

# Farmland

## IN PERSPECTIVE

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## G GLAUB FARM MANAGEMENT

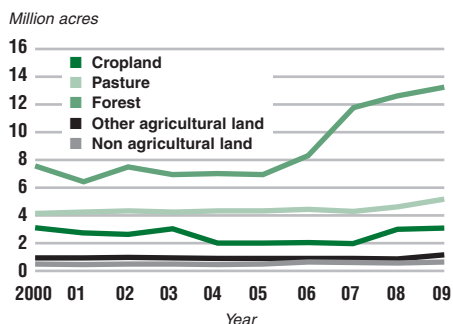
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### Relatively little U.S. farmland is foreign owned

Despite increases in foreign land ownership, only 1.7 percent, 22.8 million acres, of privately owned land was owned by foreigners as of February 2009, according to the U.S. Department of Agriculture's Farm Service Agency. The majority of this land is owned by people or firms from Canada (34%) and the Netherlands (17%).

Most foreign land ownership is concentrated in Maine. Some 15.7% of Maine's privately owned farm and forest land, 2.82 million acres, is foreign owned. Of this, 2.77 million acres are forest. Other states with relatively high levels of foreign ownership of land include Hawaii, Washington, Nevada, Alabama, and Texas.

### Trends in foreign holdings of U.S. farmland, 1999–2009



Source: Blevins et al., 2010.

## Despite congressional uncertainties, estate planning remains as important as ever

By Michael G. Barton, *ag law attorney*

Many absentee farmland owners are watching to see if/how Congress addresses uncertainties over potential estate and gift tax liabilities. The uncertainties exist because current estate tax laws will expire on December 31, 2012. With significant increases in land values, coupled with current opportunities under the law, many people should be evaluating their situations and either creating, or modifying their estate plans without waiting for Congress to act.

Today's tax rules reflect the political stalemate in Washington. When prior estate and gift tax rules were set to expire in 2010, Congress created a short-term solution by extending the rules for 2011 and 2012.

### The 2010 Act also added three helpful provisions:

- 1. Increased Exemption.** The amount of property which can be transferred without payment of any estate tax (the "exemption amount") was increased to \$5,000,000 per person for 2011 and \$5,120,000 for 2012.
- 2. Portability.** The 2010 Act added a new tax planning option for married individuals called "portability." Without portability, the ownership of property between spouses greatly impacted the amount of estate taxes. With the addition of the portability feature, asset ownership is not as critical since any unused exemption at the death of the first spouse is available to the surviving spouse. For example, if the husband died in 2011 with \$3,000,000 of property, then the wife is allowed to utilize the husband's remaining \$2,000,000 of exemption. This permits the wife to transfer \$7,000,000 of property and not pay any federal estate tax or gift tax.
- 3. Lifetime Gifting.** The 2010 Act reunited the gift and estate tax exemptions. Therefore, beginning in 2011, the \$5,000,000 exemption level also applies to lifetime gifts. This creates new planning opportunities for many individuals

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who have significant assets since one can make gifts and fully utilize the federal estate tax exemption in 2012 if desired. Prior to the 2010 Act, the lifetime exemption was limited to \$1,000,000. It should be remembered that in order for these gifts to qualify, the donor must relinquish all rights to the property, including all income for the rest of his or her lifetime.

### Status Quo

If Congress does not act, then the estate tax law reverts to the rules which were in effect in 2001. All three options, above, would be gone. The exemption level is reduced to \$1,000,000, no portability would exist between spouses, and the lifetime gift exemption would be reduced to \$1,000,000.

At this time, it is important for each person to prepare a realistic assessment of one's current net worth. Then one should review with an informed individual the current estate plan and potential alternatives to determine if the current plan minimizes taxes and achieves the intended goals for transfer of property. One needs to create a plan based on the rules which apply today. If the rules change in the future — they will, then it may be necessary to revise the plan.

When reviewing one's estate plan, one factor to be determined initially is the specific method or methods to be used for the transfer of property. One alternative is accomplished by

changing the titling of the property. These options include transferring of property into joint tenancy, designating a payable on death beneficiary to an account, or designating a beneficiary under a life insurance or retirement account. For all other assets, one needs to determine if he or she desires to utilize a will format or a revocable living trust.

### Will vs. Trust

The traditional method for transferring property has been a will. A will is filed with the local probate office. Then an executor is appointed to administer the estate, pay the bills and transfer the property according to the terms of the will.

An alternative to a will is a revocable living trust. Under a trust arrangement, an individual (a "grantor") signs the trust agreement which identifies a trustee (who manages the property), the beneficiary (who is entitled to receive benefits to the property held by the trust) and the terms of the trust. In addition, the grantor determines what assets are transferred to the trust (the trust "principal").

When deciding between a will and a trust, an important point to remember is that both are effective at transferring property as intended if well drafted. There is no right or wrong decision. Like many planning opportunities, it is important to become educated to find out the advantages and disadvantages of each and make an informed decision.

The tax effects of a will versus a trust are often misrepresented. No estate tax savings or income tax savings are achieved by using a trust instead of a will. The tax consequences are the same under either method. As long as the grantor is acting as either sole or co-trustee, there is no requirement to file any income tax return for the trust.

### Revocable Living Trust

**The advantages of using a revocable living trust include the following:**

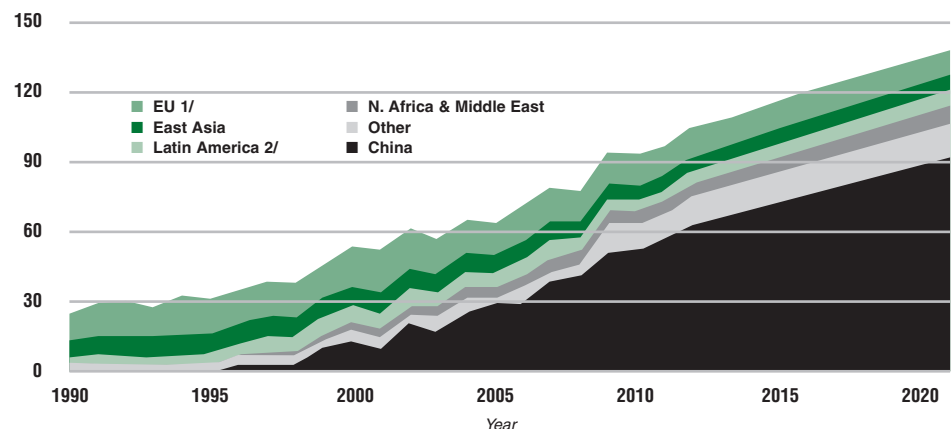
- 1. Privacy.** It allows one's plan to remain private since the document is not filed with any court.
- 2. No probate.** It avoids the requirement for having probate of a will. This eliminates the need for having an executor appointed, dealing with fees and costs associated with court administration. Without probate, it also alters what heirs have to be notified and given copies of the plan.
- 3. Management.** It provides an effective way of managing assets and property without using a power of attorney. In many cases, the use of a co-trustee allows an elderly person to remain involved in management of property while assisting descendants in acquiring the skills to manage the assets.
- 4. Organization.** It can promote the organization of assets and paperwork for efficiency and assists the

## China dominates global import demand for soybeans

China's soybean imports have risen sharply during the past 10-15 years and now account for more than half of world trade. Over the next decade, China's soybean imports are projected to rise 59% to 90 million tons. This increase accounts for more than 80% of the projected growth in global soybean imports. China's large oilseed crushing capacity underlies these strong gains in soybean imports. The United States, Brazil and Argentina are the leading exporters of soybeans. In fiscal year 2011, 59% of U.S. soybean exports went to China.

### Global soybean imports

Million metric tons



1/ Excludes intra-EU trade. 2/ includes Mexico.

Source: USDA Agricultural Projections to 2021 (OCE-121), February 2012.

children in administering the assets after a parent is deceased.

- 5. Multiple states.** If property is located in other states, it can allow for title to be transferred without a need for ancillary court proceedings.
- 6. Title.** The need to locate assets and transfer them to the trust often allows for review of title to the property and verification of assets. If problems are discovered, they can be corrected by the grantor while living.

#### **Disadvantages of a revocable living trust include the following:**

- 1. Claims.** Not available is the shorter claim period that is allowable through a probate.
- 2. Tax planning.** Fewer income tax planning opportunities exist for the trust.
- 3. Fees.** Attorney fees and administrative costs are higher when creating and funding the trust. Fees to administer it after death, however, are often reduced.
- 4. Re-title assets.** To properly utilize a living trust, all assets must be re-titled to the trust name.
- 5. Understanding.** Many individuals have difficulty understanding how a trust operates and how they can effectively utilize it in their daily living. Many individuals assume you need a bank to have a trust and they have difficulty in understanding the role of an individual trustee.

- 6. FSA.** Although most revocable living trusts do not have to have any separate income tax reporting requirements, land in a revocable living trust typically requires a separate tax number for the Farm Service Administration (FSA).

The need for planning and structuring one's estate is as important as ever, even if taxes are not an issue. By identifying your assets, your family issues and your goals, and then working with someone who is qualified to handle your type of situation, you can create an estate plan which achieves your goals and allows for a smooth transition to the next generation.



**Michael G. Barton** is an ag law attorney in Springfield, Illinois. He grew up on a grain and livestock farm in west central Illinois near Pittsfield. He has received his Bachelor's and Master's degrees in agricultural economics at the University of

Illinois and also his law degree from the University of Illinois. Prior to law school, Barton worked as a farm consultant and income tax preparer for farmers and land owners through Farm Business Farm Management. Barton's law practice concentrates in real estate, business planning, income tax planning, estate planning, and trust and estate administration for farmers and landowners. Barton has been identified as a Leading Illinois Attorney in Agricultural Law.

## **Organic crop production in the U.S.**

U.S. markets for organic products have grown due in part to consumer demand for pesticide-free foods and providing a profitable niche for farms of all sizes. Once available only in natural food stores and farmers' markets, organic food has grown rapidly in terms of supply and demand during the past decade. By 2009, organic products accounted for more than 3.5% of food sold for at-home consumption, according to the U.S. Department of Agriculture, with organic sales accounting for a much higher percentage of specific commodities, particularly fruit and vegetables.

Organic farming tends to be more labor intensive than conventional farming. While some larger farms produce organic products, thus far, organic production has been relatively more common among smaller farms whose operators consider themselves full-time farmers.

## **U.S. & EU enter partnership in organic trade**

A partnership between the United States and the European Union will recognize the two countries' organic programs as equivalent and allow access to each other's markets. Together, the U.S. and EU organic markets are valued at more than \$50 billion. Under this agreement, estimates show the market for U.S. organic sales to the EU could grow substantially within the first few years. In 2010, the U.S. organic market grew nearly 8% to nearly \$28.6 billion. Organic exports reached approximately \$1.8 billion in 2010, and that number is expected to grow 8% annually over the next several years.

## **R&D drives increases in ag productivity**

Agricultural productivity increased 152% between 1948 and 2009, according to the Economic Research Service of the U.S. Department of Agriculture. The main driver behind this growth in productivity is the application of new technologies to farming. Robust productivity growth has allowed U.S. agriculture to hold down the cost and environmental consequences of growing more food and fiber.

A strong relationship exists between public agricultural research and development (R&D) spending and agricultural productivity growth. Investments in productivity-oriented research at public institutions affect productivity growth with a time lag; the impacts, however, persist for decades. Public agricultural R&D complements other factors, such as agricultural extension, farmer education, rural infrastructure, and private agricultural R&D, that contribute to agricultural productivity growth. However, productivity-oriented public agricultural research expenditures – excluding R&D on post-harvest, environmental, and rural development issues – have been declining since the mid-1990s (after adjusting for inflation).

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## Transitioning Agricultural Assets

The majority of people do not like discussing estate planning due to its very nature, but poor planning can cause conflicts among family members in the future. Proper planning may include the use of professionals such as a CPA, Attorney, Insurance Agent, Financial Planner, and a Professional Farm Manager for transitioning agricultural assets.

Most agricultural assets do not pass beyond the second generation primarily due to a lack of planning and education. Beneficiaries of an estate may see the large dollar value of the agricultural asset and decide to liquidate. A farm manager can help educate estate beneficiaries about the importance of agricultural assets for growing and maintaining wealth.

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