

Considerations for C Corporations Making a 2016 Conservation Easement Gift

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When considering making a conservation easement gift, there are a number of steps involved, including the creation of multiple documents, appropriate due diligence and other tasks required to implement and substantiate such a gift. If you act for a C corporation and are considering making a 2016 gift, it is important to start that process now.

Although individual and pass-through entity rules have undergone substantial and recent revision, the corporate tax deduction for conservation contributions has remained substantially unchanged since 1976. Below is a general summary of conservation tax rules for Subchapter C "regular" corporations.

1. **Main Rationale.** A deduction is allowed for a conservation easement as an incentive for placing permanent restrictions on the use and development of qualified real estate. Valuable development rights are forever surrendered. This tax treatment is in recognition of the private and voluntary limits intended to preserve important natural resources.
2. **Conservation Purpose.** One or more enumerated conservation purposes are served by a conservation easement. Acceptable aims are the preservation of an open space, a relatively natural habitat for plants and animals, and outdoor areas for use by the general public.
3. **Duration of Restrictions.** Conservation restrictions must be perpetual in duration. That is, the restrictions must not be subject to expiration and relate to a specific real estate described at the time of the gift.
4. **Qualified Organization.** The easement is granted to a qualified organization, such as a land trust with experience monitoring preservation covenants. Such organization must be empowered to enforce the restrictions in perpetuity.
5. **Amount of Deduction.** The deduction may be maximized if the subject real estate would produce long-term capital gain on a sale. This would require that the real estate be a capital asset held for more than one year.
6. **Limits on Deduction.** Total charitable deductions of a C corporation for each year are limited to ten percent of taxable income. A corporate donor may carry forward any unused deduction for five years.
7. **Valuation.** The value of a conservation easement is customarily measured as the difference between the fair market value of the real estate before and after the gift. The valuation must be established by an appraiser's opinion of the highest and best use for the property.
8. **Particular Factors.** In the valuation, an appraiser considers how immediate or remote the likelihood it is that the real estate, absent the restrictions, would be developed, in addition to any effect from preexisting zoning, conservation or preservation laws.
9. **Possible Enhancement Value.** If the conservation restriction increases the value of any other real estate owned by the taxpayer or a related party, the amount of the charitable deduction must be reduced by the increase.
10. **Quid Pro Quo Issues.** If a taxpayer receives a return benefit in exchange for their contribution, the amount of the deduction is reduced accordingly.
11. **IRS Audit.** Making a conservation gift requires the C corporation to check box 4(b) on Form 8283 attached to the corporation's federal return, typically Form 1120. The IRS has a method for monitoring the deduction taken. Audits based on proper contribution purpose, valuation issues and substantiation requirements may occur.

Charitable gifts of conservation easements are typically complex to document and implement, but can produce significant deductions for a C corporation. Each situation is very fact intensive. Legal guidance should be based on your own particular facts and circumstances. Attorneys in Baker Donelson's charitable gift practice assist our clients in their decision making process as to whether a gift of a conservation easement restriction to a specific piece of real estate may help reach business, land use and tax goals.

If your C corporation is contemplating the possibility of making a conservation easement gift, please contact Allen Blow or any member of Baker Donelson's Conservation Easements Group.