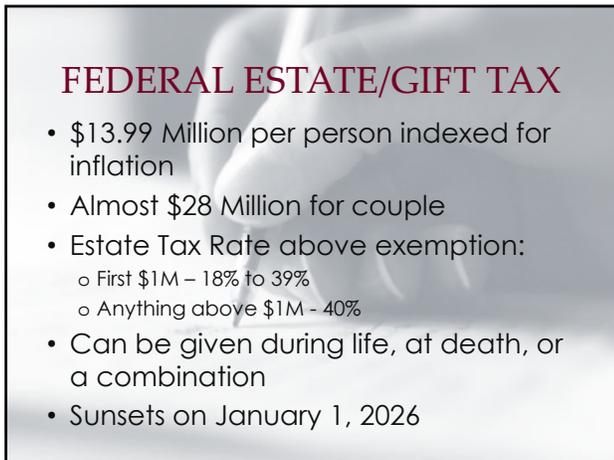


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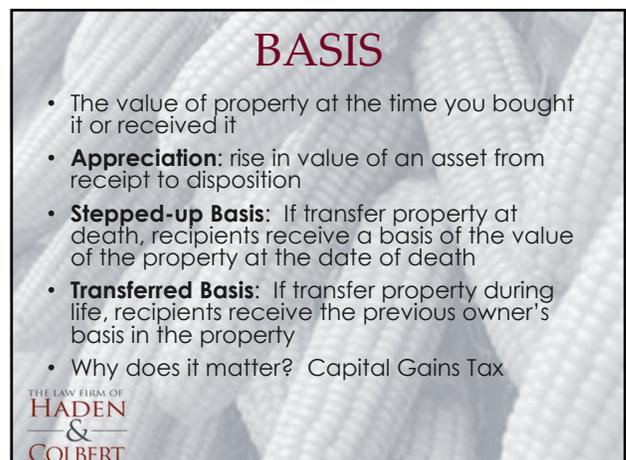
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6

BASIS: Example

- Buy a farm in 1980 for \$100,000. The farm is now worth \$500,000.
- If I **SELL** the farm during my lifetime: I owe capital gains tax on \$400,000
- If I **GIFT** the farm to my children during my **lifetime**: I do not owe capital gains tax, but my children will owe capital gains tax on the difference between \$100,000 and what they sell it for if/when they sell farm
- If I **GIVE** the farm to my children at my **death**: my children will have a basis of \$500,000 in the farm. If children sell the farm, will not owe capital gains tax

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WHERE ARE WE GOING?

- Elimination of Stepped-Up Basis?
- Taxation of Unrealized Gain at Death?
- Proposed Exemptions: \$1M plus primary residence (up to \$500,000)?
- Exemption for Farms that Stay in the Family?

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The primary purpose of good estate planning is to preserve family relationships.

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Things to Think About

- Trusts
- Divorce
- Long Term Care
- Business Arrangements

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TRUSTS
Things to Consider...

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What is a Trust?

- Creator = Grantor or Settlor
- Trustee
- Beneficiary

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Funding Your Trust

- Real Estate – Deed
- Checking Account – Pay on Death
- Savings Account - Retitle
- Certificate of Deposit - Retitle
- Business – Assign or Transfer on Death
- Life Insurance – Beneficiary Designation
- Retirement Account – Beneficiary Designation
- Vehicle – Transfer on Death

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One Trust or Two?

- In the past, Husband and Wife each had a Trust
- No longer necessary to take advantage of each spouse's estate tax exemption
- Higher estate tax exemption
- Portability

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One Trust or Two?

- Ease of Administration
- Protection for Remarriage
- Protection for Long-Term Care Expenses – be careful
- Basis Step-Up
- Re-titling Assets
- Second Marriage
- Qualified Spousal Trust

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LIFETIME TRUSTS

- PURPOSE: Protection of Beneficiaries
- Protect from Creditors
- Protect from Ex-Spouses
- Reduce or Eliminate Estate Tax for Beneficiaries
- Flexibility vs. Control
- Also called: Heritage Trusts, Dynasty Trusts, GST Trusts

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RETIREMENT ACCOUNTS IN TRUST

- BE CAREFUL!
- Typically, if you make retirement accounts payable to a trust, the funds must be distributed to the beneficiary within 5 years.
- Careful planning will allow the distribution of funds from retirement accounts to be stretched over **10 years**

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SPECIAL NEEDS TRUSTS

- PURPOSE: Provide for Beneficiary without disqualifying them from public benefits
- The special needs beneficiary cannot be in control
- Distributions are for the sole benefit of the special needs beneficiary

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IRREVOCABLE TRUSTS

- USED FOR SPECIFIC PURPOSES
- Reduce Size of Estate
- Asset Protection
- Long Term Care Expenses
- CONTROL vs. PROTECTION

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WHAT ABOUT DIVORCE?

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TRUE or FALSE

Inherited property will be
divided in a divorce
proceeding.

IT DEPENDS!

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Protection from Divorce

- Inherited Property: NOT divided in Missouri
 - Other states have different laws
- Jointly Titled Property: WILL be divided

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Protection from Divorce

- Consider Adding Restrictions to Governing Documents of Organizations (Corporation, LLC, Partnerships, etc.)
- Lifetime Trusts
- PRE-NUPS!!!

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BUSINESS ARRANGEMENTS

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Possible Business Structures

- Individual (Sole Proprietorship)
- Partnerships (Formal or Informal)
- Limited Partnership
- Limited Liability Company
- Corporations

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Choosing a Business Structure

- Simplicity
- Liability Protection
- Taxes
- Government Payments

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TRUE or FALSE

If I have a farm LLC (Limited Liability Company), I can eliminate liability for our operation.

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FALSE!!

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Managing Risk: Incorporation

Incorporating your operation can help shield your personal assets from liability incurred on the farm, and vice versa

Incorporation separates your business and personal assets into separate pools that can limit recovery for a plaintiff

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Liability Insurance

This is still your best protection against liability

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Formation

- Through Secretary of State
- "Unique" Name
- Member-Managed or Manager-Managed
- Registered Agent and Address
- Length of Existence
- Operating Agreement
- Tax Identification Number

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You Must Observe Formalities

- Keep Personal Funds Separate
- Keep Minutes
- Document Major Decisions
- File Appropriate Tax Returns
- If you don't treat it like a separate business, neither will a court
- Know how it is owned

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Operating Entity

Separate the ownership of the underlying assets from the business of farming

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Buy-Sell Agreements

- Restrict Ownership
- Right to Purchase
 - Right to Buy
 - Option to Buy
- Method of Valuation (FMV, Fixed Price, Discounted, Other)
- Financing
 - Spread out over period of time
 - Interest Rate
- Key Person Life Insurance

33

EACH PLAN IS UNIQUE

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34

Scenario #1

Jim and Pam have been married for 7 years and have two children, Andy (age 5) and Kelly (age 3). Jim graduated with an agriculture engineering degree and worked for a precision agriculture company for 3 years before moving back to the family farm. Pam graduated with a business degree and worked for a large bank until they had their first child. The family farm consists of approximately 2,000 acres of row crop and has a cow-calf operation with approximately 250 cows. Jim's parents, Dwight and Phyllis, have been lifelong farmers and still work on the farm. However, they are considering slowing down. Jim took a job at a local bank when he moved back to the farm and has been helping with the farm work in the evenings and on the weekends. He is considering starting a precision agriculture business and quitting his job at the bank. Pam has been helping keep the books for the farming operation. Jim has an older brother, Darryl, who lives off the farm and does not plan to come back. He also has a younger sister, Erin, who is still in high school and is very involved with the cattle operation.

35

Scenario #1

The Basics:

- Guardianship
- Trust?
- Powers of Attorney

The Family Farm:

- Can the farm support 2 families?
- What if Erin wants to come back?
- What does "slowing down" look like for Dwight and Phyllis?
- Basis Issue for Land

36

Scenario #1

The Business:

- Create an entity to shield liability

Parents' Plan:

- Multi-generational plan
- Open discussion with parents

37

Scenario #2

Robert and Cora have a large row crop operation. Some of the land they own has been in Cora's family for three generations and they purchased a lot more land during their marriage. They estimate the value of their land to be around \$25 Million and the value of their equipment to be around \$4 Million. They have little in the way of savings because they generally buy another piece of farm land with any savings. They have two sons – Matthew and Thomas. Matthew moved to Kansas City, works for Cerner, is married and has two young children, Mary and Edith. He enjoys coming back to the farm to hunt and occasionally comes back to help at harvest, but does not plan to ever move back to the farm. Thomas moved back to the farm right after college. He is not married and has no children, but tends to have bad taste in women. Robert and Cora want to treat their children equally and would like to keep the farming operation together.

38

Scenario #2

Taxes:

- Estate Taxes
- Capital Gains Taxes

Gifting:

- Annual Exclusion Gifts – AT LEAST
- Large Gift

39

Scenario #2

Business Arrangement:

- Family Limited Partnership
- Rights of First Refusal
- Discount
- Fair vs. Equal

Asset Protection:

- Dynasty Trusts
- Premarital Agreement

40