Depreciation of On-Farm Processing Facilities; Ag Liens; Gifting Farm Equipment; and Portability

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OBBBA and Qualified Production Property

Overview

The One Big Beautiful Bill Act made 100 percent bonus depreciation permanent for assets placed in service after January 19, 2025. So, this year, you will be able to deduct 40 percent of the cost of buildings and equipment placed in service between January 1 and January 19. After that, you'll be able to fully deduct 100 percent of those purchases, or you can make an election to continue to deduct 40 percent instead. But does 100 percent bonus depreciation apply to processing facilities on the farm?

Bonus Depreciation and On-Farm Procession Facilities

If you process farm commodities in a building on your farm, the rule has been that the facility was depreciable over 39 years. Now, under the One Big Beautiful Bill Act you'll be able to apply 100 percent bonus depreciation to a facility constructed after January 19 this year if construction is completed by the end of 2030.

The 100 percent bonus depreciation only applies to the cost of the building related to the manufacturing or production process. The cost of the building related to office or other non-qualifying activities is still required to be depreciated over longer lives. This will likely require retaining a company to provide a cost-segregation study to provide that allocation.

If you are thinking about expanding your farm operation into a production activity or expanding your current production activity, you'll benefit from the new rule.

Agricultural Liens

Overview

An agricultural lien is a legal claim a creditor has on your crops, livestock, or other farm assets to secure a debt. These liens are essential in the ag industry, providing a way for you to obtain financing for equipment, seeds, fertilizer, and other operational costs.

Categories of Liens

Agricultural liens generally fall into two categories: statutory liens and consensual liens. A statutory lien is created automatically by law without a written agreement. For example, a supplier who provides fertilizer to you may have a statutory lien on the crops that are grown with that fertilizer. This type of lien gives the supplier a legal claim on the crops if you fail to pay. In contrast, a consensual lien is created when you and a creditor agree to it in a contract. For example, you might grant a lender a security interest in your crops or livestock in exchange for a loan. To make this lien enforceable against third parties, the lender must file a financing statement with the state's Secretary of State office. This public filing serves as a notice to other potential creditors that the lender has a claim on your assets.

When multiple creditors have liens on the same property, priority determines who gets paid first if you default. Generally, the first creditor to file a financing statement has priority. However, statutory liens can sometimes have priority over previously filed consensual liens.

Agricultural financing is often an important aspect of modern farming and ranching. The rules are complex and statutory lien rules can be confusing.

Gifting Farm Equipment and Depreciation Recapture

Overview

If you buy a piece of farm equipment and take 100 percent bonus depreciation on it while farming, and then two years later retire and give the equipment to your child that is also farming, is depreciation recapture triggered? What if you had used Sec. 179 depreciation instead, would that trigger recapture? These are important questions not only because the scenario happens frequently in agriculture, but also because if recapture is triggered the tax rate on the recaptured amount is tied to your ordinary income tax rate.

Is Gifting a Possible Solution?

A gift of depreciated property does *not* trigger depreciation recapture. Recapture is generally triggered by a sale or other taxable disposition of the property for a gain. A gift is not considered a taxable disposition. But the donee will receive a "carryover" basis in the equipment which is likely to be zero and can't claim any future depreciation.

However, if you took I.R.C. §179 depreciation and your percentage of business use for the equipment drops to 50 percent or below before the asset's depreciable period expires, depreciation recapture is triggered. The amount recaptured is the difference between the I.R.C. §179 deduction claimed and the amount that would have been allowed as regular depreciation up to that point. It's reported as ordinary income on your tax return in the year the business use dropped.

With bonus depreciation, the rules are different. While it's a form of accelerated depreciation, it's not subject to the same business use recapture rule as I.R.C. §179. So, the gift of equipment wouldn't trigger depreciation recapture.

The Portability Election

Overview

The current federal estate and gift tax rules provide for a unified credit that offsets $13.99 million in taxable value of gifts or estate value this year. Next year, thanks to the One Big, Beautiful Bill Act, that amount will be $15 million per person. It's a "take-it-or leave-it" type of rule – you can either use the credit to offset taxable gifts or keep it and use it to offset taxable estate value at death. Property that is included in your estate at death for tax purposes gets a date of death fair market value in the hands of the beneficiary – the basis "step-up" rule. Also, any unused exemption at the time of your death can be transferred (ported over) to your surviving spouse (if you have one) and added to the surviving spouse's own exemption. This probably is about the most favorable set of transfer tax rules there could possibly be (apart from have no estate or gift tax at the federal level). But the ability to "port-over" the unused exemption to the surviving spouse is not automatic.

Porting the Unused Exemption – Recent Case

The Tax Court, in *Estate of Rowland, T.C. Memo. 2025-76,* denied a surviving spouse's estate from claiming the deceased spousal unused exclusion (DSUE) amount due to an improper portability election. The ruling highlights the importance of strict compliance with the filing requirements for a valid portability election, even when no estate tax is owed.

The facts of the case are that Fay died in 2016, and her husband Billy died in 2018. While Fay's estate was well below the federal estate tax exemption, her executor attempted to port her unused exclusion to Billy by filing an estate tax return. However, the return was filed late and didn't provide proper itemization or valuation of assets. Instead, it used estimated values, which is only permissible under a safe harbor that didn't apply.

After Billy's death, his estate sought to use Fay's ported amount, but the IRS disallowed it, arguing the original portability election was invalid. The Tax Court agreed. Fay's estate failed to timely file the return, and it was not properly prepared with the required asset valuations. The court rejected arguments of "substantial compliance" and "equitable estoppel."

The portability election is a valuable tool that can save millions in estate taxes, but it requires strict adherence to the rules. A simple filing error, such as a late return or incomplete asset information, can permanently forfeit a significant tax benefit.

Conclusion

A "potpourri" of ag tax and law-related issues. Stay tuned for more next time.

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