



# Tax Incentives for Land Conservation

*This introduction to federal tax laws regarding donations of land and conservation easements is excerpted with permission from **Conservation Options: A Landowner's Guide** published in 2000 by the Land Trust Alliance. Information on the 2001 tax law is drawn from other LTA sources and from Attorney Stephen J. Small, author of [Preserving Family Lands](#).*

*An extension of the enhanced easement incentive makes it more likely that moderate income landowners will be able to deduct the full value of their conservation easement gifts. This incentive is now **effective until December 31, 2011**. Additional information may be found at <http://www.landtrustalliance.org/policy/tax-matters>.*

*Since tax laws are subject to change at any time, landowners should consult their own tax advisor for the most current information.*

Your own tax result will depend on a variety of factors, including the conservation strategy you've chosen to protect your land, the value of your gift, and your personal financial situation. For a more complete understanding of how federal, state, and local tax laws affect your particular situation, and the potential tax treatment of your land conservation, you should consult with your accountant, financial advisor, or attorney.

Donating land or a conservation easement may also affect your state and local taxes. The Vermont state income tax is indexed to a taxpayer's federal income tax. In New Hampshire, land restricted by a conservation easement may be eligible for reduced property taxes. State laws may also provide for additional estate tax benefits.

## **What is a Charitable Gift?**

The first step in figuring a potential tax deduction is to determine whether the donation is a charitable gift in the eyes of the

IRS. Key requirements for a conservation easement or outright gift of land include:

- The gift must be made to a public agency or to a qualifying 501(c)(3) organization such as the Upper Valley Land Trust.
- The gift must be a true gift for which no benefit is anticipated in exchange. For example, a conservation easement given to a land trust by a developer in exchange for a permit or government approval of a subdivision is not a gift.
- The gift must be complete and irrevocable, without contingencies or strings attached. For example, a condition that 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 would make the donation non-deductible.
- The easement must meet certain standards and fulfill the conservation purposes established by Congress for permanent open space protection and public benefit. An easement does not have to provide public access to qualify as a charitable gift.

You should have your attorney or tax advisor review the gift's terms and advise you as to its deductibility.

## **Substantiating the Value of Your Gift**

To take a tax deduction for gifts worth more than \$5000, including land or conservation easements (cash and publicly traded securities are exceptions), the donor must obtain a "qualified appraisal" prepared by a "qualified appraiser." The appraisal will present the value of a conservation easement which is equal to the difference between the fair market value of the property before and after the easement is donated.

Generally, a “qualified appraiser” is one who has sufficient training and qualifications to allow them to make appraisals of the specific type in question (such as for a conservation easement), and whose relationship to the taxpayer and donee would not cause a reasonable person to question the appraiser's independence. UVLT cannot provide the appraisal itself, but can give you a list of appraisers with experience in appraising gifts of land and conservation easements.

The IRS requires that the appraisal must not be completed 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/closing. (UVLT can work with you and your appraiser to correlate these timing issues). Alternatively, an appraisal may be done at any time after the gift, the value being retroactive as to the date of the gift. The appraiser's report must meet IRS standards, and a donor statement summarizing the gift and IRS Form 8283 (which is signed by the land trust and the appraiser), must be attached to the donor's income tax return.

## **Federal Income Tax Deductions**

**30% Limitation (or 50% until 12/31/2011!):** Federal tax law places limitations on the maximum annual charitable deduction a donor may take. Typically, the amount you can deduct for a gift of long-term capital-gain property held more than one year – which includes most gifts of appreciated land or conservation easements – is limited to 30% of your adjusted gross income per year. If the value of your gift exceeds 30%, you can carry forward the excess for up to five additional years, applied each year up to the 30% limit.\*

\* For conservation easement gifts made prior to Dec. 31, 2011 donors may deduct up to 50% of adjusted gross income, and carry forward the excess for up to fifteen additional years!

**The 50% (step down) election:** Alternatively, a taxpayer can elect to claim a deduction up to 50% of his or her adjusted gross income per year but only for the property's tax basis (usually the price originally paid for it or its value when inherited, rather than its current fair market value). Again, this may be carried forward five additional years. If the property is highly appreciated in value, it is usually more advantageous for the taxpayer to choose the 30% option.

**Other deductions:** Landowners receiving a tax deduction for their charitable contribution of land or an easement may also be able to 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.

In addition, any cash or securities given to a non-profit land trust to endow management of the property or administration of its easements (including contributions to UVLT's Stewardship Fund) may qualify as a tax deductible charitable contribution.

## **Federal Estate Taxes**

With a few exceptions, upon a landowner's death, the fair market value of his or her land becomes part of the taxable estate. Because development pressures in most parts of the country have dramatically increased property values over the past 20 years, many heirs are faced with the prospect of having to sell family lands in order to pay estate taxes.

Placing a conservation easement on land during the landowner's lifetime, donating it by will, or making a post-mortem donation of an easement will lower the value of the estate, and reduce the estate tax liability. Although there are limits on the amount of deduction that can be used to reduce income taxes, there

are no such limits for estate tax purposes, so the tax savings can be substantial. Thus a conservation easement can be a useful estate planning tool.

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:

2006: \$2,000,000

2009: \$3,500,000

In the year 2010 the estate tax is scheduled to be repealed for one year, and in 2011 the threshold is scheduled to revert to \$1 million, but Congress may revise this threshold (Gifts or bequests to spouses or to charities are not limited). Over the same period, the highest estate tax rates are also scheduled to drop from 50% to 45%.

***Conservation Incentives for Heirs: Section 2031(c) Exclusion:*** Beyond the value of the easement itself, heirs of a landowner who has donated a qualifying conservation easement can receive an additional exclusion from estate tax of up to 40% of the remaining taxable value of the land (up to a cap of \$500,000), no matter where the land is located (effective through 2012). The land must have

been owned by the decedent or a member of his/her family for three years prior to death.

IRC 2031(c) can be the result of a conservation easement donated in a will or prior to death. If the heirs are making the donation, the executor must make an irrevocable election to take these benefits. Such an election can be made only if the easement is placed on the land by the executor or beneficiaries before the filing of estate taxes -- generally nine months from the death of the decedent. The easement can qualify the estate for a charitable tax deduction *and* for an additional exclusion under Section 2031(c).

The possibility of a post-mortem election is not a reliable substitute for good estate planning by a landowner. The power of an executor to make a post-mortem donation of an easement may be limited by state probate laws. If there is disagreement among heirs, it may be difficult to use the post mortem election to protect family lands. UVLT encourages landowners who wish to conserve property to do so during their lifetime or include directions in estate planning documents.



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