

PUBLICATION

Congress Boosts Incentives to Increase Conservation Easement Donations

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Congress made 2006 a very big year in the area of conservation easements incentives. On August 17, 2006, President Bush signed the Pension Protection Act of 2006 effectively making the first substantial change in the conservation easement tax system in over twenty years. Land trusts, developers, conservationists and lobbyists all agreed that Congress needed to boost the incentive for landowners in order to increase the rate of donations. Contributions to such organizations as The Land Trust Alliance, American Farmland Trust, Wilderness Land Trust and The Nature Conservancy among others have increased over the last decade; however, the government decided that more incentives could be made. The Pension Protection Act of 2006 (the Act) dramatically increased the amounts deductible for a conservation easement; at least for now. This could translate into big savings for the landowner who is tax or conservation minded.

While the Pension Protection Act contained many new incentives and restrictions for other forms of charitable contributions and charitable entities, it increased the benefits of conservation easements without adding any new restrictions. To appreciate the changes, and opportunities, of the new law it is best to have a general understanding of the old system. Generally, to receive a conservation easement donation deduction, under the old or new law, there must be a qualified conservation contribution of a qualified real property interest to a qualified organization. Essentially, there must be a donation of the landowner's right or privilege (though not 'all' rights or privileges) to change or alter a piece of property that holds some substantial quality that is worth conserving. This limitation of rights or restriction on rights is the easement. The easement is donated to a qualified organization, which generally is some type of land or historic trust. These guidelines are outlined very succinctly in the Internal Revenue Code and have not been changed with the new laws.

Under the former system, Section 170(b) of the Internal Revenue Code contained the limitations on deductibility of a qualified conservation easement. An individual could deduct the value of a conservation easement donation generally up to 30% of the donor's 'contribution base' for the year. Any leftover deductions could be carried forward for five more years. A 'contribution base' means the adjusted gross income (the AGI) of an individual subject to certain adjustments. These adjustments are not relevant to the vast majority of landowners, and most practitioners simplify the explanation to 30% of the adjusted gross income. Corporations were even more restricted, as they were limited to 10% of the corporation's taxable income and the same carry forward as individuals. The new law changes these donation limitations to greatly increase the benefits that individuals and corporations will receive upon donation in two primary ways.

Any individual landowner who donates a qualified conservation easement can now deduct up to 50% of AGI or more specifically, 50% of the contribution base. Perhaps more importantly, the taxpayer may carry forward the deduction for up to 15 years. This will decrease the number of landowners who fear wasting deductions due to low AGI and high deductions. Under former law, as discussed above, any conservation easement of capital gain property would be subject to the normal charitable contributions of capital gain property rules. The 50% limitation now overrides that rule, as the Act did not make exceptions for capital gain property. Unfortunately, Congress did not change the 10% limitation for corporations. The 50% deduction will only be for contributions from individuals. However, individuals and corporations receive enhanced incentives if the corporate entity or individual qualifies as a "farmer or rancher."

A conservation easement donor may deduct up to 100% of AGI and carry forward the deduction for 15 years. Other types of agricultural and forestry activities are included in farming and ranching.

Taxpayers have a very small window of opportunity to take advantage of the incentives. The new incentives only apply to donations made after January 1, 2006 and until December 31, 2007. Time is of the essence. Conservation easements can be several acres to several thousand acres (even islands have been donated!) and with large or complex properties it may take some time to have the property and the easement properly appraised.