



A TRIBUTE TO DAVE MILLER

With a sad heart, we say goodbye to Dave Miller. This April, Dave passed away. He worked with our firm for 10 years as a tax return preparer.

Dave was the type of person that lifted the mood of a room by just walking in. He was a great listener and a wonderful storyteller. He was smart, he was professional and he was a problem solver. He loved his family, agriculture and his community. He was a good man.

We need more people like Dave in our lives. Dave Miller, you will be missed.

It's been a while since our last newsletter. We have been in our new office for over two years now. We have settled in and are enjoying our move to Delaware. It's nice having the conveniences of being in town without dealing with the traffic headaches of Columbus. If you haven't been to the new office yet, we encourage you to stop by if you are in the area.

Like all businesses, we are constantly facing changes. In May we lost our good friend Dave Miller who passed away suddenly. Dave had assisted us with tax return preparations over the last few years. Attorney Kent Jorgensen left our firm last summer to take an in-house counsel position with a ranch in Florida. We hated to see Kent go but it was a good opportunity for him and his family.

We currently have three full-time attorneys: Kelly Moore, Ryan Conklin and myself. Paul Wright continues to work on a part-time basis and is also enjoying his travels. We continue to focus our work on estate planning, business planning and succession planning for farm families. Ryan has expanded his practice area into agritourism, labor issues as well as taking on some litigation. Around 95% of our work is with farmers and landowners.

As part of our responsibility to our clients we are constantly monitoring any changes in the law. We are watching with the most interest any federal legislation involving tax reform, including estate taxes. In the event Congress or the state legislature passes significant laws that affect our clients, we will be sure to let you know and provide guidance as to what changes, if any, are needed with estate and business plans.

As always, feel free to contact us if you need any assistance or just have a question about a legal issue. We appreciate the opportunity to work with you and try to make a positive impact within the agricultural community.

REPEALING ESTATE TAXES



By Kelly Moore

As you may have read or heard on the news, the Trump administration proposed to abolish federal estate taxes in its tax reform agenda. I thought it might be interesting to discuss how a repeal of estate taxes might affect farmers. This article is not meant to take a position on whether we should or should not have estate taxes. Rather, it is only meant to show how there is usually more to a change in the law than what's on the surface.

Currently, each person has a \$5.49 million federal estate tax exemption. This means that as long as your net worth does not exceed \$5.49M your estate will owe no estate taxes. Married couples have a joint \$10.98M exemption. A 40% tax is owed on all net worth exceeding the estate tax exemption.

So, abolishing the estate tax would be a good thing, right? Maybe not, at least maybe not for most people. I'll try to explain.

Under current law, when someone passes away their estate receives a step-up in basis on most assets. This step-up adjusts the tax basis of all assets to the fair market value at the time of death. For example, let's say Farmer owned \$500,000 of machinery. During his life, Farmer had depreciated the equipment to \$0.



When Farmer died his machinery received a stepped up tax basis to \$500,000. Farmer's beneficiaries who inherit the machinery can now sell the machinery and pay no tax on the sale (as long as sale price does not exceed \$500,000) or if they are farming, depreciate the machinery again. The stepped-up basis has been a tremendous benefit to American farmers over the years.

The issue becomes – if estate taxes are abolished, will the stepped-up tax basis also be abolished? It seems like it may be hard to justify a stepped-up tax basis at death if there are no estate taxes. Less than 1% of Americans have a high enough net worth be affected by estate taxes. However, many people benefit by inheriting assets that can be sold without taxes or re-depreciated.

The justification for abolishing estate taxes is often stated as preventing small businesses and family farms from having to sell assets to pay estate taxes. I agree with this justification. Family businesses and farms are the backbone of the economy and should not be jeopardized by estate tax liability. However, instead of abolishing estate taxes and possibly losing the stepped up basis, maybe it would be better to simply exclude assets used in family businesses and farms from estate tax inclusion.

The point I'm trying to make is that we need to analyze proposed legislation closely. What seems like a good idea on the surface can sometimes cause unintended negative consequences. For estate taxes, losing the stepped-up basis would be a significant loss for almost every family farm while making a simple change to the current estate tax law (excluding business assets) could allow farmers to have the best of both.



Ag Law 101

By Robert Moore

Is a verbal lease valid in Ohio?

Maybe, generally, verbal leases are not valid under Ohio. However, if the tenant begins to perform the lease, the lease can become enforceable. Examples of performance that can cause a verbal lease to become valid is partial payment, tillage, planting, and/or fertilizer application. Whether the performance rises to the level of creating a valid lease is decided on a case by case basis and the law does not have a clear guideline. The enforcement of verbal leases is the most common question we receive.

Do I need to record my lease?

Depends. Ohio law requires leases for more than three years to be recorded. Long-term leases that are not recorded are considered year to year leases under the law. Long-term leases (or a memorandum of lease) should also be recorded to protect the tenant in the event the land is transferred during the term of the lease.

Am I liable if a hunter is injured on my property?

Probably not. Landowners in Ohio are protected by the Recreational User Statute. This law provides immunity to landowners who allow others to use their property for recreation purposes. Recreation includes, but is not limited to, hunting, fishing, ATV/snowmobiling and hiking. The idea of the law is to limit liability of landowners so that they will allow others to use it without the fear of lawsuits. While this law provides protection to landowners, there is no substitute for good liability insurance. As we all know, there are exceptions to most laws and you never want to find out you are the exception.

Do I need a will or a trust?

Depends. We use trusts to accomplish several purposes – allow for complex plans (on-farm/off-farm heirs) avoid probate, minimize estate taxes hold

hold assets after death. If some or all of these apply to your situation then you probably need a trust. Around 80% of our estate plans include a trust. We use wills when all assets are going to children/heirs equally, no off-farm/on-farm heir issues, no heirs need assets managed for them and probate avoidance isn't an issue.

What is an irrevocable trust and do I need one?

Again, depends. An irrevocable trust is a trust that cannot be changed after it is set up. Generally, an irrevocable trust is established then assets are transferred to the trust. After the transfer, the assets are owned by the trust and no longer available to the Grantor (person establishing the trust). The Grantor can receive income from the trust but cannot have access to principal. Irrevocable trusts are most commonly used to protect assets from nursing home costs, estate taxes or potential liability. You should only consider an irrevocable trust if you are willing to give up ownership and control of the assets going into the trust. The vast majority of trusts we set up are not irrevocable so that the trust can be amended over time to allow for changes in family situations and farm planning. Irrevocable trusts can be valuable tools in estate planning but also requires a big commitment to relinquish ownership and control of assets.

Should I try to avoid probate?

Yes. Probate tends to be cumbersome and expensive. Probate can be avoided by using trusts and/or a combination of transfer on death/payable on death designations on assets. For example, real estate can have a transfer on death designation so that the land transfers directly to a person, trust or business entity at death. Most titled assets can have a transfer on death or payable on death designation added to the title. We find that it is much more cost effective and efficient to make assets non-probate than to open a probate estate and administer the assets through the court.

Ag Law 101 Cont.

Am I liable if I hit a utility line pulling into a field?

Don't know. We have had this issue come up several times, including hitting stop lights in town. There is no law to provide guidance on this issue nor is there any minimum height requirements for utility lines in farm fields. In some cases the utility company accepted responsibility as the lines had sagged and became too low. In other cases the utility company sent the farmer a bill, demanded payment and ended up filing a lawsuit for the payment. I will say that you should not automatically assume you are liable if you pull down a utility line, it could be the utility company's fault for allowing a line to become too low or not installing the line high enough to allow farm equipment to go under. This is another case by case situation.



To the Young, Beginning, Small Farmer



By Ryan Conklin

Should I form a business entity?

Since joining Wright & Moore in August 2015, one of my priorities has been working with young, beginning, and small (YBS) farmers. Many of the folks I encounter in professional and social circles fit this mold, and are using their 20s and 30s to begin farming or join existing family operations. For these YBS farmers, getting off the ground can be a steep climb, and one that often presents unique legal challenges. Starting with the summer 2017 newsletter, I want to highlight some of these challenges and provide some insight that can assist YBS farmers with addressing their legal challenges.

To start, the most common line of questions YBS farmers will ask me is about whether to form a business entity. Makes sense, right? Between starting a family, working an off-farm job, and spending your free time in the fields or barn, many YBS farmers start to wonder "is it time for me to make my business legitimate?" Well, in a classic attorney's answer, I will tell you "it depends," and that is the trust. I must stress that the needs of each client must be considered when answering this question. However, here are a few examples that could provide additional guidance.

My wife and I are starting to market our own products at local markets and directly to customers, should we have a business?

Most likely, yes. Selling products directly to markets and consumers is considered a high-risk activity. If you make someone sick with your products, you're liable no matter how careful you are. Take advantage of all the liability protection you can get (and buy plenty of liability insurance). Other high risk activities include property rentals, trucking, and raising large amounts of livestock.

My best friend and I have this great idea and want to start using it to make money, should we put something formal in place?

Again, most likely the answer is "yes." Business ventures among family members or friends are also high risk endeavors. If the business effort fails, what happens to the profits or losses? If one party wants to leave, can the other buy back his/her share? These issues, and others, can be addressed through forming a business, and can save lots of headaches down the road.

Young, Beginning, Small Farmers Continued

Business for my farm recently picked up, and I had to hire a few employees to help with the workload. Should we have a business entity?

Forming a business entity would be a great idea in this scenario. If you are not incorporated, and one of your employees causes an accident, you could be directly liable for the accident. Even if you are the only business owner, operating under a formal entity is a key form of liability protection (in addition to your liability insurance!).

I am going to get married next month and have some farm assets I want to protect from a potential divorce. Would a business entity help?

Possibly. This question is more difficult to answer. If you form a business and put your farm assets into that business, it could provide some short-term protection from divorce. However, the longer you are married, the more that the line between marital asset and non-marital asset begins to blur. If this is a concern for you, the best route to protecting farm assets is a prenuptial agreement.

FARM BILL FOCUS

By Ryan Conklin

Back in early 2014, when I was a second-year law student at Michigan State, I remember when President Obama visited MSU to sign the Agricultural Act of 2014 (the 2014 Farm Bill) into law. My excitement level was unmatched in the entire law building. When I tried to talk to my peers about this topic, I usually received a “what’s the farm bill?” or “big deal, who cares?” in reply. Given the unproductivity of government at that time, I figured people

“The individual constituent will play a vital role in the passage of a farm bill”

would be excited that Congress passed a law at all. Well, it has been four years since the 2014 Farm Bill, and it’s time to get excited again! The gears of policy development for the next farm bill have kicked into motion, and the process is well underway. However, much like the 2014 edition, a finished product is not guaranteed in 2018. Congress will be tasked with tackling major questions within the farm bill, especially regarding commodity, conservation, and nutrition programs.



As the cycle progresses, here are a few key areas to keep in mind:

Spending Cuts : The 2014 Farm Bill shaved tens of billions of dollars in federal spending. Once again, the farm bill will be the target of spending cuts. Predictably, the key questions will be: how much will be cut and where the cuts come from. The largest spending title is by far Title 4 (the nutrition programs), which accounted for 79.9% of the spending projections in 2014. Frequently the target of Republicans seeking to reduce spending, Title 4 is the part of the farm bill that Democrats will fiercely protect. Crop insurance, commodity programs, and conservation programs are other titles likely to face spending scrutiny.

The House vs. The Senate: Advancing a farm bill out of either house of Congress is going to be a challenge. You might be thinking: “shouldn’t be too hard, right? Republicans control both houses!” Well, in the House, the Freedom Caucus is may withhold valuable Republican passage votes in a House vote. In the Senate, remember that 60 votes are usually needed to pass a bill like the farm bill. So Democratic votes may be needed to pass a farm bill.

Maybe It’s Time for a Breakup Is it finally going to happen? Will the nutrition programs in the farm bill finally be divorced from the agriculture parts of the bill? This split has been talked about for several cycles. There is a very real chance that the split happens in the 2018 Farm Bill cycle. In arguably the most partisan age in American politics, a breakup between the agriculture titles and the nutrition title could make an already enormous challenge (passing a farm bill) even more daunting. In short, it could threaten the passage of a farm bill at all.



Farm Organizations Will Need Help: In 2033, the farm bill will turn 100 years old...if it can last that long. Could you imagine rural America without a farm bill? What would happen to our farms and small towns? The farm bill is the single most important piece of legislation to rural America, and our elected representatives need to know it. As always, groups like Farm Bureau, the commodity organizations, and others will be passionately lobbying Congress on behalf of farm families and rural residents. However, they are going to need help. The individual constituent will play a vital role in the passage of a farm bill, and your phone calls, emails, and letters must pour into the offices of Ohio’s Congressmen and women, and Ohio’s Senators. Hopefully our office will produce several newsletters throughout this farm bill cycle. I will do my best to relay news and updates to the followers of Wright & Moore. However, when you read this information, my hope is that you will use it to lobby your representatives. Agriculture has plenty of advocates, and each one is needed to ensure the continued prosperity of rural America.

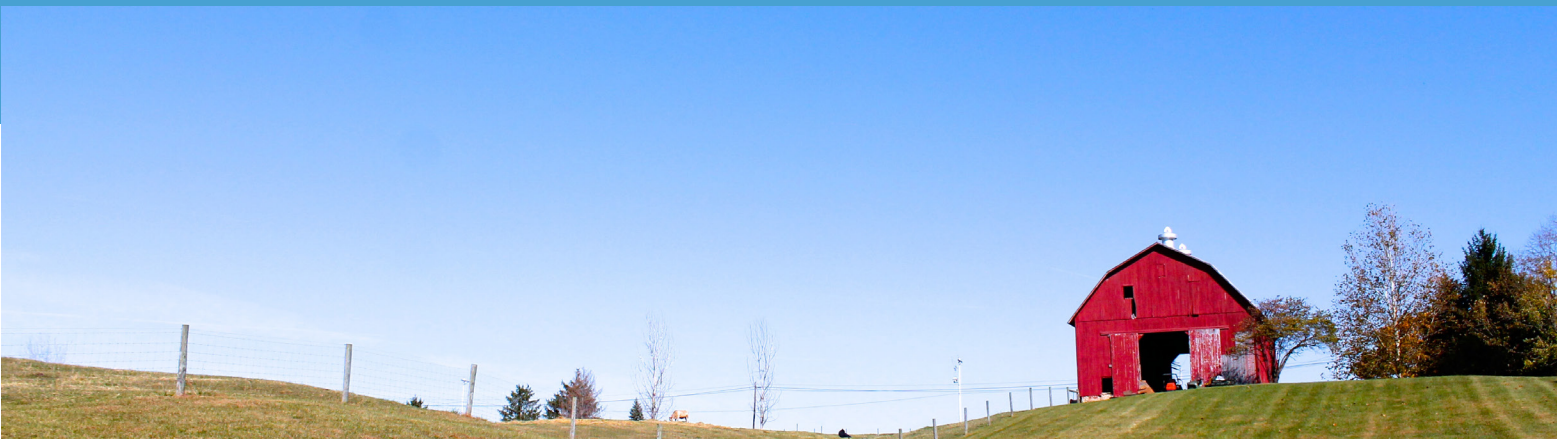
CAUV Reform Bill Enacted

By Robert Moore

The recently passed state budget included significant reform to CAUV rates. The first change is a modification to the CAUV formula. The capitalization rate in the formula is now based on a USDA farm equity rate rather than the broader financial market. The goal is to allow CAUV rates to more accurately reflect the farm economy.

The second reform allows land that is in conservations programs to be valued at the lowest rate. This prevents farmers who participate in conservation programs from being taxed as if the land is in full production. This reform prevents farmers from being somewhat penalized by participating in conservation programs.

Ohio Farm Bureau estimates this most recent reform, along with other previous reforms, will result in 30% savings for landowners in 2017. The reforms will be phased in through the next two reappraisal cycles which means the reforms will be fully implemented in all counties no later than 2022. The reform will provided much needed relief to farmers and landowners and should prevent sharp increases in CAUV rates like we have seen in the last few years.





**92 N. Sandusky St., Suite 300,
Delaware, OH 43015
(740) 990-0750**