

AG TAX TIDBITS

A source of taxation strategies and information...impacting your bottomline.

PROPERTY OWNERSHIP AND ESTATE PLANNING CONSIDERATIONS

Parman R. Green, UO&E Ag. Business Mgmt. Specialist

A person's estate includes all property owned. Ownership can be in different forms and is generally thought of as control of a bundle of rights. The choice of ownership form is important because of its impact on whether the property is included in the estate, if so - how much, whether the property has to be probated, and the manner of disposition of the property at death.

Ownership of property may be held in one name or many names. Property held in one name is generally referred to as fee simple. Additionally, the ownership of property may be divided into multiple interests, such as, life estates and remainder interests. Co-ownership of property involves the undivided ownership by two or more persons.

In general, the estate tax treatment of sole ownership property is straight-forward, it's included in the estate of the person who owns the property. Breaking the ownership up into multiple interests adds tremendous estate planning opportunities. For example, leaving property to a surviving spouse with a life interest and a remainder interest to the children, provides the surviving spouse with income from the property for the surviving spouse's life, yet keeps the property out of that spouse's estate when they die.

Estate taxation of co-owned property held as tenants in common is very similar to that of property held in sole ownership. Whatever the fractional interest of ownership is

the fractional interest of value that is included in the estate. Tenancy in common does not provide for right of survivorship. Joint tenancy, which is characterized by right of survivorship, provides a few wrinkles to be considered. For property titled by a husband and wife in joint tenancy, one-half of the value of the property is included in the estate of the first joint tenant (or tenant by the entirety) to die. However, for joint tenants who are not husband and wife, the entire value of the property is included in the estate of the first joint tenant to die, unless the surviving tenants can show they contributed consideration for the acquisition of the property.

Ownership of life insurance warrants further comment. Life insurance is frequently acquired to enhance an estate or to provide liquidity for the estate settlement process. However, if the insurance proceeds are included in the estate, only the proceeds net of taxes will be available to settle the estate or distribute to the heirs. For example, one hundred thousand dollars of life insurance can easily be reduced to sixty thousand or less by estate taxes and settlement costs. In general, the value of life insurance is included in the gross estate of the decedent, if he or she retained the incidents of ownership. The incidents of ownership include: the right to change the beneficiaries of the policy, borrow against the policy, or cancel the policy. The primary planning opportunity relative to life insurance is to make someone else or an insurance trust the owner of the policies on your life.

A review of property ownership is essential for estate planning. Occasionally, the review will reveal property thought to be titled one way that is actually titled differently. In one case, the wife had inherited property, but the deed was in her husband's name. Ownership of property is the foundation on which an estate plan is constructed.