ENHANCED TAX INCENTIVE FOR CONSERVATION EASEMENT DONATIONS

While the primary motivation for anyone giving land or an easement to a conservancy is to protect a place they love in perpetuity, there can also be significant federal income tax benefits. The value of land or a conservation easement donated to a non-profit land trust is treated as a charitable contribution by the IRS, and is deductible from taxable income. Thanks to concerted lobbying by the national Land Trust Alliance, the tax deduction for donated conservation easements has become more generous in recent years, but the level of the deduction has not always been predictable. This uncertainty ended on December 2015, when Congress voted overwhelmingly to make the "enhanced" income tax incentive for conservation easement donations permanent.

Under the enhanced incentive, donors of a conservation easement to a non-profit land conservation organization can now deduct the value of the easement (which it should be noted needs to be backed up by an appraisal) from their taxable income, up to a limit of fifty percent of their income in that tax year. Previously, donors could only deduct the value of an easement up to thirty percent of their income in a given tax year. Qualifying farmers (which includes tree farmers) can also now deduct up to one hundred percent of their income. The law defines a farmer as someone who receives more than fifty percent of his or her gross income from "the trade or business of farming." The other big benefit of the now-permanent incentive is a tripling of the "carry-forward" period in which an easement donor can use up their tax deduction from five to fifteen years. This change is especially valuable to people with relatively modest annual incomes who donate a conservation easement with a very high value. For example, under the previous rules, a landowner earning $50,000 a year who donated a conservation easement valued at $1,000,000 could take a $15,000 deduction for the year of the donation (30% of their income) and for an additional 5 years - for a total of $90,000 in tax deductions. Under the enhanced incentive, the same landowner can deduct $25,000 for the year of the donation (50% of their income) and then for an additional 15 years. That adds up to a total of $400,000 in deductions, If the landowner qualifies as a farmer, he or she could take a maximum of $800,000 in deductions for the million dollar gift.

The enhanced tax incentive applies to conservation easements donated on or after January 1, 2015. The incentive also applies to "bargain sales" of conservation easements, in which a landowner sells a conservation easement for less than its appraised value, and then takes the balance of the value as a tax deduction. Unfortunately, the enhanced tax rules do not apply to landowners that give their land outright to a conservation group, rather than just a conservation easement. In this case, the "old" annual deduction cap of 30% of taxable income and the five year maximum carry-over still apply (see example above).

This article is intended only as an overview of the recent tax law changes, and landowners considering a land or conservation easement donation should consult a qualified tax expert to make sure they understand the potential tax impact based on their own specific situation. Tax benefits are also just one part of the decision process for conserving land. If you are a landowner considering conserving your land, you may want to consult an attorney and/or certified public accountant.