

## The Estate Tax Law

**Q** Toward the end of this past year, the House passed a measure to freeze the federal estate tax at 2009 rates. As of Dec. 31, no action had been taken by the Senate or by President Barack Obama. So, as I understand it, in 2010 there is no estate tax. Then in 2011, without some action by the government, the limits revert back to the rates we had in 2001. How do we plan for the future with this type of a situation, especially as it relates to our succession plan?

**A** Yes, there is no federal estate tax for 2010. Without legislative action this year, it will be restored to pre-2001 levels—55% on estates valued at \$1 million or more—in 2011.

In the scheme of things, the estate tax law is one of the elements that must be covered in a comprehensive succession plan. The estate tax law inevitably affects planning—and knowing that the law is changing means plans must remain flexible so that a family's succession intentions are achieved.

It is usually the inappropriate application of estate planning tools, which are designed to mitigate the estate tax, that divide and destroy the farm operation. The last thing you want is for the farm to be parceled and sold in the estate settlement process.

As you begin the new year and initiate the succession planning process for the first time or review your current plan—in light of the current estate tax law—consider the following questions.

**Does your adviser use a comprehensive planning model for succession?** I encourage using a model that includes these four elements:

■ **Financial security.** A proper succession plan enhances the family's financial security. Each suggestion must be measured against what is best for the owner, the family and the operation.

■ **Management continuity/ownership transition.** Transferring ownership may be as simple as identifying tomorrow's leaders, establishing a time frame for transition and defining the transfer methods. Maintaining management strength should be the focus as you evaluate each transition alternative.

■ **Leadership development.** People management, team development, project coordination, business design and professional growth are all part of developing new leaders. It is crucial to continuing growth and lasting success.

■ **Estate planning.** An effective estate plan is designed to maintain the family's financial security, plan for equitable distributions and mitigate the estate tax liability.

**Does your adviser employ a specific succession planning process?** I use a six-step process to ensure a clear understanding of your goals and a thorough selection of alternative succession solutions.

The consultation step includes a review of succession planning principles, input from all active family members and a discussion of specific succession goals and intentions.

The discovery phase of the process confirms the family's succession objectives. It includes collecting qualitative and quantitative information.

The preliminary plan is a discussion of initial recommendations related to financial security, ownership transition, leadership development and estate planning.

The fourth step is developing the final plan, including specific recommendations for each element and an implementation schedule with



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actionable steps to achieve the families' succession goals.

The implementation step means working with professional advisers to ensure compliance with the plan and timely implementation.

The annual review means actively monitoring each element in the comprehensive succession solution and making necessary changes because of the estate tax law, for example.

Other questions to consider when working with your adviser include: Does your adviser understand the role of estate planning in succession planning? Does your adviser understand and facilitate the "equal isn't fair; fair isn't equal" discussion?

Kevin Spafford serves as Farm Journal's succession planning expert. His firm, Legacy by Design, guides farmers and agribusiness owners through the succession planning process. Send questions and comments to Legacy by Design, 2550 Lakewest Drive, Suite 10, Chico, CA 95928, (877) 523-7411 or [legacyproject@farmjournal.com](mailto:legacyproject@farmjournal.com).

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