



USING THE CONSERVATION TAX INCENTIVE

In 2015 Congress enacted one of the most powerful conservation measures in decades: the enhanced federal tax incentive for conservation easement donations.

The permanent conservation easement tax incentive is a powerful tool that helps Americans conserve their land voluntarily.

For land trusts across the country, the permanent incentive represents vastly increased opportunities to protect the special places in their widely varied communities.

If you own land with important natural, agricultural or historic resources, donating a conservation easement can be a prudent way to both save the land you love forever and to realize significant federal tax savings.

This short brochure summarizes the conservation easement tax incentive and provides answers to some frequently asked questions. For the latest information and for guidance on individual properties, please contact your local land trust, which can be located at www.findalandtrust.org.



FREQUENTLY ASKED QUESTIONS

WHAT IS A CONSERVATION EASEMENT?

A conservation easement, also called a conservation agreement, is a voluntary and legally binding agreement between a landowner and a land trust or government agency.

When a landowner donates an easement to a land trust or public agency, she or he is giving away some of the rights associated with the land. The easement permanently limits uses of the donated parcel in order to protect its conservation values, as specified in the Internal Revenue Code (IRC) 170(h).

Conservation easements offer private landowners flexibility in protecting their land. For example, a donating landowner can retain the right to grow crops on a parcel while, at the same time, relinquishing the right to build additional structures on the parcel.

The land trust is responsible for making sure that a landowner adheres to the conservation terms of the easement. An easement may apply to all or a portion of the property and may or may not allow for public access to the property. A landowner who has donated a conservation easement can sell the land or pass it on to heirs, and future owners of the property are bound by the terms of the easement.

HOW DOES THE PERMANENT, ENHANCED TAX INCENTIVE WORK?

If a conservation easement is voluntarily donated to a land trust or government agency, and if it benefits the public by permanently protecting important conservation resources, it can qualify as a charitable tax deduction on the donor's federal income tax return.

First enacted temporarily in 2006, the tax incentive was made permanent in 2015 and increases the benefits to landowners by:

- Raising the deduction a donor can take for donating a conservation easement to 50%, from 30%, of his or her annual income;

- Extending the carry-forward period for a donor to take a tax deduction for a conservation agreement to 15 years from 5 years; and
- Allowing qualifying farmers and ranchers to deduct up to 100% of their income, increased from 50%.

Easements vary greatly in value. In general, the highest easement values are found on tracts of open space under high development pressure. In some jurisdictions, placing an easement on one's land may also result in property tax savings for the landowner.

1. What is an example of the financial benefit that the permanent tax incentive provides a landowner?

Prior to 2015, a landowner earning \$50,000 a year who donated a \$1 million conservation easement could take a \$15,000 deduction (30% of his or her income) for the year of the donation and for an additional five years, generating a total of \$90,000 in tax deductions.

The new, permanent incentive allows that landowner to deduct \$25,000 (50% of income) for the year of the donation and for each of an additional 15 years. This would result in a total of \$400,000 in deductions.

If the landowner is a farmer or rancher, he or she can deduct \$50,000 (100% of income) in the first year and then for each of the following 15 years, realizing a maximum of \$800,000 in deductions.

2. Can anyone deduct more than the value of his or her gift of an easement?

One can never deduct more than the fair market value of the gift. The permanent incentive simply allows landowners to deduct more of that fair market value.



3. Who qualifies as a farmer or rancher?

The 2015 law defines a farmer or rancher as someone who receives more than 50% of his or her gross income from “the trade or business of farming.” The law references IRC 2032A(e)(5) to define activities that count as farming, including:

- Cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training and management of animals) on a farm;
- Handling, drying, packing, grading or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant or operator of the farm regularly produces more than one-half of the commodity so treated; and
- The planting, cultivating, caring for or cutting of trees, or the preparation (other than milling) of trees for market.

For an easement to qualify for a farmer or rancher, it must contain a restriction requiring that the land remain “available for agriculture.” This provision also applies to farmers who are organized as C corporations. Additionally, Alaska Native Corporations are eligible as farmers or ranchers.

4. Do these changes apply to gifts of land?

The expanded incentive does not apply to gifts of land in fee. It only applies to gifts that qualify under IRC 170(h)(2), such as conservation easements. A landowner considering the donation of land should consult an attorney to determine whether the structure of his or her gift should be changed to take advantage of the permanent incentive.

5. When does the permanent incentive apply?

The permanent incentive applies to all conservation easements donated after December 31, 2014.

6. What other restrictions apply?

Conservation easement donations must comply with “conservation purposes” as defined in IRC 170(h). A donated easement must be a true gift. It must protect significant natural, agricultural or historic resources that public agencies or land trusts want to have conserved. A donated easement cannot serve to simply prevent development on a property or be part of a “quid pro quo” agreement in exchange for a government action, such as issuance of a building permit or a zoning change.

7. Will donors who use this provision be audited by the IRS?

Taking advantage of the 2015 law should not affect one’s likelihood of being audited. However, all donors should note that the IRS does pay attention to donations of property that are high in value, including donations of conservation easements.

This makes it important for donors and their advisors to know and follow the law, utilize a reputable professional appraiser who has experience in the appraisal of conservation easements and donate to a well-established, reputable land trust that has adopted and implemented *Land Trust Standards and Practices*.

WHAT IS THE ROLE OF THE LAND TRUST?

Voluntarily donating a permanent conservation easement is a major commitment for a landowner that requires careful planning and independent legal advice.

Donating an easement also necessitates a strong working partnership with a land trust. A landowner should allow sufficient time for the careful drafting of baseline documentation, creation of maps and production of a professional property appraisal. Land trusts will want to review the appraisal before accepting the gift, and landowners should understand that a land trust may decline to accept a donation that does not meet both the legal requirements and the land trust’s charitable mission and strategic plan.