



The Estate Tax and Conservation Easements

Congress has long provided incentives in the estate tax for the donation of conservation easements to protect important natural resources for the benefit of the public.

Conservation easements retire development rights to protect natural habitats on forests and rangeland, and can protect agricultural lands while allowing continued sustainable use of the land.

IRC 2055(f) allows the value of a donated conservation easement to be excluded from taxable estate. Donating a conservation easement means a landowner will not pay estate taxes on valuable development rights they have agreed to retire.

IRC 2031(c) provides an estate tax exclusion of up to 40% of the remainder value of land protected by a donated conservation easement. That exclusion is capped at \$500,000 and is further reduced if the easement reduces a property's value by less than 30%.

These sections have made conservation easement donations an important consideration in estate planning for many agricultural and forest landowners.

Estate tax reform provides an important opportunity to build on this by encouraging new donations of conservation easements.

Effect of the Estate Tax on Natural Resources

Even with a \$3.5 million unified credit, the estate tax will affect a surprisingly large amount of land of importance to the public for its environmental and agricultural values.

The Economic Research Service of the US Department of Agriculture estimates that fully 10% of commercial farms (those selling more than \$250,000 a year of agricultural products) will be affected by the estate tax at its 2009 level¹. A study by U.S. Forest Service personnel² shows that the estate tax will affect more than 4,000 forest landowners a year at the 2009 level, focusing its impact on the large tracts that are particularly valuable for their wildlife, watershed, timber and carbon sequestration potential. Their study also found that a substantial portion of those lands are likely to be converted to non-forest uses to pay estate tax.

These effects are exacerbated where residential development is the most profitable use of land – areas where conversion of agricultural and forest lands to other uses continues, even on the most productive lands. According to the Natural Resources Inventory of the USDA, we have been losing 2 million acres of forests and farms a year in this way. The estate tax can also result in the overharvesting of timber, as a tax requiring the liquidation of 45% of assets within 9 months directly contravenes the efforts of US Forest Service and state forestry agencies to promote sustainable forestry.

¹ Durst, "Ron, Federal Tax Policies and Farm Households", Economic Information Bulletin Number 54, USDA Economic Research Service, May 2009

² John L. Greene, Steven H. Bullard, Tamara L. Cushing and Theodore Beauvais, "Effect of the Federal Estate Tax on Nonindustrial Private Forest Holdings," *Journal of Forestry*, January/February 2006

Solutions

1. **Make the income tax incentive for conservation easement donations work for farmers.**

HR 1831, which now has 262 cosponsors³, would make permanent the conservation incentive the Congress first enacted in 2006. By allowing donors whose income is primarily from farming, ranching or forestry to deduct a larger portion of their AGI over more years, **it allows modest income donors with highly valued lands to earn income tax deductions that would have been available to them if their incomes were larger.** The donation of a perpetual easement protects the resource for the future, and reduces the development value component of the land for estate tax purposes. JTC has scored this as costing between \$750 and \$900 million over ten years.

2. **Provide a more significant exclusion from estate tax for lands protected by a permanent conservation easement.**

HR 3050, introduced by Representatives Blumenauer (D-OR) and Cantor (R-VA), would increase the IRC 2031(c) exclusion from a maximum of 40% of the remainder value of the land under easement to 50%, and from a maximum of \$500,000 to \$5 million in recognition of increased land values. This would provide a powerful incentive for larger landowners, especially owners of high-value agricultural and forest lands, to protect these properties in perpetuity and allow them to keep the land in the family from one generation to the next. JTC has scored this as costing \$132 million over ten years.

In addition, Congress needs to further amend IRC 2031(c) to prevent the important changes it made to the statute in the Economic Growth and Tax Relief Reconciliation Act of 2001 – making IRC 2031(c) apply to conservation easement donations anywhere in the country, and clarifying that values referred to in 2031(c) are the value at the time an easement was donated – from expiring at the end of 2010.

3. **Allow owners of working agricultural or forest lands to defer estate taxes on those lands until they take them out of production or sell them.**

HR 3524, introduced by Representative Mike Thompson (D-CA), would allow such a deferral, with a recapture provision to ensure that if the lands on which estate tax was deferred were taken out of production or sold, the estate taxes would be paid at the rate in force at the time of deferral, assessed at the market value of those lands at the time they were taken out of production or sold.

This is not an exclusion, but a true deferral, resulting in no one being forced to sell their working lands just to pay estate taxes – but ensuring that if and when they do sell those lands, the estate taxes must be paid. It is an effective policy for promoting family ownership of productive lands, and for ensuring that lack of good estate tax planning or the cash resources to implement such planning does not automatically result in the breakup and potential loss of important farm and forest properties.

JTC has scored this as costing \$16.2 billion over ten years, including the provisions of HR 3050.

For more information about estate tax incentives for land conservation, please visit: www.lta.org/policy/estatetax or contact Russ Shay at 202-638-4725 x305.

³ Including Reps. Rangel, Camp, and a majority of both D's and R's on the Ways and Means Committee, and in the House as a whole.