

*The primary reason a landowner donates a conservation easement is to preserve the natural, scenic and historic integrity of their land, forever. Many want to establish a legacy for their children and grandchildren. Most value the peace of mind of knowing that their land will always be preserved as farmland, forestland, and wetlands.*

*In addition, there are significant income tax and estate planning benefits.*

### **How Does a Conservation Easement Qualify for a Tax Deduction?**

In order to be tax-deductible, the conservation easement must meet several tests:

- It must be granted in perpetuity.
- It must be donated to a qualified governmental or non-profit organization, such as the VES Land Trust.
- It must have a qualified property appraisal, which establishes the size of the charitable gift eligible for a tax deduction.
- It must be donated exclusively for “conservation purposes,” meaning the property must have some significant natural, scenic, historic, scientific, recreational or open space value that will be protected forever.

### **Federal Income Tax Deduction**

The donation of a conservation easement is treated as a charitable gift. The value of the property pre-easement, minus the value of the property post-easement, equals the value of the charitable gift. This gift, or easement value, may be deducted from the donor’s income in calculating federal income taxes.

- Currently, the federal income tax deduction a donor can take for donating a conservation easement is 50% of their adjusted gross income;
- Qualifying farmers and ranchers may deduct up to 100% of their income; and
- The carry-forward period for a donor to take tax deductions for voluntary conservation agreements is 15 years (in addition to the year of donation).

The enhanced easement incentive defines a farmer or rancher as someone who receives more than 50% of their income from “the trade or business of farming.” The law references an estate tax provision (Internal Revenue Code (IRC) 2032A(e)(5)) to define activities that count as farming. Specifically, those activities include:

- cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm;

- handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and
- the planting, cultivating, caring for, or cutting of trees, or the preparation (other than milling) of trees for market.

The qualified farmer or rancher provision also applies to farmers who are organized as C corporations. For an easement to qualify for the special treatment, it must contain a restriction requiring that the land remain “available for agriculture.”

### **Estate Tax Deduction**

Estate taxes can be as high as 55 percent of the value of an individual’s estate. In many cases, a landowner’s heirs must sell the property just to pay estate taxes. By donating a conservation easement, landowners can reduce these taxes in up to two ways:

- First, the total estate will have been reduced by the value of the easement (smaller estate value means less – or perhaps no – estate tax due.)
- Secondly, the American Farm and Ranch Protection Act of 1997 allow heirs to exclude up to 40 percent of the remaining value of their land (with a maximum exclusion of \$600,000) from estate taxes if the easement qualifies for the program.

*Check with your attorney or tax professional to see if your conservation easement would qualify for the American Farm and Ranch Protection Act deduction.*

### **Virginia State Income Tax Credit**

The Commonwealth allows a conservation easement donor to claim a credit against their Virginia income tax liability for up to 40 percent of the value of the donated easement.

These Virginia Land Preservation Tax Credits can be used on a \$1 for \$ basis against a maximum of \$20,000 per year. The tax credit may be carried forward for up to 10 years.

Any unused state income tax credit may be donated or sold for use by another taxpayer. Eastern Shore easement donors typically receive between 78 and 85 cents on the dollar in the sale of their excess tax credits through brokers and in private transactions.

For example, the owner of an 85-acre farm on Occohannock Creek in Accomack County donated a conservation easement worth \$800,000. The easement generated \$320,000 in state tax credits. The donor sold excess credits for 80 cents on the dollar. If the donor sold all their credits (rather than using some on their tax return) the easement will generate \$256,000.

### ***Please note:***

- If the donor receives state tax credits, the allowable federal deduction will be reduced by the value of tax credits. For example, if a landowner donates a \$100,000 in easement

value and can claim \$40,000 in Virginia Land Preservation Tax Credits, they will be able to take a \$60,000 federal income tax deduction.

- The land preservation tax credit program is currently capped at \$75 million statewide.
- Conservation easement donors may claim a credit against their Virginia income tax liability for up to 40% percent of the value of the donated easement.
- Conservation easements that result in registrations of *more than \$1million* of tax credits must have the conservation values reviewed and accepted by the [Department of Conservation and Recreation](#) before being accepted by the [Department of Taxation](#).
- Registration of conservation easements of *less than \$1million* of tax credits will require a form (LPC-1) that includes:
  - i. A description of the conservation purpose or purposes;
  - ii. The fair market value of the land without restrictions;
  - iii. The public benefit derived from the donation;
  - iv. The extent to which best management practices will be implemented on the property; and
  - v. Whether the property is fully or partially forested and a forest management plan is included in the terms of the donation.
- Tax credit claims for easement or fee interest donations can be claimed in the year of the gift and the subsequent 10 years or until fully expended.
- Any property that serves as the basis for a land preservation tax credit cannot also serve as the basis for a historic rehabilitation tax credit within the same five-year period of time and vice versa.
- Any transfer of registered tax credits triggers a 5% VA Department of Taxation fee on the amount of the tax credit transferred.

**Landowners who have started the process of donating a conservation easement should consider finishing the process early in the year to get their easement recorded and tax credits registered. The Department of Tax recommends applying for tax credits using form LPC-1 before November 1st.**

For more information about the Virginia Eastern Shore Land Trust or conservation easements, contact Hali Plourde-Rogers, VES Land Trust, 757-442-5885, [director@veslt.org](mailto:director@veslt.org). The Land Trust does not provide tax or legal advice. Please check with your attorney or accountant for more details on the tax benefits of easements.