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The CAUV Election: A Fourth Bite at the Estate Tax Apple

This article is an extension of the article written by James K. Leonard, Esq., *The Leveraged Exclusion Amount: Still the Best Way to Reduce Ohio State Taxes for Married Clients*, which was published in the September/October 2003 edition of Probate Law Journal of Ohio (Volume 14, Issue 1). Mr. Leonard's article demonstrated the power of the combined use of the life estate marital deduction, the leveraged exclusion amount, and the unlimited marital deduction, to zero out estate taxes in the estate of the first spouse to pass away.

This article explores a fourth technique, available under certain circumstances to be used in conjunction with the techniques demonstrated in Mr. Leonard's article to further reduce estate taxes. The additional method of reducing estate taxes involves the use of the CAUV election in estates with significant holdings in qualified farm property. The CAUV election is guided by [Ohio Revised Code § 5731.011](#).

Ohio's current agricultural use valuation program (CAUV) provides for the valuation of agricultural land according to its ability to generate revenue, rather than based on the lands' highest and best potential economic use (market value). Valuing real estate as agricultural ground can result in a dramatic reduction in annual real estate tax bills for working farmers. Statewide, the average CAUV value as a percent of market value is 18%.¹

Within the context of Ohio estate taxation, qualified farm property means real property located in this state, which property is included in the gross estate of the decedent and which property was acquired by, or passed to, a qualified heir.² A qualified heir is a member of the decedent's family. A member of the decedent's family includes the decedent's ancestor or lineal descendent, a lineal descendent of any of their grandparents, their spouse, the spouse of any such descendent, or a stepchild or foster child of the decedent.³

The use of the CAUV election is available if 50% or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which, on the date of the decedent's death, was being used for a qualified use, and, 25% or more of the adjusted value of the gross estate consists of the adjusted value of real property which, on the date of the decedent's death, was being used for a qualified use.⁴ "Qualified use" means the devotion of real property exclusively to agricultural use as described in the definition of "land devoted exclusively to agricultural use" contained in [Ohio Revised Code § 5713.30\(A\)](#).⁵

For the purpose of illustrating the use of the CAUV election, we will utilize example number 2 in Mr. Leonard's previously referenced article. His example number 2 does not assume as a fact the existence of qualified farm property in the estate. Mr. Leonard's example number 2 is as follows:

Example 2. John's estate is larger than his LEXA.

Assume that John dies in 2003, with a \$1,000,000.00 estate going to a QTIPable Family Trust for Mary, who is 70 at John's death.

Part I and Part II of schedule M, would appear as follows:

 [Image 1 within document in PDF format.](#)

 [Image 2 within document in PDF format.](#)

For purposes of this article, Mr. Leonard's example number 2 is modified to presume the existence of qualified farm property that has a date of death appraised value of \$500,000, together with \$500,000 in nonqualified property, for a total estate of \$1,000,000, all of which is funded into the Family Trust. In this modified example 2, a CAUV election is made for the qualified farm property. This election is made on page 2 of Estate Tax Form 2, election number 2, within the section captioned Elections by the Executor.⁶ With this change in the example, the reporting on Part I and Part II of schedule M would appear as follows:

 [Image 3 within document in PDF format.](#)

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. . .

Accordingly, instead of the inclusion of 25.41% of the Family Trust in the surviving spouse's estate, the inclusion percentage after utilizing the CAUV election is 1.89%.

Practice Pointers:

In order to utilize the CAUV election, the election must be made on or before the date by which the return is required to be filed, determined with regard to any extension time granted for the filing of the return.¹⁰

- The CAUV election applies to any interest in qualified farm property that is held in partnership, corporation, or trust, if the interest would qualify if it were held directly by the decedent.¹¹
- The CAUV election is available for the first \$500,000 in value in qualified farm property. In the event the value of the qualified farm property exceeds \$500,000, the excess amount will be reported on ET 34, page 3, line 6(g). If such an excess exists, the practitioner may report the excess amount on Schedule A, of Ohio Estate Tax Form 2. The practitioner may choose to use the following language to report the excess valuation: "Carryover of excess value from ET Form 34, page 3, line 6(g)."
- Once the CAUV election is made, the qualified farm property must continue to be owned by a qualified heir for four years after the decedent's date of death. In the event the qualified heir disposes of any interest in the property to a person other than a member of the decedent's family or ceases to use any part of the property for a qualified use within that time period, a recapture tax shall be imposed. The recapture tax shall be equivalent to the estate tax savings realized in the decedent's estate by valuing the interest disposed of at its value for its actual qualified use, instead of its fair market value. The recapture tax, plus interest, will be computed from nine months after the date of the decedent's death and is due and payable on the day that is nine months after the date of the disposition or cessation of use, and shall be paid by the qualified heir who disposed of the interest or ceased use of the part of the property for a qualified use.¹²
- Until such time as the running of the four-year holding period, the qualified heir must file an annual report with the Tax Commissioner, establishing that the qualified farm property has not been transferred to a person other than a member the decedent's family and that no part of the qualified farm property has ceased to be used for a qualified use.¹³

Footnotes

¹ V-6C(2008). Source: DTE 114, Ohio Department of Taxation, June 19, 2009. See also http://tax.ohio.gov/divisions/real_property/documents/CAUV_2008_V_6c.pdf.

² R.C. 5731.011(A)(3). This definition is subject to the qualifications referenced in § 5731.011(A)(3)(a) and (b) discussed below.

³ R.C. 5731.011(A)(2).

⁴ R.C. 5731.011(A)(3)(a) and (b).

5 R.C. 5731.011(A)(5).

6 Ohio Estate Tax Form 2.

7 $\$500,000 \times .18$ (See footnote 1) = \$90,000. $\$90,000 + \$500,000$ (nonqualified property) = \$590,000.

8 $\$590,000 \times 0.40758 = \$240,472$. (Rounded down)

9 $\$11,195/\$590,000=1.89\%$

10 R.C. 5731.011(B)(2).

11 R.C. 5731.011(C)(2). Perhaps the statute should be revised to include holdings within a limited liability company.

12 R.C. 5731.011(E).

13 R.C.5731.011(F). Ohio Estate Tax Form 36.

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