

Income Tax Deductions

Landowners who donate a "qualifying" conservation easement to a "qualified" land protection organization under the regulations set forth in 170(h) of the Internal Revenue Code may be eligible for a federal income tax deduction equal to the value of their donation. The value of the easement donation, as determined by a qualified appraiser, equals the difference between the fair market value of the property before and after the easement takes effect.

To qualify for this income tax deduction, the easement must be: a) perpetual; b) held by a qualified governmental or non-profit organization; and, c) serve a valid "conservation purpose," meaning the property must have an appreciable natural, scenic, historic, scientific, recreational, or open space value. As a result of new legislation signed by President George W. Bush on August 17, 2006 (H.R. 4 - The Pensions Protection Act of 2006), in 2006 and 2007, conservation easement donors may deduct the value of their gift at the rate of 50% of their adjusted gross income (AGI) per year. Further, landowners with 50% or more of their income from agriculture may be able to deduct the donation at a rate of 100% of their AGI. Any amount of the donation remaining after the first year can be carried forward for fifteen additional years (allowing a maximum of sixteen years within which the deduction may be utilized), or until the amount of the deduction has been used up, whichever comes first. With the passage of the Farm Bill in the summer of 2008 these expanded federal income tax incentives were extended such that they also apply to all conservation easements donated in 2008 and 2009.

Estate Tax Reductions and Exclusions

For landowners who will leave sizable estates upon their death, the most important financial impact of a conservation easement may be a significant reduction in estate taxes. Estate taxes often make it difficult for heirs to keep land intact and in the family because of high estate tax rates and high development value of land. It may be necessary to subdivide or sell land for development in order to pay these taxes which may not be the desire of the landowner or their heirs. A conservation easement can often provide significant help with this problem in three important ways:

1. *Reduction in Value of Estate.* The deceased's estate will be reduced by the value of the donated conservation easement. As a result, taxes will be lower because heirs will not be required to pay taxes on the extinguished development rights. In other words, heirs will only have to pay estate taxes on preserved farmland values, and not full development values.
 2. *Estate Exclusion.* Section 2031(c) of the tax code provides further estate tax incentives for properties subject to a donated conservation easement. When property has a qualified conservation easement placed upon it, up to an additional 40% of the value of land (subject to a \$500,000 cap) may be excluded from the estate when the landowner dies. This exclusion is in addition to the reduction in land value attributable to the easement itself as described above.
 3. *After Death Easement.* Heirs may also receive these benefits (but not the income tax deduction) by electing to donate a conservation easement after the landowner's death and prior to filing the estate return (called a "post mortem" election).
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