

TAX BENEFITS OF CONSERVATION EASEMENTS *

A gift of a qualified conservation easement in perpetuity may qualify as a non-cash charitable gift which may yield a deduction for federal income tax purposes and a credit for state income tax purposes. In addition, there may be local property tax reductions and federal estate tax exemptions. An independent certified appraiser must establish the value of the easement that is primarily based on the value of the development rights forgone. Once that value is established, it becomes the basis for calculating tax benefits.

- A. Federal Charitable gift deduction. Section 170(h) of the IRS Code establishes the criteria for a “qualified gift of a conservation easement.” For this deduction, tax form 8283 is used as a qualified conservation easement is considered a gift of property interests. For tax years 2006–2009, the deduction was limited to 50% of adjusted gross income in the year of the gift, which if not used up, could be carried forward for an additional fifteen years. A farmer or rancher who received more than 50% of Adjusted Gross Income (AGI) income from “the trade or business of farming” was eligible to deduct 100% of AGI. As of January 2010, this expanded tax benefit had expired. The federal deduction for tax year 2010 will revert to 30% of AGI for all taxpayers (which may be used for a total of only six years) unless the more favorable benefits are extended and made retroactive to the first of the year. For updates on Congressional action, see www.lta.org. The tax form setting forth the easement valuation is completed by an independent certified appraiser and signed by VOF to acknowledge the gift.
- B. Virginia State Tax Credit. A Virginia State tax credit has been established for conservation easements at 40% of the value of the easement. This credit can also be carried forward for ten years and any unused portion may be transferred to another Virginia taxpayer. (see Code of Virginia, Sec. 58.1-510 through 513). As of January 1, 2007, State income tax credits under the Virginia Land Conservation Incentives Act of 1999, as amended, in excess of \$1 million must be reviewed and approved by the Virginia Department of Conservation and Recreation in accordance with adopted review criteria. The Virginia Department of Taxation will charge a 2% fee on the easement value. The income from the sale of the tax credits is subject to taxation.
- C. Federal Estate Tax Exemption. Section 2031(c) “The Farm and Ranch Protection Act” allows up to 40% of the value of land under conservation easement to be exempt from estate taxes, depending on appraised value (i.e. an exemption is reduced if appraisal is less than 30% of the property value) and subject to a \$500,000 cap for an individual (or \$ 1 million for a couple with proper estate planning).
- D. Local property taxes may be reduced (see Code of Virginia 10.1-1011 and 58.1-3205), however, if land is already assessed at “use value,” in other words, enrolled in a local Land Use Assessment Taxation Program, additional reductions in taxes are unlikely.

*** VOF does not give tax advice. Please check with your tax advisor or attorney about qualifying for any tax benefits associated with conservation easements.**