

New Conservation Tax Incentives

Texas Land Trust Council Annual Conference

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SUMMARY SHEET

ACCOUNTING LESSONS:

- Charitable Gift: Potential Charitable Deduction, not Itemized Deduction
- Adjusted Gross Income = AGI
- Bargain Sale: Sale of property to a charitable organization for less than FMV, and the donation of the balance of the remaining value as a charitable contribution
- Charitable contribution taken as deduction from AGI on Form 1040 Schedule A

RULES TO REMEMBER:

- Conservation Easement (CE) Value = Before Value – After Value
- CE Value = Potential Charitable Deduction
- ENHANCEMENT: If the easement increases the value on adjacent properties owned by the donor or related persons, the increased value of the adjacent land must be deducted from the value of the easement.
- Cash gifts: 50% AGI Limitation and 5 year carry over period
 - Cash contribution deductions taken before CE deduction
- Established law – applied before 2006 and reapplies in 2008
 - 30% AGI Limitation Sec. 170(b)(1)(C)
 - Limits annual charitable deduction to 30% of donor's AGI
 - 5 year carry over period Sec. 170(D)(ii)
 - After deduction in year 1, unused deduction carried over 5 years
 - Corporate donors of cash or CE : charitable deduction limited to 10% of corporate taxable income with 5 year carry over
- PPA – 2006: applies in 2006 and 2007
Sec. 170(b)(1)(E) Qualified Conservation Contributions
 - 50% AGI Limitation
 - 100% AGI Limitation for qualified farmer/rancher individuals
 - * Qualified means: > 50% of taxpayer's gross income from farming
 - After deduction in year 1, unused deduction carried over 15 years
 - Corporate donors: charitable deduction for CE limited to 100% taxable income with a 15 year carry over

- Charitable Contributions:
 - In 2006-07 donor can deduct 50% (or 100%) of AGI, but in 2008 it's back to 30%
 - Any unused deduction in 2006-07 can be carried forward up to 15 more years, but for donations in 2008 it's back to 5 years

SHORTCUTS:

- CE reduces value of rural land by about 1/3
- CE reduces value of urban land by about 2/3
- Approximate Tax Rates:
 1. Middle Class Tax Rate = 25%
 2. Wealthy Tax Rate = 35%
- Formula to Determine Tax Savings:
 1. Determine total potential charitable deduction
 2. Calculate AGI x 30% x 6 years OR in 2006-07 Calculate AGI x 50% or 100% x 16 years
 3. Multiply Smaller Amount by tax rate
- Maximum Annual Deduction (MAD)
 - MAD = AGI x 30%
 - PPA – for 2006 & 2007
 - MAD = AGI x 50%
 - MAD = AGI x 100% for qualified farmer/rancher
 - MAD = Taxable Income x 100% (qualified farmer/rancher corporation)

WHAT KINDS OF GIFTS QUALIFY FOR THE NEW CONSERVATION TAX INCENTIVES?

Gifts of the entire FEE INTEREST do NOT qualify for the new conservation tax incentives

New conservation tax incentives apply to gift of a “qualified real property interest” [Internal Revenue Code § 170(h)]

1. Conservation easement
2. Entire interest of donor other than qualified mineral interest
3. Remainder interest

ENTIRE INTEREST OF DONOR OTHER THAN QUALIFIED MINERAL INTEREST

“ENTIRE INTEREST OF DONOR”

- Can be an undivided interest

“QUALIFIED MINERAL INTEREST”

- Subsurface oil, gas or other minerals
- The right to access such minerals

DO ALL PROPERTIES QUALIFY FOR A RETAINED MINERAL INTEREST GIFT?

- To retain a mineral interest, the donor must own the minerals and the right to access them.
- IRS POSITION:
Mineral interest retained cannot be “insubstantial”
Key Inquiry: Would mineral rights sell for more than nominal amount?

ALL “QUALIFIED REAL PROPERTY INTERESTS”

- Conservation easement
- Retained mineral interest gift
- Gift of remainder

** Must pass the conservation purposes test

Both the retained mineral interest owner and the land trust receiving the fee are subject to conservation restrictions on their respective interests

The conservation restrictions will be very similar to a conservation easement

Conservation values must be protected in perpetuity

SUMMARY: RETAINED MINERAL INTEREST GIFT

A landowner who:

- 1) Wants to donate their fee interest in property to a land trust for conservation purposes
- 2) Owns the minerals and the right to access them
- 3) Has recoverable minerals on the property

can retain a mineral interest and qualify for the new conservation tax incentives

GIFT OF REMAINDER INTEREST

- Donor retains life estate
- Land Trust takes title and possession upon death of life tenant

GIFT OF REMAINDER INTEREST MUST COMPLY WITH CONSERVATION PURPOSES TEST

- Life tenants must be subject to recorded, legally enforceable restrictions that prevent life tenant from diminishing conservation values
- When the land trust takes ownership upon death of the life tenant, the land trust is likewise subject to the conservation restrictions

Conservation values must be protected in perpetuity

DO THE NEW CONSERVATION TAX INCENTIVES APPLY TO PURCHASE OF DEVELOPMENT RIGHTS PROGRAMS?

Federal Programs such as Farm & Ranch Land Protection Program purchase a conservation easement from the landowner at 75% of appraised value

BARGAIN SALE - Sale of property to a charitable organization for less than Fair Market Value

A bargain sale is part sale and part gift.

In the case of a sale of CE valued at \$100,000 for \$75,000, there is:

- \$75,000 SALE
 - Donor pays capital gains tax on gain in sale
- \$25,000 GIFT
 - Charitable contribution of \$50,000
 - Donor can deduct up to 50% of AGI for 16 years

PURCHASE OF DEVELOPMENT RIGHTS PROGRAMS & QUALIFIED FARMERS AND RANCHERS

REVIEW: Donation by “qualified farmer or rancher” is deductible up to 100% of donor’s AGI in the year of the gift

“QUALIFIED FARMER OR RANCHER” = > 50% of AGI is from “trade or business of farming”

Some PDR programs may knock farmer/rancher out of eligibility to deduct 100% of AGI

- This will matter only when charitable gift is very large relative to income.

Installment sales may allow participants in some PDR programs to qualify for 100% AGI.

- Installment sales have complicated tax implications. Donor needs good tax and legal advice.

WHEN DO THE NEW CONSERVATION TAX INCENTIVES APPLY?

They apply to all qualifying gifts in 2006 and 2007

- If your land trust took a CE prior to passage of the law (August 2006), let your donor know they are eligible
- The new conservation tax incentives expire at the end of 2007 unless they are renewed by Congress.

We need your help in persuading Congress to renew them!!

WHAT YOU CAN DO:

- 1) If you get a call to action from the Land Trust Alliance or from Carolyn Vogel, please respond
- 2) Notify Carolyn of any conservation easement deals you are working on

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