



## **CAN MY HEIRS SAVE MONEY ON ESTATE TAXES? CONSERVATION EASEMENTS HAVE BENEFITS YEARS AFTER YOUR DONATION**

Not only do you get an immediate financial reward from state tax credits and federal deductions when you donate a conservation easement, you can also save money on estate taxes for generations to come. Up to \$500,000 of the value of your land that is protected by a conservation easement can be excluded from the value of your estate if certain requirements are met. At a 45% estate tax rate, that can add up to a savings of \$225,000 when the land passes to the first heir, and very likely once again each time the land passes to another family member.

In order to get the benefits described above, you first have to be sure that your conservation easement follows all of the normal IRS requirements in order for you to earn a federal tax deduction. In addition, the conservation easement must prohibit all but minimal commercial recreational activities. The legislative history makes it clear that hunting and fishing are still allowed. There is also a requirement that the land must have been owned by the decedent (person who passed away) or a member of the decedent's family during the three year period ending on the date of death. The conservation easement must have been granted by the decedent or a member of the decedent's family. If you have a mortgage on the property, your heirs will only get an exemption for the portion of the property that you owned outright, not for the portion under a mortgage.

The amount of the exemption is 40% of the value of the land subject to the conservation easement (there are slightly different rules if your conservation easement value was below 30%). For example, you have land worth \$1,000,000 and put a conservation easement that followed all of the above rules on it in 2004 that reduced the value to \$650,000, meaning your conservation easement was worth \$350,000 (or 35% of the full fair market value). If you continued owning it until your death in 2008, your heirs could make a 2031(c) election to exclude 40% of the value of the land from the taxable estate. Let's say in 2008 your land went up in value to \$700,000 because of market increases (from the \$650,000 in 2004), your land would be valued at \$700,000 – \$280,000 (40% x \$700,000) = \$420,000. If you hadn't done a conservation easement at all, your land would have been valued at over \$1,000,000 (the original full fair market value plus any market increases). Hopefully, you decide to make a donation during your life because of the other benefits that a conservation easement provides, but if you aren't able to do that, your heirs can place one on the property after your death and still receive these estate tax benefits.

As you can see from the above example, putting a conservation easement on your property has two separate benefits for estate tax purposes – (1) reducing the value of your property at the time of your death because of the restrictions on how you can use the property (taking the value from \$1,000,000 to \$650,000), and (2) the 2031(c) exclusion that reduces the amount of tax you have to pay by 40% up to a total cap of \$500,000 exclusion. The even better part is that this exclusion likely applies each time the conserved property passes from one family member to another after death. If you plan to keep your property in the family for successive generations, a conservation easement might be the perfect way to allow your land to pass to your heirs without paying as much in estate taxes.

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