



November 2, 2016

John D. MacEachen
Internal Revenue Service
Room 5203
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

RIN: 1545-BB71
Docket Number: IRS-2016-0022-0001

Dear Mr. MacEachen,

National Farmers Union (NFU) appreciates the opportunity to submit comments on the proposed rule regarding Estate, Gift, and Generation-skipping Transfer Taxes: Restrictions on Liquidation of an Interest. NFU is the second largest general farm organization in the United States. Since 1902, NFU has advocated for the economic and social well-being and quality of life of family farmers and their communities by supporting the sustainable production of food, fuel and fiber. NFU represents 200,000 members nationwide with members in almost every state and organized divisions in 33 states. NFU has a strong history of supporting efforts on the intergenerational transfer of agricultural operations. We recognize the challenges that come at each intersection of the estate planning process. With this in mind we submit the following comments.

Intergenerational Transfer of Family Farms

According to the USDA, roughly 96 percent of our nation's 2.2 million farms are "family farms." The average age of a farm operator is over 58 and the fastest growing segment is those over age 65. This aging requires increased planning as farmers reach an age when transition must occur because of death, disability or retirement. Otherwise, the food system and rural economies will be left vulnerable to severe shock that may undermine food security.

With so much land about to transfer from one generation to the next, NFU has invested, through its education programs, significant resources to teach different generations the value of transition planning. According to the Family Business Institute only about 30% of family businesses survive into a second generation. That survival rate drops to 12% for the third generation and 3% for the fourth generation. According to the U.S. Department of Agriculture's (USDA) Economic Research Service, transitioning family farms have a 10 percent higher success

rate than family businesses in other sectors, but even with such a boost the failure rates are staggering.

Transitioning a family farm from one generation to the next is subject to all manner of challenges. Human factors such as an unwillingness to relinquish the reigns of the business when it is time, the failure of a child or grandchild to emerge at the right time to take over the farm, a failure in appropriate planning or a gradual transition that takes years to complete for various reasons, including gift limitations and other tax considerations. Transitions can occur while the principle operators is alive, but also happen after that operator has deceased. Regardless of the obstacle to transition, public policy must be in place to make transitioning easier, not more difficult.

Estate Tax

NFU, through its grassroots policy, respects what the estate tax represents. We are not opposed to the estate tax. Our policy does support estate tax relief for family-owned farms, ranches and small businesses in order to facilitate the transfer of those enterprises to the next generation. Our policy supports relief from estate tax in several forms including exemption limits, graduated rates starting at 35 percent, simplification, and special valuation of agricultural land.

NFU recognizes that the estate tax, gift tax and generation-skipping transfer tax have never directly affected a large percentage of taxpayers. However, farmers, by virtue of the large asset base required to operate a farm, often have concerns over the tax's impact on the ability to transfer a multigenerational family farm intact to the next generation. According to the USDA, only 3.0 percent of farm estates would be required to file an estate tax return, with a much smaller share of estates owing any federal estate tax for the 2015 tax year.

Historically, taxpayers have been subject to a much higher tax rate and a lower estate tax exemption. Over the past decade and a half the exemption amount has grown considerably, while the maximum tax rate has fallen. Consequently, the share of estates required to file a return or pay taxes has fallen. NFU is grateful for the higher exemption within the context of agriculture. This is due in part to the changing nature of agriculture. Farm input costs have continued to rise, prices have not kept pace, and increasing economies of scale have been required to remain profitable. As family farms get larger to stay in business, it is important that exemptions hold pace.

Family Limited Partnerships

As one generation looks to transfer assets to the next, we have seen the extensive use of the family limited partnership. This structure serves a number of administrative functions and provides meaningful relief as families look to transfer large assets, or pools of assets, that are integral to the family farm. The strategy allows partners to precisely detail rights and interests,

allows the donor to maintain control, provides a secure structure from outside entities, and a range of additional benefits.

An important aspect of transfers through the family limited partnership is discounts. The lack of marketability discount and a minority discount have a significant economic impact as operations look to transfer assets. The lack of marketability discount reflects the fact that interests in the operation have little or no marketability. The minority discount reflects the inability of the limited partner to compel distributions or liquidation to obtain the limited partner's share of the assets. Discounts across the board are critical to farmers as they look to keep their assets intact. While percentages of discounts range, we have seen the extensive use of valuation discounts as part of an operation's transfer strategy.

Proposed Regulation

NFU is concerned with the framing of the proposed change. As stated above, we respect what the estate tax represents. In the August publication of "*Treasury Notes*," Mark Mazur asserted The Treasury was closing a loophole that is aggressively used by wealthy taxpayers to artificially lower the taxable value of their assets. That statement and viewpoint may be true in certain circumstances. But when family farmers are roped into this group as a result of the proposed rule, we must object.

As stated many times discounts are critical to family farms. Farmers require the discounts across the board because the assets they control do not necessarily reflect market value. While we previously spoke to the discounting provisions under the family limited partnership, there are other variations in valuation. An example might include the way in which farmland is taxed under the Internal Revenue Code. The code contains a special section for valuation of farm property based upon its production capacity rather than fair market value, as a means of allowing farm families to pass such property to the next generation without being forced to sell the property to pay estate tax.

These special use valuations take into account the unique challenges that occur in agriculture. The large asset bases controlled by farmers don't necessarily equate to wealth. The value, the majority of which comes from real estate, is not viewed from the farmer perspective as a saleable asset. Farmers are the stewards of that land that they look to pass on, only selling parts of it in the case of dire financial situations.

With that perspective in mind, we turn to the changes within the proposed regulation. We are concerned that discounts will not be applicable under a range of new changes. These include the "lookback period" which creates a three year window to determine whether a minority valuation discount would apply. The lookback appears to remove deathbed transfers of a minority interest at the time of death. We are also concerned over the new class of restrictions described as "disregarded restrictions." The restriction will apply when family members retain control after the transfer. Family and family control are defined in such a way that family farms would likely be denied discounts that are essential.

Proposed changes to rules on valuation of family-held corporations could significantly increase taxes to family farm operations being transferred to future generations, threatening a family's ability to keep the operation intact. From NFU's perspective, the gradual transfer of assets from one generation to the next and the continued involvement of multiple generations in the operation is an important component of a sustainable operation. As an organization, we advance public policy that incentivizes the transfer of family farms without additional burdens, not only for the farm family, but for all Americans who rely on the work these families do to feed and clothe the nation.

The changes proposed in this regulation places family farmers in an economic category in which they do not belong. Treating family farmers, looking to responsibly transfer their operations, as wealthy individuals using aggressive tax strategies to artificially lower their asset value to avoid paying higher taxes is simply not the case. Discounts and special valuations are in place for the family farmer in recognition of the unique space they occupy. We urge you to either provide special considerations for family farmers within this regulation or withdraw the regulation altogether.

We appreciate your attention in this matter and thank you for your consideration. We look forward to future opportunities to work with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Johnson". The signature is fluid and cursive, with a large initial "R" and "J".

Roger Johnson
President