less.

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