

# Tax-wise land management: Conservation easements

Real property—land and the home or other structures on it—often has special significance to the family that owns it, to the surrounding community or to the ecology of the area. It may: have played a role in a historical event; provide habitat for wildlife; command a magnificent view; or offer access to recreational or educational venues. It is only natural that owners might want to preserve the unique character of their property.

Yet, real estate passing to one's heirs is valued at its "best and highest use" for federal estate tax purposes. Even if it is open, undeveloped land, it will be taxed at the value that a residential or commercial developer would place upon it. This optimal market value of real property also may affect its assessment for local property taxes. For these reasons, conservation-minded landowners are choosing voluntarily and permanently to *reduce* the value of their land. The mechanism that they employ in this process is known as a *conservation easement*.

## **Fundamentals of the easement**

In legal terms an easement is a right ceded by a property owner to others for limited use of the property, permitting a shared road to pass through one's land, for example. A conservation easement generally gives to a qualified conservation organization a guarantee that the property in question will *not* be developed in a way that compromises the interests promoted by the organization.

The unique nature of the property governs the type of organization that may accept the donation of a conservation easement on it. For example: If it has buildings of historical significance, or is part of a battlefield, an organization such as the National Trust for Historic Preservation may wish to enter into an agreement conserving its unique character in perpetuity. Or, an organization such as Ducks Unlimited or the Nature Conservancy may accept an easement protecting a significant wildlife habitat containing special natural attributes.

A conservation easement takes the form of a written agreement between the landowner and the conservation organizations. Easements are quite adaptable to the individual circumstances of the case. Rights that the owner wishes to retain can be written into the agreement—even the right to subdivide, build an additional structure, retain timber, mineral or hunting rights, etc.

## **Tax issues**

An easement is regarded as a charitable donation—the value of the donation being equal to the loss of value of the affected property. This can run from less than 20% to more than 90% of the property's unencumbered value. Naturally, the more rights retained by the landowner, the lower will be the value of the easement.

The donation has been deductible from income taxes up to a limit of 30% of adjusted gross income (AGI). But the Pension Protection Act of 2006 brought some good news. For 2006 and 2007 only, the limit has been upped to 50% of AGI (100% if taxpayers derive at least one-half of their income from farming or ranching on the land). Also for 2006 and 2007, taxpayers who are not eligible to take a full deduction in the year that they make their donations are entitled to carry forward any excess of the unused portions of the deduction for 15 years (increased from five years). Efforts in Congress are under way to make these changes permanent.

In certain instances, an easement also may reduce the property value in the eyes of local tax assessors, resulting in savings on property tax. Potentially, the biggest advantage of conservation easements involves the estate tax. Easements often are cited as being responsible for keeping in the family valued property that might otherwise have to be sold to pay estate tax.

## **Additional considerations**

In practice, the agreement for an easement must spell out carefully the rights that are being ceded, and those that are being retained, and must be binding on both parties. For this purpose the assistance of an attorney specializing in real estate matters is essential. There must be something special or unusual about the land that you are protecting, although a great variety of properties, large and small, can be found to qualify. The agreement must be with a legitimate charity or government agency. In order to substantiate a tax deduction, the value assigned to the easement must be supported by a qualified appraisal. Often a cash donation accompanies the grant of an easement in order to help the grantee organization maintain the rights ceded to it.

An easement is generally not appropriate when a quick sale is contemplated. The tax benefits notwithstanding, most people who grant conservation easements have a genuine interest in preserving the environment. Although an easement is regarded as reducing the market value of the property on which it is granted, the reverse is sometimes the case. Certain buyers, it seems, actually are willing to pay more for conserved land.

In short, a conservation easement can be a key part of a family's financial and estate planning. Consult your advisors for more information.

(June 2007)  
© 2007 M.A. Co. All rights reserved.