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IRS approves charitable conservation easement

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Federal tax laws permit a charitable deduction for the value of qualified real property interests which are donated to a charity solely for conservation purposes. In a recent ruling the IRS approved a charitable deduction for a conservation easement, granted to protect an environmental ecosystem and endangered species. Such easements may qualify for deduction, if the necessary requirements are met.

In order to qualify for a charitable deduction for a conservation easement, the easement must be granted to a qualified charitable organization. Such an organization must have a commitment to protect the conservation purposes of the donation, as well as the resources to enforce the easement. "Conservation purposes" include:

- *Preservation of land for outdoor recreation by, or for the education of, the general public;
- *Protection of a relatively natural habitat of fish, wildlife, plants or a similar ecosystem;
- *Preservation of an open space for scenic enjoyment or under a federal, state or local conservation policy, which will have a significant public benefit; or
- *Preservation of historically significant land or a certified historic structure.

There are also a variety of more specific requirements concerning the nature and quality of scenic view easements, as well as easements that protect ecosystems.

The easement must be perpetual and granted exclusively for conservation purposes. The grantor may retain certain rights in the property, as long as those rights are subject to legally enforceable restrictions. In the case of the IRS' recent ruling, the grantors of the easement retained a variety of rights in the property, including to manage forest resources, engage in agricultural activities and engage in recreational activities. These reserved rights were subject to the condition that they could not be inconsistent with or detrimental to the purpose of the easement and could not adversely impact the conservation values of the property. Under the terms of the easement, the donee charity was given the right to monitor compliance with and legally enforce the terms of the easement.

Given the technicalities of the requirements, a taxpayer contemplating gifting a charitable conservation easement should speak with his tax advisors to see if the property in question qualifies for the charitable deduction. Provided that it can, a qualified conservation easement provides a way for a real estate developer to help preserve the environment for the future, while receiving a tax benefit today.

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