

Estate Tax Incentives for Land Conservation

Keeping Land in the Family

For some families, one of the major advantages of donating a conservation easement is that it helps pass land on to the next generation, by reducing estate taxes. Estate taxes can lead to the land being broken up or sold off, even when families want to keep the land intact. Estate taxes can make it especially challenging for families to hold on to working farm, ranch and forest land.

Recent changes in the tax code have put the vast majority of landowners out of reach of the estate tax. The 2017 Tax Cut and Jobs Act raised the size of estates exempt from estate tax to \$10 million, indexed for inflation. The indexing means that exemption changes each year. In 2019, the first \$11.4 million of a person's estate is not taxed (\$22.8 million for a married couple). Those exemption levels will revert back to an earlier level of \$5 million per person in 2026.

For very large estates, donating a conservation easement can be an important way to reduce the value of the estate's landholdings.

How Conservation Easements Can Lower Estate Taxes

A conservation easement can reduce estate taxes in two ways:

- 1. It reduces the value of the estate to be taxed.** A conservation easement lowers the property value — and, correspondingly, estate taxes. In some cases, a conservation easement may drop the value of the estate below the threshold for estate taxes altogether.

2. Heirs can exclude 40% of the value of land under conservation easement from estate taxes. Section 2031(c) of the Internal Revenue Code provides an estate tax exclusion of up to 40% of the encumbered value of land (but not improvements) protected by a “qualified conservation easement.” Unfortunately, that exclusion is capped at \$500,000. The cap is lower if the easement reduced the land’s value by less than 30% at the time it was donated. To qualify, the easement must serve one or more of the conservation purposes recognized in Section 170(h) of the tax code. It must limit commercial recreational use to a minimum and it cannot qualify solely for the purpose of historic preservation. Only members of the original easement donor’s family, including spouses and descendants, can claim this exclusion.

Conservation Decisions in Estate Planning

Families can benefit from these estate tax advantages if the landowner donates an easement during life, by will or if the heirs donate a posthumous easement (which section 2031(c) allows, but can be complicated by state inheritance laws). However, if the easement is donated by will or posthumously, the family foregoes the opportunity for an income tax deduction.

Landowners should note that conservation easements must meet specific criteria to qualify for tax benefits and that the tax implications of their decision will depend on their specific circumstances. Anyone considering a conservation easement is advised to consult with independent, qualified financial and tax advisors.

Improving Estate Tax Policy

The Alliance’s policy advocacy led to the creation of the first estate tax incentives for land conservation in 1997. The Alliance continues working to improve estate tax laws so that they provide opportunities for conservation, rather than forcing families to sell their land, which often leads to development.

One major issue is that property values have gone up significantly since 1997, making the \$500,000 cap on the estate tax exclusion increasingly inadequate. In many cases, the estate taxes on working farms, ranch may not be i enough to keep the land in the

family. The Alliance supports policy solutions that include raising the cap or excluding working farm, ranch and forest lands from estate taxes altogether, as long as they remain in the family and in production.

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