

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 to these stewardship goals, there are significant income tax and estate planning benefits to preserving your land.

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 non-profit organization, such as the Virginia Eastern Shore 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. The value of this gift (easement value) is determined by a qualified appraiser and may be deducted from the donor's income in calculating federal income taxes. Tax savings are dependent on the landowner's taxable income level and applicable tax brackets.

Currently, the federal income tax deduction is limited to 30 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 5 years, subject to the 30 percent income limit each year.

Please note: An enhanced federal tax deduction for conservation easements expired on December 31st, 2009. It allowed an easement donor to take a deduction of up to 50 percent of adjusted gross income, while qualified farmers could deduct up to 100 percent of their income. Donors could use the deductions for a total of 16 years. While there is a push for Congress to renew the enhanced incentive this year and make it retroactive to January 1st, the outcome remains uncertain.

Estate Tax Deduction

While the federal estate tax is suspended this year, it returns in 2011 with rates up to 55 percent of the value of an individual's estate. In many cases, a landowner's heirs must sell a family farm or woodland just to pay huge estate taxes.

By donating a conservation easement, landowners can greatly reduce estate taxes:

- The value of the total estate is reduced by the value of the conservation easement on the property. With estate tax exclusions (\$1 million of assets in 2011), the smaller estate value can shrink or even eliminate estate tax liability.

- Some conservation easement donors are eligible for a further estate asset exclusion of up to 40 percent of estate tax liability, for a maximum asset value exclusion of \$500,000, if their easement qualifies under the Internal Revenue Code. Your attorney or a tax professional can help determine if your easement would qualify.

Virginia State Income Tax Credit

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

These Virginia Land Preservation Tax Credits can be used on a \$1 for \$ basis against a maximum of \$50,000 per year in Virginia income tax liability, for a total of eleven years. The credits are managed by the state Department of Taxation.

Any unused state income tax credit may be donated or sold for use by another taxpayer, which can generate significant income for the easement donor.

For example, a landowner who pays \$10,000 in state income tax each year donates an easement worth \$500,000. The easement 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).

This easement donor could sell his or her excess \$90,000 in credits to another taxpayer, albeit at a discount. At an average price of 75 cents per credit, and after a five percent fee to the state for the transfer, this easement donor would realize \$63,000. In sum, the easement would generate \$173,000 in tax savings and cash.

Conservation easement donors can sell their excess tax credits through brokers and in private transactions. The state Department of Taxation charges a five percent transfer fee on each tax credit sale it registers. Traditionally, the highest tax credit values are received through private sales by easement donors to other taxpayers in their community.

For example, the owner of an 85-acre farm on Virginia's Eastern Shore donated a conservation easement in 2009 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 sells all his credits at that price, his easement will generate \$260,000 before the state transfer fee. The donor has eleven years to sell his credits.

Please note: The land preservation tax credit program is capped at around \$100 million per year. In 2009, the cap was reached by Thanksgiving and easement donors had to wait until the following year to receive allocation of their credits. It pays to get your easement recorded early in the year.

Also, a conservation easement likely to generate more than \$1 million in state income tax credits must be reviewed and accepted by the state Department of Conservation and Recreation (DCR) before the credits can be registered with the Department of Taxation. Early review is available before the easement is recorded to ensure it qualifies for state credits.

VES Land Trust offers this information for general guidance only. Check with your attorney, accountant or other tax advisor to see how the many tax benefits of a conservation easement can work for you.