

*Advisory for Accountants and Attorneys on
Enhanced Conservation Tax Incentives
January 2011*

Congress recently renewed, through 2011, an incentive that enhances the tax benefits of protecting land by donating a voluntary conservation agreement which will preserve natural or historical resources. *See generally*, 26 U.S.C. § 170(h).

These new incentives make it easier for average Americans, including working family farmers and ranchers, to donate the development rights on their land. The incentive:

- Raises the maximum deduction a landowner can take for donating a voluntary conservation easement from **30%** of adjusted gross income (AGI) to **50%**;
- Allows qualifying farmers and ranchers to deduct up to **100%** of their AGI; and
- Increases the number of years over which a landowner can take deductions **from 6 years to 16 years**.

These changes allow landowners to capture more of the tax benefits of their donation. However, unless Congress acts, these enhanced tax benefits will expire December 31, 2011.

What do your clients need to know about voluntary conservation agreements? Here are the basics:

- A voluntary conservation agreement, also known as a conservation easement, is a legal agreement between a landowner and a nonprofit land trust, or other qualified holder, that permanently limits uses of the land in order to protect conservation values. The landowner continues to own the land and may convey it to others. *See generally*, S.C. Code Ann. § 27-8-10 *et seq.*
- When the landowner enters into a voluntary conservation agreement with a land trust, the landowner gives up some of the rights associated with the land, but the terms of the agreement are tailored to fit the land being offered for protection. Future owners also will be bound by the agreement's terms and the land trust is responsible for making sure the terms of the agreement are followed.

- Most conservation agreements do not provide public access to the subject property.
- A conservation donation requires not only a willing donor, but a qualified conservation organization to accept the donation. However, a land trust will not accept a donation that does not fit its mission and purposes.
- A voluntary conservation agreement can help a landowner pass land on intact to the next generation. By limiting the land's development potential, the agreement lowers its market value, which in turn lowers estate tax and property taxes. Whether the agreement is donated during life or by will, it can make a critical difference in the heirs' ability to keep the land intact.
- Donation of a conservation agreement may qualify as a tax-deductible gift if certain public benefits are achieved by permanently protecting important conservation resources and it meets other federal tax code requirements. The amount of the donation is determined with an appraisal considering the value of the property with and without the easement.

South Carolina also allows for income tax deductions similar to those provided under federal law and provides tax credits subject to certain restrictions. *See generally*, S.C. Department of Revenue Form SC SCH.TC-19. Furthermore, conservation easements donated *inter vivos* or post-mortem may receive special treatment under estate tax laws. *See generally*, 26 U.S.C. §§ 2031(c) & 2055.

This advisory is provided by the Pee Dee Land Trust to raise general awareness among accountants and attorneys of the above tax incentives but is not intended to constitute legal advice. For a listing of land trusts serving other regions of South Carolina, see <http://sccbanc.sc.gov/entitlandtrust.html>

About Pee Dee Land Trust

The Pee Dee Land Trust is a 501(c)(3) non-profit organization and its mission is to conserve, and to promote an appreciation of, the significant natural, agricultural, and historical resources of the Pee Dee Region. We work with land owners in Chesterfield, Darlington, Dillon, Florence, Georgetown, Horry, Marion, Marlboro, and Williamsburg counties. If you want to learn more please visit our website: www.peedeelandtrust.org or contact us: P.O. Box 4, Darlington, SC 29540 / 843-661-1135.