The Future of Ag Tax Policy – Where Is It Headed?

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Overview

The Tax writing committees in the Congress are busy trying to figure out ways to pick your pocket through the tax Code to pay for the massive spending legislation that is currently proposed and being debated. If and when any legislative proposals become law, important planning steps will be necessary for many farm and ranch families. But, all hinges on just exactly what changes become law. It's difficult, if not impossible, to plan for changes that are unknown. That's particularly the case if tax changes are done on a retroactive basis.

In today's post, I highlight where the areas of change might occur by referring you to a lengthy article resulting from interviews with farm media in recent days. Also, I invite you to attend either in-person or online, my upcoming 4-hour seminar on the tax landscape on October 8. The in-person presentation will be at the University of Wyoming College of Law in Laramie. The event will also be simulcast over the web. I will provide the most up-to-date information of where legislative proposals are at as of that time and the prospects for passage, and planning steps that need to be taken.

The current tax landscape and the upcoming October 8 seminar – it's the topic of today's post.

Possible Changes

In the article in which I am quoted that is linked below, I attach percentages (as of September 17, 2021) as to likelihood of whether particular current tax Code provisions would change. The areas that I address include the following:

- The federal estate tax exemption
- "Stepped-up" basis at death
- Income tax rates
- The deduction for state and local taxes
- A cap on itemized deductions
- The capital gains tax rate(s)

Stepped-Up Basis

As for the stepped-up basis issue and the possible elimination of modification of the rule, the Congress has tried this approach before. The long-standing rule has been that the basis of property that is included in a decedent's estate for tax purposes gets a basis equal to the fair market value of the property in the hands of the heir(s). *I.R.C. §1014.* But, for property that is gifted, the donee generally receives an income tax basis equal to the donor's basis at the time of the gift. This is known as a "carryover basis." The Tax Reform Act of 1976 expanded carryover basis to include dispositions at death. *Pub. L. No. 94-455, Sec. 2005, 90 Stat. 1872 (1976).* Section 2005(a)(1) of that law retained the old step-up/step-down (fair market value basis) rule of I.R.C. Sec. 1014 in the case of a decedent dying before January 1, 1977. The Revenue Act of 1978 delayed the effective date of I.R.C. Sec. 1023 (the new carryover basis rule) to decedents dying after 1979, and the non-application date of I.R.C. Sec. 1014 (the old step-up basis rule), to estates of decedents dying before January 1, 1980. *Pub. L. No. 95-600, Sec. 515, 82 Stat. 2884.* The new carryover basis rule of I.R.C. §1023 was repealed by Pub. L. No. 96-223, Sec. 401, 94 Stat. 229 (1980). This amendment was made effective for decedents dying after 1976. The date on this repeal amendment is April. 2, 1980.

As of this writing, it appears that the Congress will not change the existing fair market value basis at death rule. The chairman of the House Ways and Means committee has indicated that the votes are not there to change the rule. That's good news for farmers and ranchers and tax practitioners – the administrative burden of changing to a carryover over basis would be extensive.

Corporate Tax and I.R.C. §199A

Corporate tax. Presently, the proposal is to increase the corporate tax to 26.5 percent on income exceeding $5 million from its current 21 percent rate. That would amount to a 25.5 percent rate increase at the federal level that corporations would, depending on the competitive structure of their market, pass through to consumers in the form of higher prices. On top of the 26.5 percent rate would be any state-level corporate tax. The current federal corporate income tax rate puts the United States near the middle of the pack in comparison with its Organisation for Economic Co-operation and Development peer countries. The proposed change would give the U.S. one of the highest corporate tax rates of the OECD countries. The result would be a drop in investment in U.S. companies and cause some firms to locate outside the U.S., taking jobs with them. Also, if the corporate rate is increased, it's not likely that the various tax deductions and other favorable corporate tax provisions that the Tax Cuts and Jobs Act removed, would not be restored.

Qualified Business Income Deduction (QBID). The QBID of I.R.C. §199A, under the current House proposal, the QBID would be limited to a $500,000 deduction (joint), $400,000 (single) and $250,000 (MFS). It would be capped at $10,000 for a trust or an estate. For farmers that are patrons of qualified cooperatives the amount passed through from the cooperative would not be limited. The QBID is presently 20 percent of business income. There is "talk" on the Senate side of eliminating the QBID, but retaining any amount passed through to a patron from a cooperative. Either proposal, if enacted, would result in a significant tax increase for many farmers.

For discussion of the other major tax proposals, you can read my comments in the article linked here: https://www.farmprogress.com/farm-life/farm-busting-tax-changes-possible-unlikely

Wyoming Seminar

As mentioned above, I will be addressing the legislative tax proposals and providing possible planning steps at a seminar to be held at the University of Wyoming College of Law in Laramie on October 8, 2021. You may attend either in person or online. For more information the October 8 event, you may click here: https://www.washburnlaw.edu/employers/cle/farmranchplanning.html

Conclusion

The future of tax policy for agriculture is of critical importance at the present time. Make sure you are staying up with the developments.