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FARM ESTATE PLANNING: NEW CURRENT-USE VALUATION RULES

The Economic Recovery Tax Act of 1981 increased the benefits of the Internal Revenue Code, Section 2032 A, Special Use Valuation, and changed the name to Current-Use Valuation.

- More farmers' estates will be able to take advantage of the simplified formula-valuation method.
- Qualified heirs may make like-kind exchanges of qualified real property without involving recapture.
- The value of qualified real property may be reduced under current-use rules by up to $600,000 for 1981 estates, $700,000 for 1982 estates and $750,000 for post 1982 estates.

QUALIFYING TESTS

Real property being valued under Section 2032 A Current-Use Valuation, must have been operated by the decedent or a member of the decedents' family and used in a qualified use. For example, if otherwise qualified real property was leased by the decedent to his/her child under a net-cash lease (even at a rate below market) and the child ran the property as a farm, the child's activity will be

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attributed to the parent for purposes of this test. The qualified use, however, must be an active trade or business use and not just a passive, investment use.

Current-use valuation is also available to individuals who are retired or disabled at the date of death. The individual is disabled if he/she is unable to materially participate in the operation of the business because of mental or physical impairment.

- Generally, the decedent or family member must have materially participated in the operation of the farm or business during a total of 5 or more of the 8 years that end on the date of the decedent's death.
- Retired persons or a family member must have materially participated in the operation for a total of 5 or more of the 8 years that ended on the date the decedent began receiving Social Security retirement benefits.
- Disabled persons or a family member must have materially participated for a total of 5 or more of the 8 years that ended on the date the decedent became permanently disabled.

The surviving spouse who inherits the currently valued farm or other closely held business is considered to "materially participate" in the business, even without paying self-employment taxes, if he/she engages in "active management" of the farm or other business. For the family operation, this test is met if the surviving spouse is involved in one or more of the following:

(1) inspection of growing crops,

(2) review and approval of annual crop plans in advance of planting,

(3) approval of major expenditures, and/or

(4) a substantial number of management decisions (for example, what crops to grow, how many cattle to raise, where and when to market crops, how to finance business operations).

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Add two--farm estate planning

VALUATION METHODS

An estate may now substitute net-crop-share rentals for cash rentals where no comparable land under cash-rental systems exists. The amount of a net-share rental is the gross value of the produce received by the lessor of the most comparable land minus the cash operating expenses (not real estate taxes) of growing the crop.

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