

## **2006 Federal Land Conservation Tax Code Changes Explained**

*For a short time, you or your clients can take advantage of  
great new incentives to preserve the land you love*

This summer, Congress passed the Pension Protection Act of 2006 that, among other provisions, includes bold new tax incentives for land conservation easement donations. The changes – effective until December 31, 2007 – were signed into law by President Bush on August 17. This new law presents a limited-time opportunity for landowners who may be considering making a donation for conservation purposes.

### **These new benefits will help protect your land and rural livelihood forever.**

If you or your client own land with important natural or historic resources, donating a voluntary conservation agreement can be one of the smartest ways to conserve the land you love, protect America's natural heritage, maintain your private property rights and realize significant federal tax benefits.

These new incentives are the boldest change to conservation tax law in two decades. They allow modest income landowners, like working family farmers and ranchers, to deduct much more than they could under the old rules, bringing increased fairness to the tax code. While the new provisions are set to expire in December of 2007, the coalition behind these incentives is working to make them permanent. Unfortunately, there is no guarantee they will be available in 2008 or beyond. Now is the time to consider using them in your personal tax and estate planning.

Among the changes, the new law:

1. **Raises** the deduction a landowner can take for donating a conservation easement from 30% of their adjusted gross income in any year to 50%;
2. **Allows** qualifying farmers, ranchers and forest landowners to deduct up to 100% of their taxable income (e.g., *pay no federal income tax*); and
3. **Extends** the carry-forward period for a donor to take tax deductions for a conservation easement from 5 to 15 years.

## How does it work?

Before the rule change, it was very difficult for someone with limited income to donate a conservation easement because of the way the federal tax code was structured. The new rules allow more moderate-income landowners to participate directly in land conservation, especially farmers whose income may be very limited compared to the increasing value of their property. Take the following hypothetical example:

Mr. Brown owns 50 acres of land with environmental conservation value that he wants to protect forever. Mr. Brown's annual taxable income is \$100,000. He wants to donate his property's development rights to a land trust through a conservation easement. The donation is valued at \$700,000.

### Under the Old Law

Mr. Brown is only allowed to deduct 30% of his taxable income and only has 6 years total to use up the deduction:

Total value of the gift = \$700,000  
Mr. Brown's annual tax deduction = \$30,000 (30% of his \$100,000 taxable income)  
Eligible time period = 6 years (year of the gift + 5-year carry-forward)  
Tax deduction claimed = \$180,000 (\$30,000/year x 6 years).  
Tax deduction lost = \$520,000 (\$700,000 value - \$180,000 deduction)

*Based on these numbers, Mr. Brown's financial consultant advises him **against** donating the development rights and the property is ultimately sold for a new subdivision.*

### Under the New Law

Mr. Brown is allowed to deduct 50% of his taxable income and has 16 years to use up the deduction:

Total value of gift = \$700,000  
Mr. Brown's annual tax deduction = \$50,000 (50% of his \$100,000 taxable income)  
Eligible time period = 16 years (year of the gift + 15-year carry-forward)  
Tax deduction claimed = \$700,000 (\$50,000/year over first 14 years).  
Tax deduction lost = \$0 (\$700,000 value - \$700,000 deduction)

*Based on these numbers, Mr. Brown's financial consultant **advises him to donate** the development rights and the property is conserved forever.*

**And it could get even better ...** If Mr. Brown were a family farmer or rancher and wanted to preserve his farm, his deduction would increase from 50% to 100% of his annual taxable income!

## Is a conservation easement right for you or your client?

A landowner should always get professional financial planning and legal advice before making such a major donation. Here is what you need to know and consider:

- A voluntary conservation agreement, also known as a conservation easement, is a legal agreement between a landowner and a nonprofit land trust or government agency that permanently limits uses of the land in order to protect important conservation values. It allows you to continue to own and use your land and to sell it or pass it on to heirs.
- When you enter into a voluntary conservation agreement with a land trust, you give up some of the rights associated with the land. For example, you might give up the right to subdivide your land or build additional houses, while retaining the full right to grow crops. Future owners will be bound by the agreement's terms. The land trust which holds title to the easement is responsible for making sure the terms of the agreement are followed.
- Voluntary conservation agreements vary widely. An agreement to protect rare wildlife habitat might prohibit any development, for example, while one on a farm would encourage continued farming and might allow the building of additional agricultural structures. An agreement may apply to just a portion of the property and need not require public access.
- A conservation donation requires not only a willing donor, but a qualified conservation organization to accept the donation. That organization needs to be able to show that the donation closely fits its particular charitable mission. A land trust will not accept a donation that does not fit its mission and purposes.
- A voluntary conservation agreement can help a landowner pass land on intact to the next generation. By limiting the land's development potential, the agreement lowers its market value, which in turn lowers estate tax. Whether the agreement is donated during life or by will, it can make a critical difference in the heirs' ability to keep the land intact.
- If a conservation agreement benefits the public by permanently protecting important conservation resources and meets other federal tax code requirements, it can qualify as a tax-deductible charitable donation. The amount of the donation is the difference between the land's value with the agreement and its value without the agreement.
- To qualify as a charitable donation, a conservation agreement must be permanent.

## Estate Tax Benefits

Tax, financial and estate planners should be aware that the donation of a conservation easement can lower heirs' estate taxes on land in several ways. First, the easement value is excluded from the taxable value of the estate under section 2055(f) of the Internal Revenue Code. Second, section 2031(c) of the code provides an additional benefit to easement donors, which can further reduce the taxable value of an estate by up to \$500,000. Lastly, section 2031(c) provides heirs the opportunity to make a post-mortem donation of a conservation easement to take advantage of

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the above-listed provisions, if state law allows for such a donation. For more on estate tax benefits, see <http://www.lta.org/publicpolicy/taxlawnew.htm>.

## **Changes to the IRA charitable deduction**

In addition to the improved conservation tax incentives, the Pension Protection Act of 2006 also included a new, limited-time opportunity for IRA donors who may be considering making a charitable contribution to a land trust or other charitable organization.

**Give More for Less:** For 2006 and 2007 only, Americans over age 70½ will no longer pay federal income tax on individual retirement account (IRA) funds, if they are given directly to qualified charities, such as land trusts – up to \$100,000 per person, per year.

**How it works:** Retroactive to January 1, 2006 and by December 31, 2006, you can make a gift of up to \$100,000 by transferring IRA assets directly to the chosen charity. Between January 1 and December 31, 2007, you may transfer an additional \$100,000. You will *not* receive an additional charitable deduction because the distribution is not taxable.

**Some Restrictions Apply.** Such transfers cannot be used for donor-advised funds or private foundations. You can use these funds to establish a permanent endowment to benefit the charity of your choice.

**Is this Right for Me?** If you answer “yes” to any of the following questions, you may want to consider taking advantage of this short-term opportunity. The Land Trust Alliance recommends that you consult estate planning professionals and your tax advisors.

- Are you older than 70 ½ and are you planning to leave a charitable legacy through your estate plan?
- Have you designated your favorite charity as beneficiary of retirement assets?
- Do your retirement savings exceed your expected needs?
- Are you subject to a charitable deduction limitation because you give more than 50 percent of your income to charity?
- Do you take the minimum distributions from your IRA only because you must?
- Do taking greater distributions from your retirement plans affect the amount of your Social Security benefits that are taxed?
- Do you have adjusted gross income above \$150,500 (\$75,250 for married filing separately), which causes a phase-out of itemized deductions and exemptions?

## **Want to learn more?**

For more information about the conservation tax incentives, conservation easements, or land trusts, contact the Land Trust Alliance at [www.lta.org](http://www.lta.org) or your local land trust.

For more information about the IRA Charitable Deduction, contact your estate planning professional, tax advisor or Council on Foundations, [www.cof.org](http://www.cof.org).

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