I. Current State of the Income Tax

A. Ordinary Income Tax Rates

Because of the TCJA, the top individual income tax rate in 2022 remains at 37 percent. Corporations are taxed at a flat 21 percent. Businesses, including farming businesses continue to benefit from the 20 percent deduction for qualified business income (QBI). In 2026, the rates will return to pre-2018 levels, when the top individual tax rate was 39.6 percent. The QBI deduction will be eliminated in 2026.

B. Accelerated Cost Recovery Options

1. Section 179

The maximum I.R.C. § 179 deduction for 2022 is $1,080,000, reduced $1 for every $1 over the $2,700,000 investment limit. The section 179 deduction is permanently set at $1 million, but is indexed for inflation each year. Section 179 is an important tool for agricultural producers. It can be used to expense equipment, single purpose agricultural buildings, irrigation equipment, and many other kinds of farming assets. It does not apply to multi-purpose agricultural buildings.

2. Bonus Depreciation

Also called additional first-year depreciation, farmers may deduct 100% of the basis of depreciable property in the year the property is placed into service. Bonus depreciation, unlike section 179, applies to multi-purpose farm buildings, as well as other assets. Bonus depreciation, however, must be taken for an entire class of assets. It is automatic, so that who do not wish to take the accelerated depreciation must elect out. Beginning in 2023, bonus depreciation will begin to phase out. It is scheduled to end entirely in 2027. The scheduled phase-out is as follows:

2023: 80 percent bonus
2024: 60 percent bonus
2025: 40 percent bonus
2026: 20 percent bonus

II. Tax Rates When Selling Assets

A. Capital Gain Tax

Under current law, individuals generally pay tax upon the sale or disposition of appreciated assets. Increases in the value of an asset are not "realized" until that asset is sold, exchanged, disposed of, involuntarily converted, or lost in a casualty event. Tax is due for realized gain unless a provision in the tax code prevents it from being "recognized." Deferral of the recognition of gain, for example, can apply to a like-kind exchange or an involuntary conversion.

Tax for recognized capital gain is calculated based upon whether the gain is short-term, which generally arises when the asset is held for one year or less, or long-term, which usually arises when the asset is held for more than one year. Current law affords a preferential rate schedule for long-term capital gain. Short-term capital gain is generally taxed as ordinary income. Gain is calculated based upon the difference between the owner's adjusted basis and the sales price. As shown below, the top long-term capital gains tax rate is presently 20%.

Single Taxable Income	MFJ Taxable Income	Capital Gain Tax Rate
0–$41,675	0–$83,350	0%
$41,676–$459,750	$83,351–$517,200	15%
$459,751+	$517,201+	20%

B. Medicare Tax

Current law also imposes a net investment income tax (NIIT) on the gain arising from the sale of investment assets. This 3.8% tax is imposed upon taxpayers with net investment income—which also generally includes rental income—when the taxpayer's modified adjusted gross income exceeds the threshold levels shown in the following chart.

Filing Status	Threshold MAGI
Married filing jointly	$250,000
Married filing separately	$125,000
Single	$200,000
Head of household (with qualifying person)	$200,000
Qualifying widow(er) with dependent child	$250,000

Also called the "Medicare" tax, Congress instituted the NIIT in 2013 to help pay for the Affordable Care Act. In addition, capital gain is often subject to taxation at the state level. Under current law, active farmers do not pay NIIT upon the sale of their farmland or on their self-rental income. Retired farmers, however, generally pay the NIIT upon the sale of their farmland and on their cash rental income if they exceed the income thresholds.

III. Exchanging Assets

Under I.R.C. § 1031, taxpayers remain eligible in 2022 to defer the recognition of capital gain when they exchange real property used in a trade or business or for held for investment with other business or investment property. Since 2018, the like-kind exchange has been limited to the exchange of real property. Equipment trades are no longer tax deferred.

IV. Transferring Assets at Death or by Gift

A. Transfers at Death – Basis

Under current law, property transferred at death receives a basis adjustment in the hands of the recipient. Generally, the basis in the hands of the recipient will equal the fair market value (FMV) of the property at the date of death or six months thereafter. This is usually referred to as a "step up" in basis, although it can be a "step down" as well. Under these rules, no tax is assessed on the gain that accrued while the decedent owned the property.

The tax-free step up in basis has been explicit in the tax code since at least 1921. Although sometimes explained as a tool to prevent the double taxation of assets subject to the estate tax, the basis adjustment and the estate tax have never been expressly synced. The step up in basis, for example, applies even when estate property is exempt from estate tax. This was as true in 1921 as it is 100 years later.

B. Transfers by Lifetime Gift – Basis

Property transferred through a lifetime gift is treated differently for tax purposes. The gift does not trigger income tax liability, but the recipient of the gift takes the property with the donor's basis. This means that while gain is not realized when the gift is made, it is not eliminated. If the recipient sells the property, tax will be recognized on the gain, or the difference between the basis and the sales price. This "carryover basis" rule has been in place since 1921. Before that time, owners of appreciated property could escape the capital gains tax by transferring the property to someone else because gifted property also enjoyed a tax-free step up in basis.

C. Estate and Gift Tax

Some asset transfers have estate and gift tax consequences. In 2022, however, these taxes impact very few U.S. taxpayers. Under current law, the value of property transferred at death and via lifetime gift is subject to taxation. A unified credit, however, provides that no tax liability is imposed unless the sum of lifetime taxable gifts and property transferred at death exceeds the "basic exclusion amount." In 2022, this basic exclusion amount is $12.06 million per person. Married couples may receive the benefit of a double exclusion because at the death of the first spouse, "portability" grants the surviving spouse the option to preserve and later apply the deceased spouse's unused exclusion as well. Although estate and gift tax rates are graduated, transfers in excess of the exemption are currently taxed at 40% because the present exclusion exceeds the top rate threshold of $1 million.

In addition to the lifetime exclusion amount, current law allows an annual exclusion for lifetime gifts of $16,000 per year. This means that a person can gift up to $16,000 per year to as many people as they wish without incurring a gift tax obligation. Gifts over $16,000 to a single recipient in any year require the donor to file an IRS Form 709, Gift Tax Return. Gift tax is only due, however, if the giver exceeds the basic exclusion amount with the sum of lifetime gifts.

The estate tax basic exclusion amount has increased significantly during the past several decades, as shown below.

2005	$1.5 million
2006	$2 million
2007	$2 million
2008	$2 million
2009	$3.5 million
2010	$5 million
2011	$5 million
2012	$5.12 million
2013	$5.25 million
2014	$5.34 million
2015	$5.43 million
2016	$5.45 million
2017	$5.49 million
2018	$11.18 million
2019	$11.4 million
2020	$11.58 million
2021	$11.7 million
2022	$12.06 million

At current exemption levels, very few estates owe estate and gift tax. USDA-ERS recently estimated that of the approximately 31,000 principal farm operators expected to have died in 2020, 189 (0.6%) would be required to file an estate tax return, and only 50 (0.16%) would owe federal estate taxes. Absent intervention from Congress, the basic exclusion is set to go back to $5 million, indexed for inflation, in 2026.