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Dividing up assets after death

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Retirement resources for every age, continued from page 3

Investors of all ages have questions about investing and asset allocation, and may be confused by the various types of tax-advantaged accounts they can choose from, Wollan said. Two publications address those questions in clear, straightforward language.

For those approaching retirement within the next five to 10 years, a set of four "Retirement Transitions" publications explains key topics that affect retirement well-being, including Social Security options, required minimum distributions, income annuities and strategies for establishing a steady income flow in retirement.

In addition to materials consumers can use on their own, the "Retirement: Secure Your Future" Web page also highlights three core retirement workshops from ISU Extension and Outreach. These workshops are available to groups and

sometimes are offered to the public, with a modest fee to cover expenses, Wollan said.

"ISU Extension and Outreach materials always are non-commercial, with no vested interest in promoting any particular products or services," Wollan said. "That makes them fairly unique in the retirement planning world, which is dominated by commercial firms and organizations that have commercial interests through advertising. I don't discourage people from reading and learning from commercial material, but it's important to critically evaluate the motives of those sources. ISU Extension and Outreach materials are based on research."

Visit the "Retirement: Secure Your Future" Web page at www.extension.iastate.edu/humansciences/retirement.



Dividing up assets after death*

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Dividing assets among the heirs after death rarely poses a tax problem although there may be hurt feelings for years among those who get less than a proportionate share of the estate. The problems, if they develop in dividing up the assets after death, usually arise when the parents left undivided interests in assets, particularly if the assets are of unequal value and an equal division is difficult or impossible to achieve. That could occur with one-of-a-kind personal property items or of farmland with widely varying productivity and value. Unfortunately, none of the alternatives will assure that all parties will be completely satisfied. However, some of the options score higher than others. With careful pre-death planning the level of satisfaction can be elevated significantly.

Undivided interests passing to the heirs

The first issue is whether the heirs are willing to continue for the foreseeable future as happy, cheerful and contented holders of undivided interests in the assets including the farm or ranch land involved. If so, the major concern is in deciding who will bear responsibility for management, how the ownership will be handled long term (as undivided interests or as co-owners of an entity formed prior to or after death such as a limited liability company, limited liability partnership or some other organizational structure) and how those eventually wanting to exit from the arrangement can do so on a fair basis. All of those concerns should be carefully worked out and agreed to in writing in a manner that will be enforceable even on the part of a minority owner.

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A mere partition of the assets (if that is possible) may be acceptable if the assets in question can be fairly divided. However, few tracts of land have sufficient uniformity of value to permit a partition without some adjustments made in the division of assets. One very important point – a partition of assets by heirs after death can avoid recognition of gain unless a debt security (such as a promissory note, a commitment to share the crops unequally for a stated period in favor of the recipient of the less valuable land or some other form of “boot”) is paid and received or property is received that differs “materially. . . in kind or extent” from the partitioned property. If those conditions are not met, the risk is that it is likely to be deemed a like-kind exchange and most likely a related-party like-kind exchange.

Property is left in trust and the trustee has the authority to allocate the assets

One of the lesser understood options is for the property to be placed in trust and the trustee given specific authority to allocate the assets between or among the heirs. In a 2003 private letter ruling, the decedent’s will stated that, at the time of termination of the trust, the trustees were to partition (or have the properties judicially portioned) between and among the children. The plan of termination allowed for the beneficiaries to request the type of assets that would be distributed to them at the time of termination of the trust and that the distributions would not necessarily be made on a *pro rata* basis. A state statute made it clear that distributions did not have to be *pro rata*. Those state statutory provisions were applicable to trusts with a *situs* in the state.

An earlier IRS ruling had taken the position that if neither the trust instrument nor local law authorizes the trustee to make *non-pro rata* distributions of property in kind, the distribution is treated as a sale or exchange even though there

is a mutual agreement between or among the beneficiaries as to the plan of distributions. A 1981 ruling added a warning that where a federal statute specifies that gain must be recognized, that takes the matter out of the realm of state law and gain (or loss) must be recognized.

What this adds up to is this – unless the federal statute in question specifically requires recognition of gain or loss, if there is a state law provision permitting *non-pro rata* distribution and the trustee has the authority exercisable at that time to make such *non-pro rata* distributions, the exercise of that authority does not result in the recognition of gain or loss to the beneficiaries.

Specific bequests

Another discrete alternative is for the parents simply to make the decisions on who is to receive which property after the deaths of the parents and specify that outcome in the will or trust. That avoids the tax aspects of the division of property after death but it may result in criticism of the parents’ decisions. That aspect often weighs heavily upon the parents to the point that they end up preferring for someone else to make those decisions.

If that is the case, the parents should consider authorizing the trustee to make the decisions. It is not completely clear that a passage in a will or trust alone is sufficient authorization without a state law provision authorizing a trustee or trustees to so act but the passage in the 2003 private letter ruling referring to the fact that, in discussing *Rev. Rul. 1969-486*, reference is made to the passage, in that ruling that “neither the trust instrument nor local law authorized the trustee to make a *non-pro rata* distribution. . . .” That would suggest that a provision in the trust alone might be sufficient authority for the trustee to act.

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Updates, continued from page 1

Internet Updates

The following Decision Tools have been updated on www.extension.iastate.edu/agdm.

2014 Farm Bill Analyzer: Data and Methods - A1-33 (Decision Tool)

Farm Bill Calculator - A1-36 (Decision Tool)

Farmland Tile Drainage Investment Analysis - C2-90 (Decision Tool)

Iowa Beginning Farmer Tax Credits and Loan Programs - C4-30 (2 pages)

Current Profitability

The following tools have been updated on www.extension.iastate.edu/agdm/info/outlook.html.

Corn Profitability – A1-85

Soybean Profitability – A1-86

Iowa Cash Corn and Soybean Prices – A2-11

Season Average Price Calculator – A2-15

Ethanol Profitability – D1-10

Biodiesel Profitability – D1-15

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