GROWERTALKS

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Future-proofing Your Business

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The demands of running a growing, retailing, nursery or landscape business leave little time to think about what will happen next. While planning for the future of the business can have serious, unintended consequences, according to *Forbes Magazine*, only 85% of small business owners are estimated to have business plans, and if they do, they're usually outdated or insufficient.

The passage of the One Big Beautiful Bill Act (OBBBA) in July 2025 significantly altered the landscape of both estate and succession planning. Among other things, the OBBBA increased the federal estate and gift tax exemption amounts and made them permanent, thus shifting the focus from solely minimizing estate tax to asset protection and overall succession planning.

Estate taxes

Years ago, the Tax Cuts & Jobs Act (TCJA) doubled the estate and gift tax exemption amounts. Unfortunately, that increase was set to expire at the end of 2025 with an exemption of $13.99 million per person, effectively cutting that amount in half for 2026.

Fortunately, beginning in 2026, the OBBBA resets the exemption amount at $15 million (per person). What's more, this amount will be increased for inflation in future years. Although the permanent exemption amount is important providing, as it does, a degree of certainty about the future of the estate and gift tax rules and a sizable exemption, they're not the only factors to consider.

The Generation Skipping Transfer (GST) tax exemption is aligned with the new, higher estate tax exemption. Unfortunately, the GST exemption isn't portable between spouses, requiring careful planning for generational wealth transfers.

The "step-up in basis" rule remains in effect, allowing heirs to receive inherited assets at their fair market value on the date of death, limiting capital gins on accumulated appreciation. The State & Local Tax (SALT) deduction cap has been raised, temporarily, to $40,000 per trust, opening new tax planning opportunities.

Thanks to these changes, increased emphasis should be placed on planning the future of your business and its management in the years ahead.

Succession strategies

Every grower and retailer face unique estate planning challenges that will require specialized strategies in order to protect their accumulated wealth, minimize both their and the operation's tax bills, and ensure the successful transition of the business. Even in families where both older and younger generations share a desire to keep the business within the family, challenges exist for a successful transition.

What's going to happen to that business built up and nurtured over the years when the owner retires? Who's going to lead it in the years ahead? Will ties with the business be severed or will it be used as a source of retirement income for the departing owner?

Planning business succession

A succession plan is, in essence, a blueprint should there be a changing of the guard, which is inevitable sooner or later. With a proper succession plan, growers and retailers can achieve their personal and financial objectives while maintaining control during their lifetime. Without a clear strategy, heirs may face estate taxes, legal disputes or more.

Generally, there are a number of transition considerations that should be addressed when developing a good succession plan including:

- Founder transition. How long does the owner plan to stay involved in the growing business? What are his/her retirement plans, if any?
- Family transition: If the plan is to leave the business to family members, how will roles and power relationships change? How will family harmony be maintained through the transition?
- Business transition: How will business operations and customer relations be impacted or maintained through the transition?
- Management transition: Will management consist of family, non-family or both? How will the operation's new leadership be evaluated and on what schedule will control of day-to-day decisions be transferred?
- Ownership transition: How will ownership be transferred? A sale to management? A sale to employees? A sale to a third-party? A sale or gift to children?

Successful succession

There are a number of options for successfully transitioning the business, ensuring its continued operation and minimal tax bills for both the departing owner and the business. One option involves selling the business to its employees.

- The ESOP option: An Employee Stock Ownership Plan (ESOP) is an employee benefit plan that gives workers an ownership interest in the business in the form of shares of stock. In addition to being an employee benefit, ESOPs are an excellent exit (or liquidity vehicle) for an owner, as well as providing tax benefits to the business.
- Family Limited Partnerships (FLPs) are often used to control the business, allowing owners to gift shares of the business at considerable discounts. An FLP can also assist in transferring a business interest to family members.
- Gifts. Some succession plans involve outright gifts rather than selling or transferring an interest in the business. Outright gifting is usually limited to growers and retailers who don't need the proceeds from selling their interest in their business.

- Selling the business outright remains an option, although one with many potential stumbling blocks—and a number of tax consequences. Among the strategies for selling the business are buy/sell agreements. The buy/sell agreement is a legally binding agreement that requires one party to sell and another party to buy a particular ownership interest in a business at the occurrence of a triggering event, such as the death or disability of an owner.

Succession strategies

Other options that growers and retailers might consider are dependent on the owner's expectations or what they hope to achieve. A merger is one such option since joining with a competitor or related business ensures the business' survival and growth.

A business that's acquired by another doesn't always produce the results desired by the acquired business' owner. An option such as an outright sale of the business usually results in the seller cutting all ties to his or her business. Being acquired, on the other hand, might mean continued involvement with the operation with severance occurring down the road.

If the owner dies and the business passes via inheritance, there could be estate taxes (despite the new, higher exemption amounts) and valuation issues, as well as disputes over what is "fair." It should also be kept in mind that if the business is "gifted," the IRS often views it as a taxable transfer. If the business is sold at a price the IRS feels is too low, they may get involved. And then there are trusts.

An option of trust

Among the consideration when evaluating the benefits of having a trust own a portion of the equity in the business and the potential pitfalls are:

- Control. Often an owner will transfer the non-voting interest to a trust and maintain control by keeping the voting interest in his or her name.
- Continuing cash flow. A common concern with business succession planning is providing cash flow to a surviving spouse. Having a trust own a portion of the business can help address this.
- Asset protection. Assets gifted to a trust are no longer owned by the business owner and may be protected from his or her potential creditors.
- Income taxes. A trust is often used as an income tax planning tool. Much like an FLP, trust income is distributed among the grower or retailer's children and the income may be taxed at lower tax rates.
- Estate taxes. The business owner may make a gift of a non-voting interest in the business to a trust for the benefit of his or her family, with the gift removing the asset's value from the owner's taxable estate. All future appreciation in the value of the business may also be removed from the owner's estate.

Estate planning for succession

As mentioned, the passage of the OBBBA significantly altered the landscape of estate planning by making the increased federal estate and gift tax exemption permanent. Every estate plan should now:

- Consider lifetime gifting: The higher, permanent exemption means larger lifetime gifts can be utilized to remove future appreciation from the estate.
- Utilize flexible trusts: Tools like Spousal Lifetime Access Trusts (SLATs) or dynasty trusts remain valuable for asset protection and wealth transfer.
- Address state-level taxes: OBBBA doesn't affect state estate or inheritance taxes, which can have much lower exemption thresholds.

- Long-term care planning: The OBBBA includes provisions related to Medicaid eligibility and a cap on home equity for long-term care, requiring a review of long-term care and asset protection strategies.

A lot of tax-advantaged estate planning strategies involve the grower or retailer giving up control of some of their money to protect it. After years spent accumulating wealth, many business owners find it difficult to trust in the process enough to relinquish control.

Consulting with an experienced estate planning attorney or financial advisor is critical to tailor a strategy to your unique circumstances and maximize benefits under the new law. **GT**

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