



Gifts: Resources to help our next generation of farmers

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Giving assets to the next generation before death may be useful to decrease the size of very large taxable estates, or to pass farm assets to cash-poor successors. Gifting may seem simple at first, but there are several potential problem areas.

In order to make a gift you must have intent to give the property and there must be actual or constructive receipt of the gift. If property to be given cannot actually be moved into the possession of the recipient, there must be constructive delivery. Constructive delivery is some action or transfer that is symbolic of the actual transfer; for example, giving the keys to a car if the car is not in the same vicinity as you. Other examples of constructive delivery include handing over the deed to land or a photo of the object to be transferred. Also, delivery must take place at the same time as expression of intent to give. For example, Dad says, "I want you to have my John Deere A when I die." This statement does not satisfy the requirements of a gift because the tractor was not actually handed over at the same time Dad expressed his intent to give. The tractor will become part of Dad's estate and be distributed according to his will. Some one else may end up with the tractor.

Gifts must be given free of any restrictions and are not revocable. The donor (giver) must be ready to completely part with the property. For example, Dad gives Son five cows and the cows are moved to the Son's pasture. Dad, however, still checks them every day, decides which bull to breed them to, and continues to make all managerial decisions regarding the five cows. This was not a gift but a loan or a lease and the cows will still be part of Dad's estate. Also, if Dad reserves the right to take the cows back, no gift was made.

Tax Implications

The current annual exclusion amount is \$12,000 and is indexed for inflation. This means that any one donor can make a gift of \$12,000 to any one recipient without being subject to gift tax and without affecting the unified credit (amount of your estate excluded from estate tax) of the donor. Husbands and wives can combine their annual exclusion and give one recipient an annual tax-free gift of \$24,000. For even larger gifts, husband and wife can give an adult child and his/her spouse each \$24,000 for a total tax-free gift of \$48,000. Any gifted amount in excess of \$12,000 per donor/donee will result in significant tax rates (as much as 45 percent) or will affect the size of the donor's taxable estate at death. Gifts for payment of educational and medical expenses are tax exempt.

Gifts in any amount are excluded from the recipient's gross income for tax purposes; however, there may be significant capital gains taxes if the recipient decides to sell gifted property. Capital gain is the sale price of the property minus your basis. Generally, basis is your cost of acquiring property plus the cost of improvements. When property is transferred by gift, the recipient must take the donor's basis in the property, which may be much less than the current fair market value and may result in large capital gains if sold. Current capital gains tax rates, however, are lower than gift tax rates. If an heir receives an asset at death by will or living revocable trust instead of during the life of the donor, he/she will receive a "stepped up basis," which is equal to the fair market value at the time of death. Time of death transfers will significantly reduce capital gains tax if the recipient decides to sell the property.

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