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Year End Estate and Tax Planning for Ranchers, Growers, and Farmers

by

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As the end of the year rapidly approaches, ranchers, growers, and farmers still have the opportunity to take some meaningful estate and tax planning steps. This article is divided into two parts: (1) a short list of year end actions every rancher, grower, and farmer should discuss with their tax adviser; and (2) a short discussion of two advanced planning ideas that, if applicable, can yield great benefits.

Year End Planning List

Maximize Annual Gifting. You can gift \$12,000 per year per person. If you are married, you and your spouse can elect to split gifts and double your gifting power. Your gifts are not limited to cash. However, if you gift property that does not have a readily determinable value (publicly traded stock vs. interests in a closely-held family business), then you should comply with all IRS valuation and reporting requirements to minimize your audit risk.

Take Your Losses. If you have investment assets that have unrealized losses, consider selling them and using the losses to offset gains recognized earlier in the year or, to a limited extent, as a deduction against your ordinary income.

Charitable Giving. Aside from the personal satisfaction of helping others, giving to charities has two primary tax benefits. First, an income tax deduction is immediately available. If your gift is of appreciated property, the tax deduction equals the present value of the gift and no gain is recognized on the appreciation. Second, the value of the gifted property will not be included in your estate for estate tax purposes. This latter benefit allows for the implementation of several advanced planning techniques, such as charitable remainder trusts, many of which allow you to split-interests in an asset with a charity.

In addition to the foregoing, please see the below discussions concerning Qualified Charitable Distributions and Qualified Conservation Contributions. In particular, Qualified

Conservation Contributions have special benefits only available to certain ranchers, growers, and farmers.

Retirement Plans. If you participate in a tax preferred qualified retirement plan (i.e. 401(k), IRA, profit sharing), consider your ability to maximize your contributions. Many of these plans provide you with a current income tax deduction, but have annual contribution limits. In addition to obtaining a current income tax deduction, the assets in the plan grow tax-free.

Review Your Estate Plan. It is a good idea to annually review your estate planning documents, (will, living trust (if any), durable power of attorney, designation of health care surrogate, etc.). This review will help ensure that these important documents still achieve your goals in light of changes that occurred over the past year. Such changes could be personal changes involving family members (births, deaths, marriages, etc.) or business changes (started a new business or partnered with another). Every three to five years you should review these documents with your estate planning attorney to determine if changes in the law over that time warrant revising your estate plan.

Advanced Planning Concepts

The Pension Protection Act of 2006 (the “PPA”) created two charitable planning opportunities that are set to expire at the end of this year. Although bills to extend these opportunities are currently being considered by Congress, there is no assurance that they will be passed in time.

Qualified Conservation Contributions. Qualified Conservation Contributions are defined in the Internal Revenue Code (the “Code”) as a contribution of: 1) the taxpayer’s entire interest in real property other than certain mineral interests; 2) a remainder interest in the taxpayer’s real property; or 3) a perpetual restriction on the use of the taxpayer’s real property (i.e. a conservation easement). A Qualified Conservation Contribution can be made to public charities or certain government agencies.

In addition, the contribution must be for a conservation purpose. A conservation purpose is defined as: 1) the preservation of land for outdoor recreation by, or the education of, the general public; 2) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; 3) the preservation of open space including farm land and forest land or the preservation for the scenic enjoyment of the general public or pursuant to a federal, state or local governmental conservation policy; or 4) the preservation of historically important land area or certified historic structure. For example, a taxpayer could grant a perpetual easement to restrict all development of its land and allow public access for hiking or boating.

Prior to the PPA, the donation of a Qualified Conservation Contribution was considered a contribution of a capital asset. The deductions for contributions of capital assets were limited to 30% of a taxpayer’s income (10% for a corporation). Any unused deduction may be carried forward to the next five years. For the 2006 and 2007 tax years, the PPA increases the allowable income tax deduction to 50% of the taxpayer’s income. In addition, any unused deduction may be carried forward for fifteen years.

If the taxpayer (whether an individual or corporation) is a “qualified farmer or rancher” as defined by the Code, then **the deduction limitation is increased to 100% of a taxpayer’s income**. However, if the Qualified Conservation Contribution by a “qualified farmer or rancher” was made after August 17, 2006 and consisted of property used in agriculture or livestock production (or was available for such use), then in order to qualify for the 100% income limitation, the property owner must retain the right to use the property for agriculture or livestock production after the contribution.

Qualified Charitable Contributions. Section 1201 of the PPA created Section 408(d)(8) of the Internal Revenue Code which allows for Qualified Charitable Contributions. This new tax law provides a special benefit by allowing annual IRA distributions of up to \$100,000 per taxpayer (\$200,000 for married taxpayers) to be made directly to most public charities (except for §509(a)(3) supporting organizations and donor-advised funds). **The distributions must be made on or after the IRA beneficiary attains 70-1/2 years of age and prior to January 1, 2008.**

What makes a Qualified Charitable Contribution special is that unlike other distributions from an IRA, a Qualified Charitable Contribution is not included in your gross income for the year of distribution nor do they count as a charitable contribution for the year. In essence, it is a tax neutral event - money is distributed from the IRA but income is not recognized and a charitable deduction is not allowed. This can be a great benefit to high-income taxpayers whose itemized deductions are limited (and therefore cannot maximize the tax benefits of their charitable contributions). Qualified Charitable Contributions do not count towards a taxpayer’s annual charitable deduction limits. In addition, Qualified Charitable Contributions are considered as distributions for purposes of meeting the annual minimum distribution requirements applicable to all of the taxpayer’s individual retirement accounts.

You should consult with your legal and tax advisers to determine if the recommendations contained in this article are appropriate for you.

The members of the Dean Mead Estate and Succession Planning Team are familiar with all aspects of year end planning and charitable giving, and are available to discuss the application of the concepts discussed in this article to your unique situation.

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