Financial Incentives for Private Land Conservation in the United States

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DISCLAIMER
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Overview
• Conservation 101
• Tax benefits
• Funding options

If you remember nothing else...
READ THE CODE, REGULATIONS AND STATUTES!

CONSERVATION 101
The basics
- U.S. private property rights
- Conservation real estate tools
  - Fee interest
  - Less-than-fee interests
    - Leases
    - Covenants and deed restrictions
    - Conservation easements

Conservation easements
- What are they?
- How do they work?
- How are they valued?
- How are they conveyed?
  - Donation
  - Sale
  - Bargain sale

TAX BENEFITS

Federal income tax 101
- Gross income
- Adjustments
- Adjusted gross income (AGI)
- Deductions (standard or itemized)
- Personal exemptions
- Taxable income
\times \text{Applicable tax rate}
- Gross tax owed
- Credits
- Net tax owed or refund due
Federal income tax deduction

Taxpayers making a “qualified conservation contribution” can deduct a portion of their easement’s appraised value equal to 30%* of their AGI and carry forward any unused portion of the easement’s appraised value for 5 years.

“Qualified conservation contribution”

1. Contribution
2. Of a qualified real property interest
3. To a qualified organization
4. Exclusively for conservation purposes
5. In perpetuity

Federal estate tax 101

Gross estate
- Deductions
  Taxable estate
+ Lifetime taxable gifts
  Total taxable estate
x Tax rate
  Tax owed
- Available unified credit
  Total tax owed

Federal estate tax reduction

• If property in an estate was conserved before the decedent’s death, it’s worth less than unconserved property in computing the value of the “gross estate.”
• If property in an estate is conserved after the decedent’s death, the estate can claim a deduction for the easement’s value in calculating the value of the “taxable estate.”
Federal estate tax *exclusion*

The executor of an estate can elect to exclude a portion of the value of easement-conserved land equal to 40% of the land’s value or $500,000, whichever is less.

Federal estate tax *exclusion*

- Must be elected
- Only available for estates of decedents dying after December 31, 1997
- Applies to “qualified conservation easements,” not all “qualified conservation contributions”
- Applies to value of land only, not improvements
- Only available on land owned by the decedent or a member of the decedent’s family at all times during the 3-year period ending on the date of decedent’s death

Federal estate tax *exclusion*

- Easement must reduce the value of the land by at least 30% to qualify for the full exclusion
- Easement must prohibit all but “de minimus” commercial recreation
- Value of land must be reduced by any outstanding debt on the property
- Land owned by entities is eligible if decedent owned at least 30% of the entity
- Post mortem easement donations qualify, provided no income tax deduction is taken

Tax credit states
Colorado state tax credit

Colorado taxpayers who donate a perpetual conservation easement to a state-certified organization can claim an income tax credit equal to the lesser of 50% of their easement’s appraised value or $375,000.

Colorado state tax credit

- Grantee must be state-certified governmental entity or charitable organization exempt under IRC 501(c)(3) that was created at least 2 years prior to receipt of the easement
- Conserved property must be located in Colorado
- Landowner must donate all or part of the easement’s value
- Easement must be a perpetual easement in gross per Colorado statute

Colorado state tax credit

- Taxpayer must be:
  - Colorado resident individual
  - C corporation
  - Trust
  - Estate
  - Member of a pass-through entity who receives the credit from such entity, regardless of whether such member is a Colorado resident
  - Nonprofit corporation (except land trusts)
Local tax benefits

- “Real property subject to one or more easements shall be assessed with due regard to the restricted uses to which the property may be devoted.”
- A conservation easement will sometimes lower property taxes due to the reduced value of the property subject to the conservation easement.
- For Colorado agricultural properties of a certain size, a landowner is entitled to maintain agricultural classification after a conservation easement is placed on the property, even if agricultural use later ceases.

Funding options

Federal government funding
- USDA Natural Resources Conservation Service
  - Agricultural Land Easement Program
  - Wetland Reserve Program
- North American Wetlands Conservation Act
- National Scenic Byways Program

State government funding
- Great Outdoors Colorado
- Colorado Parks and Wildlife
## Local government funding

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## Private funding

- Corporations
- Foundations
- Individuals

## For more information

- C. Timothy Lindstrom’s *A Tax Guide to Conservation Easements*
- Internal Revenue Code § 170(h)
- Treasury Regulation 1.170A-14
- Internal Revenue Code § 2031(c)
- Land Trust Alliance website
- Coloradoopenlands.org