SAVING THE LITTLE GUY: ESTATE AND INHERITANCE TAXATION ON GENERATIONAL FARMERS AND RANCHERS

by Sarah Patterson[*]

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The Census of Agriculture reported in 2017 that there were 2.04 million farms and ranches in the United States.[1] Ninety-six percent of these farms and ranches were reported as family owned.[2] Despite this report, in the last few decades of the 20th century, family-owned farms and ranches have struggled to survive and faced one of the biggest hurdles when passing their land on to future generations.[3] In fact, only twenty percent of small businesses make a successful transition to the next generation.[4] This is a result of two common obstacles: lack of estate liquidity and failure in planning for tax liability.[5] Specifically, estate and inheritance taxes make it incredibly difficult for farmers and ranchers to pass their land and business on to future generations.[6] The use of comprehensive estate planning is one way for these businesses to be passed on, but legislation is likely a more permanent and underutilized alternative.[7]

For example, the Rieckmann family, a generationally owned dairy cattle producer in Wisconsin, was in debt in 2019 for approximately $300,000.[8] Despite their desire to leave the family farm to their two sons, they face a serious reality that they must focus on their current survival rather than their legacy.[9] The United States saw a disappearance of more than 100,000 farms from 2011 to 2018, and the inability to simply reorganize through bankruptcy has left farm debt for those like the Rieckmann family at approximately $416 billion.[10] This concern does not solely rest upon the Agriculture community because without local farmers and ranchers the food supply chain for the country can be disrupted resulting in bigger issues for American citizens.[11]

This comment will explore the current and future legal issues arising from estate and inheritance taxes on generational farmers and ranchers.[12] Initially this comment will explain how estate and inheritance taxes are calculated and to whom they apply.[13] Additionally, this comment discusses

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1. Teresa White & Sue King, *2017 Census of Agriculture Data Now Available*, U.S. DEP'T OF AGRIC. (Apr. 11, 2019), https://www.usda.gov/media/press-releases/2019/04/11/2017-census-agriculture-data-now-available.
2. *See id.*
3. *See* Mary S. Falk, *Passing Down the Family Farm or Ranch*, FALK, CORNELL & ASSOC., LLP (Aug. 12, 2016), https://www.falkandcornell.com/estate-planning/passing-down-the-family-farm-or-ranch/.
4. *See id.*
5. *See id.*
6. *See id.*
7. *See id.*
8. *See* Alana Semuels, *'They're Trying to Wipe Us Off the Map.' Small American Farmers Are Nearing Extinction*, TIME (Nov. 27, 2019), https://time.com/5736789/small-american-farmers-debt-crisis-extinction/.
9. *See id.*
10. *See id.*
11. *See id.*
12. *See* FARM BUREAU, *Agriculture and Tax Reform*, https://www.fb.org/issues/tax-reform/agriculture-and-tax-reform/ (last accessed Sept. 24, 2020) [hereinafter FARM BUREAU].
13. *See id.*

the timeline for estate and inheritance taxes as well as the effect on ranchers and farmers.[14] In particular, several case examples are presented of ranches and farmers losing their property as a result of these taxes.[15] Detailed descriptions of planning methods—transitional and estate planning, intestate succession, trusts, wills, temporary legislation, and permanent legislation, for example—explain the types of solutions in current existence.[16] Statutory examples at the state and federal level are also provided in order to provide a larger context for additional solutions to estate and inheritance taxes.[17] The final portion of this comment will propose a solution to the dilemma of estate and inheritance taxes on generational farms and ranches.[18]

Ultimately, this comment will propose permanent legislation in order for generational farms and ranches to be exempt from paying estate or inheritance taxes.[19] There have been forms of permanent legislation implemented by states to create a tax exemption for generational farmers, ranchers, and other small businesses.[20] The utilization of this method to create legislation at both the federal and state levels would ensure the ability of farmers and ranchers to pass on their property to future generations, thereby ensuring that land used for farming and ranching production of necessary agricultural commodities is not sold off as a result of crippling taxes.[21] Temporary solutions such as legislative exemptions with expiration dates or other means of avoiding estate and inheritance taxes do not solve the problem but actually create uncertainty within the Agriculture community.[22]

I. INTRODUCTION

A. Background and History of the Federal Estate Tax

Estate and inheritance taxes apply to the ability to transfer or receive property by death of the landowner.[23] These taxes have existed for many years and can be traced as far back as ancient Egypt.[24] There, the Roman Emperor Caesar Augustus implemented a tax, the *Vicesina Hereditatium*, on

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14. *See id.*
15. *See id.*
16. FARM BUREAU FINANCIAL SERVICES, *Your Complete Guide to Farm Succession Planning* (Aug. 31, 2020), https://www.fbfs.com/learning-center/what-you-need-to-know-about-farm-succession-planning.
17. *See* FARM BUREAU, *supra* note 12.
18. *See id.*
19. *See id.*
20. *See id.*
21. *See id.*
22. *See id.*
23. Darien B. Jacobson et al., *The Estate Tax: Ninety Years and Counting*, IRS.GOV, https://www.irs.gov/pub/irs-soi/ninetyestate.pdf (last accessed Oct. 20, 2020).
24. *See id.*

successions and legacies to everyone other than close relatives.[25] In America these taxes originated in 1797 when the U.S. Congress decided to utilize stamp duties to raise funds for the Navy to defend it in an undeclared war with France.[26] Taxation ranged depending on the size of the "bequest" or inventories of the deceased.[27] This was then followed by several other various taxes each replacing the one that came before and causing increasing harm on generational farms and ranches.[28] Although, the intended purpose of many of the estate and inheritance taxes was to address inequality in wealth that existed between corporate ownerships such as the holding company and small businesses like farmers and ranchers.[29] The taxes were also the result of fear that this concentration of wealth would result in greater political power and a manipulation of the country.[30] As a result, the Sixteenth Amendment to the Constitution was passed and the federal income tax was enacted.[31]

The Revenue Act of 1916 was the initial estate tax on transfer of wealth from an estate to beneficiaries and came in stark contrast to previously enacted inheritance taxes intended to focus on beneficiaries.[32] This led to later taxation in 1932 on inter vivos gifts, or a gift tax, that Congress intended to target wealthy individuals seeking to avoid the estate tax by transferring wealth during their lifetimes.[33] Valuation changed during this time as well allowing for estates to be valued up to a year after the decedent's death.[34] However, most importantly was the establishment of the martial deductions for estate and gift taxes in the Revenue Act of 1948.[35] While this deduction was limited to one-half of the adjusted gross estate of a decedent, it also created a deduction for inter vivos gifts to spouses.[36]

Relatively no changes were made after 1948 to the estate tax or entire transfer tax system until the Tax Reform Act of 1976 was enacted.[37] This was a unified framework for estate and gift taxes which merged the estate and lifetime gift tax exclusions into a single exclusion to be used to offset gift tax liability while the donor was alive.[38] The framework also provided increases in filing exemptions and *generation-skipping transfer trusts* (GSTs).[39] After

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25. *See id.*
26. *See id.*
27. *See id.*
28. *See id.*
29. *See id.*
30. *See id.*
31. *See id.*
32. *See id.*
33. *See id.*
34. *See* Jacobson, *supra* note 23.
35. *See id.*
36. *See id.*
37. *See id.*
38. *See id.*
39. *See id.*

GSTs were being used to avoid tax liability, Congress developed a series of rules to tax the termination of an intervening beneficiaries' interests.[40] The changes of 1976 were followed by the Economic Recovery Tax Act (ERTA) of 1981 and the Taxpayer Relief Act of 1997.[41] ERTA allowed marital deductions for life interest in property that was qualified terminable interest property (QTIP) as well as marital deductions in unlimited estate and gift taxes.[42] The Taxpayer Relief Act increased the incremental unified credit that was utilized as the filing threshold and special rules for valuing real estate that was used by a farm or business.[43]

Each of these reforms built the federal estate tax of 2011 which required the filing of a tax return for every deceased U.S. citizen with a gross estate equal to or exceeding one million dollars.[44] The estate tax return had to be filed within nine months of the date of the decedent's death—unless a six-month extension is requested.[45] Former President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act which is what estate taxes from 2010–2012 were based on.[46] The Act was only good for two years so afterwards the federal estate tax rate and exemption defaulted back to the numbers used previously from 2001 and 2002.[47] However, before this could occur, Congress passed the American Taxpayer Relief Act (ATRA) in 2013 and President Obama signed it into law a day later.[48] This was meant to make the change to laws overseeing federal estate, gift, and generation-skipping transfer taxes permanent.[49]

The current laws governing federal estate taxes, gift taxes, and generation-skipping transfer taxes were signed into law by President Trump in December 2017.[50] The Tax Cuts and Jobs Act (TCJA) originally set the exemption at $5.49 million but was later increased to $11.58 million in 2020.[51] This exemption will remain in place and could even increase based on a regular adjustment for inflation until it is set to expire in 2025.[52] If no additional laws or adjustment is made, the exemption amount will revert to that of pre-2018.[53] This means that the lower exemption amount, coupled with an inflation of property and asset values, will make it easier for farmers

40. *See* Jacobson, *supra* note 23.
41. *See id.*
42. *See id.*
43. *See id.*
44. *See id.*
45. *See id.*
46. Julie Garber, *How the Federal Estate Tax Exemption Changed from 1997 to Today*, THE BALANCE (June 07, 2020), https://www.thebalance.com/exemption-from-federal-estate-taxes-3505630.
47. *See id.*
48. *See id.*
49. *See id.*
50. *See id.*
51. *See id.*
52. *See* Garber, *supra* note 46.
53. *See id.*

and ranchers to reach the taxable threshold which threatens the ability to successfully transfer property to the next generation.[54]

B. Background and History of the State Inheritance Tax

The inheritance tax is imposed by states for those individuals that inherit a deceased person's assets.[55] The tax rate is different than the federal estate tax because the rate depends upon the state where an individual resides.[56] Additionally, the inheritance tax varies based on the value of the inheritance and the relationship between the beneficiary and decedent.[57] There is no federal inheritance tax, but inheritance taxes began as a way for states to regulate receipt of the proceeds of an individual's estate.[58] Inheritance taxes once dominated the nation, ensuring states had the ability to benefit from legatees receiving an inheritance.[59] Today, the federal estate tax has taken the place of state inheritance taxes.[60] This is a result of a federal credit against state inheritance and estate tax liability.[61] All fifty states adopted the formatted estate tax to get the revenue up to the threshold amount for governmental credit.[62] Although the credit was later repealed, the majority of states did away with the taxes altogether.[63] The states that retained the taxes utilize a deduction, but the deduction leaves additional liability on taxpayers that live in states wishing to impose an estate or inheritance tax.[64]

The first inheritance tax was enacted by Pennsylvania in 1826 to help finance a canal project designed to compete with the Erie Canal.[65] Pennsylvania's tax targeted collateral heirs, or those that are not the decedent's direct heirs, and was set as a two and a half percent inheritance tax.[66] Louisiana followed suit two years later by imposing a ten percent inheritance tax but was only targeted at nonresidents.[67] The first state to adopt an inheritance tax to both direct and collateral heirs was California.[68] Although each of these was significant in its own right, New York's tax on

54. Jared Walczak, *State Inheritance and Estate Taxes: Rates, Economic Implications, and the Return of Interstate Competition*, TAX FOUNDATION (July 17, 2017), https://taxfoundation.org/state-inheritance-estate-taxes-economic-implications/.
55. *See id.*
56. *See id.*
57. *See id.*
58. *See id.*
59. *See id.*
60. *See* Walczak, *supra* note 54.
61. *See id.*
62. *See id.*
63. *See id.*
64. *See id.*
65. *See id.*
66. *See* Walczak, *supra* note 54.
67. *See id.*
68. *See id.*

collateral heirs was the turning point for inheritance taxation among states.[69] In the two-year time frame after New York's tax implementation, twelve other states adopted inheritance taxes.[70] By 1916, when the federal government implemented the federal estate tax, forty-three other states had imposed a similar state inheritance tax.[71]

In the years after the federal estate tax was implemented, state inheritance taxes became rare; although from 1915 to 1924, annual tax collections increased significantly.[72] Many of the states that did away with their inheritance or estate taxes used it as an advantage to try to lure wealthy retirees, while those states still using their own estate or inheritance taxes saw the federal estate tax as a way to become competitive again with those states that no longer used their own estate or inheritance tax.[73] When the federal government began offering the federal credit for state inheritance and estate taxes, many of the states continuing to enforce such taxes began either getting rid of the inheritance or estate taxes completely or aligned them closer to the federally covered amounts.[74] After the Economic Growth Tax Relief Reconciliation Act (EGTRRA) of 2001 was passed and the four-year phaseout of the credit began, some states repealed estate and inheritance taxes while others statutorily aligned their rates with the federal credit.[75] The elimination of the credit by EGTRRA essentially cancelled the remaining state taxes despite the fact they were still statutorily present.[76] By 2005, every state levied inheritance or estate taxes.[77] Today only the District of Columbia and eighteen states have estate and inheritance taxes in effect.[78]

State inheritance and estate taxes usually do not apply to smaller estates and bequests but instead apply to larger transfers.[79] States also vary based on the deductions allowed and how they determine fair market value.[80] The majority of states that still utilize the estate and inheritance taxes adopted the Uniform Simultaneous Death Act.[81] This Act allows assets to pass directly to relatives in the case of two or more people dying within a short period of one another due to the same accident.[82] States retaining the estate or inheritance taxes have the ability to either conform to federal deductions or develop their

69. *See id.*
70. *See id.*
71. *See* Walczak, *supra* note 54.
72. *See id.*
73. *See id.*
74. *See id.*
75. *See id.*
76. *See id.*
77. *See* Walczak, *supra* note 54.
78. *See id.*
79. *See id.*
80. *See id.*
81. *See id.*
82. *See id.*

own.[83] Despite the differences between an inheritance and an estate tax, both allow exemptions to transfers to spouses after death.[84]

II. TAX LIABILITY AND TIMING OF PAYMENT

A. Federal Estate Tax Liability and Timing of Payment

An estate tax is a tax on the right to transfer property at the time of the owner's death.[85] The estate tax is calculated by accounting everything an individual owns or has interest in at the time of death.[86] The fair market value of the items is used to find the total value of all the items, which is called the 'gross estate.'[87] Deductions, or reductions in certain circumstances, are allowed to then finally determine the 'taxable estate.'[88] Once the net amount is calculated, the value of lifetime taxable gifts is added, and the available unified credit is deducted.[89] Estates consisting of "cash, publicly traded securities, small amounts of other easily valued assets, and no special deductions or elections, or jointly held property" do not require an estate tax return to be filed.[90]

The property is typically valued at the time of death, but if the estate is large enough the valuation can take place six months after the death of the decedent as long as the estate is worth less at the later date.[91] Alternatively, when the decedent's gross estate is large enough for the Federal Estate Tax return to apply, the estate tax is due nine months after the decedent's date of death.[92] However, extensions are available if good cause can be shown.[93] An example of good cause usually shown is the inability to file a reasonably complete return at the date the payment is due.[94] These extensions include a year extension for good cause shown, a five-year deferral, or a ten-year

83. *See* Walczak, *supra* note 54.
84. *See id.*
85. IRS, *Estate Tax*, https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax (last accessed Sept. 24, 2020).
86. *See id.*
87. *See id.*
88. *See id.*
89. *See id.*
90. *See id.*
91. *See* Adam Thielen, *Estate Tax - Using Alternate Valuation Date Election*, OLSEN THIELEN & CO., LTD. (Nov. 16, 2016), http://www.otcpas.com/advisor-blog/estate-tax-using-alternate-valuation-date-election/.
92. Melissa O'Rourke, *Federal Estate Taxes*, IOWA STATE UNIVERSITY: EXTENSION AND OUTREACH, https://www.extension.iastate.edu/agdm/wholefarm/html/c4-24.html (last updated Nov. 2018).
93. *See id.*
94. Estate of Paul Proske v. United States, No. 09-CV-670, 2010 WL 2178968, at *2 (D.N.J. May 25, 2010).

installment payment for those businesses where the decedent's interest in the business is more than 35% of the decedent's gross estate.[95]

The time variation makes agricultural valuation complicated due to possibilities of bred livestock or crops continuing to grow.[96] Property is valued either on the date of sale or six months post death depending on which is earlier.[97] Any property not existing at death does not factor into the alternate valuation.[98] While property is typically valued based on fair market value, or the price a willing buyer that knows all the considerations regarding the property would pay a willing seller that is not forced to buy or sell, farm or ranch property is valued subject to "special use valuation."[99] Essentially this allows the land to be based on the agricultural value rather than that of fair market value; however, the amount of value for reduction is restricted.[100]

Special use value can be determined one of two ways: the five-factor test or rent capitalization.[101] The five-factor test is based on capitalization of income and rent, an assessed tax value, comparable sales excluding those with pressure from urban areas, and other factors fairly valuing the property to constitute the amount for special valuation.[102] Alternatively, rent capitalization utilizes a formula for the value which is "[t]he average cash rent for the previous five years for comparable real estate minus the average property tax divided by the five year average interest rate for Farm Credit Banks provides a special valuation amount per acre."[103] Though, rent capitalization can only be utilized for farmland.[104]

Special valuation also requires significant eligibility requirements in order to be used.[105] First, the farm property has to be a large portion of the estate and meet several tests such as percent tests, material participation tests, equity interest tests, requirements for owners, and requirements for qualified heirs.[106] These tests specifically ensure that benefits of special valuation help agricultural families and operations as opposed to other large estates not

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95. *See* O'Rourke, *supra* note 92.
96. *See* Walczak, *supra* note 54.
97. *See* Thielen, *supra* note 91.
98. *See id.*
99. *See* Roger A. McEowen, *Special Use Valuation and Cash Leasing*, AGRIC. L. & TAX'N BLOG (May 8, 2017), https://lawprofessors.typepad.com/agriculturallaw/2017/05/special-use-valuation-and-cash-leasing.html.
100. *See id.*
101. Neil E. Harl, *Special Use Valuation: The Complexities of Economic Engineering*, 60 N.D. L. REV. 1, 9 (1984).
102. *See* Robert A. Mcleod, *Estate Taxes and the Closely Held Business: The Beginning of the End?*, 22 WM. MITCHELL L. REV. 1349, 1363 (1996).
103. *See id.*
104. *See id.*
105. *See* Dean Krishn et al., *Section 2032A - Special Use Valuation (Portfolio 833)*, BLOOMBERG TAX & ACCT. https://pro.bloombergtax.com/portfolio/section-2032a-special-use-valuation-portfolio-833/ (last visited Mar. 18, 2021).
106. *See* Kelley et al., *Qualification Based on the Use to Which the Property is Applied: In General*, 2 EST. PLAN. FOR FARMERS & RANCHERS § 15:20 (3d ed. 2020).

intended to fit within the special valuation category.[107] Second, there is also a ten-year recapture period that begins if an eligibility requirement is violated within ten years.[108] If a violation occurs then the tax savings from the special valuation has to be returned and repaid to the government.[109]

B. State Inheritance Tax Liability and Timing of Payment

An inheritance tax "is a state tax on assets inherited from someone" at their time of death.[110] Although inheritance is not considered income at the federal level, inheritances can be taxable at the state level.[111] Additionally, while the deceased's estate pays the estate taxes, the beneficiary pays the inheritance tax.[112] The impact of inheritance taxes at the state level depends on average farm, or ranch, value and size.[113] States with higher average ranchland or farmland value, like Illinois and Iowa, are more likely to achieve tax exemption levels on smaller farms or ranches.[114] In contrast, larger family farm or ranch operations in Western states will be negatively impacted by inheritance taxes despite the lower farmland or ranchland values.[115] As in the case of estate taxes, if the exemption value decreases, it takes fewer acres to reach the inheritance tax threshold.[116]

Six state examples of how much each state charges for inheritance taxes include: Pennsylvania at 4.5%–12%; New Jersey with 0%–16%; Nebraska with 1%–18%; Maryland with 10%; Kentucky with 4%–16%; and Iowa 5%–15%.[117] Only six states impose an inheritance tax, and the tax being imposed depends on the relationship between the beneficiary and the deceased person.[118]

The beneficiary is responsible for paying the state inheritance tax.[119] Depending on the relationship with the decedent, certain individuals may get

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107. *See* Rita Noll, *Taxation: Valuation of Farmland for Estate Tax Purposes, Qualifying for I.R.C. § 2032A Special Use Valuation*, 23 WASHBURN L. J. 638, 644 n. 27 (1984).

108. *See id.* at 653.

109. *See id.* at 654.

110. Tina Orem, *Find Out If You'll Owe Inheritance Tax*, NERDWALLET (Sept. 24, 2020), https://www.nerdwallet.com/blog/taxes/inheritance-tax/#:~:text=The%20estate%20tax%20is%20a,from%2018%25%20to%2040%25.

111. *See id.*

112. *See id.*

113. American Farm Bureau Federation, *Estate Taxes Are a Threat to Family Farms*, THE FENCE POST (Oct. 23, 2020), https://www.thefencepost.com/news/estate-taxes-are-a-threat-to-family-farms/.

114. *See id.*

115. *See id.*

116. *See id.*

117. *See* Amanda Dixon, *All About the Inheritance Tax*, SMARTASSET (Feb. 13, 2020), https://smartasset.com/taxes/all-about-the-inheritance-tax.

118. *See id.*

119. TURBOTAX, *What are Inheritance Taxes*, https://turbotax.intuit.com /tax-tips/estates/what-are-inheritance-taxes/L93IUc3sC (last accessed Oct. 20, 2020).

an exemption or reduction in the inheritance tax.[120] In most circumstances, states exempt a spouse from the inheritance tax when the property is inherited from another spouse.[121] Additionally, children and other dependents can be qualified for the same exemption, but occasionally only a portion of the property qualifies.[122] The higher rates of taxes will ordinally be paid by the individuals inheriting property from a descendent with whom they have no familial relationship with.[123]

As of 2020, only six states depended on an inheritance tax: Iowa, Kentucky, Maryland, Nebraska, New Jersey, and Pennsylvania.[124] Even if an individual lives in one of these six states, spouses will typically be automatically exempt from inheritance taxes.[125] Rates and tax laws within states can vary from year to year though so predictability in even these six states can be difficult.[126] Life insurance made payable to a specifically named beneficiary is not often subject to inheritance taxes.[127] Nevertheless, inheritance taxes only really apply to the sum exceeding the exemption.[128]

Certain states maintain their own thresholds for filing deadlines, valuation determinations, and taxation processes.[129] For example, the value of the property for inheritance taxes in Iowa can be calculated in one of three ways: at market value on the date of the decedent's death, market value six months after the date of the decedent's death, or special valuation.[130] After the property is valued, liabilities and debts are deducted to determine the share of each recipient.[131] These debts can include debts the decedent owed at the time of death, mortgages or liens securing debt on the decedent's Iowa properties, or other taxes in place before death.[132] Fiduciary and attorney fees, as well as funeral expenses, are also deductible from the gross estate.[133] In Iowa, the inheritance tax applies to a beneficiary's share and requires payment by the beneficiary, but the personal representative is in charge of making sure the tax is collected and paid.[134]

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120. *See id.*
121. *See id.*
122. *See id.*
123. *See id.*
124. Amanda Dixon, *All About the Inheritance Tax*, SMARTASSET (Feb. 13, 2020), https://smartasset.com/taxes/all-about-the-inheritance-tax.
125. *See id.*
126. *See id.*
127. *See id.*
128. *See id.*
129. *See* IOWA DEP'T OF REVENUE, *Introduction to Iowa Inheritance Tax*, https://tax.iowa.gov/inheritance (last accessed Oct. 23, 2020).
130. *See id.*
131. *See id.*
132. *See id.*
133. *See id.*
134. *See id.*

III. Importance of Family Farms and Ranches

The United States Department of Agriculture found that family farms are an integral part of U.S. agriculture and represent 98% of all farms as well as 88% of production.[135] Small family farms operate almost half of U.S. farmland and generate around 21% of production.[136] Midsize or large-scale family farms produce around 66% of overall production.[137] The remaining 2.1% of farms are non-family farms and account for around 12% of overall production.[138] The specific commodities produced by each type of farm vary, but most small farms produce the majority of U.S. poultry and hay.[139] Midsize and larger farms produce most of the cotton, cash grains, or oilseed.[140] Larger farms also produce the majority of dairy in the United States.[141] Non-family farms and large-scale farms produce the dominant portion of "beef production and high value crops which include vegetables, fruits/tree nuts, and nursery/greenhouse products."[142] In the United States, more than 97% of beef ranches are categorized as family-owned or operated.[143] Nearly 50% of beef in the United States is raised in all or part of Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.[144] In fact, overall, there are .289 cows per person in the United States.[145]

Farm and ranching households are not low-income, nor are they low-wealth.[146] The farms being operated as "[r]etirement farms . . . and low-sale farms . . . are the only types of farms that have income falling below median income for overall United States households or households utilizing self-employment as their income."[147] Retirement farms are those farms where the principal operator reported that they were retired from farming, and low-sale farms are those farms with operators that engage primarily in farming and make less than $150,000 in income per year.[148]

Many family farm households combine farm and off-farm work to generate income and receive other benefits from an off-farm job.[149] Off-farm

135. Christine Whitt, *A Look at America's Family Farms*, USDA (Jan. 23, 2020), https://www.usda.gov/media/blog/2020/01/23/look-americas-family-farms.
136. *See id.*
137. *See id.*
138. *See id.*
139. *See id.*
140. *See id.*
141. *See id.*
142. *See id.*
143. Caitlin Dewy, *A Growing Number of Young Americans Leave Desk Jobs to Farm*, FRR (Nov. 23, 2017), https://familyranchraised.wordpress.com/2017/06/03/featured-content/.
144. *See id.*
145. *See id.*
146. *See* Whitt, *supra* note 135.
147. *See id.*
148. *See id.*
149. *See id.*

occupation farms are those where the principal operator reports doing something other than farming as their main occupation.[150] Over 80% of these operators work at an offsite location, as do 62% of their spouses.[151]

A. How Ranchers and Farmers Are Affected

1. Land Being Sold

The majority of ranches and farms in the United States are operated and owned by generational producers, meaning that they are family run farms and ranches.[152] The United States Department of Agriculture (USDA) categorizes family farms that are organized like a sole proprietorship, partnership, or family corporation as family farms.[153] The USDA does not include farms with hired managers or farms identified as nonfamily cooperatives or corporations as "family farms."[154] Estate and inheritance taxes make it difficult for farmers and ranchers passing on ownership of their land.[155] Children usually pay higher taxes than spouses, which makes it extremely difficult for parents to pass the land to their children.[156] As cities continue to grow and prices for land inflate, farmland is being absorbed for development into housing or shopping centers.[157]

Farms and ranches with assets above the exemption for estate or inheritance taxes often must liquidate assets to fulfill tax obligations, which can be as high as forty percent of the overall taxable amount.[158] The taxes—estate taxes in particular—are based on market value of the asset.[159] As a result of consistent appreciation in agricultural land and assets, this tax burden can be significant for farmers and ranchers.[160]

During 2020, the national average value of farm real estate (including all land and buildings on farms) was $3,160 per acre, unchanged from 2019's record high. Based on this, it would take approximately 3,700 acres to reach the current $11.58 million estate tax exemption.

Importantly, over the last decade, the value of farmland in the U.S. has increased by nearly 50%, or $1,010 per acre. Given that increase, it would

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150. *See id.*
151. *See id.*
152. *Family Farms*, U.S. DEP'T OF AGRIC., https://nifa.usda.gov/family-farms (last accessed Oct. 23, 2020).
153. *See id.*
154. *See id.*
155. Roy Reed, *Death Taxes Compelling Heirs to Sell Farm Land*, N.Y. TIMES (Feb. 15, 1976), https://www.nytimes.com/1976/02/15/archives/death-taxes-compelling-heirs-to-sell-farm-land-death-taxes-force.html.
156. *See id.*
157. *See id.*
158. *See* American Farm Bureau Federation, *supra* note 113.
159. *See id.*
160. *See id.*

take 32% less acres to reach the estate tax exemption level in 2020 than it would have in 2010.

Based on the most recent Census of Agriculture, more than 74,000 family farmers were operating 2,000 or more acres in 2017, suggesting that approximately 3.6% of the more than 2 million family farms could potentially have farm assets that exceed the estate tax exemption. These 74,000 farms operate more than 449 million acres, indicating that nearly 50% of the farmland in the United States could face increased liquidation pressure upon the transfer of assets at death.[161]

The reality that farm and ranch assets often come from machinery or livestock rather than simply real estate indicates that these numbers could be an understatement of the family farms that exceed estate or inheritance tax exemption.[162] This concern is compounded when viewing the future of the estate tax if permanent legislation is not introduced.[163] The likelihood that an even larger portion of farms and ranches will fall into the category of those not exempt from estate taxes means that farms and ranches face an uncertain and worrisome future.[164]

Farm and ranch expenses are significant, representing $326 billion in 2017 for feed, livestock purchases, hiring labor, fertilizers, and cash rents.[165] In comparison, the average farm income in 2017 was $43,053.[166] Less than half of the total farms and ranches in 2017 had positive net cash income.[167] In addition, the number of producers in 2017 grew seven percent because more farms and ranches reported multiple producers.[168] The average age of producers was 57.5 and increased to about 58.7 after 2012.[169] On the other hand, one in four producers were just beginning their career as a farmer and possessed less than ten years of experience.[170]

Inflation of the value for farmland and ranchland is a dominant factor for why estate taxes continue to burden passing on agriculture-based land.[171] The 2020 average farm real estate was $3,160 per acre which is 5.3% higher than the value in 2015.[172] Factors such as commodity prices or income earned from the land can affect the value as well as debt accrued with land acquisition or government policies such as taxes, trade, energy, or input

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161. *See id.*
162. *See id.*
163. *See id.*
164. *See* American Farm Bureau Federation, *supra* note 113.
165. *See* Teresa White & Sue King, *supra* note 1.
166. *See id.*
167. *See id.*
168. *See id.*
169. *See id.*
170. *See id.*
171. *See* Ann M. Johanns, *Getting Started in Farming: Inheriting a Farm*, IOWA STATE UNIVERSITY EXTENTION AND OUTREACH, https://www.extension.iastate.edu/agdm/wholefarm/html/c4-07.html (last accessed Jan. 3, 2020).
172. *See id.*

costs.[173] In comparison to ranchland used for grazing, farmland has higher values due to higher per-acre returns based on crop production.[174]

> Between 2019 and 2020, U.S. average cropland and pastureland values both fell by 0.8 percent, to $4,100 and $1,400 per acre, respectively . . . In the Pacific region, cropland was worth four times as much as pastureland in 2020 ($7,240 vs $1,750). Since 2016, cropland values have risen the most in Pacific States (6.5 percent), while they have fallen the most in the Northern Plains (-11.7 percent). Over the same timeframe, pastureland values have increased the most in the Southern Plains (3.5 percent), and have fallen the most in the Corn Belt (-6.2 percent).[175]

The land in the United States for ranchland and farmland is broken up into 10 economic regions: Northeast, Lake States, Corn Belt, Northern Plains, Appalachian, Southeast, Delta States, Southern Plains, Mountain, and Pacific.[176] The states comprising each region are as follows:

Northeast………	Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont.
Lake States……..	Michigan, Minnesota, Wisconsin.
Corn Belt……….	Illinois, Indiana, Iowa, Missouri, Ohio.
Northern Plains…	Kansas, Nebraska, North Dakota, South Dakota.
Appalachian……	Kentucky, North Carolina, Tennessee, Virginia, West Virginia.
Southeast……….	Alabama, Florida, Georgia, South Carolina.
Delta States.........	Arkansas, Louisiana, Mississippi.
	Southern Plains, Oklahoma, Texas
Mountain……….	Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming.
Pacific………….	California, Oregon, Washington.[177]

The value of the land used for farming in the Corn Belt is about $6,110 as opposed to the $2,340 value for pastures in the same areas.[178] This difference in pricing for farmland and ranchland is reflected throughout the other

173. *See id.*
174. *Farmland Value*, U.S. DEP'T OF AGRIC., https://www.ers.usda.gov/topics/farm-economy/land-use-land-value-tenure/farmland-value/#:~:text=U.S.%20farmland%20values%20remained%20 high,and %20Wealth%20Statistics%20for%20details) (last accessed Jan. 4, 2021).
175. *See id.*
176. *See id.*
177. *See Land Values 2020 Summary*, U.S. DEP'T OF AGRIC., (Aug. 2020) https://downloads.usda.library.cornell.edu/usda-esmis/files/pn89d6567/js957404w/hq37w9890/land0820.pdf.
178. *See id.*

regions, as demonstrated by the $3,160 value for farm land and the $1,400 value for pasture land.[179] This means that farmers and ranchers with larger operations, especially those that are generationally owned and later increased in size, face falling into lower tax exemption brackets.[180] The importance of eliminating the estate tax is crucial to save these producers from facing repeated payment of large sums on the same taxable assets and property.[181] Currently farmers and ranchers alike face the issue of either having to spend incredible amounts on estate planning or the alternate option of having to sell their land to pay hefty estate taxes.[182]

Small family farm and ranches have a higher likelihood of being run by the full owners of the land.[183] Around 45% of farmland is used for small family farming and 46% of that land is utilized by individuals that own all of the land operated for farming.[184] In addition, 51% of farmland is midsized or large family farms and can include rented land as well as owned.[185] Farms not being run by families only accounts for 4% of all farmland in the United States and 28% of that is fully owned operations.[186] Ten percent, (93 million acres) of all farmland was expected to be transferred from 2015–2019.[187] Six percent of that farmland changed hands using gifts, wills, or trusts.[188] Also, fourteen percent of the land transferred was sold between relatives and was anticipated to stay family operated or sold later to an outside buyer.[189]

2. Case Examples

William G. Cox, a resident of Capistrano Beach, and his family lost their farm due to the high estate tax bill after his mother passed away.[190] Cox wrote to Mr. Royal, another farmer, and explained that the I.R.S. estate tax is causing big corporations to buy the small farms and will not have to pay the estate tax because corporations do not die.[191] This is also causing family farms and ranches to have to form trusts and corporations so they do not lose the land.[192]

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179. *See id.*
180. *See Farmland Value*, *supra* note 174.
181. *See id.*
182. *See id.*
183. Daniel Bigelow, *U.S. Farmland Ownership, Tenure, and Transfer*, USDA (Aug. 2016), https://www.ers.usda.gov/webdocs/publications/74672/eib-161.pdf?v=4582.9.
184. *See id.*
185. *See id.*
186. *See id.*
187. *See id.*
188. *See id.*
189. *See id.*
190. *See* Reed, *supra* note 155.
191. *See id.*
192. *See id.*

3. Foreclosures and Bankruptcies

Farm debt in 2019 has a projected record high value of $416 billion with $257 billion being in real estate debt.[193] Chapter 12 bankruptcies remain elevated; however, the highest filings were in Wisconsin with 48 filings, Georgia and two other states with 37 filings, and Iowa along with 9 other states at or above their 10-year highs.[194] Overall, all regions saw higher bankruptcy rates in 2019 than in 2018, and although many included other types of debts, many faced this hardship as a result of the estate related debts.[195]

While the U.S. stock market soared to record highs in 2019, farmers had incredible difficulty paying their bills in the agricultural sector.[196] Despite a less than one percent increase, farm incomes fell in places like Colorado, Kansas, Nebraska, Oklahoma, Wyoming, and parts of Missouri and New Mexico.[197] The household and capital spending for farms also fell, although commodities and government aid increased.[198] The American Farm Bureau Federation reported 580 Chapter 12 bankruptcy filings, and while portions of these occurrences were based on actions taken by countries such as China as a response to President Trump's threats to focus U.S. production within its own borders, portions were also a result of farmers and ranchers having to pay state estate or inheritance taxes.[199]

4. Case Examples

Lloyd Royal is a 59-year-old ordinary farmer that makes a modest living.[200] However, if Mr. Royal dies, he would leave his wife Doris a $32,000 debt based on the I.R.S. Federal estate taxes.[201] This is a result of inflation and spiraling land prices causing their land price to quadruple in value since they bought it.[202] These inflating land prices have resulted in crippling death taxes and an inability for young people to begin farming or ranching.[203] It is common knowledge in the agriculture community that ranchers and farmers live poor and die rich, and are cash poor and property

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193. FARM BUREAU, *Farm Bankruptcies Rise Again: Chapter 12 Filings Increase 24% Compared to Year-Ago Levels*, (Oct. 30, 2019), https://www.fb.org/market-intel/farm-bankruptcies-rise-again.

194. *See id.*

195. *See id.*

196. Clive McKeef, *U.S. Stock Market at Record But Farm Bankruptcies at Highest Since 2011*, MARKET WATCH (Nov. 17, 2019, 10:14 AM), https://www.marketwatch.com/story/us-stock-market-at-record-but-farm-bankruptcies-at-highest-since-2011-2019-11-16.

197. *See id.*

198. *See id.*

199. *See id.*

200. *See* Reed, *supra* note 155.

201. *See id.*

202. *See id.*

203. *See id.*

rich.[204] To begin farming in 1976, it was estimated to require at least $250,000 to afford high land prices and equipment.[205] The same year, 1976, Mrs. Royal and several of her friends managed to gain 70,000 signers in forty-two different states asking Congress to step in and do away with the tax laws.[206] Gilbert Brody, the president of Wisconsin's National Farmers Union, was also quoted for saying that a farmer making $10,000–$12,000 would leave an estate valued for about $320,000.[207] The resulting likelihood is that families like the Royals in ranching and farming, even in 1976, would not have been able to shoulder the burden of the debt they would leave behind.[208] In fact, another individual, William Jones, and his family were farmers for many years before they lost control of the land.[209] His family owned and operated an orchard for over 100 years, but due to the tax in an inflationary period, the land is going to be confiscated for taxes.[210]

B. How Ranchers and Farmers Should Plan

1. Transition Planning

In order to develop a transition plan, an individual has to determine what will actually transfer and the value of it.[211] To achieve this, a balance sheet—a systematic organization of the assets owned and owed based on taxes or debts by a business or individual—can be prepared.[212] Liquid assets are considered those that can be converted into cash quickly without losing value.[213] Examples are accounts receivable, stocks, bonds, and bank account balances.[214] In addition, an anticipated retirement lifestyle can help ensure retirement is sustainable for a long period.[215] Equitable and equal in a transition plan must be defined separately.[216] Equal is defined as the "same" in regards to quantity, size, or value.[217] Equitable, however, is defined as fair and impartial.[218] When trying to transition property to the next generation,

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204. *See id.*
205. *See id.*
206. *See* Reed, *supra* note 155.
207. *See id.*
208. *See id.*
209. *See id.*
210. *See id.*
211. Robert Fears, *Pass it on: Generational transfer of the ranch or farm*, THE EAGLE (Dec. 17, 2018), https://theeagle.com/landandlivestockpost/pass-it-on-generational-transfer-of-the-ranch-or-farm/article_df43eee6-fc11-11e8-baca-0bb2ab43d5b8.html.
212. *See id.*
213. *See id.*
214. *See id.*
215. *See id.*
216. *See id.*
217. *See id.*
218. *See* Fears, *supra* note 211.

many parents try to ensure their children receive fair and equal amounts.[219] Despite this, many times the transition plan results in equitable shares.[220]

The best way to transfer family owned farms or ranches can vary, so there are several steps that make a difference when trying to plan for a clean transition.[221] The first step is for the farmer or rancher to define their goals by prioritizing needs.[222] These needs are assets and can include the needs of future generations, retirement, transition in responsibilities, etc.[223] It is common for owners to begin allowing their heirs to manage purchases for the ranch or farm and tend to the various tasks required for upkeep and management.[224] This step also includes figuring out the importance of things such as the family home, certain charity donations, or stipulations for the use of the land.[225] This is one of the most important steps in transitioning because the definitions used determine how the land is used and run in the future as well as whether there are additional requirements for the next generation.[226]

Another consideration when planning for transition is determining who needs to be included in the transition or succession plan.[227] A farmer or rancher trying to transition the operation to the next generation has to decide whether there are one or more heirs; how the split will be determined between ranchers/farmers and other heirs not involved with ranching or farming; and how increasing the number of heirs will impact the succession plan.[228] If there is only one heir involved with the farm or ranch, then it is important to have a will drafted that provides guidance to the heir as beneficiary to ensure they are interested in taking over.[229] If multiple heirs are involved, then the situation becomes more complicated.[230] It becomes important for the farmer or rancher to utilize a third-party advisor in determining the best business structure for the ranch or farm.[231]

If there is a mix of farming or ranching heirs and non-farming or ranching heirs, then the inheritance can be split three main ways: making the inheritance reflect the stakeholder's intent or desire, creating a structured purchase, or dividing the farmland.[232] To make the inheritance reflect the

219. *See id.*
220. *See id.*
221. FARM BUREAU FINANCIAL SERVICES, *Your Complete Guide to Farm Succession Planning* (Aug. 31, 2020), https://www.fbfs.com/learning-center/what-you-need-to-know-about-farm-succession-planni ng.
222. *See id.*
223. *See id.*
224. *See id.*
225. *See id.*
226. *See id.*
227. *See* FARM BUREAU FINANCIAL SERVICES, *supra* note 217.
228. *See id.*
229. *See id.*
230. *See id.*
231. *See id.*
232. *See id.*

stakeholder's intent or desire, it would be ideal to pass as much of the farm or ranch on in one unit.[233] This can occur by passing down things such as "rental properties, gas and mineral rights, and retirement accounts to non-farming/ranching heirs" and granting the ranching/farming heirs control of the farmland or ranchland, livestock, or equipment required to operate the farm/ranch.[234] That approach alleviates issues between the different heirs while also ensuring the land and assets are passed on in a way that suits the rancher/farmer.[235] Another option is to allow the heirs to purchase the land from other heirs over a period of years.[236] For instance, if three heirs are set to inherit the farm or ranch, then the plan can be structured so each heir receives an equal portion, and one heir has the ability to purchase the land from the other heirs over a period of twenty to thirty years by contract for deed.[237] The final option is to simply divide the farmland or ranchland equally between heirs, and allow them the freedom to choose what they want to do with the properties.[238] However, this is an incredibly risky option because it can reduce the value of the original property and leave heirs little choice other than to sell the land to non-family individuals.[239] The viability of the business and the likelihood the property stays in the family are also limited when owners decide to split the land among heirs.[240]

There are also asset determinations that have to be made during farm succession or transition planning, including what to do with machinery, livestock, feed, or land.[241] Machinery has the ability to be sold outright or in installments, or the farmer or rancher can transfer ownership when the machinery is traded.[242] Transferring machinery by gift helps limit income tax liability but can result in gift tax liability.[243] If the machinery is leased to a successor, then liability for repairs must also be determined.[244] Feed and livestock can also be transferred in a number of ways, including by sale, gift, or inventory of the livestock.[245] If livestock is sold to the successor, then payments can come as installments or in a roll-over approach.[246] In the roll-over approach, the rancher/farmer retains ownership of the breeding herd, but the successor will also share joint ownership of any offspring.[247] If

233. *See* FARM BUREAU FINANCIAL SERVICES, *supra* note 217.
234. *See id.*
235. *See id.*
236. *See id.*
237. *See id.*
238. *See id.*
239. *See* FARM BUREAU FINANCIAL SERVICES, *supra* note 217.
240. *See id.*
241. *See id.*
242. *See id.*
243. *See id.*
244. *See id.*
245. *See* FARM BUREAU FINANCIAL SERVICES, *supra* note 217.
246. *See id.*
247. *See id.*

the livestock and feed are inventories, then the rancher or farmer will receive the inventory value of the asset after the sale, and any leftover proceeds are then divided between the rancher or farmer and the successor.[248] This approach also has tax implications, so it is important for a tax professional to assist in this transition.[249] The final asset is typically land, which can be transferred by sale, gift, or at the time of death of the rancher/farmer.[250] Transferring the land upon death is the most common approach because it allows the rancher or farmer to use the property and receive income even after retirement.[251] However, state inheritance or estate tax laws as well as federal estate taxes can make a significant impact on the future of the land.[252]

2. Estate Planning

Several issues exist in estate planning for farmers and ranchers and can compound any already present difficulties for passing on land to another generation.[253] The main reason farms do not survive is that there is no estate plan in place.[254] In fact, over 75% of farms have no estate plan in place, which results typically in the loss of a multi-generational farm or ranch.[255] The next biggest reason is that farmers and ranchers fail to have a current estate plan.[256] As the lives of farmers and ranchers change, their estate plans should change as well.[257] If there is no plan, farmers and ranchers need to seek advice regarding their options for planning and assurance that their goals for the land are achieved.[258] This can include getting a team together of attorneys, accountants, bankers, or even insurance specialists to come up with an organized plan that reflects what the rancher or farmer realistically sees as the future of the land.[259] The out-of-date estate plan is also an issue if it does not accurately reflect changes that have occurred such as "births, deaths, marriages, divorces, illnesses, bankruptcies, lawsuits, jackpots," or even changing or repealed laws.[260]

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248. *See id.*
249. *See id.*
250. *See id.*
251. *See id.*
252. *See id.*
253. *See id.*
254. Ryan F. Baker, *Farm Estate Planning – What You Need to Know*, OPEN ADVISORS (Jan. 14, 2020), https://www.myopenadvisors.com/farm-estate-planning.
255. *See id.*
256. *See id.*
257. *See id.*
258. WealthCounsel Staff, *Three Estate Planning Mistakes Farmers and Ranchers Make and How to Avoid Them*, WEALTHMANAGEMENT.COM (May 13, 2015), https://www.wealthmanagement.com/estate-planning/three-estate-planning-mistakes-farmers-and-ranchers-make-and-how-avoid-them.
259. *See id.*
260. *See id.*

Another issue that comes up in estate planning is reliance on joint accounts or previous designations for beneficiaries.[261] This mistaken reliance may result in subsidies, administered by the United States Department of Agriculture (USDA), being left on the table or unable to be utilized based on the particular program.[262] The farmers and ranchers in this circumstance also give up control of the real estate if they try to co-own the property.[263] Typically trusts or business entities such as corporations, partnerships, or limited liability companies are more beneficial options to retain subsidies, minimize liability, and retain control of the property itself.[264] The other problem with this method of planning is that assets from rights of survivorship with joint property, individual beneficiary designations for life insurance policies or retirement accounts, or payable on death (POD) or transfer on death (TOD) accounts do not pass through the will or trust.[265] These distributions are also not protected from creditors or lawsuits so the overall intent of the estate plan is frustrated.[266] Even though these assets avoid probate, they are still included in the taxable estate which means that the estate tax liability is increased dramatically.[267]

The last biggest issue ranchers and farmers face with estate planning is overlooking liquidity needs.[268] These expenses can include medical bills or even fees for attorneys, accountants, administration, and trustees.[269] The fact that the federal estate taxes and state inheritance or estate taxes are all due within this same time frame means that farmers and ranchers face incredible costs after the death of a previous owner.[270] Land for farms and ranches is illiquid as is the equipment used so if there is not a plan in place for immediate or long-term cash needs then families are forced to sell the land or even the equipment at a significantly reduced rate.[271] Trust and estate attorneys have the ability to assess these liquidity needs and develop a long-term plan for the rancher or farmer to manage their debt or expenses after death or incapacity occurs.[272] This can come in the form of life insurance, secured lines of credit and proper disability insurance, or long-term care insurance.[273] These individuals can also work with other attorneys to secure life insurance trusts, gift and sale arrangements in

261. *See id.*
262. *See id.*
263. *See id.*
264. *See* WealthCounsel Staff, *supra* note 257.
265. *See id.*
266. *See id.*
267. *See id.*
268. *See id.*
269. *See id.*
270. *See* WealthCounsel Staff, *supra* note 257.
271. *See id.*
272. *See id.*
273. *See id.*

exchange for private annuity or a note, and entity planning.[274] Each of these can make a difference to assist farmers and ranchers in paying off their debts without having to sell the land or equipment as a last-ditch effort to pay off the debts owed after the previous owner dies or is incapacitated.[275]

3. Intestate Succession

Intestate succession occurs automatically if there is no will in place, if the will is invalidated either completely or partially, or a trust is in place but assets did not get transferred to it.[276] A surviving spouse will ordinarily get some of the intestate estate unless a prenuptial agreement is in place.[277] Blood relatives and/or adopted children have the ability to receive inheritance, but stepchildren and in-laws are not eligible.[278] One advantage is it requires little to no effort on behalf of the estate owner.[279]

Succession planning is a process that allows the transfer of "knowledge, skills, labor, management, control and ownership between the generations."[280] The successful transition and transfer of farm and ranch property is dependent on the financial aspects as well as personal aspects.[281] Only around one percent of family-run farms and ranches are successfully transferred to a third generation and thirty percent of these businesses have not even considered a successor.[282] The majority of business owners for farms and ranches consider inadequate succession planning to be the biggest issue they face in business and the biggest threat to their livelihood.[283]

Succession planning involves several steps in order to provide stability for the operation and the best possible outcome for farmers and ranchers.[284] These steps include: (1) determining practicability of the transfer of the business; (2) choosing a successor; (3) starting the transfer of ownership to the successor; and (4) finalizing transfer of ownership responsibilities to the successor.[285] This process takes several years and experts in succession urge those trying to use succession planning to set a target date, facilitate training of the successor, and work with professional advisors in order to complete any type of succession planning.[286] These experts also encourage the setting

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274. *See id.*
275. *See id.*
276. *See* Fears, *supra* note 211.
277. *See id.*
278. *See id.*
279. *See id.*
280. *See* Bill Sheets, *Estate and Succession Planning for Farmers and Ranchers*, CPI, at 11 (last visited Nov. 11, 2020).
281. *See id.*
282. *See id.*
283. *See id.*
284. *See id.*
285. *See id.*
286. *See* Sheets, *supra* note 272.

of goals for the successor, incentives for retaining employees after the transition, considering other off-farm family member needs, and reviewing asset protection or liability insurance.[287] Each of these can play a major role in the successful transfer of farms or ranches to the next generation and the failure to utilize them can result in serious delay or complete failure to pass on the property.[288]

a. Trusts

There are several types of trusts including revocable living trusts, an irrevocable living trusts, testamentary trusts, and charitable trusts.[289] A revocable living trust for farm transfer gives the farmer the ability to retain ownership and control over distribution while avoiding the probate process.[290] An irrevocable living trust can only be used during the farmer's life, but the trust cannot be changed nor can assets be reclaimed.[291] A testamentary trust is effective at the time of the farmer's death and is typically created by a will.[292] The testamentary trust basically serves to minimize estate taxes while protecting assets.[293] Charitable trusts can be used to shelter capital gains tax and allow for more cash flow for retirees.[294] Trustees have the ability to act as an objective third party when issues arise among family members after transition occurs.[295]

Trusts can also have multiple goals such as "wealth replacement, providing for a special needs beneficiary and/or minor children, avoiding probate . . . or providing for a beneficiary or spouse without financial management skills . . . [296] Specifically, trusts are beneficial to individuals running farms or ranches because it sets up a transition so that estates will not be heavily damaged by estate or inheritance taxes.[297] If farmers or ranchers wait too long to take advantage of a trust system the resulting detriment could be that the heirs are unable to pay the taxes without having to sell off portions, or the majority, of the property.[298]

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287. *See id.*
288. *See id.*
289. *See* Baker, *supra* note 249.
290. *See id.*
291. *See id.*
292. *See id.*
293. *See id.*
294. *See id.*
295. *See* Sheets, *supra* note 272.
296. *See id.*
297. *See id.*
298. *See id.*

b. Wills

A will is a set of directions to distribute the property after a decedent passes away.[299] The will only take effect after the individual dies, and the decedent must have had testamentary capacity when it was written.[300] The will must also be correctly executed and probated.[301] Wills are useful because they can be individualized based on the needs of each farmer or rancher and can include specific provisions to assist children continuing the family business.[302] Wills can also be used to distribute assets to multiple children including "nonfarming heirs" and "farming heirs."[303] If a farmer or rancher is married, then each spouse should have a separate will.[304] Wills normally include:

- Appointment of a trusted personal representative (also known as an "executor") to handle the estate, collect assets, pay debts, and manage the distribution of assets according to the instructions in the will;
- Procedures for distributing property;
- Special mention of how the spouse will be treated under the will;
- Special mention of how children will be treated under the will;
- Incorporated trusts (often called "testamentary trusts") to help avoid estate taxes and protect the spouse and/or children;
- Special provisions to help farming heirs remain on the farm; and
- Provisions for the care of minor children.[305]

A farmer or rancher dying without a will leaves state law to determine the distribution of the farm or ranch.[306] Dying without a will is referred to as dying 'intestate' and is risky because the specific goals of transfer for the farmer or rancher are not taken into account by state law.[307] Additionally, the farmland or ranchland may be sold as opposed to passing to a child who wants to continue on the family farm or ranch legacy.[308]

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299. *See* Fears, *supra* note 211.
300. *See id.*
301. *See id.*
302. *See* CENTER FOR AGRICULTURE & FOOD SYSTEMS, *Wills*, https://farmlandaccess.org/wills/ (last accessed Nov. 11, 2020).
303. *See id.*
304. *See id.*
305. *See id.*
306. *See id.*
307. *See id.*
308. *See id.*

Wills can also be used in conjunction with other types of planning such as trusts, life insurance, and tax planning for estate and gift taxes.[309] In using a will for farm or ranch transfers, a public probate process involving a court is required, which can take from twelve up to eighteen months.[310] This process typically requires assistance from a probate attorney and can involve significant legal fees.[311] Estate planning attorneys are essential for drafting wills, setting up trusts, finding tax advantages, and helping find the best legal tools to meet transfer goals for farmers and ranchers.[312]

IV. ALTERNATIVES TO FEDERAL ESTATE TAX AND STATE INHERITANCE TAXES

A. Temporary Legislation

The Tax Cuts and Jobs Act was passed in 2017 and allowed farm and ranch businesses to stimulate the agricultural economy while growing their operations.[313] This Act also provided for many permanent tax provisions relied on by generational farmers and ranchers.[314] In fact, this Act doubled the estate tax exemption to $11 million per person and $22 million per couple.[315]

The constant change in exemption amounts reflect the inconsistency ranchers and farmers face when trying to create a succession plan.[316] Lawmakers also have the ability to further reduce exemption amounts, which makes it even more difficult for farmers and ranchers to try to make a succession plan that fits the needs of their property.[317] Many ranchers and farmers find themselves slowing business expansion and getting rid of assets to prevent tax liability as the only way to prevent heirs from suffering the consequences of burdensome estate and inheritance taxes.[318] However, this can negatively impact the future of not only the farm or ranch, but also the rural communities, jobs, and other businesses that the ranch or farm supports.[319] Currently, eliminating the federal estate tax or making the current $11.6 million exemption permanent are the best options for allowing ranchers and farmers to avoid the constant changing expectations for estate tax

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309. *See id.*
310. *See id.*
311. *See id.*
312. *See id.*
313. *See* FARM BUREAU, *supra* note 12.
314. *See id.*
315. *See id.*
316. *See* John Newton & Patricia Wolff, *Estate Taxes Are a Threat to Family Farms*, FARM BUREAU (Oct. 19, 2020), https://www.fb.org/market-intel/estate-taxes-are-a-threat-to-family-farms.
317. *See id.*
318. *See id.*
319. *See id.*

liability.[320] This would not only allow ranchers and farmers to successfully pass on operations to the next generation, but would also allow these operations to continue providing crucial commodities for the United States.[321]

B. Permanent Legislation

"Good tax policy is known for its certainty, if for no other characteristic. Without predictability, tax policy can create confusion and have a lethal effect on economic activity."[322] The problems with the federal estate tax and state inheritance taxes include discouraging savings and investment, hindering wage growth or job creation, preventing economic investment potential, and contradicting the creation of wealth.[323] The federal estate tax encourages individuals to consume wealth instead of investing so that they do not have to face liability later.[324] The tax also undermines the concepts of job creation and wage growth because it costs Americans between 170,000 and 250,000 potential jobs each year.[325] The investments that could be made to create more job opportunities are typically spent elsewhere due to fear of tax liability in the future.[326] In turn, this prevents the economy from being able to achieve its potential investment.[327] Employees are unable to work productively when they have poor access to tools, machines, or factories, and a boost in productivity then boosts wages.[328] The estate tax also contradicts wealth creation, which means that even those who work hard and save money or have illiquid monetary value such as farmers and ranchers, will undoubtedly face heavy taxes later on.[329]

While the Tax Cuts and Jobs Act has greatly benefited farmers and ranchers, there needs to be permanent legislation enacted because otherwise the exemption will revert back to the previous amount, which will result in more farms and ranches being subject to estate taxes.[330] The unpredictability essentially forces farmers and ranchers to spend their money on estate tax planning instead of growing their farm and ranch businesses.[331]

Agriculturists such as farmers and ranchers deal with constant uncertainty as a result of unpredictable commodity and product markets,

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320. *See id.*
321. *See id.*
322. William Beach, *Now Is the Time to Permanently Repeal Federal Death Taxes*, REPORT TAXES (June 16, 2003), https://www.heritage.org/node/18342/print-display.
323. *See id.*
324. *See id.*
325. *See id.*
326. *See id.*
327. *See id.*
328. *See id.*
329. *See id.*
330. *See* FARM BUREAU, *supra* note 12.
331. *See id.*

uncertain weather, fluctuating prices, and changing practices to promote sustainability.[332] When the Tax Cuts and Jobs Act was passed in 2017, farmers and ranchers saw the first glimpse of stability, allowing them to stimulate the agricultural economy and expand their operations.[333] The stepped-up basis for inherited property helped them plan for expenses without having to put the majority of their earnings towards estate planning.[334] If the exemption reverts back to pre-2017 levels, then farmers and ranchers will be subject to the uncertainty again regarding whether they can pass on their operation without the next generation being strapped with the burdensome tax.[335]

Some critics fear that a permanent repeal of legislation would be expensive.[336] More specifically, the Office of Management and Budget believes that estate and gift taxes could draw in around $205 billion from 2019 to 2028.[337] These same critics fear that a permanent repeal would merely ensure that those bringing in the highest of the income distribution would shelter their income.[338] Additionally, the estate tax could potentially lead to a reduction of charitable donations because gifts from an estate have the ability to qualify for full deduction of the taxable value of the estate.[339] The solutions these critics turn to include substituting an inheritance tax for the estate tax, limiting preferences, or even returning to prior law.[340] If an inheritance tax solution were utilized in place of the estate tax, critics believe it could give donors incentive to spread wealth and allow those receiving the wealth to get an exemption and utilize progressive tax rates.[341] This would result in the overall tax attributable to the estate to decrease dramatically.[342] The second option in place of an estate tax would be to limit preferences, which would modify trust arrangements, valuation discounts, and thus, reducing the ability of the savvy wealthy population by reducing or eliminating estate tax liability.[343] Reducing these preferences would also allegedly increase revenues that could assist in reducing the deficit or allow exemptions to return to pre-Tax Cuts and Jobs Act (TCJA) levels.[344] The final option—returning to prior law—would reduce the exemption levels to any of

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332. *See id.*
333. *See id.*
334. *See id.*
335. *See id.*
336. *See* TAX POLICY CENTER BRIEFING BOOK, *Key Elements of the U.S. Tax System*, https://www.taxpolicycenter.org/briefing-book/how-could-we-reform-estate-tax (last visited Dec. 29, 2020).
337. *See id.*
338. *See id.*
339. *See id.*
340. *See id.*
341. *See id.*
342. *See id.*.
343. *See id.*
344. *See id.*

those occurring since 2000.[345] This would drastically increase the number of estates that would reach the threshold for exemptions thus increasing the number of those liable for estate taxes.[346]

Despite the concerns from those opposed to repealing the federal estate tax, the tax is the primary obstacle for generational-owned farms and ranches.[347] The U.S. Department of Agriculture estimated 91% of farm and ranch assets are illiquid, so they cannot be easily converted to cash.[348] This means that the "simple" solution of limiting preferences for reducing or eliminating tax liability means that family-owned farms and ranches are strapped with a burdensome estate tax which forces them to sell their land, equipment, or other parts of their operation.[349] These farms and ranches already pay yearly taxes based on their income and land; however, the estate tax allows the federal government to bill family farms and ranches twice for the same assets.[350]

The claim that only the rich feel the burden of the estate tax does not take into account the fact that farmers and ranchers suffer when their money is diverted from investment in businesses or employees and must be put towards fees for estate planning.[351] The cost for family farms and ranches to estate plan can range from thousands to hundreds of thousands, and some may even restructure their business to impede their growth to avoid estate tax liability.[352] The consequence of this alternative route is the reduction of the economic activity in rural communities that would be better served by allowing family farms and ranches to avoid the death tax and spend the estate planning money to expand and hire additional employees.[353]

A federal inheritance tax, the other alternative to the federal estate tax, would also be unfair for family farms and ranches because agricultural property is usually owned for many years before the owner's death.[354] Agriculture professionals see this as a serious issue because taxing the full capital gain does not account for the fact that the value of family-owned farms and ranches is a result of inflation.[355] Present law dictates that inherited property gets full fair market value, so if the value of the property has

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345. *See id.*
346. *See id.*
347. *See* Kevin Kester, *An Unfair Burden to Farmers*, U.S. NEWS & WORLD REPORT (Oct. 3, 2017), https://www.usnews.com/opinion/letters/articles/2017-10-03/the-estate-tax-has-real-negative-consequences-for-farmers-and-ranchers.
348. *See id.*
349. *See id.*
350. *See id.*
351. *See id.*
352. *See id.*
353. *See id.*
354. *See* Steve Davies, *Farmers Could Be Hit Hard By Some Aspects of Biden Tax Plan*, AGRIPULSE (Oct. 14, 2020 at 6:48 a.m.), https://www.agri-pulse.com/articles/14644-farmers-could-be-hit-hard-by-some-aspects-of-biden-tax-plan.
355. *See id.*

appreciated since the decedent gained ownership, then the increase in value escapes capital gains tax.[356]

For instance, a farmer dying with around $5 million in assets sees the assets receive a "step-up" to fair market value.[357] Biden has proposed an elimination of the "step-up" basis, which would mean in the previous scenario the farm would be forced to pay $5 million right away after the decedent's death.[358] As a result of the previously discussed illiquidity, the family farm or ranch inheritance tax would be nearly impossible to pay; also, if the gains are put on the next generation then years of accounting records would be required to determine the new cost basis.[359]

Despite criticism that repealing the estate tax would essentially create and encourage permanent aristocracy in the United States, the estate tax is a small and relatively inconsequential part of the overall federal tax system.[360] "Even if the estate tax were repealed, the federal tax system would still remain highly progressive."[361] Repealing the estate tax would not, as critics have said, create complete aristocracy and would not lower taxes on wealthy Americans much at all.[362] The Department of Treasury determined that the wealthy Americans, the .1% of taxpayers, pay 39.2 percent of their income in federal taxes; whereas the remaining 90% of taxpayers pay 14.1% of their income.[363] Therefore, even with the federal estate tax repealed, the wealthy are not being favored nor are they benefitting significantly from the repeal.[364] On the other hand, the farmers and ranchers who own generational operations and fall into the exemption range are being hit by the tremendous tax and are facing the reality of losing their business if they have do not have a strong estate plan in place.[365]

> Using the same data from Treasury, I've graphed how much each income group would pay in taxes in 2016 if the estate tax didn't exist. The change is underwhelming. Under this scenario, instead of paying 31.9 percent of their income in taxes, the 0.1 percent richest American households would pay a tax rate of 31.2 percent.[366]

356. *See id.*
357. *See id.*
358. *See id.*
359. *See id.*
360. Scott Greenberg, *Repealing the Estate Tax Would Not "Create a Permanent Aristocracy Overnight*, TAX FOUNDATION (Aug. 18, 2016), https://taxfoundation.org/repealing-estate-tax-would-not-create-permanent-aristocracy-overnight/.
361. *See id.*
362. *See id.*
363. *See id.*
364. *See id.*
365. *See id.*
366. *See id.*

So, in reality, even if the estate tax were repealed, those falling into the category of "high-income taxpayers" would still be liable for the United States' tax burden.[367] Therefore, the claim that repealing the estate tax would create permanent aristocracy in the United States is false and fails to acknowledge the reality that those farmers and ranchers falling into the taxable estate are losing the ability to continue production of vital American resources.[368]

Other countries have already done away with an estate tax or simply do not possess one.[369] Japan has the highest estate tax rate at 55%; South Korea has an estate tax rate of 50%; France implements its estate tax at 45%; and the United States has an estate tax rate of 40%.[370] One study showed that "[t]hirteen countries or jurisdictions have repealed their estate or inheritance taxes since 2000."[371] Another study highlighted that out of fifty countries surveyed, twenty-four have no inheritance or estate tax.[372] This includes countries such as Sweden, Australia, Canada, and New Zealand.[373] Many countries recognize that estate tax is not a valuable source of revenue.[374] If the United States were to follow suit with these countries, then it is possible the capital stock would increase by 2.2%, around 139,000 jobs would be created, and federal revenue would increase.[375]

C. Temporary Estate and Inheritance Tax Exemptions for Federal and States

In Illinois, although the estate taxes were repealed, they were later reinstated in 2011.[376] The exemption increased in 2012 and again in 2013.[377] Illinois utilizes a graduated estate tax system that can reach up to sixteen percent.[378] Citizens in Illinois must pay an estate tax if the worth of the estate is more than $4 million.[379] The Illinois exemption does not allow for married couples to pass the exemption between spouses; thus, if both spouses die the exemption is still $4 million.[380] Illinois also uses the guideline that if the

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367. *See id.*
368. *See id.*
369. *See id.*
370. Chris Edwards, *Repealing the Federal Estate Tax*, TAX & BUDGET BULLETIN (June 2006), https://www.cato.org/sites/cato.org/files/pubs/pdf/tbb-0606-36.pdf.
371. Alan Cole, *Estate and Inheritance Taxes around the* World, TAX FOUNDATION (Mar. 17, 2015), https://taxfoundation.org/estate-and-inheritance-taxes-around-world/.
372. *See* Edwards, *supra* note 369.
373. *See id.*
374. *See* Cole, *supra* note 370.
375. *See id.*
376. *See id.*
377. *See* FARM BUREAU, *supra* note 12.
378. Ben Geier, *Illinois Estate Tax*, SMARTASSET (July 29, 2019), https://smartasset.com/estate-planning/illinois-estate-tax.
379. *See id.*
380. *See id.*

taxable estate is over $4 million, the entire estate is taxed.[381] The following explains how the Illinois estate tax is imposed:

> Let's say your total estate is worth $5.5 million. First, you deduct $60,000 (per the Illinois Secretary of State), leaving an adjusted taxable estate of $5,440,000. Using the tax table below, you see that the base tax for this bracket is $402,800. The rate of 12% applies to the $400,000 above that amount, which comes to $48,000. If you add that to the base rate, the total tax is $450,800. Note that this number may be reduced based on any federal estate taxes owed.[382]

Illinois does not require citizens to pay any inheritance tax; however, individuals with taxable estates in other states may still be responsible for that state's inheritance taxes.[383] States without an inheritance tax, such as Illinois, often use the estate tax to tax large estates being passed on because inheritance taxes would impose a tax on recipients after the inheritance has been distributed.[384]

In New York, the state exemption was increased on an annual basis until it was set to match the federal estate tax exemption of 2019.[385] Deaths occurring after January 1, 2020, are subject to state estate taxes if the estate values more than $5,850,000.[386] The estate tax rate in New York ranges from five percent to sixteen percent.[387] New York does offer an unlimited marital deduction, so most married couples are not responsible for any federal or estate tax when their spouse dies.[388] New York differs from other states based on its estate tax regime because if a decedent's estate is large enough to meet the estate tax threshold, only the amount in excess of the exemption is taxed.[389] Those estates that exceed the exemption amount by five percent or more receive no exemption from New York estate taxes, and the estate's entire value is subject to the state estate tax.[390] The following hypothetical shows how the New York estate tax impacts its citizens:

> A New York decedent dies in June 2020, leaving a taxable estate of $5,825,000. No federal or New York estate tax is due. However, if the estate was valued at $6,150,000, which exceeds the New York exemption amount

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381. *See id.*
382. *See id.*
383. *See id.*
384. *See id.*
385. *See* FARM BUREAU, *supra* note 12.
386. Heintz & Beth A. Sharpf, *New York Estate Tax and Its Dreaded "Cliff"*, THE NATIONAL LAW REVIEW (Monday, June 8, 2020), https://www.natlawreview.com/article/new-york-estate-tax-and-its-dreaded-cliff#:~:text=The%20New%20York%20estate%20tax,any%20amount%20over%20 the%20exemption.
387. *See id.*
388. *See id.*
389. *See id.*
390. *See id.*

> by $300,000 (more than 5% over the exemption amount of $5,850,000) the New York estate tax due is $529,200. In other states, the estate would pay estate tax on the excess amount only. In New York, the estate pays estate tax on the *entire* $6,150,000. The heirs of the decedent's estate would be in a better financial position if the estate was valued at only $5,850,000 (heirs receive $5,850,000), rather than $6,150,000 (heirs receive $5,620,500).[391]

Charitable bequests and lifetime gifting are available to ensure New York citizens are not responsible for the state estate tax or at least have a reduced taxable estate.[392] Charitable bequests are referred to as a "Santa Clause" provision and are structured so they happen when the excess going to charities is less than the estate tax.[393] Lifetime gifting allows individuals to make gifts up to the federal estate tax exemption amount before any federal gift tax is owed.[394] The value of all gifts made by a decedent in New York within a three year period are included in the value of the estate when the New York estate tax responsibility is calculated.[395]

In Oregon, a majority vote completely repealed the state's estate tax in November 2012.[396] The estate tax only applies to estates with a value of more than $1 million and ranges from ten to sixteen percent.[397] Although the threshold makes any estate exceeding $1 million taxable, only the actual amount in excess is what the estate tax is applied to.[398] In order to determine the specific estate tax that will apply, individuals have to find the rate threshold that applies at the point the marginal estate tax rate is in effect.[399] The first step is to determine the taxable state, followed by finding the estate's value in the state's estate tax bracket.[400] Then, based on the amount the estate tax exceeds the lower limit of the estate tax bracket, the number is multiplied by a marginal rate.[401] Once the sum is added to the base tax, an individual will know what is owed in estate taxes.[402] For instance:

> Let's say your total estate is worth $5 million. If we subtract the $1 million exemption, that leaves a taxable estate of $4 million. The base tax for the bracket is $367,500. The bottom of the threshold is $3.5 million, so we subtract that from $4 million and get $500,000. That amount multiplied by the marginal rate of 11.5% is $57,500. When we add that number ($57,500)

391. *See id.*
392. *See* Heintz & Sharpf, *supra* note 385.
393. *See id.*
394. *See id.*
395. *See id.*
396. *See* FARM BUREAU, *supra* note 12.
397. *See* Geier, *supra* note 377.
398. *See id.*
399. *See id.*
400. *See id.*
401. *See id.*
402. *See id.*

to the base tax ($367,500), we get a total Oregon estate tax of $425,000 owed on a $5 million estate.[403]

No inheritance tax is utilized by Oregon, which means heirs do not pay after they received the money but before the money is distributed to heirs.[404]

D. Permanent Estate and Inheritance Tax Exemptions for Federal and States

Delaware repealed its estate tax in January 1, 2018.[405] For individuals dying prior to January 1, 2018, the State of Delaware imposes an estate tax on the value of an individual's estate at the time of death.[406] Delaware's estate tax was tied to the federal estate tax and included a reduction for agriculture land, buildings on that land, and farm assessment and preservation programs.[407] The specific tax rate was based on a series of ranges for taxable estates, which then was taken, and the tax on the lower amount was added to the percentage of the excess amount.[408] Payments had to be made no later than 9 months after the death of the decedent.[409] The tax was also due on or before the fixed date without regard for any extension of time on the filing of the tax return.[410] The Division of Revenue had the ability to extend the time for filing for a reasonable period past the due date, and if there was an extension for the federal estate tax return filing, then Delaware's filing time would extend automatically.[411] Delinquent taxes required a payment of half a percent each month after the due date to the date of payment.[412] Additional penalties of five, up to fifty, percent of the tax due were also available.[413] A complete failure to pay resulted in a penalty of one, up to twenty-five, percent per month, and after that date the Division of Revenue had the ability to impose an additional negligence penalty for the deficiency amount or a penalty of 40% if the deficiency was based on an understatement of the tax.[414] The highest penalty imposed went as high as 75% where deficiency was due to some sort of fraud.[415]

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403. *See id*.
404. *See id.*
405. *See* FARM BUREAU, *supra* note 12.
406. *See id.*
407. DELAWARE.GOV, *Estate Tax*, https://financefiles.delaware.gov/docs/estate_tax.pdf (last accessed Nov. 11, 2020).
408. *See id.*
409. *See* FARM BUREAU, *supra* note 12.
410. *See* DELAWARE.GOV, *supra* note 406.
411. *See id.*
412. *See id.*
413. *See id.*
414. *See id.*
415. *See id.*

North Carolina repealed the estate tax January 1, 2010, and reinstated it a year later.[416] The state then again repealed the estate tax on January 1, 2013.[417] Currently, no estate or inheritance tax is utilized by North Carolina.[418] The repeal retroactively applies to the deaths from January 2013, onward.[419] Prior to 2013, if a North Carolina resident possessed a large estate at their time of death they could have owed a federal estate tax, as well as the North Carolina estate tax.[420] North Carolina did model their estate tax after the federal tax, which meant that those estates valuing at $5.12 million were exempt from state and federal estate taxes.[421] Despite this, if an estate was valued over the exemption amount, a North Carolina estate would likely owe the compounded amount of both taxes.[422] As a result of North Carolina's elimination of its estate tax, most wealthy North Carolina citizens will only have to pay estate taxes based on the federal government.[423] If the estate is large enough, the executor has to file a federal estate tax return and pay those taxes due no later than nine months after death.[424]

Under the Ohio budget laws, the estate tax was repealed on January 1, 2013.[425] Before the estate tax was repealed, estates that had a value of more than $338,333 were subject to the estate tax.[426] This was the lowest exemption for estate taxes out of any other state.[427] Ohio did have in place a stipulation that allowed the deceased person to pass everything to a surviving spouse without any payment of the estate tax even if the estate was larger than the exempt amount.[428] The gross estate also included property owned by the deceased person including:

- Ohio real estate (the deceased person's share, if you co-own it with someone else)
- Bank accounts and cash
- Investment accounts
- Vehicles
- Other personal property (anything but real estate)
- Life insurance proceeds payable to your estate
- Retirement account funds

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416. *See* FARM BUREAU, *supra* note 12.
417. *See id.*
418. Mary Randolph, *North Carolina Estate Tax: Repealed for 2013 and Beyond*, NOLO, https://www.nolo.com/legal-encyclopedia/north-carolina-estate-tax.html (last visited Nov. 8, 2020).
419. *See id.*
420. *See id.*
421. *See id.*
422. *See id.*
423. *See id.*
424. *See* Randolph, *supra* note 418.
425. *See* FARM BUREAU, *supra* note 12.
426. Mary Randolph, *Ohio Estate Tax: 2012 Was the Last Year of the Ohio Estate Tax*, NOLO, https://www.nolo.com/legal-encyclopedia/ohio-estate-tax.html (last visited Nov. 8, 2020).
427. *See id.*
428. *See id.*

- An interest in any small businesses (whether they are sole proprietorships, limited liability companies, or small corporations)
- The value of any gifts the person made during life that are subject to the federal gift tax (generally, this means gifts of more than $15,000 to a single recipient in one calendar year).[429]

The amount Ohio citizens are actually taxed upon was determined after necessary deductions were made from the overall gross estate.[430] These deductions could be for funeral or medical expenses, real estate taxes, or attorney fees.[431] It was common that after deductions were made, there was no responsibility for an estate tax because the taxable estate fell below the exempt amount.[432] When an estate tax return was required, it had to be filed fifteen months after the death of the decedent.[433] An automatic six-month extension was granted even though the actual due date was nine months after death.[434] The executor was responsible for the interest that began to accrue on unpaid amounts after the nine-month point.[435]

Texas repealed its inheritance tax effective September 1, 2015, as a result of Senate Bill 752.[436] The tax on Texas residents was equal to the amount at the federal level imposed on the transfer of property at death.[437] Such payment in other states was due nine months after the decedent's death.[438] Prior to the repeal, the interest rate varied from 10.5% to 4.25% and the interest began to accrue nine months after the death of an estate owner.[439] Although there was an exception allowing an extension granted by the IRS.[440] Texas also required that if a personal representative of the decedent's estate were to transfer the property without first paying the tax, then the personal representative was personally liable for the taxed amount.[441] Any individual failing to pay the tax by the date it is due forfeits five percent of the amount followed by an additional five percent if failing to pay the inheritance tax thirty days after the tax is due.[442]

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429. *See id.*
430. *See id.*
431. *See id.*
432. *See* Randolph, *supra* note 418.
433. *See id.*
434. *See id.*
435. *See id.*
436. *See* FARM BUREAU, *supra* note 12.
437. JUSTIA, *2005 Texas Tax Code Chapter 211. Inheritance Taxes*, https://law.justia.com/codes/texas/2005/tx/002.00.000211.00.html (last visited Nov. 11, 2020).
438. *See id.*
439. *See id.*
440. *See id.*
441. *See id.*
442. *See id.*

V. CONCLUSION

Family farms and ranches would benefit greatly from the permanent repeal of the estate tax because they would finally have the consistency in planning the future of their operation that they need to continue producing valuable products for the United States.[443] The estate tax has a high marginal rate and doing away with it would not create a "permanent aristocracy" like critics believe.[444] The estate plan itself has created wasteful estate-planning and a complete system to avoid the hefty tax.[445] The illiquidity of farm and ranch land and assets means that a continuous cycle of allowing estate tax exemptions to revert back to previous levels or the ability of lawmakers to implement lower exemptions creates serious uncertainty.[446] In order to protect family farmers and ranchers from this continuous cycle of permanent legislation, repeal needs to be considered in order to ensure family farms and ranches can continue producing for the United States.[447]

Permanent legislation to repeal the estate tax is not a new concept, in fact United States Senator John Thune put forward a bill in 2017 to permanently repeal the federal estate tax.[448] Senator Thune, a member of the Senate Finance Committee, was joined by Senate Majority Leader Mitch McConnell as well as Senator Chuck Grassley and dozens of other senators in trying to repeal the federal estate tax permanently.[449] The bill was referred to as the "Death Tax Repeal Act of 2019" and was labeled by its supporters as an end to the punitive tax that hits generational farms, ranches, and businesses following an owner's death.[450] Thune's effort to permanently repeal the federal estate tax took place while Congress addressed the TCJA in 2017.[451] While the efforts did result in the doubling of the federal estate and gift tax exemption, it did not actually result in the permanent repeal of the onerous tax.[452] Federal legislation formatted similarly to that of Senator Thune's needs to be put forward and modeled so that it effectuates the necessary change and not a simple quick fix such as the temporary legislation found in those states still in possession of estate and inheritance taxes.[453] Additionally, the previous changing of the exemption levels is not the change

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443. *See* FARM BUREAU, *supra* note 12.
444. *See id.*
445. *See id.*
446. *See* Edwards, *supra* note 369.
447. *See id.*
448. *Thune Leads Colleagues in Reintroducing Legislation to Permanently Repeal the Death Tax*, JOHN THUNE U.S. SENATOR FOR SOUTH DAKOTA (Jan. 28, 2019), https://www.thune.senate.gov/public/index.cfm/2019/1/thune-leads-colleagues-in-reintroducing-legislation-to-permanently-repeal-the-death-tax [hereinafter *Thune*].
449. *See id.*
450. *See id.*
451. *See id.*
452. *See id.*
453. *See id.*

that family farms and ranches need; instead, permanent solutions need to be passed so that the uncertainty no longer exists for the future of Agriculture production and family farming and ranching.[454]

454. *See* THUNE, *supra* note 448.