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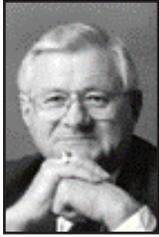


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Fixing Values at Death for Federal Estate Tax Purposes

by Neil E. Harl, Charles F. Curtiss Distinguished Professor in Agriculture and Emeritus Professor of Economics, Iowa State University, Ames, Iowa. Member of the Iowa Bar, harl@iastate.edu

With no readily determined fair market value from market determinations for ownership interests in most farm and ranch entities, it has been necessary to establish values for stock and other equity interests for federal estate tax, federal gift tax and federal income tax purposes as well as for purposes of fairness in making transfers. Until 1990, it was an accepted practice to utilize stock transfer restriction provisions to fix values for transfers during life and at death. That practice was supplemented by the enactment of legislation in 1990. The 1990 provision recognizes instances where values can be fixed at death and a recent case has applied those exceptions as well as the rules from the pre-1990 case law.

The rules in effect before 1990

Under the case-law prevailing before 1990, a stock transfer restriction could fix the value of stock or other equity securities at death if certain conditions were met –

- (1) the price was fixed or determinable by formula;
- (2) the estate was under an obligation to sell under a buy-sell agreement or upon exercise of an option;
- (3) the obligation to sell was binding during life; and
- (4) the arrangement was entered into for bona fide business reasons and not as a substitute for a testamentary disposition.

The 1990 provisions

The 1990 legislation supplemented, but did not replace, those guidelines with a general rule that such agreements, options or restrictions are not effective to set values at less than fair market value except for specified exceptions. The 1990 enact-

ment, while acknowledging that agreements, options or restrictions could not fix values at less than fair market value, articulated three exceptions to the general rule. Under the exceptions, agreements, options or restrictions were not subject to the general rule if all of three requirements were met –

- (1) the agreement, option or restriction was a bona fide business arrangement;
- (2) the agreement, option or restriction was not a device to transfer the property to members of the decedent’s family for less than full and adequate consideration in money or money’s worth; and
- (3) the terms of the agreement, option or restriction were comparable to similar arrangements entered into by persons in an arms’ length transaction.

Because the 1990 provisions were meant to supplement but not replace prior case law, the pre-1990 rules requiring that an agreement, to be effective, must be binding during life and at death and must contain a fixed and determinable price continue to apply.

Tax Court case decided in 2006

In a Tax Court case decided in 2006, an agreement restricting the sale of the decedent’s stock in a bank fixed the fair market value in determining value for federal estate tax purposes. In 1994, the decedent’s conservator and a bank negotiated an agreement for the sale of the decedent’s stock in the bank, after death, for \$118 per share. Litigation among the prospective heirs ensued and so the conservator in 1995 negotiated an agreement providing for the decedent and her heirs, except for one son, to receive \$118 per share of the bank stock and for the purchase by the son of the stock

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remaining in the decedent's estate for \$118 per share. In 1997, an agreement with the bank specified that the bank would pay \$217.50 plus four percent per year for each share to the son for the decedent's stock purchased by the son.

I.R.S. argued that the 1995 agreement setting the value for the stock should be disregarded and the value should be used coming from the purchase of the stock within a month after the decedent's death.

The Tax Court held that the restrictive agreement controlled the value for federal estate tax purposes because the requirements for the pre-1990 case law and the statutory exceptions were satisfied –

- (1) the agreement reached among the prospective heirs fixed the value of all of the decedent's bank stock;
- (2) the agreement between the heirs and the conservator was enforceable with a court order approving the settlement and granting authority to the conservator to carry out the terms and conditions of the agreement;

(3) the agreement furthered a business purpose by minimizing the risk to the decedent of holding a minority interest in a closely-held bank;

(4) the agreement was found not to be a testamentary device inasmuch as the decedent received "significant" consideration under the agreement; The court addressed the difference between the \$118 per share value and the \$217.50 per share value and found that the \$118 per share value ". . . was fair at the time and in the particular circumstances;" and

(5) the agreement was similar to comparable arms' length agreements.

The Tax Court reasoned that the statutory exceptions of I.R.C. § 2703(b) were satisfied so the general rule of I.R.C. § 2703(a) did not provide a basis for disregarding the earlier, pre-death, agreement which met all of the relevant case-law requirements.

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Proposed Farm Policy Changes in the U.S. vs. Brazil and Canada: Ships Passing in the Night

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The development of the 1985 Farm Bill was dominated by the search for policies that would allow the US to regain the share of export markets it held in the late 1970s. The talk surrounding the formation of the 1996 Farm Bill was "getting the government out of agriculture." With the 2007 Farm Bill looming on the horizon, the framing discourse involves designing policies that are compliant with World Trade Organization requirements.

In each case the framing discourse has served to limit the nature of the agricultural policies that could be considered as "realistic." In 1985 the concern that high US loan rates were pricing US producers out of international markets led to a reduction in loan rates and the introduction of instruments like Loan Deficiency Payments for some crops. In 1996 the focus was on getting farmers to produce for the market instead of "farming the program." The result was a program that intro-

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duced fixed decoupled payments and the widespread use of LDPs to allow the US price to fall to the world price, while protecting farm income.

In the present setting, trade negotiations cluster around two scenarios: full liberalization and the most likely outcome. Full trade liberalization calls for the elimination of all subsidies and all tariffs, allowing the marketplace to determine all production decisions. The likely scenario includes policies that would substitute “non trade distorting” programs, like risk management, for more direct subsidies.

If one were to look for a model of what a more complete liberalization would look like, Brazil would certainly come to mind. The rapid expansion of soybean producing areas has taken place without commodity-program-like government subsidies. As a part of its push for full liberalization, Brazil won a case against the US cotton program arguing that portions of that program were trade distorting.

When we were in Brazil three months ago, the roads were filled with trucks delivering their cargo of soybeans to local crushers and export points. Today nearly all of the movement of soybeans in the center west of Brazil has come to a halt as the result of protests by farmers. With the increasing cost of petroleum products and the loss of purchasing power as the result of a strengthening of the Brazilian Real, most farmers are caught in a squeeze as local soybean prices drop below the cost of production.

Three weeks into the protests, the Brazilian government offered a commodity-specific financial package that amounted to about a half a billion dollars. Farmers rejected the package as inadequate and the government has promised to reconsider the offer. The farmers are hoping for substantial aid to help them deal with two to three years of production debts, not to mention capital costs.

Canada, on the other hand, is a model of a country that has replaced traditional farm programs with a revenue-insurance-type risk management strategy. Many analysts in the US see the Canadian farm insurance program as a model for the US farm program.

Recent developments in Canada would suggest that the insurance program does not work out as well as its proponents expected and today Canadian farmers find themselves in financial trouble. As a result the Canadian government has made available C\$950 million to farmers in trouble and has proposed re-separating disaster assistance from income stabilization.

This presents an interesting juxtaposition of circumstances where farmers in countries, such as Brazil and Canada, operating under apparently WTO compliant policies are calling for more government support while the US is looking for ways to reduce its support of agriculture. Hmmm. . .