



## Potential Tax Benefits of Donating a Conservation Easement

Most people who protect land through a land trust do so by donating a conservation easement. They retain title and control of their land while Southern Conservation Trust (the "Trust") ensures that the property is not used or developed in a manner that is inconsistent with the property's conservation values. This summary describes the potential tax benefits associated with the donation of a conservation easement.

### General Principles

There are a number of general principles which apply to donations of conservation easements:

1. In order to be deductible for income or estate tax purposes, the donation must be made to a qualified 501(c)(3) "public charity." Southern Conservation Trust meets this requirement.
2. The easement must be of a "qualified conservation interest" given "exclusively for conservation purposes." These requirements are discussed in the next section.
3. Because a conservation easement will usually have a value of more than \$5,000, the donor must obtain a qualified appraisal in order to claim a tax deduction. The appraisal must be prepared by an independent, qualified appraiser and must contain certain factual information specified by IRS regulations. The donor must file a summary report (IRS Form 8283), signed by the appraiser and the Trust, with the donor's federal income tax return. For more information on these requirements, please refer to the handout "Appraisal Requirements".
4. If there is an existing mortgage or lien on the conserved property, the mortgage or lien must be either discharged or subordinated to the easement. Our experience has been that most mortgage holders are willing to subordinate, so long as the bank determines that the "restricted value" of the property meets the bank's requirements concerning mortgage collateral.

### "Qualified Conservation Purpose"

Generally, a conservation easement will meet IRS requirements if the easement is perpetual (permanent) and preserves land that meets 2 or more of eligible conservation purposes of:

- Water quality protection for wetlands, rivers, streams or lakes;
- Protection of wildlife habitat consistent with state wildlife conservation policies;
- Protection of outdoor recreation consistent with state outdoor recreation policies;
- Protection of prime agriculture or forestry lands; and
- Protection of cultural sites, heritage corridors, or archeological and historic resources.

**Additionally purposes:**

**Clear Governmental Policy:** Policies in Georgia which may fulfill this criterion include: lands enrolled or eligible for enrollment in the current use program; lands within a designated scenic highway corridor; conservation zones identified by a land use plan or zoning ordinance; sites identified by the Georgia Heritage Program.

**and**

**Public Benefit:** The easement will yield significant public benefit considering the following factors: the uniqueness of the property to the area; the likelihood that development of the property would degrade the scenic, natural, or historic character of the area; the opportunity of the general public to use the property or to appreciate its scenic values; the importance of the property in preserving a local or regional landscape or resource that attracts tourism or commerce to the area; whether a government or land trust has or, in the future, will conserve other important resource lands in the vicinity.

IRS regulations provide more specific guidance concerning these and related requirements. A landowner seeking a charitable income tax deduction or estate tax benefits should consult a legal or tax advisor concerning these requirements.

### **Valuing the Easement**

Determining the value of a conservation easement is a two- or three-step process. A qualified appraisal is required. Appraiser will:

1. Establish the fair market value of the property **before** it is restricted.
2. Determine the fair market value **after** the property is restricted. This step requires that the landowner and the Land Trust have agreed upon the terms of the conservation easement, so that the appraiser knows what rights the landowner is retaining and giving up. The difference between the "before" and "after" appraisals is considered to be the value of the conservation easement.

The third step applies only if the landowner or a member of the landowner's family owns land in the vicinity of the conserved property which is **not** covered by the conservation easement. In this case, the appraiser must consider whether the value of the unrestricted property is being enhanced by the easement. If so, the easement value must be reduced by the amount of the enhancement.

*To illustrate these principles:* suppose a donor owns a house and 200 acres of land valued at \$200,000. The donor also owns an adjacent 10-acre parcel valued at \$20,000. The donor conveys a conservation easement to the Trust restricting the 200 acres to the existing home and one additional building site. An appraiser determines that under these restrictions, the 200-acre property now has a restricted value of \$140,000. However, the appraiser also determines that the 10 acre, unrestricted parcel, has increased in value to \$30,000 because it is now adjacent to conserved land. The donor's deduction is \$50,000 (\$200,000 - \$140,000 - \$10,000).

If the land trust believes no gift has been made or the property has not been accurately described, it will refuse to sign the forms. If the land trust has significant reservations about the value of the gift, particularly as it may impact the credibility of the land trust, it may seek additional substantiation of value or may disclose its reservations to the donor.

## Potential Tax Benefits

### Income Tax Benefits

When the easement meets the criteria for deductibility and the value is established by a qualified appraisal, the donation of the easement will be deductible against the donor's federal and state income taxes. If the land has appreciated in value, the donor's income tax deduction is limited to 30% of the donor's Adjusted Gross Income in the year of the donation. If the easement value exceeds the 30% limit, the donor may carry over the unused deduction for up to five years after the first year.

This deduction can mean substantial tax savings. For example, suppose the donor in the previous example has an adjusted gross income of \$100,000. The easement value (after deducting the enhancement to the 10 acre lot) is \$50,000. Under the 30% rule, the donor can take a charitable deduction of \$30,000 in the year of the donation. The remaining \$20,000 may be carried over and deducted the following year. If the donor is a Georgia resident and pays a combined federal-state income tax rate of 30%, the donor will realize approximately \$15,000 in income tax savings from the easement donation over a two-year period.

Georgia taxpayers can claim a credit against their state income tax liability, worth up to 25% of the fair market value of the qualified donation. Credit limits include \$250,000 for individuals and \$500,000 per corporation. Credit may not exceed state income tax due and any unused portion may be carried forward for ten succeeding years. In 2013 Georgia conservation tax credits became transferable and are currently earning approximately 80 cents on the dollar. Tax brokers can reduce risk, help with DNR Credit Certification process and guide sellers and buyers through the process.

### Estate Tax Benefits

It is possible to convey a conservation easement to Southern Conservation Trust through a Will or a Living Trust. The Trust would always like to have an opportunity to review and approve the easement before the Will or trust is signed, and a copy of the proposed easement should be attached to the will or trust as an exhibit. If the easement meets the requirements described above, the easement value is fully deductible from the donor's taxable estate. In other words, the land will be valued at its restricted value when calculating the federal estate tax.

This could be of great importance to the donor's heirs because federal estate tax rates can go as high as 55%. Suppose, for example, a widow has a total estate valued at \$900,000. Two-thirds of that value (\$600,000) is in a farm which has been in the family for generations and which she wants to pass on to her children. The remaining \$300,000 is in the form of life insurance policies. If the widow died with the land in her estate and she had not made any lifetime gifts (other than those qualifying for the \$10,000 annual exclusion), her federal estate tax would be approximately \$111,000 (37% of the value in excess of \$600,000). Unless the beneficiaries of the insurance policies agree to pay the estate taxes, the farm may have to be sold to satisfy estate taxes. If, instead, the widow placed a conservation easement on the land during her lifetime or through her will that reduced the value of the land to \$300,000, her total taxable estate would be \$600,000, no estate tax would be due, and her children could keep the land in the family if they choose. The 30% limitation applicable in the income tax context does not apply for estate tax purposes.

In most cases, it is preferred that the owner take action before the property passes into an estate. However, under a new law adopted in 1997, Congress created an important new incentive for land conservation even after the owner has died.

If the land is placed under a qualified conservation easement, the estate may deduct 40% of the property value, excluding any reserved house sites or development rights, from the taxable estate. The deduction is limited to \$500,000.

An important component of the law is a so-called "post-mortem election." If the owner has failed to conserve the property before his or her death, but the heirs agree that the land should be conserved, the executor has nine months following the date of death to elect to place an easement on the property. The \$500,000 limit and other requirements of the law still apply. There are also many technical questions of how the law will be interpreted and administered. However, for some families at least, the law provides an important option that did not exist before.

### **Property Tax Benefits**

The desire to reduce property tax has rarely been the driving force behind a land conservation transaction. At this point the experience in Georgia is too mixed to predict with any certainty what impact a conservation easement may have on property taxes in a particular county. In general, tax appraisers are required to assess property at its full fair market value, without regard to how interests in the property may be divided. If a conservation easement is held by county government or a qualified non-profit organization like Southern Conservation Trust, the land is supposed to be assessed on the basis of its conserved value. If a landowner wishes to pursue this with the assessor, the Trust will join in those discussions.

### **Conclusion**

This document summarizes complex federal tax laws. A summary of these laws must, by necessity, be an over-simplification. It is essential that landowners seek independent legal and tax advice before finalizing a land conservation transaction. This will ensure that the donor fully understands what is and is not permitted under the conservation easement, and what the anticipated tax benefits from the transaction will be. Each donor's tax situation is unique and donors must rely on their professional team recommendations

For more information about Conservation Easements or to discuss your particular situation please contact Southern Conservation Trust at (Direct 770-846-4730) or [info@sctlandtrust.org](mailto:info@sctlandtrust.org).

Additional Resources and information:

Georgia Land Conservation Program Website for additional information, resources and forms.

<http://glcp.georgia.gov/georgia-tax-credit>