Farmland IN PERSPECTIVE

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GOODWIN

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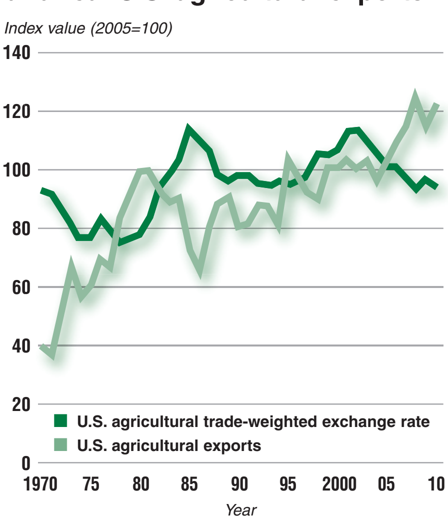
A "cheap" dollar helps U.S. agricultural trade

The depreciation of the U.S. dollar since 2002 has helped increase the real (adjusted for inflation) value of U.S. agricultural exports to record levels, according to the Economic Research Service of the U.S. Department of Agriculture.

A relatively low dollar means that U.S. exports are less expensive in foreign currency terms and helps make U.S. agricultural exports competitive in foreign markets.

U.S. real agricultural trade-weighted exchange rate and real U.S. agricultural exports



Source: USDA, Economic Research Service, Agricultural Exchange Rate Data Set (www.ers.usda.gov/data/exchangerates) and Foreign Agricultural Trade of the United States (FATUS) database (www.ers.usda.gov/data/fatus/).

Uncertainty in tax laws hobble estate planning

by Roger McEowen, J.D. • Iowa State University

As we near the end of the year, the tax law — income tax, capital gain tax, estate tax, alternative minimum tax (AMT) — remains an uncertain mess. For deaths in 2010, no federal estate tax is assessed, but the federal tax will return January 1, absent new legislation. Some states, however, do retain an estate tax, inheritance tax or both. The income tax basis rule differs for deaths in 2010 too; it is a modified carry-over basis rule. Federal gift tax remains in place for 2010, but the gift tax rate will go up beginning in 2011 if Congress does nothing.

Estate planning for 2010 is next to impossible, and it has been an uncertain area for several years. The House passed an estate tax bill in 2006 that would have set the exemption at $5 million for deaths after 2009 with a 35 percent top rate and retention of the "stepped-up" basis rule. However, the Senate didn't act before the Congressional elections that year. When control of the House and Senate changed hands, action on the estate tax ground to a halt. No bill passed both bodies even though the House and Senate had single party control with a super-majority in the Senate.

No action is in sight to extend the 70-odd tax provisions that expire at the end of 2010. An attempt to pass an extender bill earlier this year failed, largely because Congressional leadership attached language to it which would have applied self-employment tax to many small S corporations. That effectively killed the bill in the Senate.

The "AMT patch" to keep 20-30 million or more new taxpayers from being hit this year by alternative minimum tax has not been done, and the 2001 income tax rate cuts are fast approaching the end of their life expectancy at the end of 2010. The AMT, as originally passed by Congress, assured that fewer than 200 of America's wealthiest citizens would pay at least some in taxes. The AMT, however, now affects more American families than originally intended. One-year "patches" have been used by Congress in the past to assure that individuals who did not owe the AMT the previous year would likely not owe it in the current year. As of mid November, however, the Congress had not yet passed an AMT "patch" for 2010.

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An unprecedented level of uncertainty now surrounds much of the tax law. If Congress does nothing, the top individual income tax rate increases to 39.6% from the current 35%. The top rate for capital gains increases from 15% to 20%. The top rate on dividends goes from 15% to 39.6%. The federal estate tax returns with only a $1 million exemption and a 55 percent top rate, as compared to a $3.5 million exemption and a 45 percent top rate for deaths in 2009.

Predictions

Congress took no action on the major unresolved tax issues before the election. The bank bailout bill it passed was signed into law in late September and contained several tax provisions, including a doubling of the expense method depreciation amount for 2010-2011 and reinstatement of bonus depreciation for 2010.

While it probably is not wise to try to predict what might happen given the current environment, here is my opinion of what is likely to happen. Yet, what actually happens could be totally different:

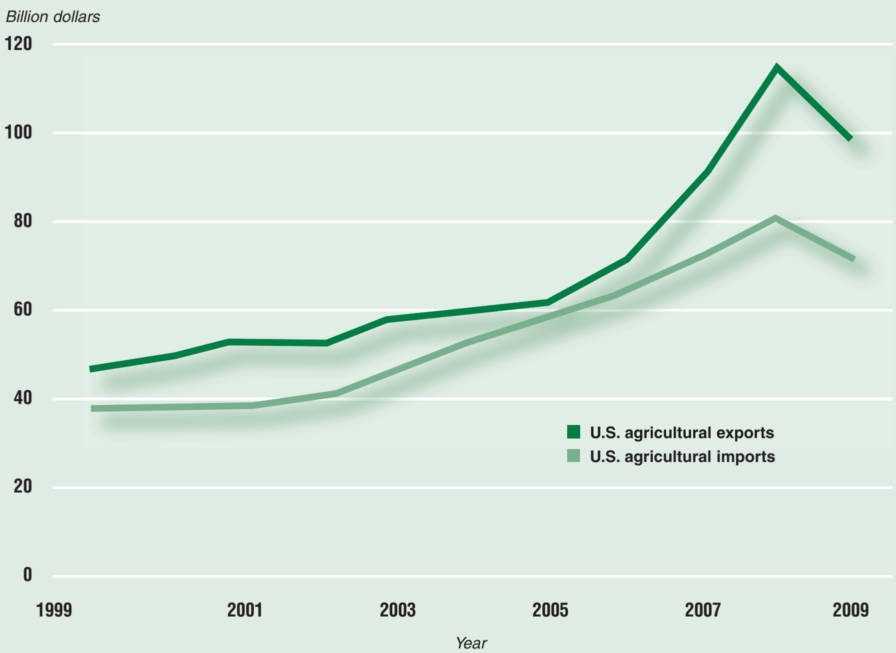
- The lame-duck Congress will pass an extender's bill.
- The lame-duck Congress will pass an AMT patch.
- The lame-duck Congress will pass an extension of parts of the 2001 tax cuts, but the top rate will rise to 39.6%.
- The dividend and capital gain rate will remain at 20%.
- The lame-duck Congress will do nothing on the estate tax. That means we will start 2011 with a $1 million lifetime exemption and a 55% top rate.

Another important point that is relatively unknown outside the professional tax world is that if the Congress does not extend the 2001 tax cuts, many lower-income people will be *added back* to the tax rolls. They were largely exempted under the 2001 law. That means a tax increase for just about everyone up and down the income scale, despite the rhetoric coming out of Washington, D.C.

C Corporations

Businesses that operate in the C corporate form also have some serious worries as 2010 comes to a close. That's because the tax rate on dividends will be higher next year. Before the 2001 tax legislation was enacted, dividends were taxed as ordinary income. Because dividends are distributions of corporate income that are already taxed at a corporate rate as high as 35 percent, the combined tax rate on dividends was 57.75%. The 2001 tax cuts tied the dividend rate to the capital gain rate, which is presently 15%. But, the

Despite a downturn in 2009, U.S. agricultural trade still shows a surplus



Source: USDA, Economic Research Service.

The number of farms selling directly to consumers and their importance are growing in response to demand by individuals who want to eat locally grown foods. The number of U.S. farms selling directly to consumers through farmers' markets, roadside stands, and pick-your-own operations grew by 104.7% between 1997 and 2007 while direct sales increased 47.6%, according to the Economic Research Service (ERS) of the U.S. Department of Agriculture.

In 2007, $12 billion of farm products were sold directly to consumers by 136,800 farms, or 6% of all U.S. farms, according to the ERS. Direct sales are highest in the urban corridors in the Northeast and on the West Coast. Small farms, those with annual sales of less than $50,000, represent 85% of all farms reporting income from direct sales to consumers.

capital gain rate is set to return to 20 percent in 2011, and dividends will again be taxed as ordinary income. So, if Congress does nothing, the top dividend rate will rise by 164 percent.

But, that is not all. Beginning in 2013, the 2010-enacted health care legislation tacks on another 3.8 percent to the top rate on investment income. That will result in a top dividend tax rate of 43.4 percent, making the total tax increase more than 189%. The best strategy at the current time may be to take a dividend out of a closely-held C corporation in 2010. That is particularly the case for shareholders who cannot get corporate dollars out by paying shareholder bonuses or paying rent.

That seems counter-intuitive because taxpayers normally try to avoid taking income before it is necessary to do so, but practically doubling the tax changes intuition.

The dividend tax increase also has serious implications for investors and could lead to a big sell-off of stocks — and other investments — late in the year. That could seriously pull down the stock market.

Economic Recovery

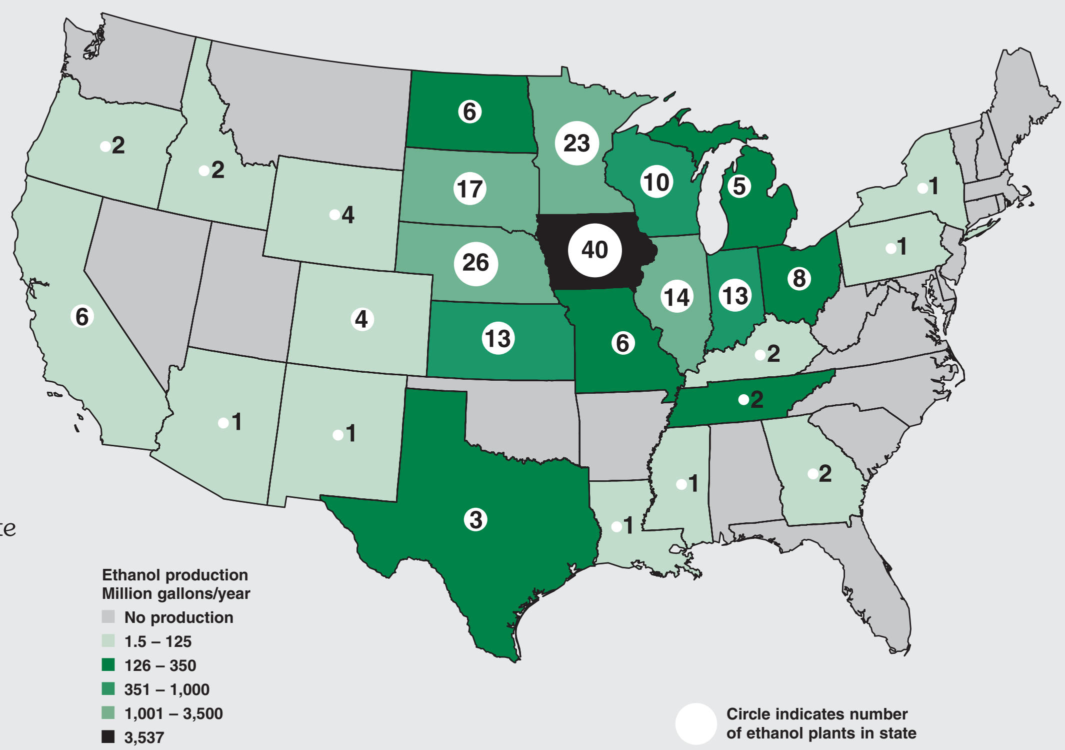
On a broader scale, the tax uncertainty is certainly putting a damper on an economic recovery — unemployment is still hovering around 10 percent, even though it was indicated that passing the stimulus legislation would keep it under eight percent. Businesses make decisions based on predictions about the legal, tax and regulatory landscape ahead. With so much uncertainty surrounding future tax policy, dollars that could be put to work in the economy will wait until the uncertainty subsides. Maybe the Congress will give us some direction on tax policy in the near future.

Roger McEowen, J.D.*, is the Leonard Dolezal Professor in Agricultural Law at Iowa State University and Director of the Center for Agricultural Law and Taxation (www.calt.iastate.edu). Professor McEowen provides law and policy expertise to the citizens of Iowa and the nation. A few of the topics that are addressed in his extensive extension programs include: charitable tax planning, farm lease law, contract hog production and anti-corporate farming law, civil liabilities, water and environmental law, private property rights, farm income tax and farm estate and business planning. Professor McEowen is widely published in scholarly journals and agricultural law reviews.*

Ethanol refineries prefer the Corn Belt

Ethanol refineries are heavily concentrated in the Corn Belt, near corn, the feedstock for 97% of the ethanol produced in the United States. Refineries also locate near markets for coproducts such as distillers' grains, which are sold as feed to the livestock industry.

Ethanol production and number of ethanol plants by state, 2010



Source: USDA, Economic Research Service using data from OilIntel.com, U.S. Ethanol Plants: Operational & Under Expansion.

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