



In December of 2015, Congress made permanent a federal tax incentive for conservation easement donations that can help thousands of landowners conserve their land.

If you own working agricultural lands that you want to conserve and pass on to future generations, donating a voluntary conservation easement can be one of the smartest ways to conserve the land you love, while maintaining your private property rights and possibly realizing significant federal tax benefits.

The incentive:

- Raises the deduction a donor can take for donating a conservation easement from 30 percent of his or her income in any year to 50 percent;
- Allows qualifying farmers and ranchers to deduct up to 100 percent of their income; and
- Extends the carry-forward period for a donor to take tax deductions for a voluntary conservation agreement from 5 to 15 years.

This is a powerful tool for allowing modest-income donors to receive greater credit for donating a very valuable conservation easement on property they own. For TALT, this translates to the possibility of protecting much more land through the use of conservation easements.

The changes apply to donations made at any time in 2015 and to all donations made after that.

HOW DOES THE EXPANDED TAX INCENTIVE WORK?

1. Can you give me an example of the difference the tax incentive makes?

Under the previous rules, a landowner earning \$50,000 a year who donated a \$1 million conservation easement could take a \$15,000 deduction for the year of the donation and for an additional 5 years—a total of \$90,000 in tax deductions.

The 2015 rules allow that landowner to deduct \$25,000 for the year of the donation and then for an additional 15 years. That's a total of \$400,000 in deductions. If the landowner qualifies as a farmer or rancher, he or she could take a maximum of \$800,000 in deductions for the million dollar gift.

2. Can anyone deduct more than the value of his or her gift?

One can never deduct more than the fair market value of the gift. This change simply allows landowners who previously could not deduct the full value of their gift to deduct more of that value.



3. Who qualifies as a farmer or rancher?

The 2015 law defines a farmer or rancher as someone who receives more than 50 percent of his or her gross income from “the trade or business of farming.” The law references Internal Revenue Code (IRC) 2032A(e)(5) to define activities that count as farming. Specifically, those activities include:

- cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm;
- handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and
- the planting, cultivating, caring for, or cutting of trees, or the preparation (other than milling) of trees for market.

For an easement to qualify for this special treatment, it must contain a restriction requiring that the land remain “available for agriculture.” The qualified farmer or rancher provision also applies to farmers who are organized as C corporations. Additionally, Alaska Native Corporations are eligible under the same terms as farmers or ranchers. IRS guidance on these parts of the law is available at www.lta.org/tax-incentives

4. Do these changes apply to gifts of land?

This expanded incentive does not apply to gifts of land in fee; it only applies to gifts that qualify under IRC 170(h)(2), such as conservation easements. A landowner considering donating their land should consult with an attorney (hyperlink to TALT endorsed attorneys?) to determine whether they should consider changing the structure of their gift to take advantage of this 2015 incentive.

5. Does this incentive only apply to conservation easements?

The expanded incentive applies to all donations covered in IRC section 170(h)(2), which includes donations of the entire interest of the donor other than a qualified mineral interest; a remainder interest; or a permanent conservation or historic preservation easement.

6. What is the timeline for this expanded incentive?

The incentive applies to all easements donated after December 31, 2014.

7. What other restrictions apply?

Conservation easement donations are subject to the same restrictions as they were before. For example, easements must meet the “conservation purposes” test defined in the existing law; they cannot be donated as part of a “quid pro quo” agreement where the easement was given in exchange for something else, such as a building permit; and they must be donated to a qualified organization—a governmental unit or a publicly supported charity that has “a commitment to protect the conservation purposes of the donation, and...the resources to enforce the restrictions.” See www.lta.org/tax-incentives for the Treasury Regulations on conservation easement donations.



8. Will donors who use this provision be audited?

Taking advantage of this 2015 law will not necessarily affect one's likelihood of being audited. All donors should note, however, that the IRS does pay attention to high value donations of property—including donations of conservation easements. That makes it particularly important for donors and their advisors to know and follow the law; to utilize a reputable professional appraiser who has experience in the appraisal of conservation easements; and to donate to a well-established, reputable land trust that has adopted and implemented Land Trust Standards and Practices.

C. OTHER RULES AFFECTING EASEMENT DONORS

A 2006 law (PL109-280) redefines who is a “qualified appraiser,” so appraisers (**do we have a list of appraisers?**) need to show donors that they are qualified under the law, which states that a qualified appraiser must “demonstrate verifiable education and experience in valuing the type of property subject to the appraisal. “The 2006 law also tightened the rules for easements on “certified historic structures.” If you are protecting a property that includes such a structure, a filing fee and specific appraisal requirements may apply to you.

D. WHAT IS THE LAND TRUST'S ROLE?

Potential easement donors should know that donating a permanent conservation easement is a big commitment requiring careful consideration and independent legal advice. Donating a conservation easement requires a working partnership with a land trust—and time for careful drafting of documents and maps, baseline documentation and a professional appraisal. Landowners should understand that a land trust may decline to accept a donation that does not meet both the legal requirements and the land trust's own specific charitable mission and strategic plan. In addition land trust will want to see your appraisal before accepting your gift.

