



# Farming and Taxes 101

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# AGENDA

## TAX REFORM

- High Level Overview
- Choice of Entity Considerations
- Q & A

# HOW DID WE GET HERE?



## HOUSE OF REPRESENTATIVES

**Nov. 2**  
Ways and Means  
Releases First Draft  
of Bill

**Nov. 6**  
Ways and Means  
Begins Mark-Up

**Nov. 16**  
House Vote



## SENATE

**Week of Nov. 6**  
Senate Finance  
Chairman Releases  
Bill

**Week of Nov. 27**  
Senate Bill Mark-Up,  
Amendments and  
Debate

**Dec. 2  
1:51AM**  
Senate Vote



## CONFERENCE COMMITTEE

**Dec. 15**  
Resolve Differences;  
Send back to House  
and Senate for Vote



## WHITE HOUSE

**Dec 22, 2017**  
President Signs P.L.  
115-97  
Tax Cut & Jobs Act

# WHAT ARE WE COVERING?

- ▶ High Level Overview – not all-inclusive
- ▶ Simplification and Permanent – It is neither!
  - Many provisions sunset at end of 2025
  - Significant complexity with many provisions
  - 1097 pages
  - Open to IRS interpretation
- ▶ Winners and Losers
  - Bloomberg estimates 18% reduction in tax liability 2018-2027 for farming industry



# RATE CHANGES

## ▶ Individuals

- Seven rates and brackets ranging from 10% to 37% (10%, 12%, 22%, 24%, 32%, 35%, 37%)

## ▶ Capital Gains/Dividends

- Same rate structure with 15% bracket starting at \$77,200 (MFJ) and 20% bracket starting at \$479,000 (MFJ)

## ▶ Increase in Standard Deduction Amounts

- \$24,000 MFJ
- \$12,000 Single

## ▶ Suspends Personal Exemptions until 1/1/26

# ESTATE AND GIFT CHANGES

## ▶ Estate, Gift & GST Exemption Limits

- Doubles the estate, gift, and generation skipping transfer (GST) tax exemption, but no full repeal.
- Sunsets after 2025 back to existing exemption amounts (adjusted for inflation)
- \$10 MM exemption, but adjusted for inflation from the 2010 base year (\$11.2 MM for 2018)

## ▶ Stepped-up Basis Preserved

# BONUS AND SECTION 179

- **100% Bonus Depreciation**
  - New AND used qualifying property
  - Acquired and placed in service after Sept. 27, 2017, and before 2023
  - Phases down by 20% each year after 2022 with sunset after 2026
  - State conformity?
- **Section 179**
  - Raises limit to \$1,000,000
  - Phase out above \$2.5 million of qualifying asset additions
  - State conformity?

# LIKE-KIND EXCHANGE

- ▶ Tax deferred gain recognition for exchange of "like-kind" property
- ▶ Real Property exchange will continue to qualify - no change
- ▶ Personal property exchanges no longer qualify
  - Examples - Combine for combine, tractor for tractor
- ▶ Gain recognized as if property was sold with no trade
- ▶ Depreciable basis of replacement property as if outright purchase with no trade
  - Bonus or Section 179 may allow you to achieve similar results as before
- ▶ State conformity?



# BUSINESS AND PASS-THROUGH DEDUCTION

- ▶ Applies to all Taxpayers who have domestic "qualified business income" (QBI) from a partnership, S Corporation, or sole proprietorship
- ▶ A deduction of the lesser of 20% of the combined QBI or 20% of taxable income (reduced by net capital gain)
- ▶ **IF** taxable income is more than \$315,000
  - Deduction may not exceed the greater of:
    - 50% of the W-2 wages with respect to the qualified business, or,
    - 25% of the W-2 wages plus 2.5% of the unadjusted basis, immediately after acquisition, of all qualified depreciable real or personal property used in the business
  - Specified service businesses (excluding engineering and architecture) do NOT qualify for the deduction above taxable income limits

# BUSINESS AND PASS-THROUGH DEDUCTION

## • Obstacles

- Complexity
- Net Capital Gains
- Qualifying wages
- Qualifying depreciable property
- Separate "QBI" determinations
- Taxable income limitations
- Exclusions
- Uncertainty
- Provision sunsets end of 2025

## • Opportunities

- Tax Savings
- Sales to cooperatives
- Planning to overcome obstacles

# NEW RATES FOR C-CORPORATIONS

- ▶ Flat rate of 21%
- ▶ Will result in tax increase for those corporations typically under \$90,000 of taxable income
- ▶ Effective January 1, 2018
- ▶ Corporate AMT repealed
- ▶ Does NOT sunset - "Permanent"
- ▶ In-depth analysis prudent before conversion
  - Income Taxes
  - Eligibility for FSA or other governmental programs
  - Management, ownership, estate, succession, etc.

# INTEREST DEDUCTION LIMITATIONS

- ▶ Farming businesses that have \$25 million in average gross receipts
  - Interest is limited to 30% of adjusted taxable income (income before business interest income and expense, depreciation, amortization, and depletion).
    - There is an option to elect out of this
- ▶ Limitation is applied at the entity level first
- ▶ Carries forward indefinitely



# DEPRECIATION

- ▶ Shortens the recovery period from 7 to 5 years for any machinery or equipment placed in service after 12/31/17
- ▶ Except grain bins, cotton ginning assets, fencing, land improvements
- ▶ Now MACRS 200% declining balance method for 3, 5, 7, & 10 year property
- ▶ For assets in service between 9/27/17 and 12/31/22, 100% bonus-includes used property in "arms-length" transactions

# NET OPERATION LOSSES (NOL)

- ▶ Section 172 – 2-year NOL carryback available for farming losses (vs current 5-year carryback)
- ▶ If not carried back, NOL carryforward is limited to 80% of taxable income (before application of NOL)
- ▶ Indefinite carryforward period
- ▶ Appears to retain the present 3 year carryback for any taxable year with a net disaster loss to which Section 504(b) of the Disaster Tax Relief and Airport and Airway Extension Act of 2017 applies

# CHOICE OF ENTITY

## ▶ Sole Proprietorship

- Unincorporated
- All items of income and expense reported on individual income tax return
- No separate tax return required for income tax filing

# CHOICE OF ENTITY (CONT'D)

- ▶ Limited Liability Company (LLC)
  - If single-member, treated for federal income tax purposes as disregarded entity, i.e. sole proprietorship
  - Multi-member LLC treated as partnership, tax paid at partner (member) level
  - Both single-member and multi-member LLC's can elect to be treated as corporation
  - Provides liability insulation and potential creditor protection
  - Flexibility in allocation of income and distributions
  - Owners (members) receive interest in profits and losses, no salary



# CHOICE OF ENTITY (CONT'D)

## ▶ C-Corporation

- Tax paid at entity level
- Additional tax paid on any dividends distributed
- Generally no personal liability of the shareholders for obligations of the corporation
- Unlimited number of shareholders

# CHOICE OF ENTITY (CONT'D)

## ▶ S-Corporation

- Income is passed through to shareholder and tax paid at shareholder level
- Some exceptions for entity-level tax (on prior C-Corporations converted to S)
- Generally no personal liability of the shareholders for obligations of the corporation
- Limited to 100 shareholders

# THANK YOU



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