

## **VES Land Trust Tax Benefits of a Conservation Easement**

*The primary reason a landowner donates a conservation easement is to preserve the natural, scenic and historic integrity of their land, forever. Many want to establish a legacy for their children and grandchildren. Most value the peace of mind of knowing that their land will be always protected from development.*

*In addition, there are significant income tax and estate planning benefits.*

### **How Does A Conservation Easement Qualify for a Tax Deduction?**

In order to be tax-deductible, the conservation easement must meet several tests:

- It must be granted in perpetuity.
- It must be donated to a qualified governmental or non-profit organization, such as the VES Land Trust.
- It must have a qualified property appraisal, which establishes the size of the charitable gift eligible for a tax deduction.
- It must be donated exclusively for “conservation purposes,” meaning the property must have some significant natural, scenic, historic, scientific, recreational or open space value that will be protected forever.

### **Federal Income Tax Deduction**

The donation of a conservation easement is treated as a charitable gift. The value of the property pre-easement, minus the value of the property post-easement, equals the value of the charitable gift. This gift, or easement value, may be deducted from the donor’s income in calculating federal income taxes.

Currently, the federal income tax deduction is limited to 50 percent of the landowner’s adjusted gross income in the year the donation is given. The unused portion of the gift may be carried forward and used as a deduction for an additional 15 years, subject to the 50 percent income limit each year.

Qualified farmers and ranchers may deduct up to 100 percent of their adjusted gross income in the year the donation is given and carry forward the unused portion of the gift for an additional 15 years.

*Please note: The federal tax benefits of conservation easements may be subject to changes January 1, 2008.*

### **Estate Tax Deduction**

Estate taxes can be as high as 55 percent of the value of an individual’s estate. In many cases, a landowner’s heirs must sell the property just to pay estate taxes. By donating a conservation easement, landowners can reduce these taxes in up to two ways:

- First, the total estate will have been reduced by the value of the easement (smaller estate value means less – or perhaps no – estate tax due.)

- Secondly, the American Farm and Ranch Protection Act of 1997 allow heirs to exclude up to 40 percent of the remaining value of their land (with a maximum exclusion of \$600,000) from estate taxes if the easement qualifies for the program.

*Check with your attorney or tax professional to see if your conservation easement would qualify for the American Farm and Ranch Protection Act deduction.*

### **Virginia State Income Tax Credit**

The Commonwealth allows a conservation easement donor to claim a credit against their Virginia income tax liability for up to 40 percent of the value of the donated easement (compared to 100 percent of the value of the easement that can be deducted under federal income tax rules).

These Virginia Land Preservation Tax Credits can be used on a \$1 for \$ basis against a maximum of \$100,000 per year in Virginia income tax liability, for a total of eleven years.

Any unused state income tax credit may be donated or sold for use by another taxpayer. For example, a landowner who pays \$10,000 in state income tax each year and donates an easement worth \$500,000, has generated \$200,000 in state tax credits (40 percent of the easement value). The landowner can use the tax credits to offset \$110,000 in income taxes (\$10,000 each year for eleven years). He or she also can sell the remaining \$90,000 in credits to another taxpayer (albeit at a discount).

In 2006, Eastern Shore easement donors received between 67 and 80 cents on the dollar in the sale of their excess tax credits through brokers and in private transactions. The highest values were received through private sales by easement donors to other taxpayers on the Eastern Shore.

For example, the owner of an 85-acres farm on Occohannock Creek in Accomack County donated a conservation easement in 2007 worth \$800,000. The easement generated \$320,000 in state tax credits. The donor sold excess credits for 80 cents on the dollar. If he sold all his credits (rather than using some on his tax return) his easement will generate \$256,000. He has eleven years to use or sell his credits.

### ***Please note: Starting January 1, 2007, the following changes are in effect:***

- The land preservation tax credit program is capped at \$100 million per year (statewide)
- Conservation easement donors may claim a credit against their Virginia income tax liability for up to 40% percent of the value of the donated easement (reduced from 50% in 2006)
- Conservation easements that result in registrations of *more than \$1million* of tax credits must have the conservation values reviewed and accepted by the Department of Conservation and Recreation before being accepted by the Department of Taxation.

- Registration of conservation easements of *less than \$1million* of tax credits will require a form that includes:
  - i) A description of the conservation purpose or purposes;
  - ii) The fair market value of the land without restrictions;
  - iii) The public benefit derived from the donation;
  - iv) The extent to which best management practices will be implemented on the property; and
  - v) Whether the property is fully or partially forested and a forest management plan is included in the terms of the donation.
  
- Tax credit claims for easement or fee interest donations made after January 1, 2007 can be claimed in the year of the gift and the subsequent 10 years or until fully expended.
  
- Any property that serves as the basis for a land preservation tax credit can not also serve as the basis for a historic rehabilitation tax credit within the same five year period of time and visa versa.
  
- Any transfer of registered tax credits triggers a 2% or \$10,000 fee (whichever is less) on the amount of the donated interest. The exact implementation and interpretation of this legislative change is still unclear.

**Landowners who have started the process of donating a conservation easement should consider finishing the process early in 2007 to get their easement recorded and tax credits registered.**

For more information about the Virginia Eastern Shore Land Trust or conservation easements, contact Peter Henderson, VES Land Trust, 757-442-5885, [pete@veslt.org](mailto:pete@veslt.org) or [info@veslt.org](mailto:info@veslt.org). VES Land Trust does not provide tax or legal advice. Please check with your attorney or accountant for more details on the tax benefits of easements.