

THINGS YOU SHOULD KNOW ABOUT CLAIMING TAX DEDUCTIONS FOR GIFTS OF LAND OR DONATED CONSERVATION EASEMENTS

FINDING THE RIGHT CONSERVATION METHOD FOR YOU

If you own land with significant conservation values you may want to consider ways to protect the land by selling or donating the land to a conservation agency or a non-profit organization such as the Natural Land Institute. The decision whether to sell or donate the land or to sell or donate a conservation easement on the land depends upon your wishes to secure a lasting legacy of natural land and your financial situation.

The Natural Land Institute can help you find the right method for you and your family. Your land conservation options include:

- Sale of the land, or a conservation easement on the land to a conservation agency or non-profit group that conserves land.
- A bargain sale or partial donation of the land or a conservation easement on the land.
- Donation of the land or a conservation easement on the land.
- Donation of the land or a conservation easement on the land through a charitable remainder trust, your will, or other estate plans.
- Sale or donation of the land while retaining use of the land for the remainder of your life.

For more information about each of these land conservation options ask for a copy of “Conserving Your Land” or go to the Natural Land Institute’s website: www.NaturalLand.org and click on “Land Preservation.”

INCOME, CAPITAL GAINS, ESTATE AND PROPERTY TAXES

A donation or bargain sale of land or a conservation easement to the Natural Land Institute has a value and may qualify you for a charitable deduction on your federal and state income taxes, reduce your capital gains or estate taxes, and lower your property taxes. The donation or bargain sale of land can be deducted at its current fair market value, but establishing the value of a donated conservation easement can be difficult and costly. In both cases an appraisal done by a qualified land appraiser must be done.

The Natural Land Institute cannot guarantee that your gift of land will qualify for a tax deduction, but we will work with you to help you understand the tax issues and process for applying for a deduction. We urge you to consult your own lawyer or tax advisor on all questions dealing with the donation of land or a conservation easement, and the tax considerations related to the gift.

INCOME TAXES

If you donate land, or a conservation easement on land to a qualified conservation agency or nonprofit organization, such as the Natural Land Institute, you may be able to claim a federal charitable gift deduction for the fair market value of your gift. In general terms, the IRS will allow you to deduct the current fair market value of the gift from your federal income taxes, but only up to 30% of your adjusted gross income (AGI) for the year of the gift. If the value of the gift exceeds 30% of your AGI in the year of the gift, you can carry the excess over for up to five succeeding tax years, until you've deducted the gift's total value or six years have passed, whichever comes first. A corporation can only deduct 10% of their taxable income per year for a gift of land or conservation easement.

The fair market value of a gift of land or a conservation easement must be determined by a qualified appraiser and the appraisal must be done in accordance with the Uniform Standards of Professional Appraisal Practice, within sixty days of the date of the donation, or before your federal income tax return is filed. The appraisal must be paid for by the donor, and Form 8283 must be prepared by the appraiser, signed by NLI, and attached to your income tax return. In addition the IRS requires a "supplemental statement" summarizing the conservation values of the donated easement, the appraiser's valuation assumptions and conclusions, whether the easements was required by a contract, permit or for government approval, and a description of any interest in any nearby land owned by the donor or a related person. The IRS can deny the deduction if any of these documents are missing from your tax return. They may also require a copy of the full appraisal if the deduction is over \$500,000. For more information about appraisals or qualified appraisers go the NLI's website, www.NaturalLand.org and click on Land Preservation.

In order to claim a federal income tax deduction for a gift of land or a conservation easement, the land must: 1) have significant conservation values and support the mission of the conservation organization to which the land or easement was donated; 2) the owner has clear title to the land, and; 3) the restrictions on the use of the land are sufficient to protect the conservation values. These rules are set out by the IRS in IRC Sec. 170(h) and the accompanying Treasury Department regulations.

During the last several years, the U.S. Congress has granted an "enhanced deduction" for donations of conservation easements to a qualified conservation agency or organization, such as the Natural Land Institute. This deduction is 50% of AGI for non-farmers and 100% AGI for farmers, and the deduction can be spread over 16 years instead of six. Efforts are being made to make this enhanced deduction for donated conservation easements permanent, but for now it is approved on a year-to-year basis and often has been extended after the end of the tax year.

The Natural Land Institute cannot make any assurance as to whether the gift of land or a conservation easement will qualify for a federal income tax deduction, what the monetary value of the gift will be that is accepted by the IRS, or what tax benefits you will receive for the charitable deduction. Federal and state tax regulations are complicated, so you should consult with your legal and financial advisors before making any decision about donation of land or a conservation easement. We will work with you and your advisors in order to assure that the gift of land or a conservation easement has lasting conservation benefits, and will qualify for a charitable deduction.

CAPITAL GAINS TAXES

When you sell land, or a conservation easement on land, you will likely have to pay capital gains taxes on the difference between the sale price and what you paid for the land plus any improvements you made, minus depreciation. If the value of your land has greatly appreciated, you may own significant federal capital gains taxes. Illinois taxes capital gains at the same rate as ordinary income as reported on your federal income tax return. A donation of highly appreciated land, or a conservation easement, to a qualified conservation agency or organization such as the Natural Land Institute, may eliminate or reduce the capital gains taxes owed.

ESTATE AND INHERITANCE TAXES

Estate taxes are a hot-button issue, even though most people are not subject to these taxes when they die. The current exemption for federal estate taxes is \$5,340,000 and for Illinois taxes it is \$4,000,000. However, if you own highly appreciated land, the value of your estate that is subject to taxes could easily exceed these thresholds. A donation of the land, or a conservation easement on the land, may reduce or eliminate the estate tax. Illinois has no inheritance tax.

PROPERTY TAXES

Property taxes are strictly a state and local issue. Donation of land will eliminate the need to pay property taxes while the donation of a conservation easement, could reduce the amount of property taxes you pay. Because a conservation easement usually lowers the fair market value of the land, it should also lower the assessed valuation of the property and the property taxes. Illinois law states that land encumbered by a conservation easement that has been certified by the Illinois Department of Natural Resources shall be assessed at $8\frac{1}{3}^{\text{rd}}$ of its fair market value. Land encumbered by a conservation easement that qualifies for the IDNR's Conservation Stewardship Program, is assessed at 5% of its fair market value. However, farmland is assessed based upon its Productivity Index, and wetlands or woodlands are usually assessed at a very low value, so you will probably not see any reduction in property taxes. You should consult with your local tax assessor to determine if a donation of a conservation easement will reduce the land's assessment. Check with the IDNR for information about the Conservation Stewardship Program (www.dnr.state.il.us/Stewardship/instructions.html)

CAUTIONS

Always consult a professional tax advisor or legal counsel before making major financial decisions or donations of land or a conservation easement. The Natural Land Institute cannot give you legal or financial advice, but we will work with you and your advisors to help lay out your options. Tax laws are complex and change frequently. We are not tax or legal professionals, and cannot legally represent your interests in these transactions.

Your gift of land or a conservation easement must have lasting conservation benefits to qualify for a tax deduction. You should make sure your gift meets the requirements of IRS Code Section 170, and/or any other federal or state requirements. We can help to make sure that your gift meets this requirement.

As the donor, you are responsible for determining the value of the donation. You must have a qualified appraiser determine the value of any non-cash gift. If the gift's value exceeds \$5,000, the tax laws require that you get a written appraisal of the value from a qualified appraiser who follows the Uniform Standards of Professional Appraisal Practices. The appraisal must be completed no sooner than 60 days prior to the date of the gift, or after the donation is made indicating the value as of the date of the gift.

You must file IRS tax form 8283 with your income tax return to claim a deduction for a gift of land, a bargain sale or a conservation easement. You should allow enough time for everyone to review and sign the form before the filing deadline. The form is signed first by the appraiser, and then it is signed by NLI and returned to you. We request a copy of the appraisal to review before signing Form 8283. Remember to include a supplemental statement with your return. We can help you with this.

Don't overstate the value or the conservation benefits of your gift. The IRS is very watchful for inflated appraisals, insider deals, and other suspicious transactions, and can impose severe penalties for tax fraud. If NLI has any questions or concerns about the claimed value of the deduction we will discuss them with you, or refuse to sign the tax form. NLI does not knowingly participate in projects where it has significant concerns about the tax deduction being claimed.

Keep the official acknowledgement letter you receive from NLI at the time of your gift. The IRS requires that you retain the letter with your tax records.

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