



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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February 1, 2000
CC:DOM:IT&A:3SKassell
[REDACTED]
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Dear [REDACTED]

We have received your letter to the Internal Revenue Service, dated November 24, 1999, which you subsequently also sent to Susan Kassell, an attorney in this office. Your letter indicates that you seek written assurance that you will be allowed to take a charitable contribution deduction for a conservation easement you plan to donate. As Ms. Kassell and I explained to you on the telephone, without a letter ruling request in accordance with Revenue Procedure 99-1, we cannot apply the law to your facts to give you a binding determination of whether a tax deduction is allowable. However, we are pleased to provide you with general information about contributions of conservation easements and substantiation under § 170 of the Internal Revenue Code (the Code).

You indicate that the easement you plan to donate is in connection with your [REDACTED] farm, which is certified by the [REDACTED] and is located [REDACTED] miles from a national forest and [REDACTED] miles from a wildlife area administered by the Department of Conservation. The easement permanently would restrict the use of the farm to [REDACTED], prohibiting urban or commercial development. It is expected that the easement will be donated to the [REDACTED], which Arthur L. Burke, Exempt Organizations Specialist, has indicated is exempt from federal income taxation under § 501(c)(3) of the Code. You plan to have the easement appraised by comparing the value of your [REDACTED] farm with and without the easement and to claim a charitable contribution for the difference. You ask whether [REDACTED] is a qualified donee and whether [REDACTED] of [REDACTED] is a fully qualified appraiser.

First we will describe some of the rules pertaining to the deduction for contribution of conservation easements. Section 170(h) of the Code provides that a taxpayer may take a deduction for a charitable contribution of a "qualified real property interest" to a "qualified organization," "exclusively for conservation purposes." A qualified real property interest includes a restriction (granted in perpetuity) on the use which may be made of the real property, such as an easement. A qualified organization includes (1) a governmental unit, (2) an organization created or organized in the United States,

exclusively for religious, charitable, scientific, literary, educational, or certain other purposes, no part of the earnings of which inure to the benefit of any private individual, and which is not disqualified for tax exemption under § 501(c)(3) for attempting to influence any legislation or political campaign, or (3) certain private foundations. The Income Tax Regulations (the Regulations) also require that the qualified organization have a commitment to protect the conservation purposes of the donation and the resources to enforce the restrictions.

Some conservation purposes described in § 170(h) of the Code include: (1) The preservation of land areas for outdoor recreation by, or education of, the public, (2) the protection of an environmental system or relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, (3) the preservation of open space, including forest land, if it will yield a significant public benefit and is either (a) for the scenic enjoyment of the general public, or (b) pursuant to a clearly delineated Federal, state, or local governmental conservation policy. Section 1.170A-14(d)(3)(ii) of the Regulations lists many examples of significant habitats or ecosystems the protection of which could qualify as protection of an environmental system. Preservation of land may be for the “scenic enjoyment” of the general public if development of the property would impair the scenic character of the local rural or urban landscape or would interfere with a scenic panorama that can be enjoyed from a park, nature preserve, road, waterbody, trail or historic structure or land area, and such area or transportation way is open to the public. “Scenic enjoyment” is evaluated by considering all pertinent facts and circumstances germane to the contribution, and § 1.170A-14(d)(4)(ii) of the Regulations provides many factors to be considered.

Under § 1.170A-14(e) of the Regulations, a deduction generally will not be allowed if the contribution is not exclusively for conservation purposes or if the contribution would accomplish one conservation purpose but would permit the destruction of other significant conservation interests. This requirement is not intended to prohibit uses of the property, such as selective timber harvesting, if those uses do not impair significant conservation interests.

You also indicate that in the current draft of the easement there is a requirement that, in the event the easement restrictions are extinguished by eminent domain or other legal proceedings, a share of the proceeds will be paid to the [REDACTED]. You indicate that you object to this provision and that, if it is not removed from the easement, you may reconsider granting the easement. You ask whether this provision is necessary for the contribution to be deductible.

A conservation easement must be enforceable in perpetuity. For a deduction to be allowed, at the time of the gift the donor must agree that the donation of the easement gives rise to a permanent property right, immediately vested in the donee organization, with a fair market value that is at least equal to the proportionate value that the easement at the time of the gift bears to the value of the property as a whole at the time of the gift. Accordingly, under § 1.170A-14(g)(6)(ii) of the Regulations, when a change of conditions extinguishes an easement, the donee organization must be entitled to a

portion of the proceeds at least equal to that proportionate value of the easement, unless state law provides that the donor is entitled to the full proceeds.

We now discuss substantiation of the contribution. When a deduction in excess of \$5,000 is claimed in connection with the contribution of property, a qualified appraisal from a qualified appraiser must be obtained, and Section B of a Form 8283 (enclosed with instructions), which contains an appraisal summary, must be filed with the return on which the deduction is claimed. The formal written appraisal is not filed with the return but is retained by the donor. The appraisal summary includes, among other things, a declaration by a qualified appraiser that the appraiser is disinterested and is a professional appraiser. Section 1.170A-13(c)(5) of the Regulations sets forth the requirements for a qualified appraiser.

In addition, under § 170(f)(8) of the Code, no deduction is allowed for a contribution of \$250 or more unless the donor substantiates the contribution with a contemporaneous written acknowledgment from the donee. A contemporaneous written acknowledgment must indicate the amount of cash and a description (but not value) of the property contributed, whether the donee organization provided any goods or services in consideration for the contribution, and, if so, a description and good faith estimate of the value of those goods or services. The contemporaneous written acknowledgment must be received on or before the earlier of the filing date or due date of the return for the year of the contribution. The contemporaneous written acknowledgment is not filed with the return but is kept by the donor with the records of the contribution.

As Ms. Kassell discussed with you, the legal costs and appraisers' fees paid in connection with the charitable contribution of a conservation easement are not deductible as charitable contributions. However, they may be deductible (to the extent they exceed the 2% floor) as miscellaneous itemized deductions if they are ordinary and necessary expenses paid or incurred in carrying on a trade or business.

We hope that this information is helpful to you. For your convenience, we enclose highlighted copies of the Code and Regulations and copies of Publications 526, "Charitable Contributions," and Publication 561, "Determining the Value of Donated Property," with pertinent pages flagged. If we can be of any further assistance, please call Ms. Kassell at (202) 622-4930.

Sincerely,

Acting Assistant Chief Counsel
(Income Tax & Accounting)

By: _____
Karin G. Gross
Senior Technician Reviewer, Branch 3

Enclosures (6)