

TAR RIVER LAND CONSERVANCY

Tax Benefits of Land Conservation

One's love for land and the desire to protect it are motivating forces for donating a [conservation easement](#) or property to a land trust. However, it is frequently the tax benefits that afford landowners the opportunity to carry out these conservation goals. Though the financial implications of these tax benefits vary by individual, they are certainly useful to all landowners.

The information below is intended as an introduction to federal and state tax laws regarding donations of land and conservation easements. It is excerpted with permission from the 2000 edition of *Conservation Options: A Landowner's Guide* published by the [Land Trust Alliance](#). Information on the 2006 tax law changes is drawn from other LTA sources and from Attorney [Stephen J. Small, author of *Preserving Family Lands*](#).

The complexities of Federal tax law preclude our being able to cover them in any great detail. Depending on the direction you decide to take to protect your land, the value of your gift, and your personal financial situation, your own tax result may vary greatly. State and local taxes also play a role in this process, providing potential for additional estate tax benefits. You will need to consult your personal accountant, tax attorney, or financial advisor.

Charitable Gifts

The first step in calculating your potential tax deduction is determining whether your donation is a charitable gift in the eyes of the IRS. The key elements of the IRS's requirements for a conservation easement or outright gift of land are as follows:

- The gift must be to a public agency or a qualifying 501(c)(3) organization such as the Tar River Land Conservancy.
- The gift must be a true gift for which no reciprocal benefit is anticipated. For example, a conservation easement given to a land trust by a developer in exchange for government approval of a subdivision is not a gift.
- The gift must be complete and irrevocable, without attached contingencies or strings. For example, the donation would be made non-deductible if ownership of a property will revert to the donor or an easement will be extinguished if the land trust does not meet certain performance standards.

The easement must meet certain standards and fulfill conservation purposes established by Congress for permanent open space protection and public benefit. Note that an easement does not have to provide public access to qualify. Your attorney or tax advisor should review the gift's terms and advise you as to its deductibility.

Substantiating the Value of Your Gift

Tax deductions for gifts worth more than \$5,000, including land or conservation easements, require the donor to obtain a "qualified appraisal" by a "qualified appraiser" (cash and publicly traded securities are exceptions). Basically, the value of a conservation easement is equal to the difference between the fair market value of the property before and after the easement. For example, if a property is valued at \$100,000 before the easement, and the easement reduces the value of the land by \$50,000, then the easement is valued at \$50,000.

A "qualified appraisal" is required if you are seeking a charitable contribution tax deduction for your easement or land donation. A "qualified appraiser" must perform the appraisal. TRLC cannot provide the appraisal, but can give you a list of appraisers with experience in appraising

gifts of land and conservation easements. Additional guidance on IRS regulations pertaining to appraisal requirements associated with the 2006 tax law is available on the Land Trust Alliance's website at www.lta.org.

The IRS requires the appraisal be completed not earlier than 60 days before the date of the gift and must state the fair market value of the gift as of the date of the contribution. (TRLC can work with you and your appraiser to correlate these timing issues.) Alternatively, an appraisal may be done at any time after the gift, retroactive as to the date of the gift. The appraiser's report must meet IRS standards and a summary of the appraisal (IRS Form 8283), signed by the land trust and appraiser must be attached to the donor's income tax return.

Federal Income Tax Deductions

On August 17, 2006 President Bush expanded the federal tax deductions available to landowners who voluntarily agree to conserve their land between now and the end of 2007. The changes are explained below and affect charitable donations of conservation agreements made during the period of January 1, 2006 and December 31, 2007. After this trial period Congress will determine whether or not to make the changes permanent, extend the trial period or revert back to previous legislation. Additional resources regarding the 2006 changes to the tax law can be found at http://www.lta.org/publicpolicy/tax_incentives_resources.htm

50% Limitation - Tax laws place limitations on the maximum annual charitable deduction a donor may take. In general, for gifts of long-term capital-gain property held more than one year – which includes most appreciated land or conservation easements – the deductible amount was limited to 30% of your adjusted gross income. The new legislation increases the deductible amount to 50%. If the gift exceeds 50%, you may carry forward the residual amount for up to fifteen additional years, up to the 50% limit. Before the new legislation the carry forward period was limited to 5 years. As with past legislation, any gift value remaining after the carry forward period expires cannot be taken as a tax deduction.

Farmers and Ranchers - Under the new legislation, farmers and ranchers who qualify under Section 2032A(e)(5) of the tax code may be eligible for a deduction for donation of a conservation easement up to 100% of their adjusted gross income for the year. If the gift exceeds 100%, the landowner may carry forward the residual amount for up to fifteen additional years, up to the 100% limit. Any remaining gift value cannot be taken as a tax deduction. In order to qualify for the 100% deduction the property must be used in agriculture or livestock production (or available for such production) and the easement must provide that the property remain available for such production.

Other deductions - Landowners taking a tax deduction for the charitable contribution of land or an easement can also deduct some of the [costs](#) incurred in making the donation. Survey costs, legal fees, and appraisal fees may be deductible under "Miscellaneous Deductions" (although they are not charitable deductions) to the extent that, in combination with various other miscellaneous deductions, they exceed 2% of your adjusted gross income.

Additionally, cash or securities given to a non-profit land trust as an endowment for property or administration of its easements (including contributions to TRLC's stewardship endowment) qualify as a tax deductible charitable contribution.

Please visit the [Land Trust Alliance](#) webpage or call Tar River Land Conservancy for more information about the revised Federal Income Tax Incentives.

Federal Estate Taxes

With few exceptions, upon a landowner's death, the fair market value of their land becomes part of the taxable estate. Due to development pressures in most areas and increased property values, many heirs face the prospect of selling family lands in order to pay estate taxes.

Putting land into a conservation easement during the landowner's lifetime, [donating it by will](#), or making a [post-mortem](#) donation of an easement reduces the estate value and associated tax liability. Although the amount of income tax deduction is limited, there are no limits for estate tax purposes, so the tax savings can be substantial. Thus, a conservation easement can be a useful estate-planning tool.

Under the 2001 tax laws, the amount an individual can give during his or her lifetime or leave by will that is exempt from federal estate tax increases as follows:

2002: \$1,000,000
2004 \$1,500,000
2006 \$2,000,000
2009 \$3,500,000

In the year 2010 the estate tax is scheduled to be repealed for one year. In 2011 the threshold reverts to \$1 million. (Note: gifts or bequests to spouses or to charities remain unlimited.) During the same period, the highest estate tax rates are scheduled to drop from 50% to 45%. Since tax laws are subject to change, landowners should consult their tax advisor for current information.

Section 2031(c) Exclusion: Beyond the easement value, heirs of a landowner who has donated a qualifying conservation easement can receive an additional exclusion from estate tax, up to 40% of the remaining taxable value of the land, no matter where the land is located. (This benefit is capped at \$500,000.) The decedent or a member of his/her family must have owned the land for three years prior to death. Previously, this exclusion was limited to land within 25 miles of a metropolitan statistical area, a national park, or a federal wilderness area, or within 10 miles of certain national forests.

Post-Mortem Election: Heirs may reduce federal estate taxes on inherited land by donating a qualifying conservation easement after the death of the landowner and before the decedent's estate tax return is due (generally nine months from the date of death). The easement can qualify the estate for a charitable tax deduction and for an additional exclusion under Section 2031(c).

There is no substitute for good estate planning and the post-mortem option may be limited by state probate laws. A disagreement among heirs can also frustrate the use of these provisions to protect family lands. TRLC encourages landowners who wish to conserve property to do so during their lifetime or include an [easement provision in the will](#).

North Carolina Conservation Tax Credit Program: North Carolina has a unique incentive that increases the tax benefits a landowner derives from donating a conservation easement or fee interest in land to a qualified recipient such as TRLC. Unlike the federal incentives which are income tax deductions, the state incentive is a tax credit (i.e. each dollar of credit value offsets a dollar of tax liability.) The credit is allowed against individual and corporate income taxes (Per G.S. 105-151.12 and G.S. 105 – 130.34 respectively). These tax credits are valued at 25% of fair market value of donated property interest and any unused portion of the credit can be carried forward for five succeeding years. For example, if a landowner donates a conservation easement valued at \$1,000,000, the landowner could take up to a \$250,000 tax credit in the year of the donation, and carry the remainder over five years. The limit on the tax credit is \$250,000 for individuals and \$500,000 for corporations.

Other Resources:

Conservation Options: A Landowner's Guide is published by the Land Trust Alliance (LTA), a national organization promoting voluntary land conservation through advocacy, resources, and training for land trusts nationwide. The year 2000 edition of *Conservation Options* may be purchased at the TRLC office or ordered from the LTA website: <http://www.lta.org>. LTA's website also has information on more recent tax law changes.

Preserving Family Lands: Book I and Preserving Family Lands: Book II by Attorney Stephen J. Small provide a thorough and clearly presented overview of tax strategies for landowners who wish to pass property on to the next generation. Small is recognized as a leading authority on private land protection options and strategies. Copies of his books may be purchased at the TRLC office or ordered from his website: <http://www.stevesmall.com>.

Forest Landowners' Guide to the Federal Income Tax (Agriculture Handbook 718) is available online from the USDA Forest Service. The 160-page Internet version of the handbook can be accessed at: <http://www.timbertax.org>. Hard copies may be ordered from US government bookstores (<http://bookstore.gpo.gov/locations/index.html> or 1-800-512-1800). The guide contains useful information on financial and tax planning, including such topics as property exchanges, conservation easements, casualty losses, self-employment taxes, alternative minimum tax for individuals, Christmas tree production, and record keeping.

N.C. Conservation Tax Credit Program

More information can be found on their website along with information on securing an application for tax credit certification. <http://www.enr.state.nc.us/conservationtaxcredit/>