Betting the Farm:
Common Disputes and Innovative Solutions in Nebraska Farm and Ranch Divorce

by Jane Langan Mach

One in four Nebraska jobs is related to agriculture, and cash receipts from agriculture contributed more than $21.4 billion to Nebraska's economy in 2019, accounting for 5.8% of the U.S. agriculture total.[1] Nebraska's farms and ranches utilize 92% of the state's land area.[2] Even small farms are big business.

During a marriage, farmers ("farmers" is intended to include all agriculture producers, including ranchers) and their advisors often plan for the intergenerational transfer of land and wealth. Sometimes these transfers are set up as gifts of land or corporate interests to a farmer's direct descendants (the "in-spouse") and the descendant's spouse (the "out-spouse"). With these intergenerational transfers, family dynamics come into play, emotions can run high, and family collusion may frustrate even the best of efforts.

Even though farming is big business, many farmers still handle deals on a handshake. They buy and sell equipment, lease land, and enter into significant financial transactions without documents, contracts, or legal advice.

The intention of family farmers to keep the farm in the family can be thwarted by these efforts in a later divorce. Lawyers get headaches trying to find assets and prove ownership or rights resulting from handshake deals. Entire articles have been written about the difficulty of treating growing crops as assets or income and the traceability of livestock. Here, we will look at a few common problems and some innovative solutions to consider in farm divorces, legal separations, or annulments.

Common Problems

Many farmers use revolving debt, such as an operating note, to finance operations throughout the year. Be sure to look at a farmer's most recent applications for credit and the balance sheet that the farmer provided to the lender. In many farm divorce cases, the tax returns show little income or asset value, while the credit applications are much more positive. However, even those credit applications do not always identify all sources of income or assets that could be considered in a divorce. Be sure to consult with a tax professional in working through the balance sheet and employing these strategies.

Spousal interest in family farm entity

More and more farmers are creating entities, both for liability and estate planning purposes. In fact, many farmers have multiple entities. For example, it is not uncommon to see one entity that owns farmland and a different entity that owns equipment.

When the family is intact, it makes perfect sense to transfer intergenerational wealth by gifting shares of an entity, such as an LLC. This allows a farmer to transfer interests to the next generation while avoiding gift tax by simply determining the

Jane Langan Mach

Jane Langan Mach is a partner at Rembolt Ludtke, where she has been practicing since 1995. She focuses primarily on family law issues, particularly complex divorce, paternity, custody, child support, and adoption matters, including both trial and appellate work. Jane is a Certified Parenting Act Mediator. Jane teaches Pretrial Litigation Skills and Family Law at The University of Nebraska College of Law and has been a regular speaker at the NSBA Family Law Section's annual seminar.

number of shares that can be transferred without hitting the gift tax limit. In an effort to divest more quickly, sometimes farmers will transfer those interests not only to the in-spouse but also directly to the out-spouse.

In a divorce situation, this creates significant complications. The out-spouse probably does not want to be involved in that family entity, and the family entity probably does not want the out-spouse to continue to be involved. However, often the parties have neglected to establish a buy/sell agreement or other obligation for the in-spouse to purchase the interest of the out-spouse. This can result in the out-spouse unwillingly remaining an owner of the family entity.

Futures or forward contracts

Grain is not always sold at the local co-op at harvest time. Grain farmers can market their product in advance with a futures contract or a hedge (forward) contract. Agricultural futures and options are used most often by larger corn and soybean farms as a means of hedging against potential fluctuations in price.[3] A 2016 study found that while just over 10% of corn and soybean farmers traded in futures contracts, those who did covered a substantial fraction (over 40%) of their production. Similarly, while only 20–25% of corn and soybean farmers used marketing contracts, those who did covered over 40% of their production with marketing contracts.[4] Few of them (6% of corn farms and 8% of soybean farms that used futures) hedged all their production through the futures market.[5]

These contracts typically provide that a commodity of a certain kind and quality will be delivered at a later date for a certain price. A forward or hedge contract typically settles at the end of the contract period, while a futures contract is traded on an exchange and may require an up-front fee or payment. Futures contracts also carry the risk of a margin call if the market price decreases. A present contract for a future income source may be speculative, but if it can be quantified, it could be appropriate to consider in a divorce proceeding.

Farm program payments and COVID relief

In pre-pandemic times, farmers had certain farm programs that provided income or price supports. These included programs like the Conservation Reserve Program ("CRP"), which provides funding to farmers who set aside ground without planting it to crop in a particular year or years. In a CRP agreement, the farmer may be able to expect a future stream of payments on certain ground. This may be an asset on the balance sheet (or, depending on grain prices, some farmers would consider it a debit against the earnings they would otherwise expect.)

In 2020 and 2021, in addition to several programs for farm-related nonprofits and technical assistance, several programs offered financial benefits for pandemic assistance.

1. The Paycheck Protection Program (PPP) was created in the CARES Act in 2020 to provide forgivable loans to small businesses, including farms. . . . PPP loans are also available to self-employed farmers based on gross income. This was one of several updates provided by the Consolidated Appropriations ACT (CAA) in December of 2020. The CAA re-opened applications for First Draw loans to farms that had not yet received a PPP loan and created a Second Draw loan for farms that had already received a First Draw loan. First Draw loans are open to most farms that experienced a negative economic impact due to COVID-19. Second Draw loans require that the business have experienced a 25% reduction in gross receipts in any quarter of 2020 as compared to the same quarter of 2019. For sole proprietors and sign-member LLCs, the owner compensation portion of new PPP loans is based on the farm's gross income. The owner compensation portion of the loan amount in 2.5 months of the farm's total annual gross income. Thus, the maximum amount of this portion of the PPP loan is $20,833. Farms with gross income under $100,000 may be eligible for a lower amount.[6]

2. The Consolidated Appropriations Act of 2021 allocated $13 billion for agriculture programs. The allocation included assistance specifically reserved for commodity producers. This assistance provided that:

> Producers of 2020 price trigger crops and flat-rate crops are eligible to receive a payment of $20 per eligible acre of the crop. Price trigger commodities, as defined in the second Coronavirus Food Assistance Program, are major commodities that meet a minimum 5% price decline over a specified period. These crops include barley, corn, sorghum, soybeans, sunflowers, upland cotton, and all classes of wheat.[7]

3. The American Rescue Plan Act (ARPA) Section 1005 includes provisions for [the] USDA to pay up to 120% of loan balances, as of January 1, 2021, for Farm Service Agency (FSA) Direct and Guaranteed Farm Loans and Farm Storage Facility Loans (FSFL) to any Socially Disadvantaged producer who has a qualifying loan with [the] FSA. This includes producers who are one or more of the following: Black/African American, American Indian, Alaskan Native, Hispanic/Latino, Asian American, or Pacific Islander.[8]

4. FSA's Coronavirus Food Assistance Program 2 (CFAP 2): CFAP 2 provides "financial assistance that gives [producers] the ability to absorb some of the increased marketing costs associated with the COVID-19 pandemic."[9] Eligible commodities include specialty crops, livestock, dairy, row crops, aquaculture, floriculture, and nursery crops.[10]

5. The Farm Service Agency is offering adverse weather programs that may allow emergency grazing; a Livestock Indemnity Program that financially assists producers when

they suffer loss of livestock, above normal mortality, due to adverse weather; an Emergency Conservation Program (ECP) to provide some cost-share assistance to rehabilitate farmland or repair fences damaged by natural disasters, and emergency loan programs for debt relief.[11]

6. CRP provides annual rental payments for land devoted to conservation purposes. This program isn't new, but the original deadline of February 12, 2021, has been extended due to the pandemic.[12] New ideas on the horizon, including the controversial "30 by 30" proposal, may increase conservation efforts to set aside farmland.

Options

A farmer may have an option or a right of first refusal to acquire land, typically family land, which may come into play in a divorce setting.

As a general rule, all property accumulated and acquired by either spouse during a marriage is part of the marital estate.[13] Property includes inchoate rights, such as unvested retirement benefits and stock options.[14] Since stock options acquired during the marriage are marital property, options to purchase farmland should be too.

An option such as this may be a standalone agreement or may be part of a lease agreement.

If a farmer has an option or a right to purchase land at less than market value, that should be considered equity and an asset on the marital balance sheet.[15] However, unlike stock options, if a farm option has not been exercised prior to the divorce, the court may require evidence that the parties tried to or at least financially could have exercised it before valuing and setting aside the asset to one party.[16]

Prepaid expenses

Prepaid farm supplies include fees, seed, fertilizer, and similar farm supplies purchased but not used or consumed in the farm business during the year of purchase. Prepaid expenses may be limited for tax purposes,[17] but that does not prevent a farmer from prepaying expenses to artificially decrease current assets or increase current debt.

Prepaid expenses can be added back to the year in which they were paid for to determine income for support purposes. This can also affect the balance sheet. If an account was depleted, or an operating note was used to prepay expenses, those amounts should be adjusted depending on the valuation date of the marital estate.[18]

Operating loss carryforward

A net operating loss (NOL) occurs when a company's allowable deductions exceed its taxable income within a tax period. Often, farmers fit the classic definition of "substantial fluctuations in income" for support purposes because the farming business may have significant profits in one year, then incur a NOL in the next, followed by another profitable year. The loss carryforward provision allows the NOL in the second year to offset taxes due in the third year.

A NOL can be an asset because it serves to reduce the income subject to tax in future tax years. The Tax Cuts and Jobs Act made significant changes to NOL rules for tax years beginning in 2018; NOLs may now be carried forward indefinitely until the loss is fully recovered, but they are limited to 80% of the taxable income in any one tax period. However, the CARES Act removed the restrictions on tax loss carryback for tax years 2018, 2019, and 2020.[19] The CARES Act established a five-year carryback for all net operating losses including a farm NOL. To complicate matters further, the Consolidated Appropriations Act (CAA) passed late in 2020[20] has a provision strictly for farmers. This provision allows them to: (1) Carry back a farm net operating loss five years, (2) Elect to carry back a farm net operating loss two years, or (3) Elect to carryforward a 2018 - 2020 net operating loss.[21]

A taxpayer can choose not to carry back the NOL by attaching a statement to the original return filed by the due date (including extensions) for the NOL year. This statement must show the taxpayer is choosing to waive the carryback period. Then the NOL can carry forward indefinitely until it is fully absorbed.

The NOL should appear on the marital balance sheet not in the amount of the carried loss, but in the amount of the anticipated tax savings represented by the loss.

Shared assets and bartering

All that equipment you see in the machine shed? "Not mine." The cattle in the pasture? "Not mine." Not all vehicles have titles, and not all cattle have brands. Many farm cases include a claim, truthful or not, that certain assets belong to someone else in the family or are otherwise shared. In these circumstances, in addition to obtaining tax returns and depreciation schedules, the out-spouse may have to subpoena barn sale records, equipment dealer records, and/or bank records and depose in-spouse family members to determine true ownership.

Bartering is also commonplace. A farmer takes grain from his brother in payment for use of equipment; proceeds from livestock sales are split disproportionately to ownership because the family patriarch had a tax problem this year. In a family when everyone gets along, this can work quite nicely, but in a divorce, sorting out who is entitled to what can be much more complicated.

Farmhouse and vehicles for personal use

A farm entity may own a farmhouse or all of the family's vehicles, even if those vehicles are used in part or even entirely for personal use. The Nebraska Supreme Court has recognized the necessity of taking a flexible approach in determining a person's "income" for purposes of child support, because child support proceedings are, despite the child support guidelines, equitable in nature; the value of those in-kind benefits can be included as income to the in-spouse.[22] Also, keep in mind that the out-spouse will no longer have that benefit after the divorce, and if the vehicle used by the out-spouse is transferred from a farm entity, there may be tax issues as a result of a distribution to a shareholder if that spouse is a title owner of the entity.

Innovative Solutions

Early transfers

If the marital estate is large enough, and if the couple's children intend to farm, the parties may be willing to agree to keep the farm intact by transferring assets to the children directly or through a family trust. Both spouses can then be assured that property won't be sold or turned over to a potentially unacceptable new spouse, and the parties can avoid issues of valuation because the asset is neither being awarded to a party nor sold. A trust or a life estate gift could allow either or both parties to receive farm income for a period of time.

Early transfer could include an outright gift, with the excess value over the annual limit reducing the transferor's excludable assets at death. It could also include transfer of LLC interests, sale of machinery to a younger party who then trades the machinery for new machinery (thereby stretching out payments), or a sale on contract (which could still trigger depreciation recapture). Transfer of livestock could occur when inventory is lowest, i.e., before breeding.

Separate action or buyout

If the out-spouse is a named owner of shares in a family farm entity and the in-spouse does not agree to purchase that interest, a separate action may be necessary for an accounting, to dissolve the entity, or to obtain other relief as a dissenting shareholder. Dissolution is an equitable action but is considered "so drastic that it must be invoked with extreme caution."[23] Sometimes the original transferors, often the in-spouse's parents, may be willing to buy out the interest without a separate court action. If this is an issue, it is helpful for the out-spouse to do his or her best to maintain good relationships with that side of the family to enable the possibility of positive outcomes.

Depreciation and Capital Gain

If property a farmer acquires to use in the farm business is expected to last more than one year, he generally cannot deduct the entire cost in the year it is acquired. Instead, the farmer must recover the cost over more than one year and deduct part of it each year on Schedule F as depreciation or amortization. However, the farmer can choose to deduct part, or all, of the cost of certain qualifying property, up to a limit, as a section 179 deduction in the year the item is placed in service.[24]

Depreciation of farm equipment can significantly reduce a farmer's taxable income. The Nebraska Child Support Guidelines provide:

> Depreciation calculated on the cost of ordinary and necessary assets may be allowed as a deduction from income of the business or farm to arrive at an annualized total monthly income. After an asset is shown to be ordinary and necessary, depreciation, if allowed by the trial court, shall be calculated by using the "straight-line" method, which allocates cost of an asset equally over its useful duration or life. An asset's life should be determined with reference to the Class-lives and Recovery Periods Table created pursuant to 26 CFR § 1.167(a)-11. A party claiming depreciation shall have the burden of establishing entitlement to its allowance as a deduction.[25]

Divorce lawyers often adjust income to account for accelerated depreciation for support purposes. Excess depreciation can also affect the balance sheet, though.

Assume a farmer owns a piece of equipment that has been fully depreciated. The equipment still has some value as an asset for divorce purposes. But a sale would result in some recapture of that depreciation for tax purposes, which ought to then affect the value of the piece of equipment.

Similarly, an asset may have latent capital gain. Land, machinery, tile, grain bins, buildings, and breeding livestock are generally all capital assets. As an example, if farm ground is purchased for $1,500/acre and later valued at $8,000/acre, realizing that price would result in a capital gains tax liability. These potential tax consequences cannot be considered unless the property is sold, or the taxes are reasonably likely to be incurred by an imminent sale.[26] This puts the in-spouse in a potentially untenable position of absorbing that latent liability with no credit on the marital balance sheet.

Adjusting asset values due to possible future tax consequences is allowed by Nebraska law and it is common practice to adjust retirement accounts by 25% to account for latent and unrealized tax liability sitting in such accounts.[27] A similar approach is warranted for latent capital gain and depreciation recapture. If agreements cannot be reached, consider actually selling the affected property during a marital tax year when a joint return is possible, or requiring that each party claim half of the gain for tax purposes. The proposed increase in federal capital gains tax may affect this analysis.

Sale with POA or novation

Farm ground may need to be sold as part of the dissolution. Unlike a house, which theoretically could be sold at any time, it is difficult to sell farmland while crops are growing. Farmland generally needs to be sold between harvest and planting. This may require the parties to hold the land for some period of time after the divorce before it can be sold.

Once a divorce is over, the trial court loses jurisdiction to modify its decree to address property disputes in the absence of fraud or gross inequity.[28] In circumstances where property may not sell until after a decree, consider providing in the decree that the property shall be sold and if there are any disputes as to price or sale terms, a third party is to be granted an irrevocable power of attorney to determine whether and on what terms the sales should take place. The parties may have an attorney, realtor friend, or other independent third party who could serve in that role. If the case has gone to mediation, consider using the mediator as the power of attorney for these purposes.

If the property settlement or decree provides for sale of property, and after the decree the in-spouse has an improved ability to buy the out-spouse's remaining interest, consider a novation agreement. A novation is the act of substituting a new obligation for an old obligation. The new one either replaces an existing obligation with a new obligation or replaces an original party with a new party.[29] Internal Revenue Code Section 1041 lays out the rules for property that is transferred between spouses who are divorcing or are divorced. It provides that a property transfer is incident to the divorce if it occurs within one year of the divorce or if it is related to the cessation of the marriage.[30]

If the transaction qualifies as a Section 1041 transfer, it is not subject to taxation and the basis of the asset carries over to the receiving spouse.[31] A transfer of property that occurs between the one-year and six-year anniversary of the decree entry must be made pursuant to a divorce or separation instrument to be presumed related to the cessation of the marriage and qualify for Section 1041 treatment. A divorce or separation instrument includes a decree of divorce or separate maintenance, a written separation agreement, or other court decree. It is also worth noting that a divorce instrument includes amendments or modifications to the instrument. A divorce instrument that does not provide for a transfer of property can be later modified to include one and will, therefore, ensure that no gain or loss will be recognized.

Young v. Young[32] provides an example of a transfer of property found to be related to the cessation of the marriage. Mr. and Ms. Young divorced in 1988. In 1989, they entered into a settlement agreement, which provided that Mr. Young deliver to Ms. Young a promissory note for $1.5 million, which was secured by 71 acres of land. In 1990, Mr. Young defaulted on this obligation and entered into a later settlement agreement to transfer 59 acres of land. In accordance with the later settlement agreement, Mr. Young retained an option to repurchase the land for $2.2 million on or before December 1992. Mr. Young assigned the option to a third party, who exercised the option and bought the land from Ms. Young for $2.2 million. No gain or loss was recognized on the transfer of the property from Mr. Young to his former spouse. Ms. Young took the marital basis of the land and recognized a gain on the subsequent sale to a third party.[33]

Similarly, *Belot v. Commissioner*[34] allowed Section 1041 treatment of an adjustment of rights after a divorce. The original decree awarded the divorcing parties continued joint ownership over multiple businesses. Sixteen months later, when the arrangement unsurprisingly failed to satisfy the parties, they entered into a settlement agreement whereby one transferred the businesses to the other in exchange for payment. The Tax Court found that although the original decree resolved all of the property disputes between the parties, "neither section 1041 nor the regulations limits application of section 1041 to one, or the first, division of marital property."[35] The transfers made in *Belot*, like *Young*, alleged shortcomings in the original decree addressed in a subsequent order to "effect the division of property owned by the former spouses at the time of the cessation of the marriage."[36]

Such an agreement allows the out-spouse to receive the same, or even higher, proceeds without paying the capital gain tax and allows the in-spouse to keep the property.

Any transfer that is not pursuant to a divorce or separation instrument and occurs more than six years after the divorce becomes final is presumed to be unrelated to the divorce, though it may be possible to still receive favorable tax treatment if the presumption can be rebutted.[37]

Lease with option

There may be no good way to divide the marital estate without awarding some farm ground to the out-spouse. If the out-spouse is not from a farming family, it may make sense to enter into a written farm lease so that the in-spouse can continue to farm the ground for a period of time. This will also have the effect of generating farm rent income for the out-spouse. Be sure the farm lease is written with as much detail and clarity as possible because this does require the former spouses to continue in a form of joint venture, and there should be little room for future disagreement. The farm lease can also contain an option, as discussed above, that provides the in-spouse with an opportunity to purchase the ground back at market value at some future point in time. In the long run, the in-spouse can end up with the entirety of the farm ground but may be in a better position to finance it a few years into the future. In the interim, the out-spouse can receive rent while still owning an asset that could be used as security to borrow money for a home or other needs.

Equalization payments

Often the in-spouse ends up with the vast majority of the farm assets and is then responsible to pay the out-spouse an equalization payment. Monthly payments, even if technically set up as property equalization, can sometimes "feel like" support for the out-spouse and allow some flexibility in negotiating spousal support amounts. But farmers generally earn the vast majority of their income over just a few months each year and prefer to make lump sum payments in November or December.

In the case of a significant equalization, payments over time are normally required. This raises the issue of interest. The judgment rate, which applies unless otherwise agreed, is relatively low as of this writing, around 2%. Interest can be a negotiated term. If payments are annual, say by December 31 each year, consider waiving interest for each timely payment. If any payment is not made timely, interest could then accrue at a higher rate and/or retroactively to the Decree or to the last timely payment. Another option is to provide that if any payment is not made timely, the default will trigger the remainder of the judgment to be immediately due and payable.

Normally, a property settlement judgment can be prepaid unless the judgment or agreement provides otherwise or provides for a penalty. A nice option when the payor wants to fund a single payment, but the recipient wants monthly income, is to consult with an investment advisor and invest a lump sum into a growth fund which automatically makes the payment to the out-spouse each month. The growth on the original investment can create a taxable gain, but the obligation is then partially funded with market growth.

Subordination, transcribing judgments and securing debt with deeds of trust

If most of the farm assets are awarded to the in-spouse and an equalization payment is required, the in-spouse may well have to refinance existing debt to obtain funding for all or part of the buyout. In Nebraska, any judgment will automatically operate as a lien on any real estate owned by the judgment debtor in the county in which the judgment is entered.[38]

The lender will likely require the out-spouse to subordinate that lien in favor of the lender to allow the refinancing and restructuring of debt. If the farmer has ground in more than one county, consider transcribing the judgment to all relevant counties. In addition, consider requiring the in-spouse debtor to sign a deed of trust in favor of the out-spouse creditor. Foreclosing a lien, while a nice bit of security in some cases, is a much more lengthy and difficult process than foreclosing a deed of trust, which could be accomplished in as little as 90 days from the default.

Conclusion

Farmers may have extremely complex marital estates, with any number of types and classes of assets and debts. Litigation can be complex and devastating to the family farm while also creating lasting hostility in the family. Thinking outside the box to address these unique issues can help preserve the farm in the family while protecting the interests of the nonfarm spouse.

Endnotes

1. *Nebraska Agriculture Fact Card*, NE Dep't of Agric., https://nda.nebraska.gov/facts.pdf (last visited June 14, 2021).
2. *Id.*
3. Daniel Prager et al., *Farm Use of Futures, Options, and Marketing Contracts*, U.S. Dep't of Agric. Econ. Info. Bulletin (Oct. 2020).
4. *Id.*
5. *Id.*
6. Corey Clark, *Farms With No Employees Can Still Benefit from the Paycheck Protection Program*, MSU Extension (Mar. 7, 2021), https://www.canr.msu.edu/news/farms-with-no-employees-can-still-benefit-from-the-paycheck-protection-program.

7 John Newton et al., *What's in the New COVID-19 Relief Package for Agriculture*, Am. Farm Bureau Fed'n (Dec. 22, 2020), https://www.fb.org/market-intel/whats-in-the-new-covid-19-relief-package-for-agriculture.

8 *American Rescue Plan Debt Payments*, U.S. Dep't of Agric., https://www.farmers.gov/americanrescueplan (last visited June 11, 2021).

9 *Coronavirus Food Assistance Program 2*, U.S. Dep't of Agric., https://www.farmers.gov/sites/default/files/documents/CFAP2-StakeholderToolkit-10132020.pdf (last visited June 15, 2021).

10 *Coronavirus Food Assistance Program*, U.S. Dep't of Agric., https://www.farmers.gov/pandemic-assistance/cfap (last visited June 11, 2021).

11 *See generally USDA Pandemic Assistance for Producers*, U.S. Dep't of Agric., https://www.farmers.gov/pandemic-assistance (last visited June 11, 2021).

12 *See generally Conservation Reserve Program*, U.S. Dep't of Agric., https://www.fsa.usda.gov/programs-and-services/conservation-programs/conservation-reserve-program/ (last visited June 11, 2021).

13 *Coufal v. Coufal*, 866 N.W.2d 74 (Neb. 2015).

14 Neb. Rev. Stat. § 42-366(8); *Davidson v. Davidson*, 578 N.W.2d 848 (Neb. 1998).

15 *Holen v. Holen*, A-16-1201, 2017 WL 6334153 (Neb. Ct. App. Dec. 12, 2017) (selected for posting to court website) ("The option to purchase was acquired by the marital estate when the agreement was signed by both parties in April 2010, and the option remained part of the marital estate at the time of the court-ordered valuation date of December 31, 2014. Even according to Erik, in September 2014, the option was still in full force and effect, and as of December 31 of that year, he had not done anything to jeopardize his rights under the Agreement. The option to purchase was therefore a marital asset at the time of the valuation date. *See Schuman v. Schuman*, 265 Neb. 459, 665 N.W.2d 30 (2003) (as a general rule, all property accumulated and acquired by either party during the marriage is part of the marital estate, unless it falls within an exception to the general rule).").

15 *See generally Holen*, 2017 WL 6334153. .

17 *Farmer's Tax Guide,* Internal Revenue Serv., https://www.irs.gov/pub/irs-pdf/p225.pdf (last visited June 14, 2021).

18 *See Osantowski v. Osantowski*, 904 N.W.2d 251 (Neb. 2017) (allowing credit for prepaid expenses but adjusting for equipment down payment); *But see Johnson v. Johnson*, 307 N.W.2d 783 (Neb. 1981) (disallowing credit as speculative when crop proceeds are unknown).

19 CARES Act, Pub. L. No. 116-136, §§ 2303(a) and (b) (2021).

20 Consolidated Appropriations Act,Pub. L. No. 116-260, Division N, § 281 (2021).

21 *Id.*

22 *See, Gangwish v. Gangwish*, 678 N.W.2d 503 (Neb. 2004); *Workman v. Workman*, 632 N.W.2d 286 (Neb. 2001); *Pickrel v. Pickrel,* 717 N.W.2d 479 (Neb. Ct. App. 2006). The court in *Workman* noted that "[i]t is well established that the provision of 'in-kind' benefits, from an employer or other third party, may be included in a party's income for child support purposes." 632 N.W.2d at 295 (citing *State on behalf of Hopkins v. Batt*, 573 N.W.2d 425 (Neb. 1998) (military housing benefit and subsistence allowance included as income); *Baratta v. Baratta,* 511 N.W.2d 104 (Neb. 1994) (free food and rent provided by employers, who were also petitioner's parents, included as income); *Morrill County v. Darsaklis*, 584 N.W.2d 36 (Neb. Ct. App. 1998) (use of home on farm included as income); and *Robbins v. Robbins*, 536 N.W.2d 77 (Neb. Ct. App. 1995) (value of food and drink provided by employer included in income).

23 *Jones v. McDonald Farms, Inc.,* 896 N.W.2d 199 (Neb. Ct. App. 2017); *see generally* Neb. Rev. Stat. § 21-20,162.

24 IRC § 179.

25 Nebraska Child Support Guidelines, Neb. Ct. R. § 4-204(C).

26 *Schuman v. Schuman*, 658 N.W.2d 30 (Neb. 2003) ("We conclude that in assigning a value to a business for purposes of dividing the property in an action for dissolution of marriage, a trial court should not consider the tax consequences of the sale of the business unless there is a finding by the court that the sale of the business is reasonably certain to occur in the near future. However, the court may consider such tax consequences if it finds that the property division award will, in effect, force a party to sell his or her business in order to meet the obligations imposed by the court.").

27 *Buche v. Buche*, 423 N.W.2d 488 (Neb. 1988) (holding that income tax would eventually have be paid on an IRA and therefore it was proper consider the future tax consequences in determining the present value of the IRA in dividing marital property).

28 *See. e.g., Carlson v. Carlson*, 909 N.W.2d 351 (Neb. 2018) ("Where parties to a divorce action voluntarily execute a [property settlement agreement] which is approved by the dissolution court and incorporated into a divorce decree from which no appeal is taken, its provisions as to real and personal property and maintenance will not thereafter be vacated or modified in the absence of fraud or gross inequity.").

29 *Novation,* Black's Law Dictionary (11th ed. 2019).

30 *Young v. Comm'r*, 240 F.3d 369, 373 (4th Cir. 2001) ("We first consider the Tax Court's ruling involving § 1041, which provides that no taxable gain or loss results from a transfer of property to a former spouse if the transfer is 'incident to the divorce.' 26 U.S.C. § 1041(a)(2). Section 1041 further provides that 'a transfer of property is incident to the divorce' if it is 'related to the cessation of the marriage.' 26 U.S.C. § 1041(c)(2). The statute does not further define the term 'related to the cessation of the marriage,' but temporary Treasury regulations provide some guidance. Those regulations extend a safe harbor to transfers made within six years of divorce if also 'pursuant to a divorce or separation instrument, as defined in § 71(b)(2).' Temp. Treas. Reg. § 1.1041-1T(b) (2000). Section 71(b)(2) defines a 'divorce or separation instrument' as a 'decree of divorce or separate maintenance or a written instrument incident to such a decree.' 26 U.S.C. § 71(b)(2) (1994). A property transfer not made pursuant to a divorce instrument 'is presumed to be not related to the cessation of the marriage.' Temp. Treas. Reg. § 1.1041-1T(b).").

31 IRC § 1041.

32 *Young*, 240 F.3d at 369.

33 *Id.*

34 *Belot v. Comm'r*, 111 T.C.M. (CCH) 1547 (T.C. 2016).

35 *Id.* at *11.

36 *Id.*

37 *Id.*

38 Neb. Rev. Stat. § 42-371 ("All judgments and orders for payment of money shall be liens, as in other actions, upon real property and any personal property registered with any county office and may be enforced or collected by execution and the means authorized for collection of money judgments."); Neb. Rev. Stat. § 25-1504 ("The lands and tenements of the debtor within the county where the judgment is entered shall be bound for the satisfaction thereof only from the day on which such judgments are rendered. All other lands, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution.").