



USING THE CONSERVATION TAX INCENTIVE

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Congress recently extended, through 2009, a Federal tax incentive for conservation easement donations that has helped thousands of landowners conserve their land.

If you own land with important natural or historic resources, donating a voluntary conservation easement (also called conservation agreement) can be one of the smartest ways to conserve the land you love, while maintaining your private property rights and possibly realizing significant federal tax benefits.

This brochure summarizes the conservation easement tax incentive and provides answers to some frequently asked questions. The incentive:

- Raises the deduction a donor can take for donating a conservation easement from 30 percent of his or her income in any year to 50 percent;
- Allows qualifying farmers and ranchers to deduct up to 100 percent of their income; and
- Extends the carry-forward period for a donor to take tax deductions for a voluntary conservation agreement from 5 to 15 years.

This is a powerful tool for allowing modest-income donors to receive greater credit for donating a very valuable conservation easement on property they own. For land trusts, this translates to the possibility of protecting much more land through the use of conservation easements.

It is important to note that the incentive *only applies to easements donated between 2006 and 2009*. The Land Trust Alliance will work to make this change permanent, but as it stands it will expire at the end of 2009.

Please check our website frequently for the latest information on this topic. Go to www.lta.org/policy/tax-policy.





FREQUENTLY ASKED QUESTIONS

A. WHAT IS A CONSERVATION EASEMENT?

A conservation easement is a legal agreement between a landowner and a land trust or government agency, that permanently limits uses of the land in order to protect its conservation values. It allows landowners to continue to own and use their land, and they can also sell it or pass it on to heirs.

When you donate a conservation easement to a land trust, you give up some of the rights associated with the land. For example, you might give up the right to build additional structures, while retaining the right to grow crops. Future owners will also be bound by the easement's terms. The land trust is responsible for making sure the easement's terms are followed.

Conservation easements offer great flexibility. An easement on property containing rare wildlife habitat might prohibit any development, for example, while an easement on a farm might allow continued farming and the addition of agricultural structures. An easement may apply to all or a portion of the property, and need not require public access.

Qualifying For A Tax Deduction

A landowner sometimes sells a conservation easement, but usually easements are donated to a land trust. If the donation benefits the public by permanently protecting important conservation resources, and meets other federal tax code requirements, it can qualify as a tax-deductible charitable donation. Easement values vary greatly; in general, the highest easement values result from very restrictive conservation easements on tracts of developable open space under intense development pressure. In some jurisdictions, placing an easement on your property may also result in property tax savings. To find a land trust near you to discuss your options, please visit www.lta.org/community/.

B. HOW DOES THE EXPANDED TAX INCENTIVE WORK?

1. Can you give me an example of the difference the new change makes?

Under the previous rules, a landowner earning \$50,000 a year who donated a \$1 million conservation easement could take a \$15,000 deduction for the year of the donation and for an additional 5 years—a total of \$90,000 in tax deductions.

The new rules allow that landowner to deduct \$25,000 for the year of the donation and then for an additional 15 years. That's a total of \$400,000 in deductions. If the landowner qualifies as a farmer or rancher, he could take a maximum of \$800,000 in deductions for his million dollar gift.

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

One can never deduct more than the fair market value of the gift. This change simply allows landowners who previously could not deduct the full value of their gift to deduct more of that value.

3. Who qualifies as a farmer or rancher?

The new law defines a farmer or rancher as someone who receives more than 50 percent of his or her gross income from “the trade or business of farming.” The law references an estate tax provision [Internal Revenue Code (IRC) 2032A(e)(5)] to define activities that count as farming. Specifically, those activities include:

- 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.

The qualified farmer or rancher provision also applies to farmers who are organized as C corporations. For an easement to qualify for the special treatment, it must contain a restriction requiring that the land remain “available for agriculture.”

IRS guidance on these parts of the law is available at www.ita.org/policy/tax-policy/.

4. Do these changes apply to gifts of land?

This 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 donating their land should consult with an attorney to determine whether they should consider changing the structure of their gift to take advantage of this new incentive.

5. Does this incentive only apply to conservation easements?

The expanded incentive applies to all donations covered in IRC section 170(h)(2), which includes donations of the entire interest of the donor other than a qualified mineral interest; a remainder interest; or a permanent conservation or historic preservation easement.

6. What is the timeline for this expanded incentive?

The incentive applies to all easements donated between 2006 and 2009. The Alliance will work hard to make this change permanent, but as it stands it will expire at the end of 2009. If a donor qualifies under this provision, they can continue to apply its formulas to the amount of their contribution that they carry over into years beyond 2009.

7. What other restrictions apply?

Conservation easement donations are subject to the same restrictions as they were before. For example, easements must meet the “conservation purposes” test defined in the existing law; they cannot be donated as part of a “quid pro quo” agreement where the easement was given in exchange for something else, such as a building permit; and they must be donated to a qualified organization—a governmental unit or a publicly supported charity that has “a commitment to protect the conservation purposes of the donation, and...the resources to enforce the restrictions.”

See www.ita.org/policy/tax-policy/ for the Treasury Regulations on conservation easement donations.

8. Will donors who use this provision be audited?

Taking advantage of this new law will not necessarily affect one's likelihood of being audited. All donors should note, however, that the IRS has greatly increased the number of tax returns it audits. The IRS has also indicated that high value donations of property—including donations of conservation easements—will receive more attention from the IRS than most tax returns.

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

C. RECENT RULES AFFECTING EASEMENT DONORS

1. How do other new laws affect easement donations?

A 2006 law (PL109-280) redefines who is a “qualified appraiser,” and gives the IRS the power to issue new regulations on appraiser qualifications. This is important: appraisers need to show donors that they are qualified under the new law and any new Treasury Regulations or guidance that may follow from it. The law states that a qualified appraiser must “demonstrate verifiable education and experience in valuing the type of property subject to the appraisal.”

2. How does the law affect easements that protect both conservation and historic preservation values?

The 2006 law tightened the rules for easements on “certified historic structures.” If you are protecting a property that includes such a structure (e.g., a farm with a historic stone barn that is listed in the National Register) these new regulations may apply to you. Donors and donees of easements protecting historic structures need to understand the 2006 rules, which include a filing fee for donors and specific appraisal requirements.

3. Have there been other recent changes affecting easement donations?

Yes! The IRS has changed the instructions for Form 8283, and now asks for additional information from easement donors.

D. WHAT IS THE LAND TRUST'S ROLE?

Potential easement donors should know that the donation of a permanent conservation easement is a big commitment. They should carefully consider their donation, and should consult with an attorney prior to donating a conservation easement.

Landowners need to understand that donating a conservation easement requires a working partnership with a land trust—and time. Donating an easement requires thought, careful drafting of documents and maps, baseline documentation and a professional appraisal. Land trusts can carefully explain their mission to potential donors, 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 own specific charitable mission and strategic plan.

ACKNOWLEDGEMENTS

There are so many people to thank who were involved in this conservation tax-incentive victory, that one grand thank you from the Alliance goes out to all of you. We could not have done it without you.

The Alliance has been leading a team effort to achieve this since 2000, when we convened land trust leaders from across the country and a 53-member coalition of national conservation groups to build a consensus on what tax policies would best address the need to expand our conservation work. National land trust organizations, local and regional land trusts, wildlife conservation and sportsmen's groups, and representatives of the ranching and farming community all played important parts in that effort.

This legislation would not have happened without the leadership of Senator Max Baucus (D-MT)—who first introduced a version of it in 1999—and his colleague Senator Charles Grassley (R-IA). Many of their colleagues in the Senate and the House have helped. Land trusts in their states—including the Montana Land Reliance and the Iowa Natural Heritage Foundation—worked hard to show these leaders that the conservation work of land trusts was important to their communities and broadly supported by their constituents. That work provided the foundation for this new conservation tool.

Remember to visit www.lta.org/policy/ for the latest information.

This information is for informational purposes only and should not be construed as legal advice.

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ABOUT THE ALLIANCE

The Land Trust Alliance is a national conservation organization representing over 1,600 Land Trusts, and works to save the places people love by strengthening land conservation throughout America. Please visit our website at www.landtrustalliance.org for more information on:

- Finding a local or regional land trust
- The latest federal tax laws concerning conservation easement donations
- Examples of how private landowners work with land trusts to protect their land
- Publications and resources for landowners

Cover photo: Harlen Persinger, photographer. Bottom cover image: Scott Bauer, USDA/ARS.

Previous panel: (clockwise from cattle image) Keith Weller, USDA/ARS; Tim McCabe USDA/NRCS; Teresa McCaffrey, courtesy of Montana Land Reliance; Scott Bauer, USDA/ARS.



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