

Tax Benefits for Donations of Land and Conservation Easements

Tax benefits for conservation easements or other donations are unique to each taxpayer's situation and depend on many factors including donation value and the donor's adjusted gross income.

Conservation Foundation does not provide tax advice to landowners and highly recommends that landowners consult their financial advisors when considering potential or actual tax benefits of conservation easements.

Tax Incentives for Donating a Conservation Easement

There are several significant tax incentives for donating a conservation easement in Florida. Conceptually, an easement reduces the development potential of a property, thereby decreasing its market value. Since resource conservation, even on private land, is in the public interest, the market value of that reduction may be considered as a charitable donation by the IRS and by the State of Florida. In general, the IRS allows the donor of a qualified conservation easement given in after 201 to take an income tax deduction for as much as the full value of that donation, limited to 50% of the donors adjusted gross income (100% for farmers), over sixteen years.

A conservation easement may also significantly reduce land values and therefore reduce the estate taxes that must be paid by the heirs of an estate. This benefit is especially valuable for families that have land as a significant portion of their net worth.

In addition, Florida Statute 196.26 provides for property tax exemptions for lands protected by conservation easement under certain circumstances.

Conservation Contributions

A charitable income tax deduction will be available for the donation of a conservation easement only if it constitutes a **"qualified conservation contribution,"** as defined by Internal Revenue Code §170(h), and as interpreted by Treasury Regulation §1.170A- 14. The Code and Regulations define "qualified conservation contribution" to mean:

A. A "Qualified Real Property Interest" --

- The donor's entire interest in the property.
- A remainder interest (personal residence, farm or conservation property).
- A perpetual conservation restriction.

B. Conveyed to a "Qualified Organization" --

- Governmental unit (U.S., State and political subdivisions), public charity, or supporting organization.

- With the commitment to protect the conservation values and the resources to enforce the restrictions.

C. **Exclusively for conservation purposes** -- Four recognized categories --

- 1) Preservation of land areas for outdoor **recreation or education of the public**.
 - “Substantial and regular use of the general public”
- 2) The protection of a relatively natural **habitat of fish, wildlife, plants, or similar ecosystem**.
 - Rare, endangered or threatened species
 - Natural areas which are high quality examples of a terrestrial or aquatic community
 - Natural areas included in, or which contribute to the ecological viability of a local, state, or federal park, preserve, refuge, wilderness area, or similar conservation area.
- 3) The **preservation of open space** (including farm and forestland) where preservation fulfills either the "scenic enjoyment" or the “governmental policy” test **and** the “significant public benefit” test.

Scenic Enjoyment. Preservation of the property as open space is for the scenic enjoyment of the general public:

- Development of the property would impair the scenic character of the local landscape or would interfere with a scenic panorama that can be enjoyed from one or more (usually public) locations, and the location(s) is open to or used by the public. (See Treas. Reg. §1.170A-14(d)(4)(ii)(A) for a list of some factors to consider with regard to ascertaining "scenic character.")

OR

Governmental Policy. Preservation of the property as open space is pursuant to a clearly delineated federal, state or local governmental conservation policy:

- This criterion is fulfilled by projects that further a specific, identified conservation project, such as the preservation of land within a state or local landmark district that is locally recognized as being significant to that district; preservation of a wild or scenic river; or the protection of the scenic, ecological or historic character of land that is contiguous to, or an integral part of, the surroundings of existing recreation or conservation sites.
- Programs providing preferential tax assessment or preferential zoning for conservation purposes constitute significant commitment by the government.
- "Clearly delineated governmental policies" in the Florida context might include: lands enrolled or eligible for enrollment in the current use program; lands within a designated scenic highway corridor; conservation zones identified by a local town plan or zoning ordinance; sites identified by the Florida Heritage Program;

AND

Public Benefit. Preservation will yield significant public benefit. Consider such factors as:

- Uniqueness of the property to the area.

- The likelihood that development of the property would lead to or contribute to degradation of 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.
 - The likelihood that the donee [land trust] will acquire equally desirable and valuable substitute property or property rights [presumably referring to neighboring properties].
- 4) Preservation of an **historically important land area or a certified historic structure.**
- “Land areas” include lands adjacent to National Register properties that contribute to historic integrity, land within a registered historic district, and other lands that meet national register criteria.
 - “Certified structures” include those listed on the National Register and those located within a registered district (if certified as being of historic significance to the district).
 - Regular opportunity for public view and limitations on development are required.

Other Limitations. The following miscellaneous limitations apply to all conservation restrictions:

- 1) The conservation easement cannot run afoul of the "inconsistent use" limitations set forth in Treas. Reg. §1.170A-14(e)(2).
- 2) The conservation easement must be enforceable in perpetuity as provided in Treas. Reg. §1.170A-14(g).
- 3) The conservation easement cannot permit the landowner to retain certain qualified mineral interests as provided by Treas. Reg. §1.170A-14(g)(4).
- 4) The easement donor must make available to the Land Trust documentation material sufficient to establish the condition of the property at the time of the gift as provided in Treas. Reg. §1.170A-14(g)(5)
- 5) The easement must be transferable only to another "qualified organization" as provided by Treas. Reg. §1.170A-14(c)(2).