



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

OFFICE OF  
CHIEF COUNSEL

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Dear \_\_\_\_\_ :

This letter responds to your request for information dated June 02, 2010, as supplemented by certain additional information we received from you on July 15, 2010. In your request, you ask whether an agricultural conservation easement contributed in a bargain sale to \_\_\_\_\_ (Foundation) under \_\_\_\_\_ (Program) in accordance with current \_\_\_\_\_ law is deductible for Federal income tax purposes.

We believe that an agricultural conservation easement contributed in a bargain sale pursuant to the Program is deductible to the extent it meets the requirements of section 170 of the Internal Revenue Code (Code), including requirements for a qualified conservation contribution and for a bargain sale. The language of \_\_\_\_\_, as amended in \_\_\_\_\_, effective for easements purchased on or after \_\_\_\_\_, is not inconsistent with the perpetuity requirements for a qualified conservation contribution, as discussed below.

A taxpayer is allowed a deduction, subject to certain limitations, for charitable contribution payment of which is made within the taxable year. Generally, only transfer of the donor's entire interest in property qualifies for a charitable contribution deduction. One exception to this general rule exists for donation of a qualified conservation contribution Code section 170(h).

Donation of a conservation easement will constitute a "qualified conservation contribution" if the donation is (i) of a qualified real property interest, (ii) to a qualified organization, and (iii) exclusively for conservation purposes. Generally, a conservation easement will constitute a "qualified real property interest" if the easement is a restriction on the use of the real property in perpetuity. Code Section 170(h)(2); Income Tax Regulations section 1.170A-14(b)(2). A conservation easement generally will not

be deemed exclusively for conservation purposes unless the conservation purposes are protected in perpetuity. Code section 170(h)(5)(A).

Consistent with these “perpetuity” requirements, any interest in the property retained by the donor (and the donor’s successors in interest) must be subject to legally enforceable restrictions (for example, by recordation in the land records of the jurisdiction in which the property is located) that will prevent uses of the retained interest inconsistent with the conservation purposes of donation. Income Tax Regulations section 1.170A-14(g)(1).

There are certain exceptions to one or more of these “perpetuity” requirements but they are limited in scope. For example, a deduction is not disallowed merely because the interest which passes to, or is vested in, the donee organization may be defeated by the performance of some act or the happening of some event, if on the date of the donation it appears that the possibility that such act or event will occur is so remote as to be negligible. Income Tax Regulations section 1.170A-14(g)(3).

Similarly, with regard to conservation purposes, if a subsequent unexpected change in the conditions surrounding the property that is the subject of a donation can make impossible or impractical the continued use of the property for conservation purposes, the conservation purposes can nonetheless be treated as protected in perpetuity if the restrictions are extinguished by judicial proceeding and all of the donee’s proceeds (as determined under the regulation) from a subsequent sale or exchange of the property are used by the donee organization in a manner consistent with conservation purposes of the original contribution. Income Tax Regulations section 1.170A-14(g)(6)(i).

The Foundation currently purchases agricultural conservation easements pursuant to \_\_\_\_\_, as amended in \_\_\_\_\_. Prior to the amendment, \_\_\_\_\_ law allowed a landowner to request termination of an agricultural easement at any time after \_\_\_\_\_ from the date of sale of the easement to the Foundation if profitable farming was not feasible.

The \_\_\_\_\_ amendment eliminated, effective for easements purchased on or after \_\_\_\_\_, the procedure for termination of an easement. As amended, \_\_\_\_\_ law states that an easement whose purchase is approved by \_\_\_\_\_, shall be held by the Foundation in perpetuity. \_\_\_\_\_ . The legislative history of the amendment indicates several goals, including elimination of misunderstanding among landowners about the nature of the easements; bringing the Program in line with conservation easement programs in other states; and reinforcement of the qualification of easements for tax deductions or credits.

We have enclosed for your reference a copy of comment letter dated \_\_\_\_\_, that the Foundation submitted regarding the proposed regulation governing conservation

easement contributions that was subsequently finalized as Income Tax Regulations section 1.170A-14.

I hope this letter is helpful. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2010-1, § 2.04, 2010-1 IRB 7 (Jan. 4, 2010). If you have additional questions, please contact me at \_\_\_\_\_ or \_\_\_\_\_ (ID # \_\_\_\_\_) at \_\_\_\_\_.

Sincerely,

Karin Gross  
Senior Technician Reviewer, Branch 1  
(Income Tax & Accounting)

Enclosure:

cc: