



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

OFFICE OF THE CHIEF COUNSEL

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

This letter responds to your request for information concerning a conservation contribution described in sections 170(f)(3)(B)(iii) and 170(h) of the Internal Revenue Code (the "Code").

You request a general information letter, which calls attention to a well-established interpretation or principle of tax law without applying it to a specific set of facts. See sec. 2.04 of Rev. Proc. 2012-1, 2012-1 I.R.B. 1, 7 (Jan. 3, 2012).

Specifically, you ask whether a contribution of an easement is deductible under section 170(h) of the Code if it is made subject to the condition that the easement can be swapped.

You define a "swap" as an agreement to remove some or all of the originally protected property from the terms of the original deed of conservation easement in exchange for either the protection of some other property or the payment of cash. You state "[t]he goal of a swap is generally to free all or a portion of the originally protected property from the easement's restrictions so that such property can be put to previously prohibited uses." You state that the transaction may be characterized by the parties as an amendment, modification, adjustment, or migration.

Under section 170(f)(3) of the Code, a charitable contribution deduction is generally not allowed for the donation of a partial interest in property. Section 170(f)(3)(B)(iii) of the Code, however, provides an exception for "qualified conservation contributions." A "qualified conservation contribution" is defined in section 170(h)(1) of the Code as a contribution (1) of a "qualified real property interest," (2) to a "qualified organization," (3) which is made "exclusively for conservation purposes."

Under section 170(h) of the Code, a contribution is not treated as made “exclusively for conservation purposes” unless it is granted in perpetuity (section 170(h)(2)) and protected in perpetuity (section 170(h)(5)). Section 1.170A-14(g)(1) of the Income Tax Regulations (the “Regulations”) provides that in order for a conservation easement to be protected in perpetuity, the interest in the property retained by the donor (and the donor’s successors in interest) must be subject to legally enforceable restrictions that will prevent uses of the retained interest inconsistent with the conservation purposes of the donation.

Under section 1.170A-14(e)(2) of the Regulations, inconsistent use is prohibited. Specifically, a deduction for a conservation easement donation will not be allowed if the contribution would accomplish one conservation purpose but would permit destruction of other significant conservation interests. There is an exception under section 1.170A-14(e)(3) of the Regulations that permits a use that is destructive of conservation interests *only* if such use is necessary for the protection of the conservation interests that are the subject of the contribution.

Section 1.170A-14(g)(6) of the Regulations allows for extinguishment of a conservation easement if subsequent unexpected changes in the conditions surrounding the property can make impossible or impractical the continued use of the property for conservation purposes. The conservation purposes will be treated as protected in perpetuity if the easement is extinguished by judicial proceeding and all of the donee's proceeds from a subsequent sale or exchange of the property are used by the donee organization in a manner consistent with the conservation purposes of the original contribution.

Therefore, except in the very limited situations of a swap that meets the extinguishment requirements of section 1.170A-14(g)(6) of the Regulations, the contribution of an easement made subject to a swap is not deductible under section 170(h) of the Code.

We note that you also ask whether a donee that agrees to swaps would lose its tax exempt status or status as an eligible donee under section 1.170A-14(c)(1). We have forwarded that question to IRS’s Office of Tax Exempt and Government Entities for its consideration.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See sec. 2.04 of Rev. Proc. 2012-1, 2012-1 IRB at 7. If you have any additional questions, please contact me at ( ) or (ID# ) at .

Sincerely,

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