

TAX BENEFITS OF CONSERVATION EASEMENTS *

The gift of an open-space easement in perpetuity to the Virginia Outdoors Foundation (VOF) may qualify as a non-cash charitable gift, providing the donor with various tax benefits. A donor applying for tax benefits must hire an independent certified appraiser to establish the value of the easement, which value 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 Income Tax Deduction. Donations of open-space easements that meet federal tax code requirements may entitle the donor to federal income tax deductions. For tax year 2012, the deduction is limited to 30% of adjusted gross income, which if not used up in 2012, may be carried forward at 30% of adjusted gross income for an additional five years or until the donation is fully expended. IRS Form 8283 must be filed to obtain this deduction. Form 8283 requires attachment of a copy of the appraisal, an appraiser's declaration, and VOF's acknowledgement of 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. The amount of the credit used by a taxpayer may not exceed \$100,000 for 2012, but any unexpended portion may be carried forward for the next ten tax years. In addition, any unexpended portion may be transferred to another Virginia taxpayer. A recent tax court opinion suggests that the income from the sale of tax credits held for more than one year prior to sale may receive more favorable long-term capital gains treatment. (*Check with your tax advisor or attorney to determine whether and when tax credits should be sold.*) Tax credits in excess of \$1 million or more will be issued only if the conservation value of the on the donation has been verified by the Director of the Department of Conservation and Recreation (DCR) based on criteria adopted by the Virginia Land Conservation Foundation. Pre-filing review of the conservation value is available through DCR. There is a limit on the amount of tax credits that the Department of Taxation may issue in each calendar year. The tax credit ceiling was set in calendar year 2008 at \$100 million, which ceiling is adjusted annually by changes in the consumer price index. Form LPC-1 must be filed with the Department of Taxation for registration of credits and Form LPC-2 for transfer of credits.
- C. Federal Estate Tax Reduction and Exclusion. Transferring the development rights for a parcel of land through a conservation easement may reduce the value of the land for estate tax purposes, thus reducing the estate taxes, often substantially. In addition, Section 2031(c) of the Internal Revenue Code provides an estate tax exclusion of up to 40% of the remaining encumbered value of the land (but not improvements on the land) protected by a qualified conservation easement. The exclusion is capped at \$500,000 and is reduced if the conservation easement reduced the land's value by less than 30% at the time of the contribution. To qualify the easement must prohibit all but "de minimis commercial recreational use".
- D. Local real estate taxes may be reduced by placing an easement on the property. However, if the easement is given on land devoted to agricultural, forestal, horticultural, or open-space use, which is already assessed at "use value," there may be no further reduction in local real estate taxes.

*** VOF provides this information about tax benefits to assist landowners, but not as tax advice. Please check with your tax advisor or attorney about qualifying for any tax benefits associated with conservation easements.**