B E C E

BARRETT EASTERDAY

CUNNINGHAM & ESELGROTH LLP

TABLE OF CONTENTS

UPDATE ON OSHA ENFORCEMENT ACTIONS AGAINST FARMS

While the small farm exemption still exempts small farm operations from enforcement of all OSHA rules, regulations, and standards, OSHA maintains its position that small farm employers are obligated to comply with OSHA standards.

Historically, Congress through the Appropriations Act, has exempted small farm operations from the enforcement of all rules, regulations, standards or orders under the Occupational Safety and Health Act. Specifically, the language in the Appropriations Act stipulates that OSHA appropriated funds cannot be used to enforce OSHA rules and regulations on small farms.

A farm operation is exempt from OSHA enforcement only if the farm meets two criteria: 1) the farm employs 10 or fewer employees currently and at all times during the last 12 months; and 2) the farm has not had an active temporary labor camp during the preceding 12 months. If either of these criteria does not apply, the farm is not exempt from OSHA enforcement. A "farming operation" is any operation involved in the growing or harvesting of crops, the raising of livestock or poultry, or related activities conducted by a farmer on sites such as farms, ranches, orchards, dairy farms or similar farming operations. A "temporary labor camp" means farm housing directly related to the seasonal or temporary employment of farm workers.

As the size of farm operations continues to grow, more and more farms will no longer meet the definition of small farm. Many farms now employ more than 10 employees. Many farms also may wrongly believe they have fewer than 10 employees based on an incorrect assumption that certain family members are not counted as employees. OSHA guidance suggests that "family members" of farm employers are not counted when determining the number of employees for purposes of the small farm exemption.

"Family member", however, is not clearly defined. If "family member" means only immediate family members, then cousins, grandchildren, nieces, nephews, aunts, uncles, and so on, may be included when calculating the number of employees.

cont'd on page 2

cont'd from page 1

Along those same lines, if the farming operation that is, the employer is a corporation or a limited liability company, OSHA may take the position that all family members are counted for purposes of determining the number of employees. As a result, many farms may be subject to OSHA enforcement despite the small farm exemption.

The small farm exemption came under fire in 2013 when OSHA began inspecting and issuing citations to farm operations. In 2011, OSHA issued a guidance memorandum to its inspectors asserting that on-farm grain storage and handling was not part of the "farming operation" and that OSHA had the authority to inspect such facilities and enforce its rules and regulations, thereby gutting the small farm exemption. Based on this memorandum, OSHA began inspecting farms with grain storage and handling facilities. Citations were issued to a farm in Nebraska and to a farm in Ohio.

When OSHA began issuing citations to farms, farm organizations and senators and representatives from farm states took notice. Our office was fortunate enough to represent the farmer in Ohio who was inspected and cited by OSHA. On behalf of the Ohio farmer, we contested the citations OSHA issued, and in the face of increasing public pressure, OSHA promptly withdrew the citations. Congress reinforced the small farm exemption in the omnibus appropriations bill in 2014 and encouraged OSHA to work with the United States Department of Agriculture (USDA) before attempting to redefine and regulate post-harvest activities such as grain storage and handling. In response, OSHA withdrew the 2011 guidance memorandum that asserted on-farm grain storage and handling was not part of the farming operation and pledged to work with the USDA.

On July 29, 2014, OSHA issued a memorandum on the limits of its authority to conduct enforcement activities on small farms. A copy of the memorandum is on our website.

AFFORDABLE CARE ACT REQUIREMENTS FOR 2014

The Affordable Care Act requires most taxpayers and their families to be covered with health insurance in 2014. To qualify, the insurance must provide Minimum Essential Coverage as defined in the Act. Coverage is determined on a monthly basis.

A tax penalty applies to individuals who do not have coverage. The penalty for not having insurance in 2014 is the higher of: (i) $95 per person ($47.50 if under age 18) with a ceiling of $285; or (ii) 1% of the excess of the household AGI over the minimum income required to trigger filing a tax return. The penalty is reduced for any months that health insurance was in force. The maximum penalty cannot exceed the cost of bronze level coverage. Penalties will increase after 2014. The penalties are reported on the taxpayer's tax return for the year.

The Act also requires large employers (generally, employers with at least 50 full-time employees) to offer affordable health coverage to full-time employees. This provision was originally to have applied for 2014; however, the employer mandate and associated penalty has been delayed to 2015.

The Act provides a refundable tax credit to help eligible individuals and families afford health insurance coverage. To be eligible for the credit: (i) the taxpayer's household income must be between 100% and 400% of the federal poverty line for the taxpayer's family size, (ii) the taxpayer must not be claimed as a dependent by another taxpayer, and (iii) if married, the taxpayer must file a joint return. When a taxpayer purchases coverage through a state exchange, a credit is applied to the premium based on an advance estimate of eligibility. The taxpayer must reconcile the actual credit for the tax year as computed on the taxpayer's tax return with the amount of any advance credits.

Since the actual tax credit for low-income taxpayers, and the penalty for not having coverage, are calculated and reported as part of the taxpayer's tax return, substantially more information regarding income and coverage for each month will be needed to prepare and file the taxpayer's tax return. The forms to calculate and report the credit and penalty are expected to be released later this year.

This article contains a brief summary of certain provisions of the Affordable Care Act. Other requirements, exceptions, and limitations may apply. For your own situation, consult a qualified professional

TAX NEWS OF NOTE

With summer here, it is time to start thinking about taxes again.
Here are a few of the highlights for 2014:

- The individual mandate provisions of the Affordable Care Act became effective for 2014. See the related article for information on the penalty for not having coverage and the credit available for certain lower-income taxpayers to help cover the cost of insurance.

- A number of extended tax provisions expired at the end of 2013 and have not been extended for 2014. These include the section 179 deduction, which was reduced from the 2013 maximum of $500,000 to a maximum of $25,000; the 50% bonus depreciation; and the provision allowing charitable gifts to be made directly from an IRA without being included in income for taxpayers who are at least age 70 ½. Many commentators expect the higher section 179 deduction, the bonus depreciation, the IRA charitable contribution, and a number of similarly affected provisions to be retroactively reinstated for 2014.

- The standard mileage rate declined from $0.565 to $0.56 for 2014.

- The tax brackets for 2014 were widened slightly, and the standard deduction and personal exemption amounts are increased for 2014 due to inflation adjustments.

- The amount of wages or self-employment income subject to social security tax is increased to $117,000 for 2014.

- Social security payments are up 1.5% in 2014 as an inflation adjustment.

- The tax rate for long-term capital gain and qualified dividend income remains 15% for 2014. The rate is increased to 20% for high income taxpayers (taxable income over $457,600 for joint filers, $406,750 if single). The long term capital rate tax rate is 0% for taxpayers whose overall incomes fall in the 10% and 15% income tax brackets.

- For married joint filers, there is no tax until taxable income reaches $20,300 (a bit higher if 65 or over). The next $18,150 is taxed at 10%, and the next $55,650 is taxed at 15%.

- The provisions of the Affordable Care Act enacted a number of new taxes, including the Net Investment Income Tax and the Additional Medicare Tax. Both were effective for returns beginning in 2013.

- The Net Investment Income Tax (NIIT) tax rate is 3.8% and is paid on the lesser of a taxpayer's net investment income or a taxpayer's excess Modified Adjusted Gross Income (MAGI). MAGI is a taxpayer's adjusted gross income (AGI) plus certain foreign source income. Excess MAGI is the MAGI less a threshold amount ($250,000 for joint filers, $125,000 for married filing separately, $200,000 for single filers, but only $11,950 for estates and trusts). Net investment income includes interest, dividends, capital gains, rent and royalty income, nonqualified annuities, and income from businesses that are passive activities. For example, joint filers have income (MAGI) of $300,000 including net investment income of $30,000. Their 3.8% NIIT is paid on $30,000 (lesser of net investment income or the excess of MAGI over the $250,000 threshold). Another example may be joint filers of modest historical income who sell a farm for a gain of $700,000 (which is their only investment income), and has MAGI of $750,000. They will pay NIIT on $500,000 (the lesser of $700,000 net investment income or $500,000 excess MAGI ($750,000 less $250,000 threshold equals $500,000). The sellers may want to consider an installment sale in order to limit the effect of the NIIT by not recognizing the full gain in one year.

- The Additional Medicare Tax rate is 0.9% and applies to wages and self-employment income that exceed a threshold amount. The threshold amounts are $250,000 for joint filers, $125,000 for married filing separately, $200,000 for single filers, $200,000 for head of household and for qualifying widow(er) with dependent child. Where wages exceed the threshold amount, the employer will be required to withhold the tax. If the tax is not withheld or otherwise paid, the taxpayer may have to pay the tax through estimated tax payments.

This article contains a brief summary of certain tax provisions.
While the information is believed to be correct, tax law is subject to change, and other requirements, exceptions, and limitations may apply.

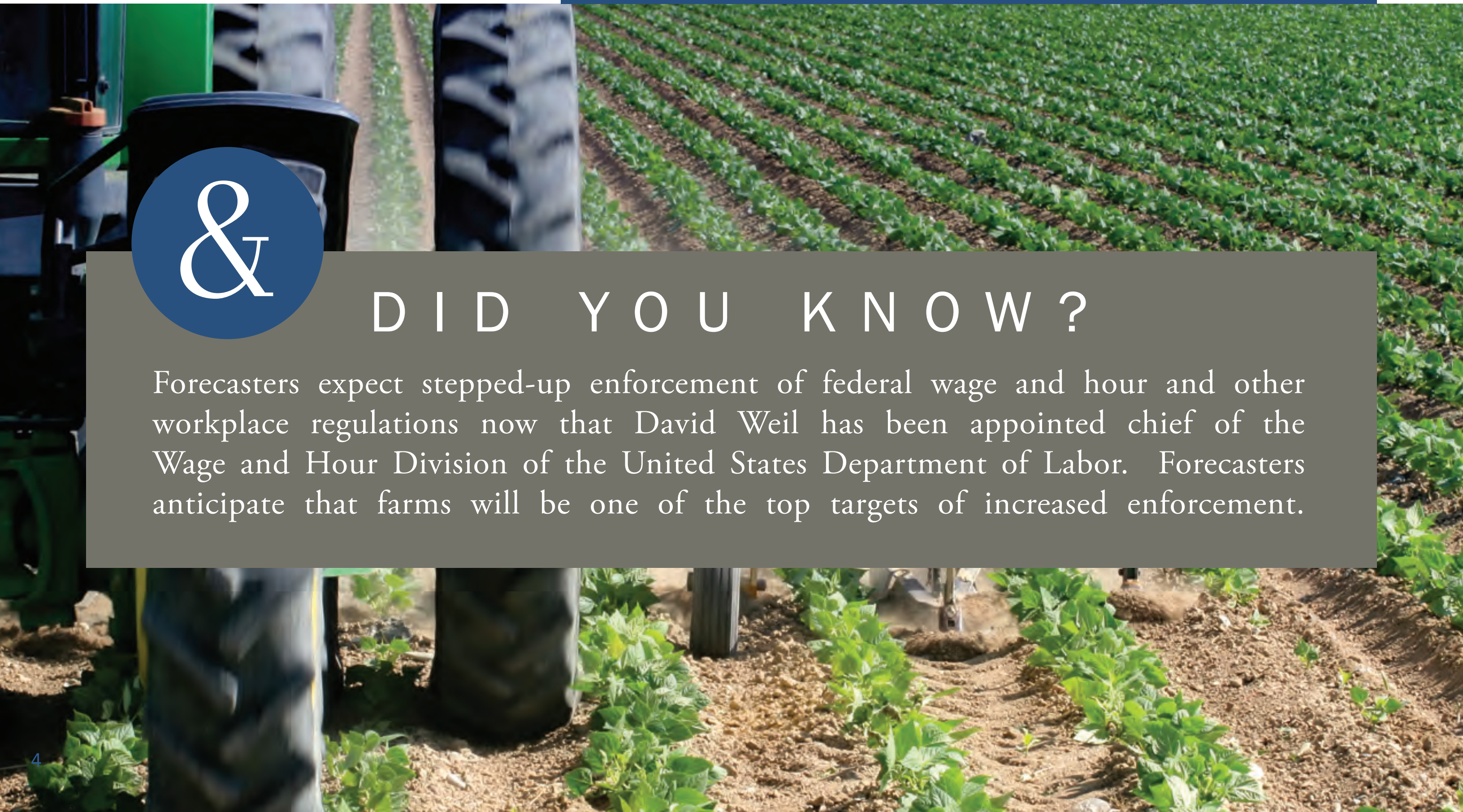
WHAT ARE YOU REALLY SIGNING AWAY WITH AN EASEMENT?

A conservation easement is a restriction placed on land by an organization to protect its current resources or use. Land owners are usually paid for the easement that restricts their use of the property.

A recent case in the United States District Court for the Middle District of Pennsylvania has proved to be costly for easement grantors. Plaintiffs sought a declaratory judgment that their conservation easement grant permitted the exploration and drilling for natural gas. The easement holder, a private organization, countered, seeking a declaration that the ambiguous contract disallowed such actions.

After a careful review of the easement agreement, the Court agreed with Defendants. The Court found that the opportunity for gas exploration/drilling had been contracted away with the signing of the easement. But that wasn't the only disappointment for the land owner. The conservation easement also had an enforcement fee provision. This provision made the non-prevailing party responsible for the costs associated with enforcing the easement. Here, the Court found the land owner responsible for $183,775.66 in fees associated with enforcing the declaratory judgment.

If you are thinking about signing any agreement, make sure you know costs you might be responsible for, especially if you are granting an easement that will run with your land into the future.



& DID YOU KNOW?

Forecasters expect stepped-up enforcement of federal wage and hour and other workplace regulations now that David Weil has been appointed chief of the Wage and Hour Division of the United States Department of Labor. Forecasters anticipate that farms will be one of the top targets of increased enforcement.

SHOULD AN ESTATE TAX RETURN BE FILED WHEN NOT REQUIRED?

With the complicated Internal Revenue Code, the obvious answer is yes.

Most estates in Ohio do not need to file an estate tax return, because Ohio repealed the Ohio estate tax and the federal government increased the applicable exclusion amount and filing threshold to $5.34 million in 2014. However, even if a decedent's estate is under the filing threshold, it may make sense to file an estate tax return, especially if the surviving spouse's estate may exceed the federal exclusion amount. Of course, the exclusion amount may not be the amount currently in effect but may be an amount indexed for future inflation or as reduced by a future Congress. President Obama has proposed lowering the exclusion amount to $3.5 million.

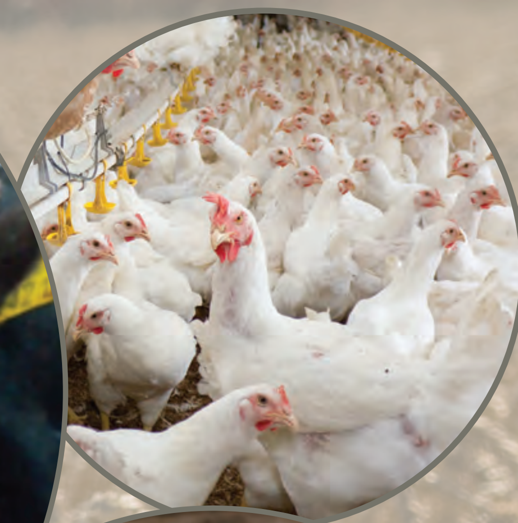
The current law allows for portability of a decedent's unused exclusion amount to a surviving spouse. For example, if the decedent transferred $2 million to the decedent's trust but transferred all remaining assets to the surviving spouse in a death in 2014, there is $3.34 million of applicable exclusion unused in the estate. By filing a federal estate tax return, the decedent's estate can pass the $3.34 million of unused applicable exclusion amount to the surviving spouse. The surviving spouse will then have the spouse's own exclusion amount at the spouse's date of death plus the $3.34 million.

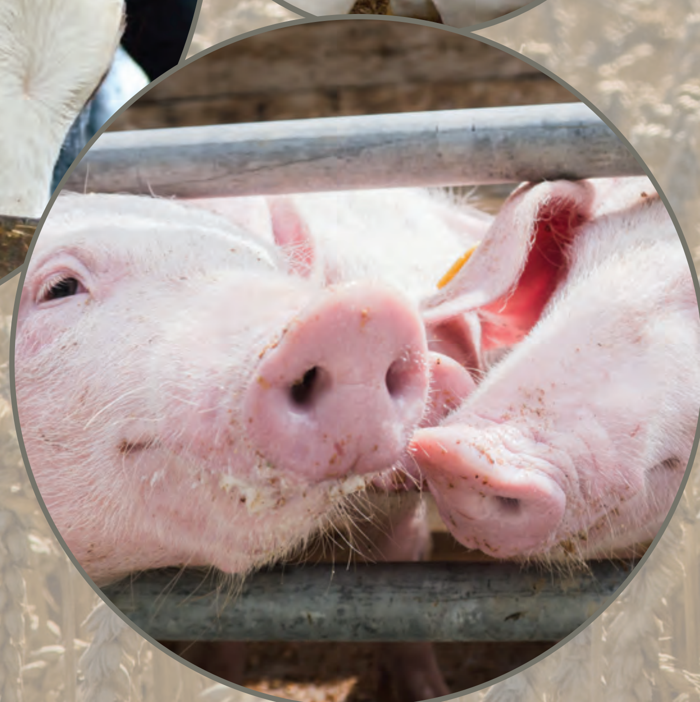
Normally, the estate needs to address this portability issue on a timely filed estate tax return; however, there is a window of opportunity for any estate of a decedent who died after December 31, 2010 and before January 1, 2014 to file the federal estate tax return by December 31, 2014. Rev. Proc. 2014-18, which became effective January 27, 2014, and was published in Internal Revenue Bulletin 2014-7 on February 10, 2014, provides an automatic extension of time to file an estate tax return to elect portability for certain estates.

CONGRATULATIONS, JUNIOR FAIR EXHIBITORS!

It was our pleasure to join with other buyers and boosters to support the Madison County Fair Sale.

Congratulations to Austin Wilt, Sidney Howard, Devin Howard, Isaiah Morrison, Zane Davison, Katie Garen, Wyatt Eades, and Kirstin Eades.





WHAT IS A1031 EXCHANGE?

The 1031 exchange, more commonly known as a like-kind exchange, is a vehicle to defer capital gains taxes that must be paid on investment property sold.

If you sell an investment (a business or investment property) you will generally have to pay capital gains tax on the proceeds that are in excess of the basis. However, Section 1031 allows you a period to reinvest the proceeds of the sale into a property that is "like-kind." Most real estate qualifies for this categorization. Property located outside the physical United States does not.

While personal property can be exchanged as like-kind property, personal property cannot be exchanged for real property, as it is not like-kind.

Further, the property must be "held for use in a trade or business or for investment."

The 1031 exchange is a great tool to defer taxes. Remember, the 1031 exchange only defers taxes. And it is still the investment owner's responsibility to keep track of the basis for capital gains purposes.

CAN THE NET INVESTMENT INCOME TAX BE AVOIDED BY BECOMING A REAL ESTATE PROFESSIONAL?

A potential strategy for owners of rental properties to avoid imposition of the new 3.8% Net Investment Income Tax (NIIT) has been getting some press. Generally, owning rental properties is a passive activity and would be considered as part of investment income for purposes of the NIIT. However, income earned as a real estate professional may be considered trade or business income rather than passive income for NIIT purposes. To qualify as a real estate professional, the taxpayer must spend more than 50% of his or her working hours (and 750 or more hours each year) materially participating in real estate as a landlord, developer, and so fort. Since trade or business income of a real estate professional is not considered passive income subject to NIIT, and since rents are excluded from self-employment income, the rental property income of a real estate professional may be able to avoid both self-employment taxes and the NIIT. In addition, for real estate professionals, the passive loss rules do not disqualify rental loss deductions.

However, there are several caveats. First, real estate professional status is generally viewed on a property-by-property basis unless an election is made to treat multiple rentals as one activity. (The election is made by attaching the proper statement to a tax return, and is typically an important part of this strategy.) Otherwise, you must qualify each property for real estate professional status individually. Second, the strategy may be of limited benefit for farm rentals, since a special rule makes certain farm rental income involving material participation subject to self-employment tax. Third, the election may affect whether trapped passive losses may be deducted if only one of a group of properties treated as a single activity is sold.

This strategy has not been tested through the Courts. Certain definitions are not clear in the Tax Code. Other requirements, exceptions and limitations may apply. For your own situation, consult a qualified professional.

BECE
BARRETT EASTERDAY
CUNNINGHAM & ESELGROTH LLP

7259 Sawmill Road
Dublin, Ohio 43016

PLACE
STAMP
HERE

SUMMER 2014 NEWSLETTER