

## Conservation Tax Incentive

As you heard in December, Congress passed and the President signed legislation making the enhanced incentive for the donation of conservation easements permanent, as part of a larger tax and spending package ([PL114-113](#) — see page 805). The law applies to all donations of easements and bargain sales of land, effective January 1, 2015 onward. The Land Trust Alliance provided the following explanatory information on their web site at [www.landtrustalliance.org/topics/taxes/income-tax-incentives-land-conservation](http://www.landtrustalliance.org/topics/taxes/income-tax-incentives-land-conservation).

### Income Tax Incentives for Land Conservation

For landowners, donating a conservation easement is a way to protect places they love. It's also a major financial decision. When landowners donate a conservation easement, they give up part of the value of their property — often their family's biggest asset. Tax incentives offset some of that loss in property value, making conservation a viable option for more landowners.

### How to Use the Federal Conservation Tax Deduction

One of the most important incentives is the federal conservation tax deduction, which allows landowners to deduct all or part of the value of a donated easement from their taxable income. In 2015, Congress made permanent the federal tax incentive for conservation easement donations, helping 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. The conservation tax 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.

These changes apply to donations made at any time in 2015 and to all donations made after that. 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.

### Frequently Asked Questions

#### 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 often 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 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.findalandtrust.org](http://www.findalandtrust.org) (link is external).

### **How Does the Expanded Tax Incentive Work?**

#### **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 or she could take a maximum of \$800,000 in deductions for the million dollar gift.

#### **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.

#### **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 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

- planting, cultivating, caring for or cutting of trees, or the preparation (other than milling) of trees for market.

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

### **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. Landowners 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.

### **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.

### **What is the timeline for this expanded incentive?**

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

### **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.”

### **Will donors who use this provision be audited?**

Taking advantage of this new law should not affect one’s likelihood of being audited. All donors should note, however, that the IRS does pay close attention to high value donations of property — including donations of conservation easements.

That makes it particularly important for donors and their advisors 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](#).

### **Recent Rules Affecting Easement Donors**

#### **How do other laws affect easement donations?**

A 2006 law (PL109-280) redefines who is a “qualified appraiser,” so appraisers need to show donors that they are qualified under the new law, which states that a qualified appraiser must “demonstrate

verifiable education and experience in valuing the type of property subject to the appraisal.” The 2006 law also tightened the rules for easements on “certified historic structures.” If you are protecting a property that includes such a structure, new regulations, including a filing fee and specific appraisal requirements may apply to you.

### **Roles and Responsibilities**

Potential easement donors should know that donating a permanent conservation easement is a big commitment requiring careful consideration and independent legal advice.

Donating a conservation easement requires a working partnership with a land trust — and time for careful drafting of documents and maps, baseline documentation and a professional appraisal. 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. In addition, land trusts will want to see the appraisal before accepting your gift.

### **State Income Tax Credits for Conservation**

In addition to the federal tax deduction, 16 states offer some form of tax credit for conservation easement donations. Many state incentives apply to fee-simple donation of land as well as conservation easements.

The most powerful state tax incentives for conservation are the transferable tax credits available in Colorado, Georgia, New Mexico, South Carolina and Virginia. In these states, if a landowner donates an easement but doesn’t owe enough tax to use the full credit, he or she can sell the remaining credit to another taxpayer, generating immediate income.

Nine states offer some form of non-transferable income tax credit — Arkansas, California, Connecticut, Delaware, Iowa, Maryland, Massachusetts, Mississippi and New York. The New York tax credit is unique, offered not at the time of donation, but every year in an amount equivalent to 25% of the property taxes paid on land under easement.

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