NAVIGATING TODAY'S TAX ENVIRONMENT: CHALLENGES AND OPPORTUNITIES FOR AGRICULTURE AND THE DAIRY INDUSTRY

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ABSTRACT

The 2017 Tax Cuts and Jobs Act significantly increased the federal estate tax exemption, providing substantial relief to agricultural families by shielding most family farms from burdensome estate tax obligations. Additionally, the Tax Cuts and Jobs Act introduced several temporary provisions that have directly benefited agricultural enterprises, including increased bonus depreciation, expanded income tax brackets, and the creation of the Qualified Business Income deduction. However, these provisions are scheduled to sunset on December 31,

2025, returning the tax code to pre-Tax Cuts and Jobs Act rules and imposing new financial challenges for family-owned farms.

This Article examines the impact of the Tax Cuts and Jobs Act's expiring provisions on agricultural families, with a specific focus on family-owned dairy farms. It highlights how the reversion of the estate tax exemption and the loss of other tax benefits—such as reduced individual income tax rates and accelerated depreciation—will affect the economic sustainability of these operations. Additionally, it explores proactive estate and income tax planning strategies to mitigate the risk of increased liabilities and preserve the long-term viability of multigenerational farming enterprises.

I. INTRODUCTION

In 2025, Congress faces a pivotal decision concerning the future of tax policy in the United States as several provisions of the Tax Cuts and Jobs Act of 2017 (TCJA) are set to expire.[1] Signed into law by President Donald J. Trump, the TCJA introduced sweeping reforms to the Internal Revenue Code, including changes to individual income taxes, corporate taxes, and estate taxes.[2] The TCJA is estimated to have reduced average effective tax rates for farm households from 17.2% in 2016 to 13.9% under the new law.[3] While the corporate tax rate reduction to a flat 21% was made permanent, many provisions affecting individuals and pass-through businesses, particularly family-owned farms, are temporary, and are scheduled to expire on December 31, 2025.[4]

1. *See* Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (codified as amended in scattered sections of 26 U.S.C.) (formally titled "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018").

2. *Tax Cuts and Jobs Act: A Comparison for Businesses*, INTERNAL REVENUE SERV. (Nov. 5, 2024), https://www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses [https://perma.cc/WCQ2-8F85] (providing a side-by-side comparison of key tax provisions before and after enactment of the TCJA, highlighting its significant impact on businesses); *Individuals*, INTERNAL REVENUE SERV. (Nov. 18, 2024), https://www.irs.gov/newsroom/individuals [https://perma.cc/WX3P-V5BP].

3. *See* JAMES M. WILLIAMSON & SIRAJ G. BAWA, ECON. RSCH. SERV., U.S. DEP'T OF AGRIC., REP. NO. 252, ESTIMATED EFFECTS OF THE TAX CUTS AND JOBS ACT ON FARMS AND FARM HOUSEHOLDS 22 (2018), https://ers.usda.gov/sites/default/files/_laserfiche/publications/89356/ERR-252.pdf?v=86464 [https://perma.cc/K6PE-4YDJ].

4. *Id.* at 9, 14; I.R.C. § 11(b) (West) (setting the corporate tax rate).

Family-owned and operated farms account for approximately 97% of the farms in the United States.[5] A family farm is defined as any "farm in which the majority of the business is owned by an operator and/or any individual related by blood, marriage, or adoption, including relatives who do not live in the operator's household."[6] Family farms may be in the form of a sole proprietorship, partnership, or family corporation.[7] Thus, the definition excludes farms that are structured as non-family corporations, cooperatives, or those managed by hired personnel.[8]

One of the most significant provisions of the TCJA for farming families is the temporary doubling of the federal estate tax lifetime exclusion amount.[9] This provision, applicable to estates of individuals who pass away and gifts[10] made between January 1, 2018, and December 31, 2025, increased the exclusion threshold from $5 million to $10 million.[11] Due to inflation, the inclusion stands at $13.99 million in 2025.[12] However, unless Congress acts to extend or make this provision permanent, the exclusion will revert to pre-2018 levels after December 31, 2025, increasing estate tax liabilities for affected families.[13] Additionally, the combined effect of expiring marginal income tax rates and other income tax

5. CHRISTINE WHITT ET AL., ECON. RSCH. SERV., U.S. DEP'T OF AGRIC., BULL. NO. 263, AMERICA'S FARMS AND RANCHES AT A GLANCE: 2023 EDITION 5 (2023) [hereinafter AMERICA'S FARMS: 2023 EDITION], https://ers.usda.gov/sites/default/files/_laserfiche/publications/108074/EIB-263.pdf?v=25548 [https://perma.cc/HK5J-T9T9].

6. *Id.* at 2.

7. *Family Farms*, NAT'L INST. OF FOOD & AGRIC., U.S. DEP'T OF AGRIC. (Aug. 5, 2024), https://www.nifa.usda.gov/grants/programs/family-farms [https://perma.cc/DZ2S-6ZWV].

8. *Id.*

9. AMERICA'S FARMS: 2023 EDITION, *supra* note 5, at 18.

10. *See* I.R.C. § 102(a) (West) (providing that "gross income does not include the value of property acquired by gift, bequest, devise, or inheritance"); *see also* Comm'r v. Duberstein, 363 U.S. 278, 285 (1960) ("A gift in the statutory sense . . . proceeds from a detached and disinterested generosity, out of affection, respect, admiration, charity or like impulses." (internal quotation marks and citations omitted)).

11. I.R.C. § 2010(c)(3)(C) (West).

12. Press Release, Internal Revenue Serv., IRS Releases Tax Inflation Adjustments for Tax Year 2025 (Oct. 22, 2024), https://www.irs.gov/newsroom/irs-releases-tax-inflation-adjustments-for-tax-year-2025 [https://perma.cc/Z4CQ-KUSQ].

13. TIA M. MCDONALD & RON DURST, ECON. RSCH. SERV., U.S. DEP'T OF AGRIC., REP. NO. 328, AN ANALYSIS OF THE EFFECT OF SUNSETTING TAX PROVISIONS FOR FAMILY FARM HOUSEHOLDS 29, 32–33 (2024) [hereinafter EFFECT OF SUNSETTING TAX PROVISIONS], https://ers.usda.gov/sites/default/files/_laserfiche/publications/108636/ERR-328.pdf [https://perma.cc/8ZX8-AWJJ].

changes would increase average tax liabilities for a farm household by $2,263, or approximately 11.5%, compared with current TCJA law.[14]

This higher exclusion amount shields over 99% of family-owned farms from estate tax filing obligations and tax liabilities[15] that could otherwise lead to the sale of land or other farm assets.[16] However, without congressional action, the exclusion will be decreased by half at the start of 2026.[17] The reduction of the estate tax exclusion from nearly $14 million to roughly $7 million will likely cause an increased amount of farm families with illiquid assets such as land, equipment, and livestock, to be subject to estate taxes without having sufficient cash on hand to pay the resulting estate tax liability.[18] This, ultimately, could necessitate the sale of essential operational assets to cover estate tax liabilities, thereby jeopardizing multi-generational farming operations.

The expiration of other critical tax provisions will further challenge family farms, limiting their capacity to invest in infrastructure and equipment. Bonus depreciation, which currently allows farmers to immediately expense 40% of qualified assets in 2025, will gradually phase out, dropping to 20% in 2026, and disappearing entirely by 2027.[19] This phase-out reduces farmers' ability to recover larger portions of the cost of machinery, irrigation systems, and livestock facilities in the year of purchase, which inevitably slows reinvestment in essential infrastructure.[20] For particularly capital-intensive agricultural operations, bonus depreciation has been extremely beneficial for farmers.[21] Fortunately, the TCJA permanently increased the expensing limits in § 179, which allow farmers to deduct the full cost of qualifying equipment up to $1 million, indexed for inflation.[22] Additionally, the Qualified Business Income (QBI) deduction, which

14. *Id.* at 7.

15. Tia M. McDonald, *Less than 1 Percent of Farm Estates Created in 2022 Must File an Estate Tax Return*, ECON. RSCH. SERV., U.S. DEP'T OF AGRIC.: CHARTS OF NOTE (May 22, 2023), https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=106559 [https://perma.cc/TQX6-T5WJ].

16. Samantha Ayoub, *2025 Tax Cliff: 'Death Taxes' Threaten Farm Families*, AM. FARM BUREAU FED'N: MKT. INTEL (Apr. 21, 2025), https://www.fb.org/market-intel/2025-tax-cliff-death-taxes-threaten-farm-families [https://perma.cc/4UBU-AGS9].

17. *See* I.R.C. § 2010(c)(3)(C) (West).

18. Ayoub, *supra* note 16.

19. I.R.C. § 168(k)(6)(A) (West); Chad Zagar, *Tax Tip: 100% Bonus Depreciation Is Being Phased Down*, FARM PROGRESS (Nov. 21, 2023), https://www.farmprogress.com/farm-business-planning/tax-tip-100-bonus-depreciation-is-being-phased-down- [https://perma.cc/47XJ-A3TY].

20. *See* Zagar, *supra* note 19.

21. *See id.*

22. EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 23–24.

provides up to a 20% tax deduction on QBI for owners of pass-through entities, is set to expire at the end of 2025.[23] Combined with the reversion of individual income tax brackets to pre-TCJA levels, these changes likely will significantly constrain the cash flow and profitability of family farms.[24]

For agricultural enterprises, particularly dairy farms that depend heavily on capital-intensive operations, the sunsetting of these tax provisions underscores the importance of forward-looking business and tax planning strategies.[25] While the tax consequences of the various sunsetting provisions within the TCJA for family farms are vast and broad, this Article focuses largely on the estate tax. It will explore the historical development of the estate tax, examine the effect of the TCJA's expiring provisions on the agricultural sector—particularly with respect to dairy farms—and offer strategic considerations to promote the sustainability of family farms in an evolving estate tax landscape plagued by legislative uncertainty.

II. The Tax Cuts and Jobs Act and Estate Tax Consequences

A. A Brief History of the Estate Tax

The estate tax has shaped United States tax policy, reflecting priorities during conflict, economic shifts, and wealth redistribution, and remains a key legislative issue under the TCJA.[26] As tax policy has progressed, the estate tax has emerged as a profound legislative issue, particularly illuminated by the sweeping reforms of the TCJA.[27]

The origins of the United States' federal estate tax trace back to 1797 when a death stamp tax was enacted to fund naval rearmament amid escalating tensions with France.[28] This early tax required, *inter alia*, use of federal stamps on wills submitted for probate, effectively regulating estate transfers.[29] It was short-lived,

23. I.R.C. § 199A(b)(2)(A), (i) (West); Williamson & Bawa, *supra* note 3, at 32.

24. *Id.* at 6–7.

25. *See* Jackie Meyer, *Navigating the Sunset: A Guide to the Tax Cuts and Jobs Act's Expiring Provisions*, Forbes (Apr. 23, 2024, 7:30 AM), https://www.forbes.com/councils/forbesfinancecouncil/2024/04/23/navigating-the-sunset-a-guide-to-the-tax-cuts-and-jobs-acts-expiring-provisions/.

26. *See* Andrew Lautz & Arianna Fano, *The 2025 Tax Debate: Individual Estate and Gift Taxes in TCJA*, Bipartisan Pol'y Ctr. (Apr. 9, 2025), https://bipartisanpolicy.org/explainer/the-2025-tax-debate-individual-estate-and-gift-taxes-in-tcja/ [https://perma.cc/8LFJ-WEWG].

27. *Id.*

28. John R. Luckey, Cong. Rsch. Serv., 95-444A, A History of Federal Estate, Gift, and Generation-Skipping Taxes 2 (2003).

29. *Id.* at 2–3.

however, and was repealed in 1802.[30] For the next roughly 60 years, the United States did not have a codified federal death tax.[31]

Then, in 1862, an estate tax was introduced to raise revenue for the Civil War.[32] The 1862 tax, like the 1797 tax, was levied on legacies and distributive shares of personal property; however, it was not a documentary stamp tax.[33] Rather, it was an inheritance tax imposed on persons who received property from a decedent.[34] The tax was graduated in accordance with the "closeness of the familial relationship between the decedent and the beneficiary."[35] To necessarily oversimplify, the closer the familial relationship, the lower the rate of tax; moreover, the rate was only imposed on personal estates in excess of $1,000.[36] Like its predecessor though, the 1862 tax was short-lived.[37] Indeed, it was wholly repealed in 1870.[38]

A more permanent estate tax was implemented by the Revenue Act of 1916 in order to finance World War I and address wealth inequality.[39] After the Great Depression, President Franklin D. Roosevelt expanded estate tax rates to 70% to fund New Deal programs and militate against wealth concentration.[40] In the post-war era, the top federal estate tax rate remained steady at 77% from 1941 until it was reduced to 70% by the Tax Reform Act of 1976, effective for estates of decedents dying after December 31, 1976.[41]

In 1981, President Ronald Reagan initiated significant reductions in estate tax rates through the Economic Recovery Tax Act of 1981, which increased exclusion amounts and reduced rates.[42] The Taxpayer Relief Act of 1997 then raised the estate tax exclusion to $1 million, beginning in 2006.[43] The Economic

30. *Id.* at 3.
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.* at 4.
36. *Id.*
37. *See id.*
38. *Id.*
39. *Id.* at 6; *see* Revenue Act of 1916, Pub. L. No. 64-271, §§ 200–12, 39 Stat. 756, 777–80.
40. *See* LUCKEY, *supra* note 28, at 9–10.
41. *Id.* at 10, 12, 15 n.66.
42. *Id.* at 15; Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, §§ 401–02, 95 Stat. 172, 299–301.
43. Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 501, 111 Stat. 788, 845.

Growth and Tax Relief Reconciliation Act of 2001 gradually phased out the estate tax, completely repealing the tax for decedents dying after December 31, 2009.[44] However, the act had a sunset date of December 31, 2010, and the estate tax was subsequently reinstated, effective in 2011.[45] By 2013, the exclusion was set at $5 million with a top tax rate of 40%, indexed for inflation.[46] The American Taxpayer Relief Act of 2010 also introduced of the concept of "portability."[47] Portability allows the unused exclusion of a recently deceased spouse to be "ported" over to the surviving spouse.[48]

B. The TCJA's Estate Tax Provision

The TCJA graciously doubled the estate tax exclusion from approximately $5 million to $10 million per individual, indexed for inflation.[49] This effectively raised the exclusion to $27.98 million for married couples in 2025, shielding many family farms and small businesses from tax burdens that could otherwise necessitate asset liquidation.[50]

This increase dramatically reduced the number of estates subject to federal taxation, limiting estate tax liability to only the wealthiest individuals and families.[51] However, a defining feature of the TCJA is its temporary nature.[52] The increased estate tax exclusion is set to expire on December 31, 2025, reverting

44. Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 501, 115 Stat. 38, 69; LUCKEY, *supra* note 28, at 26.

45. Economic Growth and Tax Relief Reconciliation Act of 2001 § 901, 115 Stat. at 150; Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111–312, § 301, 124 Stat. 3296, 3300.

46. Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 § 302(a), 124 Stat at 3301; American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 101(c), 126 Stat. 2313, 2318 (2013).

47. *See* Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 § 303(a), 124 Stat at 3302–03.

48. I.R.C. § 2010(c)(2)(B) (West); Treas. Reg. § 20.2010-2 (2015).

49. *See* § 2010(c)(3).

50. *See* Stephen C. Rohr, *IRS Announced 2025 COL Adjustments for Estate, Gift Tax Exclusion Amounts*, THE NAT'L L. REV. (Nov. 13, 2024), https://natlawreview.com/article/irs-announced-2025-col-adjustments-estate-gift-tax-exclusion-amounts [https://perma.cc/CW9C-QUPQ].

51. *Federal Tax Issues—Federal Estate Taxes*, ECON. RSCH. SERV., U.S. DEP'T OF AGRIC. (Jan. 1, 2025), https://www.ers.usda.gov/topics/farm-economy/federal-tax-issues/federal-estate-taxes [https://perma.cc/VZ5F-KJGZ] (estimating that 0.2% of farm households owe estate tax).

52. *See* § 2010(c)(3)(C).

back to approximately $5 million per individual, before adjusting for inflation.[53] Without congressional action, this reversion threatens to expose a far greater number of family-owned farms to federal estate taxes.[54]

While Congress will likely revisit the estate tax framework, extending the elevated exclusions faces significant hurdles.[55] To be sure, political divisions, deficit concerns, and the potential for a Senate filibuster requiring 60 votes presents formidable obstacles for all legislation; however, these challenges are especially prevalent with respect to taxation legislation.[56] Fiscal conservatives within the Republican Party may resist measures perceived as raising taxes and spending, while Democrats have a propensity to advocate for reducing exemption and exclusion amounts in order to address purported wealth inequality.[57] While it may seem frustrating in the moment, the law-making process delineated in the Constitution is designed to ensure legislation ultimately passed is "good legislation."[58] The above-described challenges also underscore the uncertainty surrounding the future of estate tax policy.

1. The Politics of Sunset Provisions and Budget Reconciliation

The TCJA was passed through budget reconciliation, a legislative process allowing spending measures to pass the Senate with a simple majority (i.e., 51 votes) rather than the 60 vote requirement imposed when a senator filibusters.[59] Sunset provisions are a legislative tool used to limit the long-term impact on the federal deficit, ensuring compliance with the "Byrd Rule," while leaving room for

53. *Id.*

54. EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 34–35.

55. *See generally* BILL HENIFF JR., CONG. RSCH. SERV., RL30862, THE BUDGET RECONCILIATION PROCESS: THE SENATE'S "BYRD RULE" 16–18 (2022) (discussing the Byrd Rule's effect on tax-cut legislation).

56. *See Budget Reconciliation, Simplified*, BIPARTISAN POL'Y CTR. (Aug. 28, 2024), https://bipartisanpolicy.org/explainer/budget-reconciliation-simplified/ [https://perma.cc/8YYV-6Q5N].

57. Erin Schilling & Samantha Handler, *Warren, Democrats Target Estate Tax Dodges Ahead of 2025 Fight*, BLOOMBERG L.: DAILY TAX REP. (Apr. 11, 2024, 3:45 AM), https://www.bloomberglaw.com/bloomberglawnews/daily-tax-report/X92F0QM8000000?bna_news_filter.

58. Senate Judiciary Committee, *Constitutional Role of Judges*, C-SPAN, at 24:42 (Oct. 5, 2011), https://www.c-span.org/program/senate-committee/constitutional-role-of-judges/262362 (United States Supreme Court Justice Antonin Scalia implored that we should "love the gridlock" and reminded Americans that the seemingly burdensome aspects of the legislative process should be appreciated because they are in place to ensure that "the legislation that gets out will be good legislation.").

59. *Budget Reconciliation, Simplified*, *supra* note 56.

future policy adjustments based on ever-changing economic conditions.[60] This process facilitated passage but imposed constraints under the Byrd Rule, which prohibits legislation from increasing the deficit beyond a period of time known as the budget window, often ten years.[61] Consequently, the estate tax exclusion increase is temporary, expiring at the end of 2025.[62]

The TCJA prioritized permanent corporate tax cuts, reducing the corporate tax rate to 21%, while estate tax adjustments and many individual tax cuts were made temporarily to comply with reconciliation rules.[63] The inherent structure of the compromise creates an ineluctable looming fiscal cliff, forcing future Congresses to reconsider estate tax policy.[64]

2. Effect on Agricultural Families and Farms

Agricultural estates are particularly vulnerable to lower estate tax exclusions. In 2023, approximately 39,988 farm estates were created, with an estimated 330 farm estates (roughly 1%) being required to file an estate tax return.[65] However, after accounting for tax adjustments, deductions, and exclusions, only 0.2% of these farm estates were liable for estate taxes.[66] This minimal impact on farm estates is largely attributed to the increased exclusion thresholds temporarily enacted under the TCJA, which significantly reduced the number of estates subject to federal estate tax.[67] Should the higher exemption amount be allowed to expire, approximately 7.3% of large farm estates would face estate taxes and 8.5% of very large estates could be subject to taxation.[68] The USDA estimates that 70% of United States farmland will be passed down in the next two decades; however, many family farms lack a next generation ready or willing to continue the farming

60. Rebecca M. Kysar, *Lasting Legislation*, 159 U. PA. L. REV. 1007, 1020–21 (2011); Mark Strand & Tim Lang, *How the Byrd Rule Affects Tax Reform*, CONG. INST. (Dec. 5, 2017), https://www.congressionalinstitute.org/2017/12/05/how-the-byrd-rule-affects-tax-reform/ [https://perma.cc/8CHT-UCRR].

61. *Budget Reconciliation, Simplified*, *supra* note 56.

62. I.R.C. § 2010(c)(3)(C) (West).

63. WILLIAM G. GALE ET AL., TAX POL'Y CTR., EFFECTS OF THE TAX CUTS AND JOBS ACT: A PRELIMINARY ANALYSIS 5 (2018), https://taxpolicycenter.org/sites/default/files/publication/155349/2018.06.08_tcja_summary_paper_final.pdf [https://perma.cc/2W9U-ZUPS].

64. Strand & Lang, *supra* note 60.

65. *Federal Tax Issues—Federal Estate Taxes*, *supra* note 51.

66. *Id.*

67. EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 34–35.

68. Philip Brasher, *USDA Analysis: Sunsetting Income, Estate Tax Provisions Would Hit Many Farms*, AGRI-PULSE (Mar. 6, 2024), https://www.agri-pulse.com/articles/20762-usda-analysis-sunsetting-income-estate-tax-provisions-would-hit-many-farms.

legacy.[69] Without proper succession planning, these farms risk being absorbed into larger operations or being converted to non-agricultural uses, which would accelerate industry consolidation.[70] Figure 1 portrays the anticipated changes that farms are projected to experience in the event the estate tax exclusion is reduced by half on January 1, 2026.

Return to Lower Estate Exemption Would Affect Family Farms Across the Board						
	$13.95 million exclusion			$6.98 million exclusion		
Farm Type	Percent of estates paying estate tax	Average net worth of estates taxed in dollars	Average tax rate	Percent of estates paying estate tax	Average net worth of estates taxed in dollars	Average tax rate
Small						
Retirement	0.1	35,800,000	11.3%	0.5	20,900,000	10.7%
Off-farm occupation	0.3	23,800,000	9.7%	1.4	15,600,000	11.4%
Low sales	0.1	42,500,000	11.2%	0.5	19,500,000	13.5%
Moderate sales	0.6	36,000,000	20.6%	1.5	24,800,000	18.5%
Midsize	1.4	29,600,000	14.6%	3.3	22,900,000	15.8%
Large Scale						
Large	2.8	34,500,000	17.8%	7.3	21,200,000	19.8%
Very large	6.9	53,000,000	28.1%	8.5	45,900,000	31.7%
All Farm Households	0.3	32,500,000	14.6%	1.0	19,600,000	14.7%

Figure 1 – Source: USDA, Economic Research Service[71]

The threat of land loss is further compounded by broader development trends. If current patterns continue, American Farmland Trust estimates that more than 18 million acres of United States farmland and ranchland will be converted to

69. *Family Farms*, *supra* note 7.

70. *Id.*

71. *Forecast Results of Sunsetting Estate Tax Exemption for Farm Estates* (illustration), *in* EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 32.

urban and low-density residential uses between 2016 and 2040.[72] This estimate is based on a "Business as Usual" scenario, which assumes that historical development patterns will persist.[73] Poorly planned development and residential sprawl are key drivers behind this rapid loss of farmland and ranchland.[74]

In Ohio specifically, the report estimates that 518,500 acres of agricultural land will be lost to urban and low-density residential development by 2040 under the same scenario.[75] This projection highlights the significant impact that ongoing development trends could have on Ohio's agricultural landscape, especially when combined with the potential reduction in estate tax exclusions.[76]

Family farms represent 97% of United States farms and produce approximately 90% of the nation's agricultural output.[77] Yet, they are facing economic pressures such as rising input costs, commodity price fluctuations, and industry consolidation, all of which threaten their viability.[78] "After decades of decline the number of family farms has grown by about 4[%]."[79] However, the reversion of the TCJA estate tax exemption could jeopardize these gains, placing additional stress on farms already operating on thin margins.[80]

The potential expiration of the estate tax exemption is a significant concern for many farming families, especially those managing capital-intensive operations like dairy farms.[81] Farms are unique from most other businesses in that farm wealth is typically tied to non-liquid assets such as land, livestock, and equipment, making it difficult to cover estate tax liabilities without selling essential assets.[82] As of

72. MITCH HUNTER ET AL., AM. FARMLAND TR., FARMS UNDER THREAT 2040: CHOOSING AN ABUNDANT FUTURE 22 (2022), https://farmlandinfo.org/wp-content/uploads/sites/2/2022/08/AFT_FUT_Abundant-Future-7_29_22-WEB.pdf [https://perma.cc/5DAH-YZXA].

73. *Id.* at 18, 22.

74. *Id.* at ii.

75. *Id.* at 22.

76. *See id.*

77. AMERICA'S FARMS: 2023 EDITION, *supra* note 5, at 5.

78. JAMES M. MACDONALD ET AL., ECON. RSCH. SERV., U.S. DEP'T OF AGRIC., REP. NO. 47, PROFITS, COSTS, AND THE CHANGING STRUCTURE OF DAIRY FARMING 5, 12, 23 (2007) [hereinafter THE CHANGING STRUCTURE OF DAIRY FARMING], https://ers.usda.gov/sites/default/files/_laserfiche/publications/45868/11138_err47_1_.pdf [https://perma.cc/2KMA-JQ7L].

79. *Family Farms*, *supra* note 7.

80. AMERICA'S FARMS: 2023 EDITION, *supra* note 5, at 8.

81. *See* Ayoub, *supra* note 16; THE CHANGING STRUCTURE OF DAIRY FARMING, *supra* note 78, at 9.

82. NIGEL KEY ET AL., ECON. RSCH. SERV., U.S. DEP'T OF AGRIC., BULL. NO. 211, FINANCIAL CONDITIONS IN THE U.S. AGRICULTURAL SECTOR: HISTORICAL COMPARISONS 10

2025, the inflation-adjusted exemption stands at $13.99 million per individual.[83] If the exemption reverts to roughly $7 million in 2026, the number of total estates subject to federal taxation is projected to triple, which could put immense pressure on larger family farms, potentially forcing them to sell vital assets to cover tax liabilities.[84]

By framing the TCJA's estate tax provisions within this historical and economic context, policymakers and farmers can better prepare for future uncertainties and safeguard agricultural assets for generations to come. Proactive tax legislation, estate planning, and strategic financial management are essential to mitigating the risk of forced asset sales, ensuring that farms remain operational and within families, despite looming tax burdens.[85]

C. Constitutional Challenges and Justifications Surrounding the Estate Tax

The constitutionality of the estate tax has been a topic of legal and political debate since its inception.[86] Rooted in Congress' taxing power[87] and upheld by early judicial interpretations, the estate tax has endured as a mechanism to generate federal revenue and address wealth concentration.[88] However, its critics continue to raise constitutional concerns, for example, arguing that the estate tax is not derived from a specifically enumerated power, unlike the Sixteenth Amendment's grant of authority to collect income taxes.[89]

1. Historical Foundations

The estate tax, as part of federal taxation, finds its constitutional power in Article I, Section 8, which grants Congress the authority to "lay and collect Taxes, Duties, Imposts and Excises."[90] Early challenges to the tax were addressed in

(2019), https://ers.usda.gov/sites/default/files/_laserfiche/publications/95238/EIB-211.pdf [https://perma.cc/K9KK-PSPB].

83. Press Release, Internal Revenue Serv., *supra* note 12.

84. *See* JANE G. GRAVELLE, CONG. RSCH. SERV., R48183, THE ESTATE AND GIFT TAX: AN OVERVIEW 7, 16 (2024).

85. *See* Ayoub, *supra* note 16.

86. *See* Henry Lowenstein & Kathryn Kisska-Schulze, *A Historical Examination of the Constitutionality of the Federal Estate Tax*, 27 WM. & MARY BILL RTS. J. 123, 146 (2018).

87. U.S. CONST. art. I, § 8, cl. 1 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States[.]").

88. Lowenstein & Kisska-Schulze, *supra* note 86, at 142; LUCKEY, *supra* note 28, at 5–6.

89. Lowenstein & Kisska-Schulze, *supra* note 86, at 142, 145.

90. U.S. CONST. art. I, § 8, cl. 1; Lowenstein & Kisska-Schulze, *supra* note 86, at 142.

Knowlton v. Moore, where the Supreme Court upheld the constitutionality of inheritance taxes as indirect taxes.[91] The Court reasoned that estate and inheritance taxes were distinguishable from direct taxes, which would require apportionment under Article I, Section 9 of the Constitution.[92] This interpretation solidified the legal foundation for federal estate taxation as an exercise of Congress' broad taxing authority.[93]

2. Constitutional Challenges

Critics of the estate tax have raised several constitutional objections, most notably the claim that it constitutes "double taxation" by taxing assets already subject to income or capital gains taxes during the decedent's lifetime.[94] However, the Court has rejected this argument, emphasizing that the estate tax is a distinct levy on the transfer of wealth, not on the underlying income or property itself.[95]

Additionally, opponents have contended that the estate tax infringes on property rights protected under the Fifth Amendment, asserting that taxing estate transfers at death imposes a burden on wealth holders and their heirs, producing a negative effect on savings.[96] This view is often rebutted with the argument that receiving a large inheritance actually reduces the need for beneficiaries to acquire their own savings and capital, harming long-term economic growth.[97] Despite these concerns, the Supreme Court has affirmed the estate tax's constitutionality, rejecting Fifth Amendment challenges.[98] Ultimately, the estate tax has consistently been seen as a valid mechanism for funding government operations and addressing economic disparities.[99]

The constitutional debate over the estate tax is particularly relevant to agriculture, where family farms often face unique challenges in meeting tax

91. 178 U.S. 41, 82–85 (1900); Lowenstein & Kisska-Schulze, *supra* note 86, at 143.

92. *Knowlton*, 178 U.S. at 47; Lowenstein & Kisska-Schulze, *supra* note 86, at 148.

93. Lowenstein & Kisska-Schulze, *supra* note 86, at 147.

94. GRAVELLE, *supra* note 84, at 15.

95. *See* New York Tr. Co. v. Eisner, 256 U.S. 345, 349–50 (1921); *Knowlton*, 178 U.S. at 55–56.

96. *See* Debra Rahmin Silberstein, *A History of the Death Tax—A Source of Revenue, or a Vehicle for Wealth Redistribution?*, PROB. & PROP, May/June 2003, at 58, 60–62; GRAVELLE, *supra* note 84, at 15.

97. *See* Silberstein, *supra* note 96, at 62; GRAVELLE, *supra* note 84, at 15.

98. Silberstein, *supra* note 96, at 60; *Knowlton*, 178 U.S. at 50.

99. Silberstein, *supra* note 96, at 60–62.

liabilities.[100] The sunset provisions of the TCJA, which temporarily doubled the estate tax exemption to $13.99 million per individual in 2025, have underscored concerns about the tax's fairness.[101] While the temporary increase offered relief to many farmers, the scheduled return to a lower exemption in 2026 threatens to burden agricultural estates disproportionately.[102] This is due to the illiquidity of farming assets, which forces many families to sell land or equipment to cover tax liabilities.[103] That burden could potentially disrupt generational land ownership and agricultural productivity.[104] Beyond estate tax disputes, the TCJA's broader provisions—set to expire in 2025—pose additional challenges for farmers, as explored in Part III.[105]

III. BROADER IMPACTS OF OTHER SUNSETTING PROVISIONS

The current tax environment offers farmers opportunities and challenges as TCJA provisions near their 2025 sunset. Although today's tax rules remain favorable in many respects, proactive planning is essential to maximize benefits before these changes take effect.

The TCJA increased several tax thresholds, granting farm operations greater flexibility.[106] Marginal tax brackets widened, and, in 2025, the standard deduction rose to $30,000 for married couples filing jointly (up $800 from 2024) and $15,000 for single filers (up $400).[107] The annual gift exclusion increased to $19,000 per donee, and the lifetime gift exemption stands at $13,990,000—critical tools for farm succession planning.[108] This window for wealth transfer with minimal tax burdens closes in 2026 when the lifetime exemption reverts to pre-TCJA levels of

100. *Impact of Tax Laws on Family Farms*, THE FARMING INSIDER (Feb. 19, 2024), https://thefarminginsider.com/impact-of-tax-laws-on-family-farms/ [https://perma.cc/REN5-MB9W].

101. *See* Adam Frank, *Approaching the Potential Sunset of Tax Cuts and Jobs Act (TCJA) Provisions*, J.P. MORGAN WEALTH MGMT. (Feb. 13, 2025), https://www.jpmorgan.com/insights/wealth-planning/taxes/tax-cuts-and-jobs-act-tcja [https://perma.cc/9CSP-YSMX].

102. Ayoub, *supra* note 16.

103. *Id.*; *see generally* I.R.C. § 2032A (West) (special use valuation for farms and closely held businesses).

104. Ayoub, *supra* note 16.

105. EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 1.

106. *Id.* at 6.

107. *Id.*; Press Release, Internal Revenue Serv., *supra* note 12.

108. Press Release, Internal Revenue Serv., *supra* note 12; Sara A. Wells, *IRS Announces Increased Gift and Estate Tax Exemption Amounts for 2025*, MORGAN LEWIS (Oct. 24, 2024), https://www.morganlewis.com/pubs/2024/10/irs-announces-increased-gift-and-estate-tax-exemption-amounts-for-2025 [https://perma.cc/PCQ2-ANFK].

approximately $7 million per individual.[109] This creates urgency for long-term estate planning.

Several business deductions are also phasing out.[110] Bonus depreciation, which allows immediate expensing of 60% of qualified new and used assets with a useful life of 20 years or less, will decline to 40% in 2025, 20% in 2026, and expire completely in 2027.[111] The § 179 deduction limit permanently rose to $1,000,000 (for purchases up to $2,500,000), allowing farmers to expense machinery, livestock, and other assets.[112] The § 199A deduction, offering up to a 20% deduction on QBI, will expire in 2025.[113] While the corporate tax rate remains at 21%, future political shifts could potentially alter this.[114]

Given these impending expirations, agricultural producers should assess their tax strategies. Present conditions allow farms to: (1) recognize income at lower rates; (2) maximize the § 199A deduction for permanent savings; and (3) capitalize on favorable capital gains and qualified dividend rates.[115] Additional opportunities include deferred payment contracts, accelerated equipment depreciation, crop insurance deferral, and expense prepayments to manage taxable income.[116] Retirement planning is also advantageous, with higher contribution limits and potential tax credits for establishing new plans.[117]

Additionally, farmers can use farm income averaging to smooth income volatility by spreading current-year income over the prior three years, reducing overall tax liabilities.[118] Producers should also evaluate whether their state offers a pass-through entity tax regime, allowing state taxes to be paid at the entity level to bypass the $10,000 cap on state and local tax deductions.[119]

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109. *See* I.R.C. § 2010(c)(3)(C) (West); EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 29.

110. Zagar, *supra* note 19.

111. I.R.C. § 168(k)(2)(A)(i)(I), (k)(6) (West); WILLIAMSON & BAWA, *supra* note 3, at 10.

112. I.R.C. § 179(b) (West); EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 23–24.

113. I.R.C. § 199A(a), (i) (West).

114. *See id.* § 11(b).

115. Brent Bright, *Tax Planning for Agribusiness Ahead of 2025*, PINION (Dec. 29, 2024), https://www.pinionglobal.com/blog/tax-planning-for-agribusiness-ahead-of-2025/ [https://perma.cc/89LQ-A9C6].

116. *Id.*

117. *Id.*; *see, e.g.*, I.R.C. § 45E (West) (pertaining to the small employer pension plan startup credit).

118. Bright, *supra* note 115; *see* I.R.C. § 1301 (West).

119. Bright, *supra* note 115; *see* I.R.C. § 164(a), (b)(6) (West).

The increased lifetime gift exemption presents another time sensitive opportunity to transfer wealth without the post-2025 limits.[120] By leveraging these provisions now, agricultural producers can mitigate the effects of future tax law changes and secure long-term operational stability.

A. Qualified Business Income

The QBI deduction, introduced by § 199A of the TCJA, allows owners of pass-through entities such as sole proprietorships, partnerships, and S corporations to deduct up to 20% of their QBI.[121] This deduction has been particularly advantageous for dairy farms, most of which operate as pass-through entities to avoid the complexities of corporate tax structures.[122] The QBI deduction effectively lowers taxable income, enhancing profitability and allowing vital resources to be reinvested in farm operations.[123]

Upon expiration in 2025, dairy farmers will face increased taxable income levels, reducing the funds available for equipment purchases, herd expansion, and infrastructure improvements.[124] The absence of this deduction may compel many farmers to reconsider their business structures, potentially transitioning to C corporations to maintain favorable tax treatment—though this path introduces its own complexities and uncertainties.[125]

B. Bonus Depreciation

Bonus depreciation has been a cornerstone of agricultural tax planning under the TCJA, allowing farmers to immediately expense 60% of the cost of new and used capital assets with a useful life of 20 years or fewer in 2024.[126] Farmers can immediately expense large purchases such as tractors, combines, grain silos, and irrigation systems—accelerating modernization and boosting operational

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120. *See* I.R.C. § 2010(c)(3)(C) (West).

121. *Id.* § 199A; *Qualified Business Income Deduction*, INTERNAL REVENUE SERV. (Apr. 25, 2025), https://www.irs.gov/newsroom/qualified-business-income-deduction [https://perma.cc/3UZ6-44A4].

122. WILLIAMSON & BAWA, *supra* note 3, at 3, 9 (explaining that the QBI deduction provides a significant benefit for pass-through agricultural businesses).

123. *See id.* at 9.

124. *See id.* (noting the disproportionate benefit for pass-through farms and the economic disruption from its expiration).

125. *See id.* at 3, 7 n.6 (highlighting the complexities of transitioning to C corporations and the potential tax implications); *see also* I.R.C. § 11(b) (West) (setting the corporate tax rate at 21%).

126. I.R.C. § 168(k)(2)(A)(i)(I), (k)(6)(A)(iii) (West); Bright, *supra* note 115.

efficiency.[127] This expensing mechanism not only encourages reinvestment but also strengthens cash flow, helping farms weather the volatility of commodity prices and rising input costs.[128] This provision has incentivized substantial investments in essential infrastructure, such as milking facilities, tractors, and irrigation systems.[129] By providing immediate tax relief, bonus depreciation improves cash flow and offsets the high upfront costs associated with modernizing farm operations.[130] Without this provision, farmers will face longer depreciation schedules, which will increase financial strain and limit their competitive edge.[131]

The gradual phase-out of this provision—declining to 40% in 2025, 20% in 2026, and vanishing entirely by 2027—will present significant challenges for dairy farmers.[132] The elimination of immediate expensing means farmers will revert to a more protracted depreciation schedule, spreading deductions over several years.[133] This shift reduces short-term liquidity and may delay critical investments, hampering the ability to upgrade equipment or expand operations.[134]

C. Individual Income Tax Rates

The TCJA reduced individual income tax rates across all brackets, with the top marginal rate declining from 39.6 to 37%.[135] For many farmers, who primarily file as individuals or through pass-through entities, these reduced rates have provided essential tax relief, enhancing cash flow and enabling reinvestment in essential equipment, land improvements, and operational expansion.[136]

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127. *See* Bradley Zwilling, *Understanding Farm Depreciation for 2025*, DEP'T OF AGRIC. & CONSUMER ECON., UNIV. OF ILL. AT URBANA-CHAMPAIGN: FARMDOC DAILY (Mar. 21, 2025), https://farmdocdaily.illinois.edu/2025/03/understanding-farm-depreciation-for-2025.html [https://perma.cc/8HQE-HVKH].

128. *Farmers' Guide to the Bonus Depreciation Phase-Out*, ADAMS BROWN (July 23, 2024), https://www.adamsbrowncpa.com/blog/farmers-guide-to-the-bonus-depreciation-phase-out [https://perma.cc/6G49-BS25]; THE CHANGING STRUCTURE OF DAIRY FARMING, *supra* note 78, at 5, 12.

129. *See* WILLIAMSON & BAWA, *supra* note 3, at 12.

130. *Farmers' Guide to the Bonus Depreciation Phase-Out*, *supra* note 128.

131. *See* WILLIAMSON & BAWA, *supra* note 3, at 9 n.13.

132. *See id.* at 10.

133. *Id.* at 9 n.13.

134. *See Farmers' Guide to the Bonus Depreciation Phase-Out*, *supra* note 128.

135. EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 6.

136. *See id.* at 4.

Approximately 95% of United States farms are family-owned and operated**,** accounting for 84% of the nation's farmland**.**[137] The majority of these farms operate as sole proprietorships, with partnerships and subchapter S corporations also comprising significant portions of farm businesses.[138] This ownership structure means that most farms are taxed at the individual level, making individual income tax policy more impactful to agricultural producers than corporate tax policies.[139] However, the reversion of individual tax rates to pre-TCJA levels in 2026 will negatively impact agricultural producers, increasing overall tax burdens and reducing net income at a time when economic pressures are already mounting.[140]

Farmers routinely experience volatility in commodity prices, fuel costs, and feed expenses, making predictable tax relief critical to maintaining operational stability.[141] A return to higher income tax rates will exacerbate financial strain, limiting the funds available for reinvestment, modernization, and emergency reserves.[142] This financial squeeze is particularly concerning for small to mid-size farms that lack the economies of scale enjoyed by larger agricultural enterprises.[143] Rising input costs combined with increased tax liabilities may accelerate the consolidation of family farms, as smaller operations struggle to remain competitive against larger, more capitalized enterprises.[144]

The USDA highlights the vulnerability of small and mid-size farms to such economic pressures, as many family farms already operate on thin profit

137. Press Release, Nat'l Agric. Stat. Serv, U.S. Dep't of Agric., USDA Releases 2022 Census of Agriculture Data (Feb. 13, 2024), https://www.nass.usda.gov/Newsroom/2024/02-13-2024.php [https://perma.cc/CU2C-37EP].

138. WILLIAMSON & BAWA, *supra* note 3, at 3.

139. *Id.* at 1, 3.

140. *Id.* at 14; AMERICA'S FARMS: 2023 EDITION, *supra* note 5, at 8.

141. *See* Shelby Myers, *Analyzing Farm Inputs: The Cost to Farm Keeps Rising*, AM. FARM BUREAU FED.: MKT. INTEL (Mar. 17, 2022), https://www.fb.org/market-intel/analyzing-farm-inputs-the-cost-to-farm-keeps-rising [https://perma.cc/H3Q7-5XDH].

142. *See* Chris Clayton, *Sunsetting Income Tax Breaks in 2025 Could Drive Up Liability for Farmers*, PROGRESSIVE FARMER (Mar. 11, 2024, 3:49 PM), https://www.dtnpf.com/agriculture/web/ag/news/business-inputs/article/2024/03/11/sunsetting-income-tax-breaks-2025 [https://perma.cc/P8BB-AC6D].

143. *See* LAUREN GWIN & TANYA MURRAY, OR. STATE UNIV. EXTENSION SERV., PRACTICAL STRATEGIES TO ASSESS AND IMPROVE SMALL FARM PROFITABILITY 2 (2016), https://extension.oregonstate.edu/sites/extd8/files/documents/em9149.pdf [https://perma.cc/LL3E-VNP8].

144. *See* DENNIS A. SHIELDS, CONG. RSCH. SERV., R41224, CONSOLIDATION AND CONCENTRATION IN THE U.S. DAIRY INDUSTRY 6 (2010); Myers, *supra* note 141.

margins.[145] For example, in the dairy sector capital-intensive investments in livestock, milking facilities, and feed storage require consistent reinvestment to maintain productivity.[146] Without adequate income retention due to tax increases, family-owned dairy farms risk selling off critical assets or ceasing operations altogether.[147]

By shaping investment, management, and production decisions, tax policy plays a pivotal role in determining whether farms can continue operating independently or if they are driven toward consolidation.[148] The reversion of TCJA rates may ultimately accelerate the loss of family farms, impacting the broader agricultural landscape.[149]

D. The Standard Deduction

The TCJA nearly doubled the standard deduction, simplifying tax filings for farmers who do not itemize.[150] In 2025, the standard deduction for married couples filing jointly stands at $30,000, while single filers can claim $15,000.[151] This increase has significantly reduced taxable income for farm families, streamlining compliance and minimizing record-keeping burdens.[152]

When the provision sunsets in 2026, the standard deduction will revert to pre-TCJA levels, nearly halving the current threshold.[153] This change will force many farmers back into itemizing deductions, increasing administrative complexity and the likelihood of higher taxable income.[154] For smaller farms, which rely heavily on the standard deduction, this shift represents a tangible financial setback, further eroding profit margins.[155]

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145. AMERICA'S FARMS: 2023 EDITION, *supra* note 5, at 8.
146. *See* SHIELDS, *supra* note 144, at 7.
147. Ayoub, *supra* note 16.
148. *Id.*
149. *Id.*
150. I.R.C. § 63(b), (c)(7) (West); EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 6.
151. Press Release, Internal Revenue Serv., *supra* note 12.
152. *Tax Reform: The Impact of Tax Reform on Standard Deductions: What's Changed*, FASTERCAP. (Apr. 3, 2025), https://fastercapital.com/content/Tax-Reform—The-Impact-of-Tax-Reform-on-Standard-Deductions—What-s-Changed.html [https://perma.cc/X5Z8-EUD3].
153. § 63(c)(7); EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 6, 28.
154. *See What Are Itemized Deductions and Who Claims Them?*, TAX POL'Y CTR. (Jan. 2024), https://taxpolicycenter.org/briefing-book/what-are-itemized-deductions-and-who-claims-them [https://perma.cc/EQ34-5CP7].
155. *Id.*; WILLIAMSON & BAWA, *supra* note 3, at 23.

IV. The Dairy Sector's Unique Vulnerability to Estate Tax

Dairy farms face distinct vulnerabilities as key provisions of the TCJA sunset at the end of 2025. While the agriculture industry tends to be capital intensive as a whole, dairy farms are especially capital-intensive.[156] This is because dairy farms tend to have significant investments in land, livestock, and infrastructure.[157] These assets, while essential to production, are illiquid, or at least impractical to convert to cash, thus making it difficult to cover estate tax liabilities without selling portions of the operation.[158] In the absence of intervening legislation, the reversion of the estate tax exemption to approximately $7 million per individual in 2026 will heighten these challenges, exposing many large dairy farms to increased tax burdens.[159]

Generational succession further compounds these risks. The average age of farm operators in the United States is 58 years old—and this population continues to age.[160] What is more, fewer young family members are stepping in to take over farming operations.[161] Financial instability, rising input costs, and the debt required to modernize facilities are a few of the factors that can deter younger generations from pursuing careers in agriculture.[162] Estate tax liabilities can exacerbate the problem by forcing families to liquidate farmland, equipment, or livestock to meet tax obligations, threatening the continuity of multigenerational farms.[163]

156. C. A. Wolf & J. Karszes, *Financial Risk and Resiliency on US Dairy Farms: Measures, Thresholds, and Management Implications*, 106 J. Dairy Sci. 3301, 3301, 3304 (2023).

157. *Id.* at 3304; The Changing Structure of Dairy Farming, *supra* note 78, at 7.

158. *See* Wolf & Karszes, *supra* note 156, at 3307–08; Ayoub, *supra* note 16.

159. Ayoub, *supra* note 16.

160. Nat'l Agric. Stat. Serv., U.S. Dep't of Agric., 2022 Census of Agriculture Highlights: Farm Producers (2024), https://www.nass.usda.gov/Publications/Highlights/2024/Census22_HL_FarmProducers_FINAL.pdf [https://perma.cc/94NE-9AZ8].

161. *Id.*; *Family Farms*, *supra* note 7.

162. *See* David Amaglobeli et al., Int'l Monetary Fund, Agricultural Producer Subsidies: Navigating Challenges and Policy Considerations 3 (2024); The Changing Structure of Dairy Farming, *supra* note 78, at 7, 11.

163. *See* Chris Clayton, *Farmland Values and Estate Taxes*, Progressive Farmer (Sept. 22, 2021, 7:36 AM), https://www.dtnpf.com/agriculture/web/ag/news/business-inputs/article/2021/09/22/understanding-section-2032a-special [https://perma.cc/C9JG-9GEF].

A. Family Farms Across Sizes

Estate tax impacts vary by farm size and income.[164] The USDA classifies family farms primarily by gross cash farm income (GCFI), supplemented by acreage for context.[165] GCFI is the primary measure because size classifications can vary widely by crop type and region.[166] A 2,000-acre grain farm might be midsize, while a 50-acre greenhouse operation could rank as very large due to high revenue.[167]

Farm Size by GCFI	
Small Family Farms	GCFI below $350,000
Mid-Sized Family Farms	GCFI between $350,000 and $999,999.99
Large Family Farms	GCFI between $1,000,000 and $4,999,999.99
Very Large Family Farms	GCFI of $5,000,000 or more

Figure 2 – Source: USDA, Economic Research Service[168]

For generations, farming has been more than just an occupation—indeed, it has been (and is) a way of life. Dairy farming in particular is a demanding lifestyle, with producers often working 64 hours per week year-round.[169] Though their labor feeds the nation, returns frequently barely cover costs, straining farmers and their families emotionally and physically.[170] The relentless nature of dairy farming takes a toll not just on the farmers, but on their families, who share in the physical and emotional labor of keeping the operation afloat.[171] While most United States farms are small, large and very large family farms drive agricultural output, producing

164. EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 32.

165. AMERICA'S FARMS: 2023 EDITION, *supra* note 5, at 3–5; *Family Farms*, *supra* note 7.

166. *Family Farms*, *supra* note 7.

167. *See generally id.*

168. AMERICA'S FARMS: 2023 EDITION, *supra* note 5, at 3.

169. DANIEL L. PRAGER ET AL., ECON. RSCH. SERV., U.S. DEP'T OF AGRIC., REP. NO. 254, ECONOMIC RETURNS TO FARMING FOR U.S. FARM HOUSEHOLDS 9 (2018), https://ers.usda.gov/sites/default/files/_laserfiche/publications/89702/ERR-254.pdf [https://perma.cc/Z7Y5-RF9K].

170. Elizabeth Eckelkamp, *America's Dairy Farms Are Disappearing, Down 95% Since the 1970s—Milk Price Rules Are One Reason Why*, THE CONVERSATION (Sept. 16, 2024, 8:31 AM), https://theconversation.com/americas-dairy-farms-are-disappearing-down-95-since-the-1970s-milk-price-rules-are-one-reason-why-237439 [https://perma.cc/PVP4-5TCC]; *see also* AMERICA'S FARMS: 2023 EDITION, *supra* note 5, at 5–6 (reporting that in 2022, large and very large family farms produced 50% of beef, 56% of hogs, 65% of cotton, 51% of cash grains and soybeans, 76% of dairy, and 65% of specialty crops).

171. *See* Eckelkamp, *supra* note 170.

76% of dairy in 2022 despite comprising just 3.4% of all operations (3.0% large, 0.4% very large).[172]

Dairy relies heavily on these larger operations.[173] Though farm numbers have dropped, average herd sizes have grown, with over 60% of milk production now from farms exceeding 2,500 cows.[174] Dairy and milk production account for 98% of milk sales in the United States, underscoring the sector's dependence on a shrinking pool of large-scale producers.[175] These farms often support multiple generations, offering some work-life balance unavailable to smaller operations.[176] Yet, stability is fragile, hinging on uncontrollable factors like milk price volatility and weather.[177]

Many large dairy farms, with GCFI over $1 million, may exceed the pre-TCJA exemption threshold.[178] The 2026 reversion will push currently exempt farms into taxable status and increase burdens for those already liable, potentially necessitating land or livestock sales that disrupt operations and family networks.[179]

Income dynamics also differ by size. About 84% of American farm households rely on off-farm income.[180] In many cases, the physical demands of farming are supplemented by "in-town" jobs, with family members balancing outside jobs with responsibilities on the farm to keep their operations afloat.[181] This reliance on external income is especially pronounced among smaller farms.[182]

Dairy producers, however, show greater self-sufficiency. Only 31% work off-farm, compared to 62% of all producers.[183] Further, 83% view farming as their primary occupation and 82% reside on-site, versus 42% and 70% respectively for

172. AMERICA'S FARMS: 2023 EDITION, *supra* note 5, at 4, 6.

173. *Id.*

174. Eckelkamp, *supra* note 170.

175. NAT'L AGRIC. STAT. SERV., U.S. DEP'T OF AGRIC., 2022 CENSUS OF AGRICULTURE HIGHLIGHTS: DAIRY CATTLE AND MILK PRODUCTION (2024), https://www.nass.usda.gov/Publications/Highlights/2024/Census22_HL_Dairy.pdf [https://perma.cc/Z5R5-A5W8].

176. *See* Megan Schrupp & Ellen Stenger, *Carrying on the Multigenerational Farm*, DAIRY STAR (Jan. 14, 2023, 9:17 PM), https://dairystar.com/stories/carrying-on-the-multigenerational-farm,15925 [https://perma.cc/9ZHA-BYWN].

177. *See* THE CHANGING STRUCTURE OF DAIRY FARMING, *supra* note 78, at 12, 18.

178. *See* EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 49–50.

179. *Id.*

180. AMERICA'S FARMS: 2023 EDITION, *supra* note 5, at 14.

181. *See id.*

182. *Id.*

183. 2022 CENSUS OF AGRICULTURE HIGHLIGHTS: DAIRY CATTLE AND MILK PRODUCTION, *supra* note 175.

all farmers.[184] This is consistent with larger dairy farms continuing to grow in size.[185] Increased revenue from larger dairy farms reduces reliance on external income, but estate taxes could unravel this resilience.[186]

B. Key Concerns for Large Dairy Farms

Large dairy farms today face a host of challenges, which practitioners must be aware of in order to effectively navigate tax and estate planning strategies.

- High Asset Valuation. Dairy farms in regions like the Midwest and California hold considerable investments in land, livestock, and infrastructure.[187] These assets hold great value.[188] Farms valued between $7 million and $13.99 million will likely face new estate tax liabilities when the exemption reverts.[189]
- Liquidity Shortages. Dairy farms typically lack the liquid assets necessary to cover estate taxes, which are due in cash within nine months of the owner's death (not considering any applicable extensions).[190] This often necessitates the sale of operational assets, disrupting productivity.[191]
- Rising Estate Tax Liability. USDA data projects that 7.3% of large farm estates and 8.5% of very large farm estates will owe federal estate taxes if TCJA exemptions expire, compared to just 2.8% and 6.9% respectively under current thresholds.[192]

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184. *Id.*

185. *See id.*

186. *See* AMERICA'S FARMS: 2023 EDITION, *supra* note 5, at 14; EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 32–33.

187. 2022 CENSUS OF AGRICULTURE HIGHLIGHTS: DAIRY CATTLE AND MILK PRODUCTION, *supra* note 175; JAMES M. MACDONALD ET AL., ECON. RSCH. SERV., U.S. DEP'T OF AGRIC., REP. NO. 189, THREE DECADES OF CONSOLIDATION IN U.S. AGRICULTURE 16 (2018) [hereinafter CONSOLIDATION IN U.S. AGRICULTURE], https://ers.usda.gov/sites/default/files/_laserfiche/publications/88057/EIB-189.pdf?v=43102 [https://perma.cc/66UQ-EWAG].

188. CONSOLIDATION IN U.S. AGRICULTURE, *supra* note 187, at 1.

189. Tia M. McDonald & Ron Durst, *Farm Households Face Larger Tax Liabilities When Provisions of the Tax Cuts and Jobs Act of 2017 Expire*, ECON. RSCH. SERV., U.S. DEP'T OF AGRIC.: AMBER WAVES (March 6, 2024), https://www.ers.usda.gov/amber-waves/2024/march/farm-households-face-larger-tax-liabilities-when-provisions-of-the-tax-cuts-and-jobs-act-of-2017-expire [https://perma.cc/W2RG-Z4GV]; *see* Press Release, Internal Revenue Serv., *supra* note 12.

190. *See* I.R.C. § 6075(a) (West); SHIELDS, *supra* note 144, at 1–2.

191. Ayoub, *supra* note 16.

192. EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 32–33.

- Accelerated Consolidation. As estate tax liabilities mount, small and mid-size dairy farms may be forced to sell or merge with larger operations, intensifying existing consolidation trends in the sector.[193] Existing market pressures have already driven significant consolidation within the dairy sector.[194] This development reflects the broader shift towards dominance by large-scale farms.[195]

To reiterate, the capital-intensive nature of dairy farming, coupled with generational turnover and liquidity constraints, makes the industry particularly susceptible to estate tax policy changes.[196] Proactive estate and succession planning is critical to preserving family-owned dairy operations in the post-TCJA landscape.

V. CASE STUDIES AND EXAMPLES

The following hypothetical case studies illustrate the practical consequences of the impending sunsetting of TCJA provisions crucial to agriculture, with a focus on how location and land value fluctuations can significantly affect estate tax exposure. While commodity pricing for dairy farms remains relatively stable across regions, the value of farmland often varies dramatically based on location and development potential.[197] This discrepancy underscores a key challenge for farmers: land near urban areas or in high-demand regions appreciates faster than in more rural areas, thereby heightening estate tax burdens for those individuals.[198]

193. Ayoub, *supra* note 16; SHIELDS, *supra* note 144, at 6, 10–11.

194. SHIELDS, *supra* note 144, at 6, 10–11.

195. CONSOLIDATION IN U.S. AGRICULTURE, *supra* note 187, at 1.

196. *See* THE CHANGING STRUCTURE OF DAIRY FARMING, *supra* note 78, at 8, 11; EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 1.

197. Aaron Gerdts, *How Is Milk Priced in the United States? An Overview of FMMOs*, IOWA FARM BUREAU (Sept. 28, 2023), https://www.iowafarmbureau.com/Article/How-is-milk-priced-in-the-United-States-An-overview-of-FMMOs [https://perma.cc/4DQT-AMQ2]; NAT'L AGRIC. STAT. SERV., U.S. DEP'T OF AGRIC., LAND VALUES 2024 SUMMARY 6 (2024), https://downloads.usda.library.cornell.edu/usda-esmis/files/pn89d6567/vh53zm770/1c18g799h/land0824.PDF [https://perma.cc/N8V3-TFRJ] (2024 cropland values ranged from $1,280 per acre in Montana to $17,330 per acre in California, with a United States average of $5,570 per acre).

198. *See* WILLIAM EDWARDS, IOWA STATE UNIV. EXTENSION & OUTREACH, EVALUATING A LAND PURCHASE DECISION: ECONOMIC ANALYSIS 4 (2015), https://www.extension.iastate.edu/agdm/wholefarm/pdf/c2-76.pdf [https://perma.cc/D4EJ-UHRW]; *Land Use, Land Value & Tenure - Farmland Value*, ECON. RSCH. SERV., U.S. DEP'T OF AGRIC. (May 8, 2025), https://www.ers.usda.gov/topics/farm-economy/land-use-land-value-tenure/farmland-value [https://perma.cc/5C42-GEWG].

Additionally, farming operations are heavily regulated, limiting viable farmland and reinforcing the scarcity and increasing value of agricultural land.[199]

A. Hypothetical Examples by Size

1. Very Large Dairy Operations

A dairy farm owned by a married couple, valued at $25 million, remains within the current TCJA exclusion of $13.99 million per individual ($27.98 million for married couples).[200] However, when the exemption reverts to approximately $7 million in 2026, the farm will have a taxable estate totaling $11 million, resulting in $4.4 million of estate tax liability (not considering any applicable deductions or special valuations).[201] This figure is calculated by subtracting the couple's $14 million unified credit from the farm's total value of $25 million. The resulting $11 million taxable estate is then multiplied by the 40% estate tax rate.

2. Large Dairy Operations

A dairy operation owned by an individual and valued at $9 million, remains within the current TCJA exemption of $13.99 million per individual.[202] If the estate tax exemption drops to $7 million, the farm will face a $2 million taxable estate and $800,000 in estate tax liability, after subtracting the unified credit and assuming a 40% estate tax rate.[203]

3. Small to Mid-Sized Dairy Farm

A smaller dairy farm, valued at $4.5 million, falls below the current exemption under current law or pre-TCJA law, but faces pressure from rising operational costs and competition from larger farms.[204] Although the farm may not

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199. *See* Brigit Rollins, *When Wetlands Go Dry: Prior Converted Cropland Under Swampbuster and the CWA*, NAT'L AGRIC. L. CTR. (Sept. 19, 2024), https://nationalaglawcenter.org/when-wetlands-go-dry-prior-converted-cropland-under-swampbuster-and-the-cwa/ [https://perma.cc/3A8B-PKZY]; *Laws and Regulations that Apply to Your Agricultural Operation by Statute*, U.S. ENV'T. PROT. AGENCY (Apr. 4, 2025), https://www.epa.gov/agriculture/laws-and-regulations-apply-your-agricultural-operation-statute [https://perma.cc/ZK7K-8HBY].

200. *See Estate Tax*, INTERNAL REVENUE SERV. (Oct. 29, 2024), https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax [https://perma.cc/FPG8-XPHA].

201. *See* EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 29.

202. *Estate Tax*, *supra* note 200.

203. *See* EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 29.

204. *See* SHIELDS, *supra* note 144, 6–9.

face estate taxes, consolidation trends in part driven by tax policy could increase pressure to sell, limiting opportunities for succession.[205]

B. The Anderson Dairy Farm

The following is a hypothetical example designed to illustrate the potential impact of the TCJA's estate tax sunset on family-owned dairy farms.

The Anderson family owns a 1,200-cow dairy farm in central Ohio. The farm spans 2,500 acres and produces a GCFI of approximately $5 million annually. The farm has been passed down through three generations and is currently operated by two brothers, Jim and Robert Anderson. The total net farm value, including land, buildings, livestock, and equipment, is estimated at $15 million. The brothers manage the farm jointly, and the family intends for the next generation to continue the business.

Between them, Jim and Robert have five children: Jim has two sons and a daughter, and Robert has two sons. All five children are actively involved in the farm's daily operations and plan to take over when their fathers retire. The family is committed to keeping the farm within the family and hopes to pass it on to the next generation intact.

The Anderson dairy farm currently supports two families (Jim and Robert's families) with a total annual profit of approximately $500,000 (assuming a 10% profit margin from the $5 million GCFI). The two brothers split this profit, earning $250,000 each to support their households.

As the five children become more involved in the operation and seek to support their own families, the $500,000 profit will need to be shared among a larger group. If split equally among the seven family members (the two brothers and their five children), each would receive about $71,429 per year. While this is sufficient for a moderate lifestyle, it leaves little room for future investment in the farm.

Under the current TCJA estate tax provisions, the estate tax exclusion stands at $13.99 million per individual (or $27.98 million for a married couple) in 2025.[206] Given the $15 million valuation of the Anderson family farm, the farm's total value falls below the combined exclusion limit for the two brothers.[207] If Jim and Robert Anderson were to pass away in 2025, their heirs would not be subject to federal estate taxes. This would allow the five children to inherit the farm without having

205. *See id.*; Ayoub, *supra* note 16.
206. *Estate Tax*, *supra* note 200.
207. *See id.*

to sell any of the land, equipment, or livestock to cover tax liabilities. As a result, the farm could remain fully operational, and the next generation could continue to manage the farm as planned.

However, with the sunsetting of the TCJA estate tax provisions on December 31, 2025, the exemption is set to revert to its pre-2018 level of approximately $7 million per individual (or $14 million for a married couple), after adjusting for inflation.[208] In this scenario, the Anderson family farm, valued at $15 million, would exceed the brother's combined estate tax exemption of $14 million by $1 million. With the estate tax rate set at 40%, the Anderson heirs would face a tax liability on the $1 million that exceeds the exclusion, totaling $400,000.[209] It should be noted that the Anderson family is likely eligible for the special use valuation election under § 2032A, discussed below.[210] For the purpose of this example, however, assume the Anderson family did not elect special use valuation.

The Anderson family, like many large dairy farms, is asset-rich but cash-poor. The farm's value is tied up in land, livestock, dairy facilities, and equipment, leaving little liquidity free to cover the estate tax liability. Federal estate tax returns must be filed and any resulting tax liability paid within nine months of the owner's death, meaning that the heirs will need to come up with $400,000 very quickly.[211] Section 6161 provides that the Secretary of the Treasury Department may extend the time for payment of the amount of tax.[212]

To meet this obligation, the Anderson family would be forced to sell off a portion of the farm's assets. One potential option would be to sell 500 acres of prime cropland, which is used to grow grain for the cattle. However, selling this land would reduce the farm's overall productivity, impacting the farm's capacity to maintain its 1,200-cow herd and meet production targets. This reduction in land could lead to lower profitability and threaten the long-term sustainability of the dairy operation.

Moreover, losing land could also complicate the family's ability to expand in the future, as land prices in the region have been steadily rising.[213] This reduction in the farm's footprint may limit the farm's ability to increase its herd

208. EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 29.

209. *See id.*

210. *See* discussion *infra* Section VI.G.

211. *See* I.R.C. § 6075(a) (West); *Frequently Asked Questions on Estate Taxes*, INTERNAL REVENUE SERV. (Apr. 9, 2025), https://www.irs.gov/businesses/small-businesses-self-employed/frequently-asked-questions-on-estate-taxes [https://perma.cc/P28Q-53UP].

212. I.R.C. § 6161(a) (West).

213. *See* LAND VALUES 2024 SUMMARY, *supra* note 197, at 9–10.

size or diversify its income streams through crop sales. Without expansion or diversification, the Anderson dairy farm may struggle to support multiple generations over the long term.

VI. STRATEGIES FOR NAVIGATING THE ESTATE TAX SUNSET

As the sunset for the current federal estate tax exemption approaches, agricultural families are increasingly focused on safeguarding their farms from looming tax liabilities.[214] Unless Congress acts to extend or make the existing exemption permanent, the estate tax exemption will decrease from the current $13.99 million per person in 2025 to approximately $7 million in 2026.[215]

While this exemption will continue to shield most Americans from federal estate taxes, many family farms—often asset-rich but cash-poor—face unique challenges.[216] Farm assets like land, livestock, and equipment are not easily liquidated, making estate tax planning essential for preserving the continuity and success of multigenerational farming operations.[217]

First and foremost, farm continuity requires more than gifting strategies and asset transfers.[218] A formalized succession plan ensures leadership transitions alongside ownership changes, preparing heirs to manage operations.[219] Gradual leadership handovers foster competency and stability.[220]

A. Utilization of the Lifetime Gift Exclusion

Farmers with high-value estates are encouraged to utilize the elevated lifetime gift exclusion of $13.99 million before it potentially reverts to $7 million in 2026.[221] Large gifts made before the sunset will not be subject to future claw-

214. *See* Mike Downey, *Protect Your Estate Before Tax Sunset*, FARM PROGRESS (Nov. 7, 2024), https://www.farmprogress.com/commentary/protect-your-estate-before-tax-sunset [https://perma.cc/HB38-RLXB].

215. *Id.*

216. *See* EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 32.

217. *See* CONSOLIDATION IN U.S. AGRICULTURE, *supra* note 187, at 16.

218. WESLEY TUCKER ET AL., UNIV. OF MO. EXTENSION, FIVE PHASES OF MANAGEMENT TRANSITION DURING FAMILY FARM SUCCESSION 1 (2022), https://extension.missouri.edu/media/wysiwyg/Extensiondata/Pub/pdf/agguides/agecon/g00516.pdf [https://perma.cc/V5PF-PL3R].

219. *Id.* at 3.

220. *See id.*

221. Downey, *supra* note 214.

backs by the Internal Revenue Service (IRS), even if they exceed the future reduced exclusion.[222]

In response, farmers are exploring strategies to minimize estate tax exposure, including lifetime gifting and leveraging trusts.[223] However, implementing these strategies to decrease estate taxes can have significant income tax consequences.[224] A careful analysis must be done, weighing both the advantages and disadvantages of taking substantive measures to reduce or eliminate estate taxes.

Example A – Gifting before the 2026 sunset

A farmer gifts $13.62 million in farmland to heirs in 2024, reducing their net worth and estate tax exposure. In 2026, despite the reduced exemption, the IRS cannot retroactively tax the difference between the higher and lower thresholds.[225]

B. Annual Gift Exclusion

The annual gift exclusion allows individuals to transfer wealth incrementally without triggering or counting against their lifetime estate and gift tax exclusion, which is currently set at $13.99 million per individual.[226] In 2024, individuals could gift up to $18,000 per recipient (or $36,000 for married couples) without tax consequences.[227] This amount increased to $19,000 per recipient (or $38,000 for married couples) in 2025.[228] Annual gifting is particularly useful for farmers with large families, as making multiple small gifts can gradually reduce the taxable estate over time.[229] However, for estates significantly above the exemption threshold, annual gifting alone may offer limited relief. Larger estates will likely require more comprehensive strategies, such as the gradual transfer of minority

222. *Estate and Gift Tax FAQs*, INTERNAL REVENUE SERV. (Sept. 13, 2024), https://www.irs.gov/newsroom/estate-and-gift-tax-faqs [https://perma.cc/W47X-HYLA].

223. Downey, *supra* note 214; Carol Warley et al., *10 Estate and Income Tax Questions*, THE TAX ADVISOR (Apr. 1, 2023), https://www.thetaxadviser.com/issues/2023/apr/10-estate-and-income-tax-questions.html [https://perma.cc/THQ8-64GW].

224. Warley et al., *supra* note 223 ("If the simple trust has taxable income and the beneficiaries receive distributions, the beneficiaries will have personal income tax consequences related to the distributions they receive.").

225. *Id.*; *see* I.R.C. § 2010(c)(3)(C) (West).

226. Downey, *supra* note 204.

227. *Estate and Gift Tax FAQs*, *supra* note 222; I.R.C. § 2503(b) (West).

228. *Estate and Gift Tax FAQs*, *supra* note 222; § 2503(b).

229. *See* MELISSA O'ROURKE, IOWA STATE UNIV. EXTENSION & OUTREACH, EVALUATING YOUR ESTATE PLAN: FEDERAL GIFT TAXES 1 (2018), https://www.extension.iastate.edu/agdm/wholefarm/pdf/c4-23.pdf [https://perma.cc/MAS8-3LU6].

ownership interests in family farms or businesses, to effectively avoid substantial estate tax burdens.[230]

Example B – Basic incremental gifting

A grandmother, anticipating that her estate will exceed the 2026 exemption by $200,000, gifted $18,000 to each of her eight grandchildren in 2024 and 2025. This resulted in a total transfer of $288,000, reducing her taxable estate below the exemption limit and preventing estate tax liability. The grandmother has retained enough money to cover long-term care needs.

Additionally, as discussed more thoroughly below, gifting strategies can be particularly helpful for farmers with a limited liability company (LLC) holding the family farm.[231] By gifting minority interests in the LLC, farmers may qualify for valuation discounts.[232] Interests in a closely-held LLC are often subject to lack of marketability and minority interest discounts**,** meaning the value of the gifted interest may be less than the true fair market value of the farm.[233] This further reduces the taxable value of the gift, allowing farmers to transfer greater portions of the LLC at a lower tax cost.[234] Gifting LLC units also enables farmers to retain a level of operational control.[235] An LLC's operating agreement can designate that certain members hold voting rights, while gifted shares to children or grandchildren may be non-voting, ensuring that the senior generation continues to manage the farm during the transition.[236] By gifting LLC interests annually, the total value of the farm or business held by the LLC's founder decreases over time, lowering their overall taxable estate.[237]

Example C – Married farming couple gifting LLC interests to children

A married couple jointly owns 100% of an LLC valued at $10 million, with each spouse holding 50% ownership, or 500 voting units each. The LLC is divided into 1,000 total voting units, with each unit valued at $10,000. To gradually

230. Wis. Agriculturalist, *The IRS Is Attacking Valuation Discounts*, FARM PROGRESS (Sept. 12, 2016), https://www.farmprogress.com/farm-business/the-irs-is-attacking-valuation-discounts [https://perma.cc/4KEW-R6UP].

231. *See* discussion *infra* Section VI.F.

232. Thomas S. Flickinger, *Gifts of Family LLC Units in a Post-Hackl Era: Present Interests or Future Interests?*, 8 FORDHAM J. CORP. & FIN. L. 853, 854 n.12 (2003).

233. *Id.*

234. *See id.* at 853 n.4, 854 n.12.

235. *See* DEL. CODE ANN. tit. 6 § 18-302 (2025).

236. *See, e.g.*, *id.*

237. Wis. Agriculturalist, *supra* note 230.

transfer ownership to their three children while minimizing estate tax liability, the couple implements an annual gifting strategy that maximizes the use of the annual gift tax exclusion.

Example C.1 – Initial annual gift

On December 31, 2025, the couple gifts two voting units each (i.e., two units from each parent) to each of their three children, totaling four units per child. Now, neither parent has majority control of the LLC. With a 20% minority interest discount,[238] the taxable value of each unit is reduced from $10,000 to $8,000. This results in a total taxable gift of $32,000 per child (four units valued at $8,000 per unit equals $32,000). In 2025, the annual gift tax exclusion is $19,000 per parent per child, allowing for a combined exemption of $38,000 per child.[239] Since the taxable value of the gift falls below the exemption threshold, no taxable gift occurs, and the parents retain their lifetime estate and gift tax exemption.[240]

Example C.2 – Projecting further

Over the course of five years, the couple gifts four units per child per year, totaling 20 units per child by the end of 2029. This results in a combined transfer of 60 units (6% of the LLC) to their three children. Despite transferring $600,000 in farm value over five years (based on the fair market value), the taxable value after discounts is reduced to $480,000.[241] The couple retains 94% ownership (470 units each) and full operational control of the LLC.

By continuing this strategy for another five years, the couple could transfer an additional 60 units (6% ownership), reaching a total transfer of 12% of the interests of the LLC by 2034. At that point, the couple would retain 88% ownership (440 units each), ensuring they remain involved in major decisions while significantly reducing their taxable estate. This method allows for gradual and tax-efficient ownership transfer, preserving the family farm for the next generation without jeopardizing the parents' control over operations.

238. The exact value of the discount varies, depending upon the circumstances. William H. Frazier, *Tiered Discounts: Theory and Tax Court Record*, PROB. & PROP., Jan./Feb. 2025, at 53, 54–55.

239. *Frequently Asked Questions on Gift Taxes*, INTERNAL REVENUE SERV. (Oct. 29, 2024), https://www.irs.gov/businesses/small-businesses-self-employed/frequently-asked-questions-on-gift-taxes [https://perma.cc/GL8U-SH8N].

240. *See id.*

241. Again, assuming a 20% discount for the purposes of this example.

C. Lifetime Credit Gifts and Asset Appreciation

In addition to annual gifts, farmers can use their lifetime gift exclusion to make larger, one-time transfers.[242] Family farms, especially dairy farms with high-value land and relatively non-liquid assets, should capitalize on the current elevated estate tax exemption by transferring assets before the 2026 sunset.[243] Gifting land, equipment, or livestock locks in the favorable tax treatment and prevents the need for potential forced asset sales.[244] This strategy is advantageous for assets that are expected to appreciate.[245] By transferring an asset that is anticipated to appreciate in value during the donor's lifetime, the current fair market value of the asset is removed from the donor's taxable estate, and future appreciation occurs outside the donor's estate.[246] Although this approach is most effective for appreciating assets, it may have limited benefits for assets unlikely to gain value, since the lifetime gift and estate tax exclusion is immediately reduced by the full fair market value of the gift.[247]

While lifetime gifting reduces estate tax liability, it eliminates the potential opportunity for heirs to receive a "stepped-up" tax basis at the death of the decedent.[248] The stepped-up basis rule provided by § 1014 allows heirs to inherit property at its market value at the time of the decedent's death, thus minimizing capital gains taxes if the asset is later sold.[249] For farm families, if the donor elects to make a lifetime gift (rather than allowing the intended donee to acquire the property following the decedent's death), the loss of the potential stepped-up basis might create substantial tax burdens for the next generation, should they decide to

242. *See* GRAVELLE, *supra* note 84, at 2.

243. Downey, *supra* note 214.

244. *See Estate and Gift Tax FAQs*, *supra* note 222; Ayoub, *supra* note 16.

245. Susan Hirshman, *Tax-Smart Ways to Gift Highly Appreciated Assets*, CHARLES SCHWAB (Dec. 13, 2024), https://www.schwab.com/learn/story/tax-smart-ways-to-gift-highly-appreciated-assets [https://perma.cc/Q2PB-V292].

246. *See* I.R.C. § 1014(a), (b) (West); Hirshman, *supra* note 245.

247. *See Estate Tax*, *supra* note 200.

248. § 1014(a) ("[T]he basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be . . . the fair market value of the property at the date of the decedent's death[.]"); JENNIFER HARRINGTON ET AL., CTR. FOR L. & TAX'N, IOWA STATE UNIV., ESTATE AND SUCCESSION PLANNING FOR THE FARM 40 (2023), https://www.calt.iastate.edu/files/page/files/calt5_estateandsuccessionplanningforthefarm_2023_final.pdf [https://perma.cc/8PKQ-FMAX].

249. § 1014(a); HARRINGTON ET AL., *supra* note 248, at 40.

dispose of the property.[250] For example,[251] assume an asset had an adjusted basis of $1 million and was transferred to a donee. The asset appreciated in value after five years and is worth $2 million. The donor then passed away. Due to a change in the economy, the donee's farm is required to downsize, so the asset must be sold by the donee. The donee sells the asset for its fair market value of $2 million. The donee would be subject to taxation on the $1 million of gain recognized from the sale (i.e., the $2 million amount realized, minus the $1 million adjusted basis).[252] To see the benefit of the stepped-up basis provided by § 1014, assume instead that the asset was conveyed by bequest rather than by gift during the donor's lifetime. The basis, pursuant to § 1014, would be stepped-up to the fair market value of the asset at the time of the donor's death (in this case, $2 million). Thus, upon the subsequent sale of the asset, there is no taxable gain (i.e., the $2 million amount realized, minus the $2 million § 1014 stepped-up basis, yields a gain of zero).[253] The potential tax savings from the latter version of events can be significant, especially for a small farm.[254]

Careful consideration must be given to the trade-off between reducing the present size of one's estate during their lifetime and providing an intended recipient with a stepped-up basis under § 1014.[255] In some cases, the benefit of a stepped-up basis may outweigh the estate tax savings from gifting.

Example D – Gifting assets likely to appreciate in value

A dairy farmer owns 500 acres of farmland currently valued at $1 million, which includes pastureland and cropland used to grow feed for livestock. Due to increasing land values and nearby development, the land is projected to appreciate to $3 million within the next decade. By gifting the farmland to their children now, the farmer uses $1 million of their lifetime estate and gift tax exemption.[256] As the land appreciates, the additional $2 million in future value is excluded from the farmer's taxable estate, effectively transferring $3 million worth of land to the next generation while utilizing only $1 million of the exemption.[257]

250. HARRINGTON ET AL., *supra* note 248, at 40.

251. For purposes of this example, assume that there were no depreciation deductions taken.

252. *See* I.R.C. § 1001(a) (West).

253. *See id.*

254. GRAVELLE, *supra* note 84, at 3 (describing the tax benefits of the step-up rules when passing appreciated assets through an estate compared to a lifetime gift).

255. *See id.*

256. *See Estate Tax*, *supra* note 200.

257. *See* Hirshman, *supra* note 245.

D. Paying Education and Medical Expenses

One strategic way to reduce the taxable estate is by directly paying for a beneficiary's qualified education and medical expenses. Tuition payments made directly to an educational institution and medical expenses paid directly to a healthcare provider are not subject to gift tax.[258] This strategy allows farm owners to transfer wealth while minimizing gift and estate tax exposure.[259] By funding these essential costs for heirs, agricultural families can ensure financial support without reducing their lifetime estate tax exemption.[260]

E. Irrevocable Trusts

Irrevocable trusts are another tool in estate planning, offering significant benefits for asset protection, succession planning, and ensuring the financial stability of farming operations.[261] Unlike revocable trusts, which allow the grantor to amend or revoke the trust during their lifetime, irrevocable trusts are largely immutable once established.[262] While this rigidity may seem daunting, it is precisely this characteristic that may enable irrevocable trusts to provide unique protections and advantages for agricultural families.[263]

The primary function of an irrevocable trust is to transfer ownership of assets out of the grantor's estate, thereby shielding them from estate taxes, creditor claims, and notably, nursing home costs.[264] Assets transferred into the trust are no longer owned or controlled by the grantor, and as a result, creditors—including long-term care facilities—cannot access these assets.[265] This is particularly important for farming families, where valuable assets such as land and equipment are both essential to operations and difficult to convert into cash. However, to achieve this level of protection, the transfer must occur at least five years before

258. I.R.C. § 2503(e) (West).

259. *See id.*

260. *See id.*

261. HARRINGTON ET AL., *supra* note 248, at 28.

262. UNIF. TR. CODE § 602(a) (UNIF. L. COMM'N 2018) ("Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust."); *id.* § 411 (describing the circumstances necessary to modify a revocable trust).

263. VINCENT J. RUSSO & MARVIN RACHLIN, N.Y. ELDER L. & SPECIAL NEEDS PRAC. § 21:7 (2024).

264. *Id.*; HARRINGTON ET AL., *supra* note 248, at 28.

265. *See* RUSSO & RACHLIN, *supra* note 263, § 21:9.

the grantor applies for Medicaid benefits, as Medicaid's "look-back" period can disqualify transfers made within that timeframe.[266]

The management of an irrevocable trust rests with a trustee, who is tasked with overseeing and administering the trust in accordance with its terms.[267] While the grantor selects the trustee—often a trusted family member or members, such as children—the trustee has a fiduciary duty to act in the best interest of the beneficiaries and must adhere strictly to the directives outlined in the trust document.[268] These directives can be tailored to meet specific goals, such as ensuring that farmland remains within the family or restricting the sale of certain assets.[269] For example, the trust may prohibit the sale of farmland during the grantor's lifetime and specify how the land will be divided among heirs upon the grantor's death.[270]

Example E – Using an irrevocable trust to protect farmland

Suppose a couple owns 300 acres of farmland, passed down through generations, and is concerned that nursing home costs could force them to sell the land. By transferring the farmland into an irrevocable trust and naming their children as trustees, the couple ensures that the land is protected from claims by nursing homes or creditors once the five-year Medicaid look-back period expires.[271] Additionally, the trust terms might stipulate that upon their deaths, specific portions of the farmland are to be distributed to each child, with provisions such as a right of first refusal to prevent the sale of the land to outsiders.[272] This ensures not only the preservation of the family's farming legacy, but also the smooth transition of assets to the next generation.

Beyond asset protection, irrevocable trusts can serve as an integral component of estate planning. They allow families to establish a clear plan for the distribution of assets, reducing the likelihood of disputes among heirs and simplifying the probate process.[273] Irrevocable trusts can also help mitigate estate

266. *Id.* § 21:6; 42 U.S.C. § 1396p(c)(1)(B)(i) ("The look-back date specified in this subparagraph is a date that is 36 months (or, in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual . . . 60 months) . . . .").

267. UNIF. TR. CODE § 801 ("[T]he trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries . . . .").

268. *Id.* § 802, 815; HARRINGTON ET AL., *supra* note 248, at 26.

269. *See* HARRINGTON ET AL., *supra* note 248, at 66–67.

270. *See id.*

271. *See* RUSSO & RACHLIN, *supra* note 263, § 21:6, 21:9.

272. *See* HARRINGTON ET AL., *supra* note 248, at 66.

273. *Id.* at 14.

taxes by removing high-value assets from the taxable estate, a consideration that will become increasingly critical as the federal estate tax exemption reverts to approximately $7 million per individual in 2026.[274]

Despite their many advantages, irrevocable trusts are not without drawbacks. Chief among these is the loss of control—once assets are placed in the trust, the grantor relinquishes ownership and cannot reclaim them.[275] This limitation can be particularly challenging for active farmers who may need access to their land or other assets as collateral for loans or for operational flexibility.[276] Additionally, establishing and maintaining an irrevocable trust requires careful planning, legal guidance, and administrative oversight, which may be costly and time intensive.[277]

Given these considerations, irrevocable trusts are often best suited for older, retired farmers who no longer require their assets for day-to-day operations or financial growth.[278] For those actively engaged in farming, alternative strategies may be more appropriate.[279] Ultimately, the decision to establish an irrevocable trust should be made in consultation with an experienced attorney, who can tailor the trust to align with the family's goals and ensure compliance with applicable law. When used appropriately, irrevocable trusts provide a powerful mechanism for protecting assets, preserving farmland, and safeguarding the financial future of multigenerational farming operations.[280]

F. Creating a Business Entity

Business entities, particularly LLCs and Family Limited Partnerships (FLPs), provide an effective strategy for reducing estate tax exposure while ensuring the long-term preservation of family-owned farmland. By transferring farm assets into these entities, families can take advantage of valuation discounts, retain operational control, and facilitate generational transfers with minimized tax liabilities.[281] These structures allow farm owners to distribute ownership interests among heirs at a reduced taxable value due to lack of marketability and minority interest discounts.[282] Because ownership in an LLC or an FLP is not publicly

274. *Id.* at 28; EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 29.

275. *See* UNIF. TR. CODE § 411 (UNIF. L. COMM'N 2018).

276. Robert Moore, *Irrevocable Trusts*, OHIO STATE UNIV. EXTENSION (Aug. 26, 2022), https://farmoffice.osu.edu/blog-tags/irrevocable-trusts [https://perma.cc/VCS8-QRED].

277. *Id.*

278. *Id.*

279. *Id.*

280. *See* HARRINGTON ET AL., *supra* note 248, at 28.

281. *Id.* at 63–64.

282. Wis. Agriculturalist, *supra* note 230.

traded and often comes with restrictions on transferability, the fair market value of these interests is generally lower than the actual value of the total assets owned by the entity.[283] This lack of marketability can result in valuation discounts ranging from 0 to 40%.[284] Additionally, when ownership is divided among multiple heirs in a way that no single individual holds a controlling interest, minority interest discounts further reduce the taxable estate.[285] These combined discounts allow families to transfer significant wealth at a lower estate tax cost.[286]

One of the primary advantages of structuring a farm as an LLC or FLP is the ability to transfer ownership without relinquishing control.[287] The senior generation can retain managerial authority by maintaining general partner or managing member status while gradually gifting or selling non-controlling interests to heirs.[288] Additionally, operating agreements can include transfer restrictions to ensure that farm ownership remains within the family and is not subject to external claims.[289] Many families also implement buy-sell or buy-back agreements that give heirs or the business entity the right to purchase an ownership interest before it is sold to outsiders, further protecting the continuity of farm operations.[290] These mechanisms provide a structured transition of ownership while safeguarding the farm's long-term viability.[291]

G. Maximizing § 2032A

For family farms and small businesses, navigating the federal estate tax can feel like a high-stakes balancing act because much of their wealth is tied up in illiquid assets like farmland, equipment, and livestock.[292] Fortunately, § 2032A offers a practical solution through its special use valuation provision. This

283. Dennis I. Belcher, *An Estate Planner's Guide to the Valuation of Fractional Interests, FLP Interests, and Membership Interests in LLCs*, *in* ESTATE PLANNING IN DEPTH 275, 293, 307 (ALI-ABA Course of Study, June 23–28, 2002).

284. *Id.* at 308.

285. *Id.* at 303.

286. Wis. Agriculturalist, *supra* note 230.

287. *LLC-Based Farm Transfer*, CTR. FOR AGRIC. & FOOD SYS., VT. L & GRADUATE SCH. (Mar. 23, 2025, 6:40 PM), https://farmlandaccess.org/farm-transfer/llc/ [https://perma.cc/R3KT-MDBE].

288. *Id.*; *see* HARRINGTON ET AL., *supra* note 248, at 57–58.

289. ROBERT MOORE & PEGGY KIRK HALL, OHIO STATE UNIV. AGRIC. & RES. L. PROGRAM, KEEPING FARMLAND IN THE FAMILY 12–14 (2022), https://farmoffice.osu.edu/sites/aglaw/files/site-library/LawBulletins/Keeping_Farmland%20_in_the_Family.pdf [https://perma.cc/6N7Y-C4HR].

290. *Id.* at 14–15.

291. *Id.* at 11.

292. Ayoub, *supra* note 16.

provision allows estates to value farmland or business property based on its current agricultural or business use, rather than its highest and best use as determined by fair market value.[293] The goal is to reduce the taxable value of estates, ensuring that family farms and businesses can be passed down to the next generation without requiring the liquidation of essential assets.[294] In 2025, for example, the maximum reduction in taxable estate value allowed under § 2032A was $1.42 million, an amount adjusted annually for inflation.[295] This relief can, quite literally, make a life-or-death difference for multigenerational farming operations struggling to stay viable amid rising land values and other economic pressures.[296]

Eligibility for § 2032A requires estates to meet several specific criteria.[297] First, the property must be actively used for farming or another qualified business purpose.[298] The decedent or a family member must have owned and materially participated in the operation for at least five of the eight years prior to the decedent's death.[299] Additionally, at least 50% of the estate's adjusted gross value must consist of real or personal property used in farming or business, with 25% of the estate's value coming from qualified real property.[300] These requirements ensure that the tax benefits are reserved for families who are actively engaged in farming or small business operations rather than for those who simply own land as a passive investment.[301]

To take advantage of § 2032A, the executor of the estate must make a formal election on a timely filed Form 706**,** United States Estate Tax Return.[302] All heirs with an interest in the property must agree to the election and sign a statement consenting to recapture provisions.[303] These provisions allow the IRS to recoup

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293. I.R.C. § 2032A(a), (c)(2)(ii) (West); Ashley Case, *Special Use Valuation Under 2032A: The Treehouse and the Family Farm*, FORBES (Dec. 27, 2024, 8:18 PM), https://www.forbes.com/sites/ashleycase/2024/12/27/special-use-valuation-under-2032a-the-treehouse-and-the-family-farm/.

294. Case, *supra* note 293; Megan Nelson, *Time to Update Section 2032A Special Use Valuation*, AM. FARM BUREAU FED'N: MKT. INTEL (Nov. 20, 2019), https://www.fb.org/market-intel/time-to-update-section-2032a-special-use-valuation [https://perma.cc/6SAZ-JNDH].

295. Case, *supra* note 293.

296. *See id.*

297. § 2032A(b).

298. § 2032A(b)(2)(A)–(B).

299. § 2032A(b)(1)(C).

300. § 2032A(b)(1)(A)–(B).

301. *See* Nelson, *supra* note 294.

302. *Id.*; § 2032A(d).

303. Case, *supra* note 293; INTERNAL REVENUE SERV., INSTRUCTIONS FOR FORM 706, at 22 (2024), https://www.irs.gov/pub/irs-prior/i706—2024.pdf [https://perma.cc/FK7R-59XS].

the tax savings if the property is sold or its qualified use changes within 10 years of the decedent's death.[304] For example, if heirs discontinue farming operations or sell the land for development, they could be liable for additional taxes, reversing the estate's earlier savings.[305] This recapture mechanism underscores the provision's intent to preserve working farms and businesses, rather than merely create a windfall for heirs.[306] From a policy perspective, perhaps the easiest way for Congress to protect family farms is by increasing the § 2032A limits.

Example F – Maximizing § 2032A

Consider a 500-acre dairy farm located near urban expansion zones, where development pressures have inflated land values. While the property's fair market value might appraise at $8 million, its agricultural value under § 2032A could be as low as $6.58 million, depending on its specific use.[307] By electing the special use valuation, the estate's taxable value is significantly reduced, saving heirs millions in potential estate taxes and protecting the financial viability of the farm.[308]

VII. Policy Considerations for Protecting Farms

A. Expanded § 2032A Special-Use Valuation

While the federal estate tax has consistently withstood constitutional challenges, its effect on family-owned farms remain a significant equitable and economic concern.[309] The unique liquidity constraints faced by agricultural families necessitate policies that mitigate disproportionate tax burdens.[310] The special-use valuation under § 2032A, which allows farmland to be appraised based on its agricultural use rather than its market value, provides critical relief by reducing taxable estate values.[311] Although the provision is likely underutilized due to the high federal estate tax exemption, future reductions in the exemption

304. § 2032A(c); Nelson, *supra* note 294.
305. Nelson, *supra* note 294.
306. *See id.*
307. *See Farmland Values and Estate Taxes*, *supra* note 163; Case, *supra* note 293. This is because in 2025, the maximum amount by which the special use valuation under § 2032A can reduce the value of qualified real property is $1.42 million. Case, *supra* note 293. Thus $8 million minus $1.42 million equals $6.58 million.
308. *See Farmland Values and Estate Taxes*, *supra* note 163.
309. *See id.*; Lowenstein & Kisska-Schulze, *supra* note 86, at 123.
310. Ayoub, *supra* note 16.
311. Nelson, *supra* note 294.

could renew its relevance.[312] Expanding the applicability or benefits of § 2032A—such as increasing valuation caps or simplifying compliance requirements—would align with Congress' original intent to preserve family farms by reducing the likelihood of forced asset sales.[313] Legislative reform in this area would offer a proactive approach to stabilizing multigenerational farming operations amidst estate tax pressures.

B. Farmland Preservation Act

At the state level, initiatives like the Ohio Farmland Preservation Act serve as models for supporting farm sustainability.[314] This program provides legal and financial tools to protect farmland from non-agricultural development, ensuring that critical land resources remain available for farming families.[315] Such programs complement federal tax policies by addressing land-use challenges and supporting agricultural viability in the face of urban expansion and market volatility.[316] Integrating state and federal strategies could amplify efforts to preserve the economic and cultural legacy of family-owned farms.

VIII. CONCLUSION

The sunsetting of key provisions under the TCJA will cause a significant shift in the tax landscape for agricultural enterprises, particularly family-owned dairy farms. The expiration of enhanced estate tax exemptions, bonus depreciation, and the QBI deduction could introduce new financial burdens that jeopardize the continuity of multigenerational farms.[317] These changes, if unaddressed, may force farms to liquidate essential assets. Such changes may also necessitate the consolidation of smaller farms and may ultimately diminish the economic resilience of rural communities.

With proactive planning and strategic tax management, however, farm families can mitigate much of the financial strain posed by the potential sunsetting of advantageous provisions. Utilizing the current lifetime gift exemption, implementing incremental gifting strategies through LLCs, and maximizing the

312. *Farmland Values and Estate Taxes*, *supra* note 163.

313. *See* Nelson, *supra* note 286.

314. *See* OHIO REV. CODE ANN. §§ 929.01–.05 (West 2025).

315. *All About Farmland Preservation*, FARMLAND PRES. OFF., OHIO DEP'T OF AGRIC. (May 11, 2025, 3:34 PM), https://agri.ohio.gov/programs/farmland-preservation-office/resources/all-about-farmland-preservation [https://perma.cc/V834-EABG].

316. *See* Suzette Spaller, *Right to Farm Law*, OHIO FARM BUREAU FED. (May 10, 2019), https://ofbf.org/2019/05/10/right-to-farm-law/ [https://perma.cc/WU3D-VF8A].

317. EFFECT OF SUNSETTING TAX PROVISIONS, *supra* note 13, at 1, 22, 24.

use of § 179 deductions can help preserve family assets and facilitate smooth generational transitions. While legislative uncertainty persists, agricultural families must act decisively within the remaining window of opportunity to safeguard their operations and plan for future tax liabilities.

By taking deliberate steps now, farming families can navigate the challenges of the post-TCJA tax environment and ensure that their land, businesses, and legacies endure for generations.