

FARMLAND *Insights*

FALL 2018 | Volume 1 | Issue 3

Estate Planning for Farmland: Is it a Thing of the Past?

by Michael G. Barton, Agricultural Law Attorney

On January 1, 2018, new estate tax laws provide that an individual at death does owe federal estate taxes only if the value of the assets owned at death and previously transferred by lifetime taxable gifts exceed \$11,200,000. For a married couple, the exemption is doubled, or \$22,400,000. As a result, many landowners may believe that since federal estate taxes are not an issue today, the need to schedule a meeting with their advisors to complete estate planning projects can be "put on the backburner."

Delaying one's planning is not a good idea. When doing proper tax planning, business planning and estate planning, especially with farmland, there are numerous tax and non-tax issues which need to be considered and addressed and incorporated into a plan. Previously, the planning often involved complicated plans to minimize exposure to federal estate taxes. With taxes being less of a concern, now is a great time to plan. Landowners can focus on the non-tax questions and issues that need to be addressed when establishing a plan.

Following are various planning areas and scenarios which are offered to indicate to landowners that it is still necessary and important to finalize planning for transition of the farmland.

Change of U.S Tax Law

Since the estate tax rules are based on acts of Congress, Congress has the ability to modify and change the estate tax laws at any time. The higher exemptions today may be gone tomorrow.

State Tax Considerations

Each state also has the right to impose taxes on transfers of property, both during an individual's lifetime or at death. As part of the planning process, it is important to know if the state laws where the land is located will impose any taxes on transfer of the land.

- Presently, in the Midwest, Iowa has an inheritance tax on the value of property inherited by persons who are not direct descendants.
- For those that own land in Illinois, there is a substantial exposure to potential estate taxes, since the taxes in Illinois are based on a "hypothetical" federal exemption amount of \$4,000,000, not \$11,200,000. Accordingly, if one has assets valued in excess of

Continued on page 2

is brought to you by:

Goodwin & Associates Real Estate, L.L.C.

www.bigfarms.com

**Mark Goodwin
Doug Deininger**

Real Estate Brokers

21036 S. States Lane • Shorewood, IL 60404

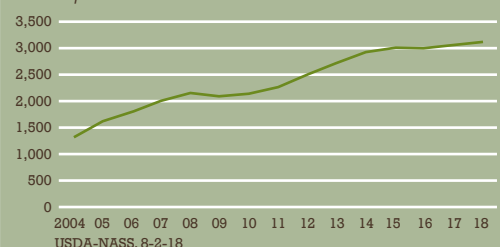
815-741-2226

U.S. Farm Real Estate Increases 1.9% from 2017

The United States farm real estate value, a measurement of the value of all land and buildings on farms, averaged \$3,140 per acre for 2018, up \$60 per acre (1.9%) from 2017 values. Regional changes in the average value of farm real estate ranged from an 8.3% increase in the Southern Plains region to 1.4% decrease in the Northern Plains region. The highest farm real estate values were in the Corn Belt region at \$6,430 per acre. The Mountain region had the lowest farm real estate value at \$1,140 per acre.

Average farm real estate value (U.S.)

Dollars per acre



Continued on page 3

\$4,000,000, additional tax planning is required in order to minimize or avoid taxes for land located in the state of Illinois. This is true even for non-residents of Illinois.

Lifetime Gifting

The federal exemption of \$11,200,000 is based on the combined value of property owned at death and taxable gifts made during a lifetime. A “taxable gift” is when the value of the transferred property exceeds the annual exclusion. In 2018, a gift of property in excess of \$15,000 is considered a taxable gift which is to be reported to the Internal Revenue Service (IRS) and which will be applied against one’s exemption of \$11,200,000.

Making lifetime gifts of property provides a valuable way to reduce exposure to potential taxes:

- Future appreciation of the gifted property is not subject to the donor’s estate tax calculations.
- Future income from the gifted property is not part of the donor’s estate.
- Gifting provides that the property is received by the intended beneficiaries, *and*
- Lifetime gifting can help the next generation begin the transition process and more successfully continue the operation.

Lifetime gifts do result in a “carryover” of the income tax basis of the asset to the donee, whereas property transferred at death receives a step-up in tax basis equal to its date of death value. Although gifting creates the potential for capital gains taxes to the donee, this only occurs if the gifted property is sold. When the gift involves the family farm, the sale of the property is normally not an issue.

Surviving Spouse Bonus Gifting

The current federal tax system has added additional flexibility in planning by allowing what is known as portability. This means that the estate tax exemptions for a couple is combined. When the first spouse

dies, any amount of the federal estate tax exemption which is not utilized is available to the surviving spouse. For example, if a spouse dies in 2018 with assets totaling \$7,200,000, then the estate did not utilize \$4,000,000 of the current exemption (\$11,200,000 – \$7,200,000). The surviving spouse is allowed to add the \$4,000,000 to his or her own exemption of \$11,200,000 for estate tax purposes.

If a surviving spouse makes a gift during his or her lifetime, the gifted amount is initially applied to the predeceased spouse’s unused exemption (the \$4,000,000 in the preceding example). For a surviving spouse who has adequate income protection, portability makes a very valuable planning option for lifetime gifting. It should be noted that this portability option is available only if there is a timely filed federal estate tax return filed when the first spouse is deceased.

Generation-Skipping Planning

Generation-skipping planning is created whenever one transfers property in such a manner that it is not considered “owned” for tax purposes by one or more future generations. For example, if property is left in a trust to provide income to one’s children for their lifetimes and then is transferred to the grandchildren, this is a generation-skipping trust since the property is not considered taxable at the death of the children.

The amount of property which can be transferred in such a manner is equal to the federal estate tax exemption. Therefore each individual can transfer in 2018 up to \$11,200,000 in a generation-skipping transfer transaction. A generation-skipping transfer can be made during lifetime or at death and can be designed to continue for multiple generations.

This can be a valuable way to maintain a large amount of assets in a manner which is exempt from any federal death taxes, any state death taxes, any creditor issues or any marital issues by the future generations.

Use of a By-Pass Trust

Prior to 2018, when married couples had potential estate tax issues, the traditional estate plan often provided that at the death of the first spouse, the property of the deceased spouse was left in a trust which provided income to the surviving spouse, with the property then being transferred to descendants or other beneficiaries after the death of the second spouse.

With the increase in the federal estate exemption, commentators and advisors are often indicating that estate plans for a couple can be simplified by holding everything in joint tenancy so that all property goes to the surviving spouse and is then transferred in accordance to the will or trust of the surviving spouse. This form of planning is promoted as a way to allow all the property to receive a step-up in income tax basis when the second spouse passes away to eliminate capital gains on any sale by the heirs.

A by-pass trust, however, still offers many advantages and protections which one may want to consider when creating an estate plan. For example, consider the following potential issues if no by-pass trust is utilized:

- All the property is subject to the creditors of the surviving spouse.
- All the property is subject to the change of tax laws.
- If there is any significant appreciation in property, it may create an estate tax liability.
- The surviving spouse has total control over the property and may transfer the property to anyone. This may become an issue if there is a new marriage by the surviving spouse.
- The surviving spouse may move to a different state, which may create different estate tax issues.
- The ability to utilize special use valuation planning under the family farm provision of §2032A may be lost.
- The ability to utilize installment tax payment of taxes under §6166 may be lost.

- The initial plan to utilize generation-skipping tax planning may be changed.

Summary

In summary, the need to complete planning with farmland is as important, or more important, than in the past. The good news is that for many landowners, the concern of estate taxes is now minimized, which allows for the other issues and factors related to the planning to be the focus when completing the plan.

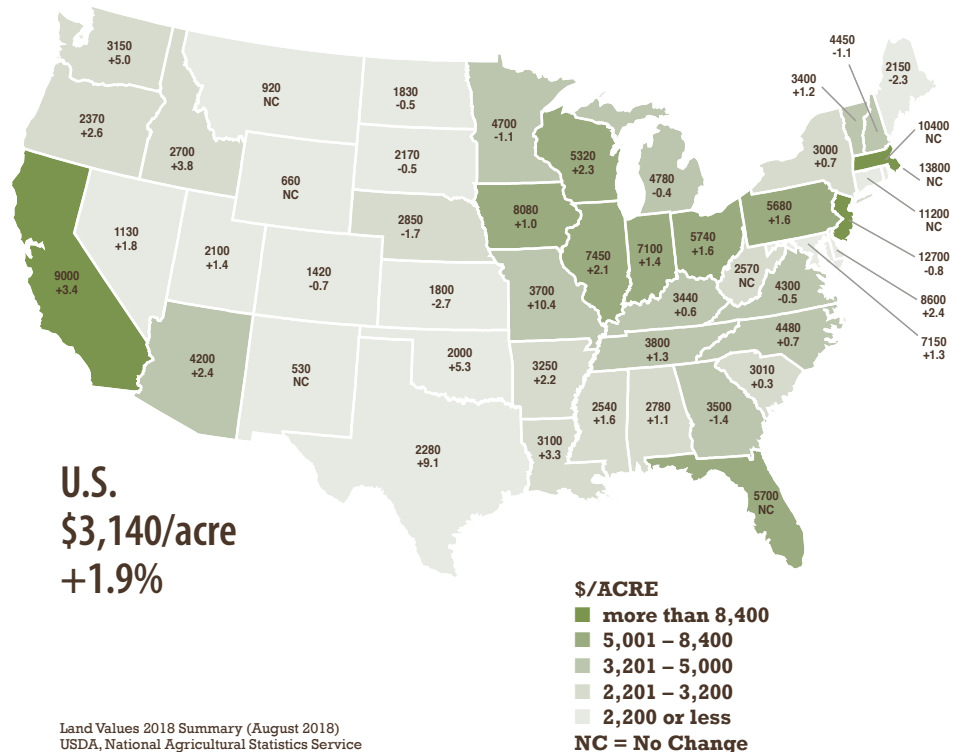


Michael G. Barton is an agricultural law attorney in Springfield, Illinois. He grew up on a grain and livestock farm in west central Illinois near Pittsfield. He received his Bachelor's and Master's degrees in agricultural economics at the University of Illinois followed by a law degree from the University of Illinois. Prior to law school, Barton worked

as a farm consultant and income tax preparer for farmers and landowners through Farm Business Farm Management. Barton's law practice concentrates in real estate, business planning, income tax planning, estate planning, and trust and estate administration for farmers and landowners. Barton has been identified as a Leading Illinois Attorney in Agricultural Law.

U.S. Farm Real Estate continued from page 1

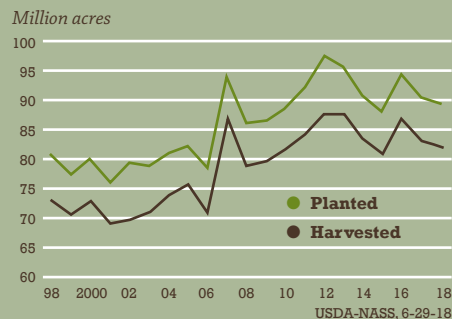
2018 Farm Real Estate Value by State Dollars per acre and percent change from 2017



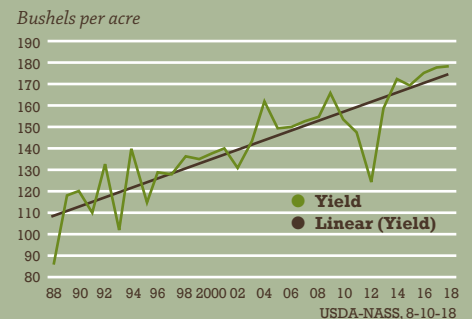
CORN: The most widely produced feed grain in the U.S.

Corn is the most widely produced feed grain in the United States (U.S.), accounting for more than 95% of total production and use. The other three major feed grains are sorghum, barley, and oats. Most of the corn crop provides the main energy ingredient in livestock feed. Corn is also processed into a wide range of food and industrial products including cereal, alcohol, sweeteners, and byproduct feeds.

Corn acres (U.S.)



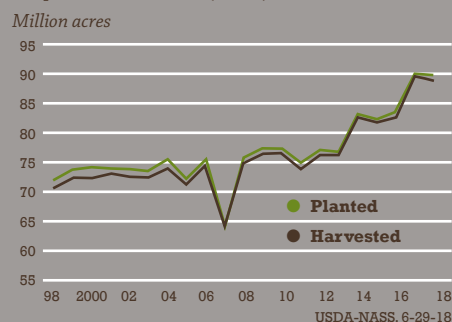
Corn for grain yield (U.S.)



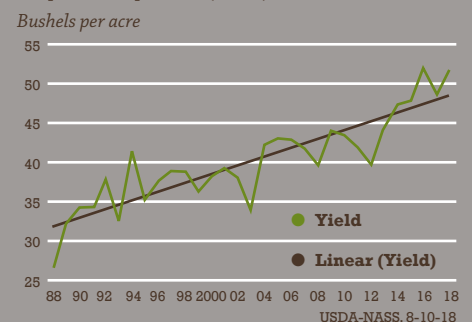
SOYBEANS: The world's largest source of animal protein feed

Processed soybeans are the world's largest source of animal protein feed and the second largest source of vegetable oil. The United States is the world's leading soybean producer and the second-leading exporter. Soybeans comprise about 90% of U.S. oilseed production, while other oilseeds – including peanuts, sunflower seed, canola, and flax – make up the remainder.

Soybean acres (U.S.)



Soybean yield (U.S.)



Mark Goodwin & Associates Real Estate, L.L.C.
21036 S. States Lane
Shorewood, IL 60404

Prsrt. Std.
U.S. Postage
PAID
Kankakee, IL
Permit No. 135

FORWARDING SERVICE REQUESTED

2 proven, Accredited Land Consultants are excelling in Chicago's collar counties.

- Experience our professional expertise in farmland sales, purchases, and 1031 Tax Free Exchanges.
- Experience the results of proven marketing activities: Far-reaching contacts online and off; Multiple Listing Services (MLS); extensive online marketing; personal emails, phone calls, and contacts.
- Experience Goodwin & Associates.



Mark Goodwin
ALC, CCIM
Managing Broker
817-412-2263



Doug Deininger
ALC
815-439-0667

www.bigfarms.com

Goodwin & Associates Real Estate, L.L.C.

21036 S. States Lane • Shorewood, IL 60404 • Tel: 815-741-2226
Email: mgoodwin@bigfarms.com • Web: www.bigfarms.com



GO GREEN... Prefer to receive your *Farmland Insights* electronically? Email us at dolly@bigfarms.com