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Landowners And Charities Farm Tax Break

Ashlea Ebeling 06.11.08, 6:00 AM ET

Land conservation charities had a banner year in 2007, as big landowners rushed to take advantage of a temporary expansion of the federal tax break for donating land development rights before it expired on Dec. 31, 2007.

But like other tax goodies originally handed out temporarily, the break for "conservation easements" is getting a second serving. As part of the new farm bill, Congress is extending the break through 2009, with an extra sweetener for farmers and ranchers thrown in.

With a conservation easement, you give some or all of the development rights on your land to a government agency or not-for-profit organization. You still own and can enjoy the land, and may even be able to do some construction--say, of duck blinds or a log cabin, for instance. You can also continue to farm the land.

The newly extended incentive allows a non-farmer donor to use a conservation donation deduction to wipe out 50% of his gross income in any year, up from the normal 30%. The temporary break also allows a donor to carry forward any unused write-off for a full 15 years, instead of the normal five.

Farmers and ranchers get an even more generous break: They can offset up to 100% of their adjusted gross income with conservation donations, potentially zeroing out their tax liability for the next 15 years. For that they can thank Senators Max Baucus, D-Mont., and Chuck Grassley, R-Iowa, the Senate Finance Committee's chairman and ranking minority member.

In fact, the conservation break is so generous that it produces a bizarre and seemingly backwards incentive: Donors who keep a piece of land while giving the development rights to a conservation group can sometimes get a bigger tax benefit than if they'd given the land outright to the same group. That's because, if a landowner gives his property away, the normal tax rules apply, meaning he can use the charitable deduction to wipe out only 30% of his adjusted gross and can carry any unused deduction forward for only five years.

Stephen Small, a tax lawyer in Boston who specializes in conservation easements, says the 15-year carry-forward rule can be a remarkable planning tool. "You can bank the deduction and use it against a big income event in the future, say you're planning to sell investment property or take big retirement distributions," he notes.

If you plan to use this break, don't get too greedy. The IRS and state revenue officials have started auditing conservation deductions, with an ongoing crackdown in Colorado. The main problem has been taxpayers claiming inflated appraisals on the worth of the easements, which leads to inflated and improper tax deductions. To stay out of trouble, go with a reputable land trust; hire your own outside tax lawyer to vet the deal; and hire a reputable, experienced and independent appraiser to value what you're giving away.

"A good conservation easement brings with it some philanthropy; you really do give up value," says Small. "If somebody says 'I can put a deal together for you where you can donate an easement and come out ahead financially,' beware." (For more details on using the break, see IRS Notice 50-2007.)

Meanwhile, the Land Trust Alliance, an association of 1,600 local and state land trusts that promote conservation, is already back in Congress, lobbying to make the break permanent. It estimates an additional 1 million acres of land was protected through 2007, thanks to the temporary break.

The Land Trust is leading a coalition of 31 organizations pushing for the break. Among the members: the American Bird Conservancy, the Civil War Preservation Trust, the Mule Deer Foundation and the North American Grouse Partnership.

"We don't want landowners to have to be under the gun of a deadline," says Russell Shay, director of public policy for the Land Trust Alliance. "We're dealing with a perpetual commitment of what's often a family's most valuable asset."