

Saving the Ranch: “Fresh Eyes on Taxes, Inheritance, and Conservation Easements”

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Definition

- “Conservation Easement” – “a less than fee simple legal interest in land that voluntarily limits development to protect significant agricultural, open space, ecological, recreational, and historic values.”
- *Voluntarily* donated or sold by landowners to non-profit land trust
- Unlike road and power line easements, CEs *prevent* certain land uses from happening.



The Basic Idea

- Donate some or all of your development rights to a land trust you respect
- Keep the land from *ever* getting subdivided
- You still own the land, you ranch or farm it, you sell it for whatever price you can get
- Land Stewardship – the main motivation
- Tax incentives sweeten the pot



Legal Basis

- English Common Law
- Tax Reform Act of 1976
- Tax Treatment Extension Act of 1980
- Uniform Conservation Easement Act of 1981
- Taxpayer Relief Act of 1997 – Section 2031(c)
- New Mexico Land Use Easement Act
- 2006 Federal Tax Act
- Supported by Section 170(h) IRS Codes



“Conservation Purposes”

- Open Space – agriculture and scenic
 - Ecological – habitat
 - Historic – sites and structures
 - Recreational – seldom used
- CEs do not require public access



Land Trusts and Easements

- “Land Trust” – a non-profit land conservation organization
- 1890 – Trustees of Reservations
- 1950 – 40 land trusts in U.S.
- 1975 – 300 land trusts
- 2007 – 1,667 land trusts



Land Trust Record in U.S.

- National Land Trusts
25 million acres conserved
- State-wide and local Land Trusts
12 million acres conserved
- Conservation Easement portion:
8,000 projects - 11 million acres



New Mexico Land Trusts

- New Mexico Land Conservancy
- Southern Rockies Agricultural Land Trust
- Santa Fe Conservation Trust
- Taos Land Trust
- Rio Grande Agricultural Land Trust
- Malpai Borderlands Group



Conservation Easements Respect Private Property Rights

- CEs based on honoring landowners rights and family goals
- Agricultural organization land trusts – including Colorado Cattlemen's Agricultural Land Trust



Easement Supporters and Ag Land Trusts

- NM Cattle Growers' Association
 - as long as *voluntary* and financially fair
- National Cattlemen's Beef Association
- American Farmland Federation
- American Farmland Trust
- Wyoming Stock Growers Association
- California Cattlemen's Association
- Montana Land Reliance



Why Place a Conservation Easement on my land?

- Keep land in the family
- Keep land in production
- Keep land from being subdivided
- Keep your vision of land stewardship



Tax Benefits

- Voluntary donation of CE in perpetuity to a 501(c)(3) non-profit organization (land trust) or a unit of government is a “charitable gift.”
- Value of donated easement is appraised -
“Before and after” appraisal method
- Easement *does not* “freeze” market value



Federal Income Tax Benefits

- For qualifying ranchers and farmers (earn more than half of their income from agriculture)
- Individual owners can deduct up to 100% of Adjusted Gross Income (AGI) on Federal taxes for year of donation and 15 following years
- Corporation owners can deduct up to 100% of Taxable Income for year of donation and 15 following years



“Non-Ag” Landowners

- Individual owners can deduct up to 50% of Adjusted Gross Income (AGI) on Federal taxes for year of donation and 15 following years
- Corporation owners can deduct up to 50% of *Taxable* Income for year of donation and 15 following years



Advisory – Get Professional Tax Advice

- These incentives expire on Dec 31st, 2007
Have to be renewed by Congress
- If not, the old figures comes back –
 - 30% of AGI, 10% of taxable income for corps
 - Six years to use the value of CE donation
- Website: www.stevesmall.com



Example #1 – No Easement

\$50,000 income and qualifying Ag owner,
No deductions

Adjusted Gross Income	\$50,000
Itemized Deductions	\$ 0
Taxable Income	<u>\$33,100</u>
Net Federal Tax	\$ 4,210

Example #1 – Easement

\$50,000 income and qualifying Ag owner
\$500,000 CE donation

Adjusted Gross Income	\$50,000
Itemized Deductions	\$50,000
Taxable Income	<u>\$ -6,600</u>
Net Federal Tax	\$ 0

Fed Tax Savings: $\$4,210 \times 10 \text{ years} = \underline{\$42,100}$



Example #2 – No Easement

\$100,000 income and qualifying Ag owner,
No deductions

Adjusted Gross Income	\$100,000
Itemized Deductions	\$ 0
Taxable Income	\$ 83,100
AMTI Net of Exemption	\$ 37,450
Schedule or Tax Table	<u>\$ 13,890</u>
Net Federal Tax	\$ 13,890

Example #2 – Easement

\$100,000 income and qualifying Ag owner,
\$500,000 CE deduction

Adjusted Gross Income	\$100,000
Itemized Deductions	\$100,000
Taxable Income	<u>\$ -6,600</u>
Net Federal Tax	\$ 0

Fed Tax Savings: $\$13,890 \times 5 \text{ years} = \underline{\$69,450}$



Example #3 – No Easement

\$200,000 Income, qualifying Ag operator
No deductions

Adjusted Gross Income	\$200,000
Itemized Deductions	\$ 0
Taxable Income	\$149,950
AMTI Net of Exemption	\$167,500
Schedule or Table Tax	<u>\$ 40,672</u>
Net Federal Tax	\$ 40,672



Example #3 - Easement

\$200,000 Income, qualifying Ag operator
\$500,000 CE donation

Adjusted Gross Income	\$200,000
Itemized Deductions	\$200,000
Taxable Income	<u>\$ -5,610</u>
Net Federal Tax	\$ 0

Fed Tax Savings: $\$40,672 \times \text{"2.5 yrs"} = \underline{\$101,680}$



Example #4

- \$50,000 income, non-Ag, \$500,000 CE
Write off 50% of AGI
\$25,000 for 16 years
Use up \$400,000 of donation value
- Federal Tax Savings:
 $\$2,205 \times 16 \text{ years} = \underline{\$35,280}$

Example #5

\$1 million income, non-Ag owner

\$1 million easement donation

Federal Tax Savings: \$165,449

\$1 million income, Ag owner

\$1 million easement donation

Federal Tax Savings: \$317,397



Selling a Conservation Easement

- Purchase of Development Rights – PDRs
- Federal Farm and Ranch Lands Protection Program – NRCS
- Forest Legacy Program
- Income treated as a Capital Gain
- Federal Capital Gains Tax due depends on your “basis” in the land – its value when you became owner.



New Mexico Income Tax Credit

- Land Conservation Incentives Act of New Mexico
- State Income Tax Credit – maximum \$100,000
- Unused portion may be carried forward for up to 20 successive years
- The New Mexico conservation easement tax credit is non-transferable and applies *in addition* to federal tax benefits.



Federal Estate Tax Benefits

- Exempt estates:

2007 - \$2 million 46% highest rate

2008 - \$2 million 45% highest rate

2009 - \$3.5 million 45% highest rate

2010 – No estate tax*

* Congress can pass new estate tax
legislation that applies after 2010



Federal Estate Taxes

- Taxpayer Relief Act of 1997
- Up to an *additional* \$500,000 may be excluded from value of an estate because of an easement donation
- Up to 40% of easement value



Local Property Taxes

- Typically *no* reduction in property taxes comes from a conservation easement
- Land taxed as “agricultural” will continue to be taxed at that rate



GET PROFESSIONAL TAX ADVICE

- Conservation Easements are a moderately complex area of tax law.
- Professional legal, tax, and accounting advisors are critical for landowner's interests to be well served.



Conservation Easement Process

- Step 1 – Landowner and land trust meet
- Step 2 – Landowner meets with advisors
- Step 3 – Land title information
 - Up-to-date title report
 - Mortgages? Lender must subordinate
 - Property boundary established



Conservation Easement Process

- Step 4 – Baseline Documentation Report
 1. Qualify property for federal and state tax benefits
 2. Locate significant conservation values for designing an effective easement
 3. Describe property improvements and condition of land – basis for future monitoring and enforcement of CE
 4. Provide direction for continued land stewardship



Minerals

If landowner owns all mineral rights:
CE must permanently prohibit surface mining

If landowner does not own all mineral rights:
Geologist report – “Remoteness Test”

“....I conclude that the likelihood of commercial mining potential is so remote as to be negligible.”



Conservation Easement Process

- Step 5 – Assess Need for Limited Development
 - Run the numbers and talk to your family
 - Take a look at your land
- Anthony Anella – Montosa Ranch Project
Sieve Mapping and Conservation Design



Conservation Easement Process

- Step 6 – Negotiate Easement Restrictions

What uses do you want to be allowed on the land?

What uses do you want to prohibit or restrict?

**Subdivision, Buildings, Mining, Water, Roads,
Timber Harvest, Industrial/Commercial Use, Agriculture**

Signs, cell phone towers, airstrips, signs, billboards

**Public Access – stays at the control of the landowner
A CE does not grant the public access to the land**



Conservation Easement Process

- Step 7 – Appraisal and Financial Analysis –
easement value and tax benefits
- Step 8 – Finalize Easement Deed
- Step 9 – Land Trust gathers all materials
- Step 10 – Conservation Easement recorded



Stewardship

Land trust makes sure your wishes are honored by future owners

Legally defends the easement and the land in perpetuity

