

Conservation Easement Tax Benefits Abound for Owners of Large Acreage

by Ann Taylor Schwing, Esq.

Donation of a conservation easement to a qualified organization can result in an immediate income tax deduction and a reduction in the value of land for estate tax purposes.

Congress recently passed the Heartland, Harvest, Habitat and Horticulture Act (the "4H Act"), which extends the generous tax benefits for conservation easement gifting that were originally enacted in the Pension Protection Act of 2006. These benefits now apply to donations and bargain sales of conservation easements before January 1, 2010.

The 4H Act

The 4H Act applies to qualified conservation contributions, namely, donations of conservation easements to a qualified organization such as a governmental agency, land trust or other nonprofit described in section 501(c)(3) of the Internal Revenue Code, whose purpose is to protect and conserve land. The grant of the conservation easement must be in perpetuity as term easements do not qualify for a charitable deduction. Not all conservation easements are entitled to a charitable deduction; for example, an easement granted in exchange for a benefit, such as entitlements for property development, will not qualify.

Conservation Easements 101

Conservation easements are individually drafted deeds transferring development rights so that the landowner or subsequent owners cannot exercise those rights. Donation of a conservation easement to a qualified organization can result in an immediate income tax deduction and a reduction in the value of land for estate tax purposes. Landowners who have no intention of exercising certain development rights can realize significant tax benefits while protecting their land. The decision requires careful thought, because the restrictions are permanent, but the benefits are substantial, especially for owners of large acreage.

Conservation easements can be used on small parcels in special circumstances but normally are

suitable for multi-acre parcels. The specific size depends on the level of existing and reserved development, the natural and scenic features of the land, and the distance from significant expanding land development. Thus, an especially scenic parcel along a highway may support a conservation easement even if it is 5 to 10 acres, while a parcel of rangeland or forested land not readily visible to the public nor subject to encroaching development will typically need to be several times that size. The decision is made individually for each parcel by the qualified recipient of the prospective donated easement.

Income Tax Benefits

The 4H Act extends the following income tax benefits affecting gifts of qualified conservation easements:

1. Individuals gifting a conservation easement may deduct the value of the easement up to 50% of the individual's contribution base over the amount of all other allowable charitable contributions. If the value exceeds the 50% limitation in the year of gifting, the excess can be carried over for up to 15 years as a contribution subject to the 50% limitation in subsequent years.
2. For an individual who is a farmer or rancher with more than 50% of his or her gross income for the taxable year from the business of farming or ranching, the individual may deduct the value of gifts of conservation easements to the extent of all of the individual's contribution base over the amount of all other allowable charitable contributions. If the value of the contribution exceeds the 100% limitation in the year of gifting, the excess can be carried over for up to 15 years as a contribution subject to the 100% limitation in subsequent years.

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Sacramento
555 Capitol Mall
9th Floor
Sacramento CA
95814-4692
tel 916.444.3900
toll free 800.403.3900
fax 916.444.8334

Oakland
1901 Harrison Street
9th Floor
Oakland CA
94612-3501
tel 510.273.8780
toll free 800.339.3030
fax 510.839.9104

www.mhalaw.com



- For a farming or ranching corporation with more than 50% of its gross income for the taxable year from the business of farming or ranching, the corporation may deduct the value of gifts of conservation easements to the extent of all of the corporation's taxable income over the amount of all other allowable charitable contributions. Corporations qualifying for this benefit cannot be publicly traded. Again, if the value of the contribution exceeds the 100% limitation in the year of gifting, the excess can be carried over for up to 15 years.

These special tax benefits expire in December 2009

The value of the easement is based on an appraisal that determines the difference between the value of the land without the restrictions and the value with the restrictions. The IRS imposes specific requirements on the timing of the appraisal and the qualifications of the appraiser.

The conservation easement donation reduces the value of the land so that the future estate tax that may be assessed may be reduced or, in some cases, elimi-

nated. In this way, the conservation easement can assist families to retain land in the family that they might otherwise have to sell to pay estate tax.

What This Means to You

A conservation easement would not suit everyone, but it can be a very valuable benefit for those who are willing to give up development rights in exchange for income and estate tax benefits. McDonough Holland & Allen PC has attorneys familiar with all aspects of conservation easements. If you have questions regarding conservation easements or the taxation of conservation easements, please contact one of the attorneys listed below.

About the Author

Ann Taylor Schwing is Of Counsel in the Sacramento office of McDonough Holland & Allen PC. Her practice focuses on appeals, motions and research, with special emphasis on conservation easements. Ann also serves as Commissioner for the Land Trust Accreditation Commission and Trustee for the American Inns of Court Foundation. She can be reached at (916) 444-3900 or aschwing@mhalaw.com.

Attorney	Practice Focus	Email
Ann Taylor Schwing, Of Counsel	Conservation easement negotiations, drafting monitoring and enforcement	aschwing@mhalaw.com
Patricia D. Elliott, Shareholder Jeffrey R. Jones, Shareholder	Real Estate Transactions	pelliott@mhalaw.com jjones@mhalaw.com
James L. Leet, Shareholder	Tax consequences of conservation easements	jleet@mhalaw.com
L. Stuart List, Shareholder	Complex estate planning	slist@mhalaw.com
Wynne S. Furth, Of Counsel Harriet A. Steiner, Shareholder Kara Ueda, Shareholder	Public agency representation; conservation stewardship financing programs; historic preservation easements	wfurth@mhalaw.com hsteiner@mhalaw.com kueda@mhalaw.com
Seth Merewitz, Shareholder	Counsel to public agencies and private landowners; Williamson Act experience	smerewitz@mhalaw.com