

Land Use Conservation: Income Tax Issues and Estate Planning Considerations

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Income Tax Issues of Conservation Programs

- **Government Conservation Programs**
- **Gift of Conservation Easements & Development Rights**

Government Conservation Programs

- **Contract payments**
 - Treated as agricultural program payments
 - Ordinary income
 - Can be subject to S/E tax
- **Easement payments**
 - Taxation determined by term in years
 - <30 yrs, ordinary income
 - 30 yrs +, basis of land affected reduced, payment in excess of basis is L.T. capital gain

Cost Sharing Payments

- May qualify for partial or total exclusion from income
- Non-excludible payments may be offset by:
 - Ordinary business operating expenses
 - Soil and Water Conservation Expenses
- S & W Conservation Expenses
 - only deductible by individuals materially participating in a farm business
 - Others must add to land basis

Gifts of Conservation Easements & Development Rights

- 1. No gain recognized on transfer**
- 2. Value of gift deductible for income tax purposes**
- 3. Gift tax exclusions can be used**
- 4. Donor's estate can be reduced by up to 40% of property's remaining value**

Donation of Conservation Easement

- Easement must be donated during lifetime
- "40% exclusion" applies to interest retained in property at death
- Exclusion reduced 2% for each 1% that value of easement is less than 30% of land value without easement

Daisy Meadows - Facts

- Value of Easement \$200K
- Contribution Deduction
(limit of 50% of AGI) \$200K
- Gift tax exclusion used \$200K
- Value of property eligible
for "40%" reduction \$800K
(\$900k - \$100k)

Daisy's Income Tax Benefits

- Annual AGI \$80,000
- Annual gift deduction \$40,000
- Average annual tax rate 31%
- Income tax saved \$62,000

Estate Election of Conservation Exclusion

- Conservation Easement Percent
($\$200\text{K} \div \$800\text{K} = 25\%$)
- $30\% - \text{Easement Percent} = 5\%$
- $\text{Shortfall} \times 2 = 5\% \times 2 = 10\%$
- Applicable percentage for exclusion
($40\% - 10\% = 30\%$)
- Estate exclusion = 30% of FMV at Daisy's death

Future Effects

- **Land value excluded from estate gets no step-up in basis**
 - 30% of property has “hold-over” basis
- **Permanent easement is binding**
 - Heirs and futures owners affected
 - Future value may be adversely affected

Buck Quail: Sale of Conservation Easement

Same values as Daisy Meadows

- Basis in Land: \$150,000 total basis, can all be used to offset against sale
- \$200K - \$150K = \$50K taxable L. T. capital gain
- Tax at 15% US, 6% GA = \$10,500
- \$0.00 basis in remaining land

Effects on Buck's Heirs

- **No exclusion from estate, since easement was sold, not donated**
- **All land eligible for step-up basis**
- **Sale of easement still binding, may affect land value in future**

Income Tax Comparison: Gift v. Sale

- **Gift generates no revenue, saves \$62,000 in taxes over 5 years**
- **Sale generates \$200,000, less \$10,500 in taxes (\$189,500 net)**
- **Sale generates net near-term benefit of \$127,500
(\$189,500 - \$62,000)**

State of Georgia: Georgia Land Conservation Act

- **HB98: Effective 4/14/2005**
- **Georgia Land Conservation Trust Fund and \$100M Revolving Loan Fund**
- **Assistance to county & local governments, and state agencies**
 - **acquiring conservation easements**
 - **actual conservation land purchases**

State of Georgia: House Bill 1107

- **State income tax credit**
 - 25% of FMV of donated property
 - Max credit \$250K individuals, \$500K corporations
 - Credit may not exceed tax liability
 - 5 year carryover permitted
- **\$5M additional for GLCA**
- **Passed in both chambers – awaiting Governor Perdue's signature**
- **Effective January 1, 2006**

Summary

- **Greenspace preservation important to both individuals and organizations**
- **Current economic benefits from either gift of sale of development rights**
- **Consider carefully long-term impact of severing development rights from land**



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