

GEORGIA LAND TRUST

Protecting Land for Present & Future Generations

A PROJECT OF THE CHATTOWAH OPEN LAND TRUST



A Professional's Guide to **CONSERVATION EASEMENTS**



June 2004



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CONSERVATION EASEMENTS

A PROFESSIONAL'S GUIDE

A Continuing Education Workshop
Presented by

GEORGIA LAND TRUST

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CONSERVATION EASEMENTS: A PROFESSIONAL'S GUIDE

I. INTRODUCTION

A. Why the need for conservation easements?

Private landowners own a majority of undeveloped land in the southeastern United States. However, private landowners find themselves under increasing financial pressure from taxes, urban sprawl, and unplanned development. Landowners are searching for ways to protect their land for themselves and their heirs while continuing to use the land for their own benefit. To achieve this goal, private landowners use conservation easements as a planning tool at an increasing rate. Conservation easements allow landowners to preserve their property in a natural state, continue traditional land use practices, and potentially take advantage of tax saving opportunities.

State and local governments may use conservation easements as part of the land use planning process. Conservation easements are a tool that can be used for protection of natural resources such as water, trees, and wildlife.

B. Why should professionals be educated on the use of conservation easements?

Accountants, attorneys, financial planners, foresters, and government officials are increasingly faced with clients and constituents who may benefit from the use of a conservation easement. The Georgia Greenspace Program and other federal, state, and local policies encourage the preservation of open space, forest resources, and wildlife habitat, and many of these programs provide incentives for local governments and landowners to use conservation easements.

II. THE BASICS OF CONSERVATION EASEMENTS

A. What is a conservation easement?

A conservation easement is a voluntary legal agreement a property owner makes to restrict the type and amount of development that may take place on his property. Each easement's restrictions are tailored to the particular property and to the interests of the individual owner. The landowner retains ownership of the property, the right to use the property for profit and recreation, and the right to convey (sell, deed, gift) the property to another.

The specific rights a property owner forgoes when granting a conservation easement are spelled out in each easement document. The owner and the prospective easement holder identify the rights and restrictions on use that are necessary to protect the property – what can and cannot be done to the land. The owner then conveys the right to enforce those restrictions to a qualified easement recipient, such as a public agency, a land trust, or a historic preservation organization.

B. Why grant a conservation easement?

Conservation easements are granted to protect land or historic buildings from inappropriate development while retaining private ownership. By granting an easement in perpetuity, the owner may be assured that the resource values of his property will be protected indefinitely, no matter who the future owners are. Granting an easement can also yield tax savings.

C. What kind of property can be protected by an easement?

Any property with significant conservation or historic preservation values can be protected by an easement. This includes forests, wetlands, farms and ranches, endangered species habitat, mountains, scenic areas, and historic areas.

D. Who can grant an easement? To whom can they grant it?

Any owner of property with conservation or historic resources may grant an easement. If the property belongs to more than one person, all owners must consent to granting an easement. If the property is mortgaged, the owner may be required to obtain an agreement from the lender to subordinate its interests to those of the easement holder so that the easement cannot be extinguished in the event of foreclosure.

If an easement donor wishes to claim tax benefits for the gift, he must donate or sell it for less than fair market value to a public agency or to a conservation or historic preservation organization that qualifies as a public charity under Internal Revenue Code Section 501(c)(3). Most land trusts and historic preservation organizations meet this requirement.

Holding an easement, however, is a great responsibility. A property owner should make sure that the recipient organization has the time and resources to enforce the easement. An organization that accepts the donation of an easement typically will ask the owner to make a contribution toward the costs of monitoring the easement in perpetuity or will establish a monitoring fund from other sources.

E. How restrictive is an easement?

An easement restricts development to the degree that is necessary to protect the significant conservation values of the particular property. An easement may prohibit all construction, as well as activities that would alter the land's present natural condition, if the goal is to preserve a pristine natural area. If the goal is to protect farm or forest land, however, an easement may restrict subdivision and development while allowing for structures and activities necessary for and compatible with the agricultural or forestry operation. Most easements permit landowners to continue traditional uses of the land.

F. How long does an easement last?

An easement in perpetuity is written to last forever. Under Georgia law, a conservation easement is unlimited in duration unless the instrument creating it provides

otherwise. O.C.G.A. § 44-10-3(c). In Alabama, if no term is stated in the instrument, an easement is deemed to last for the lesser of thirty years or the life of the grantor or until the sale of the property by the grantor. ALA. CODE § 35-18-2(c) (1997). Only gifts of perpetual easements can qualify a donor for income and estate tax benefits, and most land trusts only accept perpetual easements.

An easement runs with the land so that the original owner and all subsequent owners are bound by the terms of the easement. The easement is recorded at the county records office to ensure that all future owners and lenders have notice of the restrictions.

G. What are the responsibilities of the grantee?

The grantee organization or agency is responsible for enforcing the restrictions contained in the easement document. To do this, the grantee monitors the property on a regular basis, typically once a year. A representative of the grantee visits the property to determine whether the property remains in the condition prescribed by the easement and documented at the time of the grant. The grantee maintains written records of the monitoring visits.

If a monitoring visit reveals that the easement has been violated, the grantee has the legal right to require the owner to correct the violation and restore the property to its condition prior to the violation.

H. Does an easement require public access?

Public access is not required for a valid conservation easement. Landowners make their own choice about whether to open their property to the public. Some landowners convey certain public access rights, such as allowing fishing or hiking in specified locations or permitting guided tours at certain times of the year.

If an income tax deduction is to be claimed, however, some types of easements require public access. If the easement is given for recreation or educational purposes, public access is required. For scenic easements, much of the property must be visible to the public, but physical access is not required. Access is generally not required for easements that protect natural habitat or agricultural land.

III. THE TAX IMPLICATIONS OF GRANTING AN EASEMENT

A. The IRS Requirements for Tax Deductions

The donation of a conservation easement is a tax-deductible charitable gift, provided that the easement is perpetual and is donated "exclusively for conservation purposes" to a qualified conservation organization or public agency. Internal Revenue Code Section 170(h) defines conservation purposes to include the following (see the regulations for more detailed explanations):

1. the preservation of land areas for outdoor recreation by, or the education of, the general public
2. the protection of relatively natural habitats of fish, wildlife, or plants,

- or similar ecosystems
3. the preservation of open space – including farmland and forest land – for scenic enjoyment of the general public or pursuant to a clearly delineated governmental conservation policy; in either case, such open space preservation must yield a significant public benefit
 4. the preservation of historically important land areas or buildings.

B. The Allowable Income Tax Deduction

If the property is a long-term capital gain asset (that is, has been held for investment purposes for at least twelve months), the owner may deduct the value of the easement from federal and state income taxes. The easement donor is eligible to deduct an amount equal to thirty percent (30%) of his adjusted gross income each year for a total of six years, or until the value of the gift has been exhausted.

An Example: Mr. and Mrs. Day have their land appraised. The value of the land without an easement is \$500,000. The value with the easement is \$300,000. The income tax deduction will be \$200,000, the difference between the value of the land with and without the easement. Mr. and Mrs. Day have an adjusted gross income of \$150,000 per year. They can take the deduction up to 30% of their AGI per year. Their maximum yearly deduction will be:

$$\$150,000 \text{ (AGI)} \times .30 \text{ (thirty percent)} = \$45,000$$

Mr. and Mrs. Day will take their \$200,000 deduction as follows:

Year 1:	\$45,000 (Year of Donation)
Year 2:	\$45,000
Year 3:	\$45,000
Year 4:	\$45,000
Year 5:	<u>\$20,000</u>
	\$200,000

C. Property Tax

Property tax assessment usually is based on the property's fair market value, which reflects the property's development potential. If a conservation easement reduces the development potential of the property, it may reduce the level of assessment and the amount of the owner's property taxes.

The actual amount of reduction, if any, depends on many factors. Local officials and assessors may influence or determine the decision to award property tax relief to easement grantors. Some local governments are reluctant to provide property tax relief to easement donors due to concern over revenue loss. However, the public benefits resulting from land protection are likely to substantially outweigh the costs of lost revenue to local governments.

The Georgia Uniform Conservation Easement Act (see Appendix A) provides that upon recordation of a conservation easement, the owner is entitled to a revaluation of the

encumbered property so as to reflect the existence of the encumbrance on the next succeeding tax digest of the county. If the owner is aggrieved by a revaluation or lack thereof, he or she may appeal in accordance with Georgia law. O.C.G.A. § 44-10-8.

D. Estate Tax

Many heirs to large tracts of land – farm and forest land in particular – face monumental estate taxes. Even if the heirs wish to keep their property in the existing condition, the federal estate tax is levied not on the value of the property for its existing use, but on its fair market value, usually the amount a developer would pay. The resulting estate tax can be so high that the heirs must sell the property to pay the taxes.

A conservation easement, however, often can reduce estate taxes. If the property owner has restricted the property by a perpetual conservation easement before his death, the property must be valued in the estate at its restricted value. To the extent that its restricted value is lower than its unrestricted value, the value of the estate will be less, and the estate will thus be subject to a lower estate tax.

Even if a property owner does not want to restrict the property during his or her lifetime, the owner can still specify in his will that a charitable gift of a conservation easement be made to a qualifying organization upon the owner's death. Assuming that the easement is properly structured, the value of the easement gift will be deducted from the estate, reducing the value on which taxes are levied. Again, a lower tax results.

E. Special Considerations

1. Third Party Mineral Rights

A donated easement may qualify for a tax deduction if a third party owns the mineral rights to the property, but the tax regulations are more complicated in this circumstance. The regulations allow a deduction if:

- a. Ownership of the surface estate was separated from ownership of the mineral interests before June 13, 1976, and remains so separated up to and including the time of the gift; and
- b. The probability of surface mining occurring on the property is "so remote as to be negligible."

2. Mortgaged Property

In order for a donated easement to qualify for an income tax deduction, IRS regulations require that when a landowner contributes mortgaged property to a qualified organization, the mortgagee must subordinate its rights in the property to the organization's rights to enforce the conservation purposes of the gift in perpetuity. See Treas. Reg. § 1.170A-14(g)(2).

IV. CONSERVATION EASEMENT APPRAISALS

A. The Appraisal Requirements

To determine the value of the easement donation, the owner has the property appraised both at its fair market value without the easement restrictions and at its fair market value with the easement restrictions. The difference between these two appraised values is the easement value. Federal law imposes substantiation and reporting requirements for charitable gifts of appreciated property in excess of \$5,000. The Internal Revenue Code requires the use of a "qualified" appraiser for easement donations valued in excess of \$5,000. The appraiser must be knowledgeable in making appraisals of land similar to the donated land and must be someone other than the easement grantor or grantee. The donor must also file Form 8283 with the tax return for the year in which the deduction is claimed. *See Internal Revenue Code, 26 USC § 170 and Treasury Regulations §§ 1.170A-13 and 1.170A-14.*

B. What is the penalty for a bad appraisal?

An easement donor may face penalties for overvaluing an easement donation. If the valuation claimed on the taxpayer's return is 150 percent or more of the valuation determined by the IRS, the taxpayer must pay the additional tax due, plus a penalty of 30 percent of the additional liability. The appraiser may also be penalized. The IRS may waive the penalty if conditions prove that a real effort was made to arrive at a valid value.

An Example (from The Conservation Easement Handbook 54): A taxpayer claims that the fair market value of a donated conservation easement is \$100,000. Upon audit, the IRS determines the value to be \$50,000. As a result of the lower deduction, the taxpayer owes the government an additional tax. Further, because the valuation claimed on the return is more than 150 percent of the correct valuation (150 percent of \$50,000 is \$75,000), the penalty applies. The penalty is 30 percent of \$20,000 (the additional tax due), or \$6,000. Had the correct valuation been \$70,000, the penalty would not apply, because the claimed valuation (\$100,000) was not more than 150 percent of the correct valuation (150 percent of \$70,000 is \$105,000).

V. HOW DOES THE EASEMENT PROCESS WORK?

A. Tour the property to determine whether an easement is appropriate.

The potential easement holder must determine if the property meets its criteria for accepting easements. The property owner must decide if he is willing to accept the easement restrictions.

B. Property owner should consult legal and tax advisors.

Not every easement donation will result in a tax savings for the property owner. The legal and tax consequences of an easement donation are dependent on many factors, including the property owner's income and financial situation. Attorneys,

accountants, and other financial professionals must assist in the determination of whether a conservation easement is appropriate for their clients.

C. Baseline Documentation Report must be compiled.

A Baseline Documentation Report documents the condition and features of the property at the time the easement is created. Compiling baseline data is an IRS requirement for easement donors who plan to take a tax deduction for the value of the gift.

IRS regulations state that when an easement donor retains rights in a property that, if exercised, could impair the conservation values of that property, sufficient baseline data must be provided "to establish the condition of the property at the time of the gift." *See* Treas. Reg. § 1.170A-14(g)(5). Both the donor and the donee must acknowledge the accuracy of this documentation.

D. Obtain title information.

E. Mortgage subordination.

F. Easement restrictions are negotiated and easement is drafted.

G. Obtain a qualified appraisal.

H. Easement is signed and recorded.

Georgia Uniform Conservation Easement Act

ARTICLE 1

UNIFORM CONSERVATION EASEMENTS

44-10-1. Short title.

This article shall be known and may be cited as the "Georgia Uniform Conservation Easement Act."

44-10-2. Definitions.

As used in this article, the term:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic, or open-space values of real property; assuring its availability for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property.

(2) "Holder" means:

(A) governmental body empowered to hold an interest in real property under the laws of this state or the United States; or

(B) A charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property.

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

44-10-3. Creation or alteration of conservation easements; acceptance; duration; effect on existing rights and duties; limitation of liability.

(a) Except as otherwise provided in this article, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements, except that a conservation easement may not be created or expanded by the exercise of the power of eminent domain.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(c) Except as provided in subsection (c) of Code Section 44-10-4, a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

(e) The ownership or attempted enforcement of rights held by the holder of an easement shall not subject such holder to any liability for any damage or injury that may be suffered by any person on the property or as a result of the condition of such property encumbered by a conservation easement.

44-10-4. Actions affecting easements; parties; power of court to modify or terminate easement.

(a) An action affecting a conservation easement may be brought by:

(1) An owner of an interest in the real property burdened by the easement;

(2) A holder of the easement;

(3) A person having a third-party right of enforcement; or

(4) A person authorized by other law.

(b) The easement holder shall be a necessary party in any proceeding of or before any governmental agency which may result in a license, permit, or order for any demolition, alteration, or construction on the property.

(c) This article does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

44-10-5. Validity of easement.

A conservation easement is valid even though:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to another holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden;

(5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) The benefit does not touch or concern real property; or

(7) There is no privity of estate or of contract.

44-10-6. Interests covered by article; interests not invalidated by article.

(a) This article applies to any interest created after July 1, 1992, which complies with this article, whether designated as a conservation or facade easement, or as a covenant, protective covenant, equitable servitude, restriction, easement, or otherwise.

(b) This article applies to any interest created before July 1, 1992, if such interest would have been enforceable had such interest been created after July 1, 1992, unless retroactive application contravenes the Constitution or laws of this state or the United States.

(c) This article does not invalidate any interest, whether designated as a conservation or preservation or facade easement or as a covenant, protective covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this

state.

44-10-7. Construction and application of article to effect uniformity of laws.

This article shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of this article among states enacting it.

44-10-8. Recordation of easements; revaluation of encumbered property; appeals.

A conservation easement may be recorded in the office of the clerk of the superior court of the county where the land is located. Such recording shall be notice to the board of tax assessors of such county of the conveyance of the conservation easement and shall entitle the owner to a revaluation of the encumbered real property so as to reflect the existence of the encumbrance on the next succeeding tax digest of the county. Any owner who records a conservation easement and who is aggrieved by a revaluation or lack thereof under this Code section may appeal to the board of equalization and may appeal from the decision of the board of equalization in accordance with Code Section 48-5-311.

URBAN CONSERVATION EASEMENT

This instrument prepared by,
Return to:
Katherine Eddins
Chattowah Open Land Trust, Inc.
226 Old Ladiga Road
Piedmont, Alabama 36272

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (this "Deed") is made this ____ day of _____, 200_ by _____, having an address of _____ referred to herein as the "Grantor", in favor of THE CHATTOWAH OPEN LAND TRUST, INC, a nonprofit corporation organized and existing under the laws of Georgia, as a tax exempt public charity under Section 501(c)(3) of the Internal Revenue Code, qualified under section 170(h) of the Internal Revenue Code to receive qualified conservation contributions, with an address of 135 Christopher's Run Alpharetta, Georgia 30004, which together with its successors and assigns, is referred to herein as the "Grantee."

W I T N E S S E T H:

WHEREAS, Grantors are the sole owners in fee simple of certain real property in _____ County, Georgia, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"), approximately ____ acres; and

WHEREAS, the Property in its present state has not been developed and possesses significant natural, scenic, aesthetic, historical, cultural, watershed, wildlife, forest, open space and plant habitat features, and ecological air and water quality values (collectively the "Conservation Values"). In particular,

- The preservation of open space for the scenic enjoyment of the community at a time when most available opens space is being subdivided for housing and similar development.

Grantor _____ Date _____

1

Grantee _____ Date _____

- The preservation of older growth forest present on property which provides a greenspace buffer to Emory Forest, a permanently protected older growth forest.
- The protection of a creek which currently runs through property and feeds into the south fork of Peachtree Creek.
- The preservation of the spacious character and uniqueness of the community.

WHEREAS, said Conservation Values are of great importance to Grantor, the people of _____ County, the people of the State of Georgia, and the public in general, and are worthy of preservation; and

WHEREAS, the preservation of the Property in its present state will clearly enhance and preserve the Conservation Values; and

WHEREAS, in preservation of this open space is in keeping with Georgia Conservation Easement Law [GA Code Sec. 44-10-1 et seq.].

WHEREAS, the Conservation Values of the Property are documented in an inventory of relevant features of the Property, on file at the offices of Grantee and incorporated by this reference (the "Baseline Documentation"), which inventory consists of a collection of reports, maps, photographs, and other documentation which the parties agree provide, collectively, an accurate representation of the Property at the time of this Easement and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement; and

WHEREAS, Grantor intends that the Conservation Values of the Property be preserved and maintained by the continuation of land use patterns existing at the time of this Easement, that do not significantly impair or interfere with said Conservation Values; and

WHEREAS, Grantor further intends, as the owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity in substantially its existing state; and

Grantor _____ Date _____

Grantee _____ Date _____

WHEREAS, by this Easement, Grantor and Grantee mutually intend that the Property be preserved in perpetuity in substantially its existing state, thereby furthering conservation protection and the preservation of a “relatively natural habitat of fish, wildlife, or plants or similar ecosystem” (as used in section 170(h) of the Internal Revenue Code), and the preservation of open space for scenic enjoyment, which preservation will yield a significant public benefit; and

WHEREAS, Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purposes include the preservation and conservation of areas such as the Property in order to preserve the Conservation Values; and

WHEREAS, Grantee is a qualified "holder" within the meaning of O.C.G.A. § 44-10-2(2); and

WHEREAS, Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come;

NOW, THEREFORE, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) in hand paid at or before the sealing of these presents, the mutual intentions expressed in the foregoing recitals, the mutual covenants, terms, conditions and restrictions herein contained and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and pursuant to Official Code of Georgia Annotated §§ 44-10-1 et seq., which expressly authorizes the conveyance herein contained, Grantor has freely and voluntarily granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does freely and voluntarily grant, bargain, sell, alien, convey and confirm, unto Grantee and its successors and assigns, a perpetual, irrevocable, non-exclusive conservation easement (the "Conservation Easement") over, across and through the Property for the purposes hereinafter set forth. Grantee, by its execution hereof, accepts the foregoing grant of the Conservation Easement, and the recordation of this Deed shall constitute a "recordation of the acceptance" by Grantee within the meaning of O.C.G.A. § 44-10-3(b). Upon the recordation hereof, Grantee shall be entitled to enforce the Conservation Easement pursuant to O.C.G.A. § 44-10-4.

Grantor _____ Date _____

Grantee _____ Date _____

A. PURPOSE

It is the purpose of this Conservation Easement to assure that the Property will be retained forever predominantly in its present scenic, aesthetic and undeveloped condition, and with its Conservation Values intact, and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, as generally defined in the Baseline Documentation. Grantor intends that this Deed of Conservation Easement will confine the use of the Property to such activities as are consistent with the purpose of this Conservation Easement.

B. RIGHTS OF GRANTEE

To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Deed:

- (1.) To preserve and protect the Conservation Values of the Property;
- (2.) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of the Conservation Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property;
- (3.) To enter upon the Property up to two (2) times per calendar year, but only upon prior permission by Grantor and at a time reasonably convenient to the inhabitants of the Property, for the purpose of escorting a small group of people onto the Property for educational purposes, including without limitation a guided tour of the Property or lectures on the wildflowers and natural habitats located on the Property; provided that Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and
- (4.) To prevent any activity on or use of the Property that is inconsistent with the purpose of the Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to Paragraph 7 hereof.

C. RESERVED RIGHTS

Notwithstanding any of the provisions herein to the contrary, and in addition to any other rights or interests reserved to the Grantor by law, the following Reserved Rights are reserved by and for the

Grantor _____ Date _____

Grantee _____ Date _____

Grantor, to be exercised in a manner and scope consistent with that in which they have heretofore been exercised:

1. The right to sell, give or otherwise convey the Protected Property, provided any such conveyance is subject to the terms of this Conservation Easement and written notice is provided to the Grantee in accordance with this Conservation Easement. Notwithstanding anything contained herein to the contrary, division, subdivision or defacto division (through sales or long term leases) of the Protected Property is prohibited without the prior written consent of the Grantee, which consent may be withheld in the Grantee's sole discretion.

2. The right to cut, burn, salvage or remove from the Property only (a) nuisance exotic or non-native species plants, (b) such trees, shrubs, and herbaceous vegetation which have fallen or threaten to fall across a trail or other improvement, and (c) other dead trees resulting from natural decline, high wind, tornado or insect damage, with the prior written consent of the Grantee. Removal must be completed with minimum impact upon surrounding vegetation and soil. Consent may be withheld in the event the actions being taken are deemed contrary to the intentions and precepts of the Conservation Values outlined in this easement.

3. The right to the continued use and enjoyment of the Protected Property for non- commercial recreational purposes, which do not result in injury to a conservation value, and are consistent with the purposes of the Conservation Easement granted to the Grantee hereunder. Specifically, the Grantor has the right to maintain and reasonably improve the current single family residential home and driveway under the following conditions: (a) the structure shall only be used as a single family residential dwelling. This right may be relinquished by Grantor at anytime; (b) the home's footprint shall not exceed $\frac{1}{2}$ acre; (c) if improved, enlarged, or demolished and a new single family structure built on the same site as the current structure, the square footage of the home shall not exceed 2,200 square feet; (d) only one (1) outbuilding shall be allowed in said $\frac{1}{2}$ acre home footprint, but not erected within 100 feet of said Creek that runs through property and is described as in Baseline Documentation (Exhibit A). (e) the driveway cannot be enlarged, but can be improved or modified if said improvement/modification will enhance the conservation values protected herein; (f) a wooded buffer of 100 feet from the road must be maintained and no trees are allowed to be cut unless for the reasons described in Subsection 2 above. When performing any construction relating to the maintenance of the dwelling, driveway and/or

creek, Grantor must comply with the existing best management practices as defined by the University of Georgia or the Natural Resources Conservation Service.

4. Such other rights and privileges incident to ownership of the Protected Property which are not prohibited in this Conservation Easement, do not result in injury to the conservation value and are consistent with the purposes of the Conservation Easement are granted to the Grantee hereunder.

D. AFFIRMATIVE RIGHTS

To accomplish the purposes of the Conservation Easement, this Conservation Easement conveys the following rights to the Grantee:

1. The right of the Grantee to have visual access to and view the Protected Property in its natural, scenic, open and undisturbed condition.

2. The right of the Grantee, in a reasonable manner and at reasonable times, to enter the Protected Property for the purposes of (a) inspecting the same to determine compliance herewith, (b) preserving and protecting in perpetuity the conservation values of the Protected Property, (c) enforcing by proceedings at law or in equity the covenants hereinafter set forth, including, but not limited to, the right to require the Protected Property to be maintained in a condition essentially the same as its condition at the time of this grant, subject to the Grantor's permitted activities, (d) taking any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof, and (e) observing and studying nature and making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by the Grantor.

The Grantee shall at any time have the right to take action as may be necessary to insure compliance with the covenants and purposes of this grant and does not waive or forfeit that right by any prior failure to act. Nothing herein shall be construed to entitle the Grantee to institute any proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control such as changes caused by fire, floods, storm or unauthorized wrongful acts of any third person.

3. The right of the Grantee, but not the obligation, in a reasonable manner and at reasonable times, to enter the Protected Property to establish and monitor research projects, and to manage them if necessary, subject to, and without interfering with, the Grantor's permitted activities and provided such activities are consistent with the conservation objectives set forth herein.

Grantor _____ Date _____

Grantee _____ Date _____

4. The right of the Grantee to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Conservation Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, subject to Grantor's permitted activities set forth herein.

E. PROHIBITED USES

In furtherance of the foregoing affirmative rights, the Grantor, with the intent that the following prohibited uses shall run with and bind the Protected Property in perpetuity, agrees that, any activity on or use inconsistent with the purposes of this Conservation Easement as set forth in **SECTION A** hereof is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

1. Uses. There shall be no agricultural, commercial or industrial activity undertaken or allowed on the Protected Property. Any uses of the Protected Property and any activities thereon which, in the reasonable opinion of the Grantee, are or may become inconsistent with the purposes of this grant as set forth in **SECTION A** hereof, being the preservation of the Protected Property predominantly in its natural condition and the protection of environmental systems, are prohibited.

2. Structures. There shall be no advertising signs, billboards, or other advertising Material on the Protected Property. There shall be no construction or placing of docks, bridges, piers or other structures, except as expressly allowed under "Reserved Rights." There shall be no construction or placing of temporary or permanent buildings, mobile homes or other structures on the Protected Property.

3. Roads and Trails. There shall be no construction of any vehicular roads or trails on the Protected Property. There may be construction of non-vehicular trails with the prior written consent of Grantee.

4. Timber. There shall be no timber harvesting.

5. Topography. There shall be no filling, excavating, dredging, mining, drilling or surface removal of topsoil, sand, gravel, rock, peat, minerals or other materials, nor any dumping of trash, garbage, or any other unsightly or offensive material or any change in the topography of the Protected Property in any manner.

6. Minerals. There shall be no removal of minerals.

Grantor _____ Date _____

Grantee _____ Date _____

7. Vegetation. There shall be no removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of any vegetation or fungi, nor disturbance or change in the natural habitat in any manner, except as expressly allowed under "Reserved Rights". There shall be no planting or introduction of any non-native species of vegetation. The parties acknowledge the importance of controlling exotic and non native species on the Protected Property to preserve the conservation values. Grantor will use reasonable efforts to control the spread of exotic and non-native species on the Protected Property.

8. Waters and Hydrology. There shall be no disruption, alteration, pollution, depletion, or extraction on the Protected Property of existing surface or subsurface water flow or natural water sources.

9. Vehicles. There shall be no operation of dune buggies, motorcycles, all-terrain vehicles or any other types of motorized vehicles on the Protected Property.

10. Soil Disturbance. There shall be no soil disturbing activities such as plowing. As more fully outlined above, soil may be disturbed to maintain the existing home and one (1) allowed outbuilding.

F. GRANTEE'S REMEDIES

In the event that the Grantee becomes aware of a violation of the terms of this Conservation Easement, the Grantee shall give notice to the Grantor, at Grantor's last known post office address, of such violation via certified mail, return receipt requested, and request corrective action sufficient to abate such violation and restore the Protected Property to its previous condition. Failure by the Grantor to cause discontinuance, abatement or such other corrective action as may be requested by the Grantee within thirty (30) days after receipt of such notice shall entitle the Grantee (a) to bring an action at law or equity to enforce the terms of this Conservation Easement in a court of competent jurisdiction in the county where the Protected Property is located, (b) to require the restoration of the Protected Property to its prior condition, (c) to enjoin such non-compliance by ex parte temporary or permanent injunction in a court of competent jurisdiction in the county where the Protected Property is located, and/or (d) to recover any damages arising from such noncompliance. If such court determines that the Grantor has failed to comply with this Conservation Easement, the Grantor shall reimburse the Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorneys fees, in addition to any other payments ordered by such court.

Grantor _____ Date _____

Grantee _____ Date _____

If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Protected Property, the Grantee may pursue its remedies under this section without prior notice to the Grantor or without waiting for the period for cure to expire.

The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this Conservation Easement by any prior failure to act and the Grantor hereby waives any defense of laches with respect to any delay by the Grantee in acting to enforce any restriction or exercise any rights under this Conservation Easement. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, floods, storm or the unauthorized wrongful acts of third persons.

G. DEVELOPMENT RIGHTS

Except as is set forth above, Grantor hereby grants to the Grantee all the development rights that are now or hereafter allocated to, implied, reserved or inherent in the Protected Property, and the parties agree that such rights are terminated and extinguished, and may not (by Grantor or the Grantee or both of them) be used on or transferred to any portion of the Protected Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Protected Property or any other property.

H. GENERAL PROVISIONS

1. The Grantor agrees that the terms, conditions, restrictions, and purposes of this grant will be inserted by it in any subsequent deed or other legal instrument by which the Grantor divests itself of either fee simple, or its possessor interest in, all or portions of, the Protected Property and that such successor in interest shall assume all rights and responsibilities of the Grantor hereunder. In addition, the Grantor will notify the Grantee, its successors or assigns of any such conveyance.

Grantor _____ Date _____

Grantee _____ Date _____

2. The Grantor and Grantee have executed a Baseline Documentation Report-prepared by the Grantee establishing the baseline condition of the Protected Property at the time of this grant, as provided in Treas. Reg. 1.170A-14(g)(5)..

3. Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or to use the Protected Property or any portion thereof.

4. The Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property. The Grantor shall keep the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by the Grantor.

The Grantor agrees to release, hold harmless, defend and indemnify the Grantee from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which the Grantee may suffer or incur as a result of or arising out of the activities of the Grantor on the Protected Property. The Grantee agrees to release, hold harmless, defend and indemnify the Grantor from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which the Grantor may suffer or incur as a result of or arising out of the sole negligence of the Grantee on the Protected Property.

5. The Grantor agrees to pay any real estate taxes or other assessments levied on the Protected Property. If the Grantor becomes delinquent in payment of said taxes or assessments, such that a lien against the land is created, the Grantee, at its option, shall, after written notice to the Grantor, have the right to take such actions as may be necessary to protect the Grantee's interest in the Protected Property and to assure the continued enforceability of this Conservation Easement.

6. The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Protected Property in fee simple and has good right to grant and convey this Conservation Easement; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, a mortgage or mortgages covering all or any part of the Protected Property, and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement.

7. The Grantor covenants and represents that, to the best of its knowledge, no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that there are not now any underground storage tanks located on the Protected Property.

Grantor _____ Date _____

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Grantee _____ Date _____

8. Grantor shall comply with, and ensure that the Protected Property at all times complies with, the requirements of all Federal, State and local laws applicable to the Protected Property.

9. The covenants agreed to and the terms, conditions, restrictions and purposes imposed with this grant as well as the reserved uses and rights of Grantor shall not only be binding upon and inure to the benefit of the Grantor but also their lessees, agents, heirs, successors and assigns, and all other successors to the Grantor in interest and shall be binding upon and inure to the benefit of the Grantee, its successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property. The benefits shall be in gross and assignable only to an organization that is a qualified private organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated hereunder, and authorized to acquire and hold conservation easements under Section 501(c)(3) and 170(h) of the Internal Revenue Code (or any successor provision then applicable). If Grantee chooses to assign its rights and obligations set forth herein, Grantee shall work with Grantor to find a mutually agreeable successor. As a condition precedent to any such transfer, Grantee and its successors and assigns shall require a specific written assumption of and agreement to be bound by this Deed from each transferee hereunder, which assumption shall state that the purposes that the Conservation Easement is intended to advance shall continue to be carried out by such transferee. A copy of each such assumption shall be sent to grantor or the heirs, executors, administrators, personal representatives, successors or assigns of Grantor.

10. The Grantor and the Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in Protected Property.

11. In the event of transfer, there shall be assessed by the Grantee, and collected from all purchasers of the Protected Property, a transfer fee equal to one (1) percent of the sales price or other consideration paid in connection with the transfer of any interest in such Protected Property, which transfer fee shall be paid to the Grantee at the time of the transfer. This sum shall be placed in Grantee's stewardship fund, or such similarly named successor fund, to finance Grantee's efforts to uphold its duties and responsibilities under the Easement on the Protected Property as well as on Grantee's other protected properties. In the event of non-payment of such transfer fee, Grantee shall have the right to file a lien for such unpaid transfer fees which shall be a lien on the Protected Property but which lien shall be subordinate to this Easement and to the lien of any first mortgage on the Protected Property. Any such lien may be enforced and/or foreclosed in accordance with the laws of the State of Georgia.

Grantor _____ Date _____

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Grantee _____ Date _____

Grantee may require the Grantor and/or any subsequent purchaser to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deeds or other such evidence. Any transfer subsequent to the conveyance of this conservation easement without consideration shall be exempt from the assessment of such transfer fee. An exchange of properties pursuant to Code §1031, or similar statute, shall be deemed to be for consideration based on the market value of the property received at the time of such transfer. Market value shall be determined by agreement of the Grantor and the Grantee, or in the absence of such agreement, by an MAI appraiser selected by the Grantee, whose appraisal fee shall be paid by the Grantee. Any transfer to Chattowah Open Land Trust shall be exempt from the assessment of such transfer fee.

12. For purposes of compliance with Treasury Regulations Section 1.170A-14(g)(6)(ii), the Grantor hereby agrees that at the time of the conveyance of this Conservation Easement to the Grantee, this Conservation Easement gives rise to a real property right, immediately vested in the Grantee, with a fair market value of said Conservation Easement as of the date of the conveyance that is at least equal to the proportionate value that this Conservation Easement at the time of the conveyance bears to the fair market value of the Property as a whole at the time.

The Proportionate value of the Grantee's property rights shall remain constant. When a change in conditions which makes impossible or impractical any continued protection of the Protected Property, for conservation purposes, and the restrictions contained herein are extinguished by judicial proceeding, the Grantee, upon a subsequent sale, exchange or involuntary conversion of the Protected Property, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Conservation Easement. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in and defined under P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended and in regulations promulgated thereunder.

13. Any notices required in this Conservation Easement shall be sent by registered or certified mail, postage prepaid, to the following addresses or such address as may be hereafter specified by notice in writing:

GRANTOR(S):

GRANTEE:

Chattowah Open Land Trust
135 Christopher's Run
Alpharetta, GA 30004

Grantor _____ Date _____

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Grantee _____ Date _____

14. In the event any provision of this grant is determined by an appropriate court to be void and unenforceable, all remaining terms shall remain valid and binding.

15. The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for enforcement of this Conservation Easement.

16. The term "Grantor" shall include the Grantor and its heirs, successors and assigns. The term "Grantee" shall include The Chattowah Open Land Trust and its successors and assigns.

17. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement in the public records of _____ County, Georgia and Grantor agrees to execute, acknowledge and deliver such further instruments as may be reasonably required to assure the perpetual enforceability of this Conservation Easement.

18. The Grantee hereby represents and warrants to Grantor that the Grantee constitutes a qualified conservation organization under the terms of provisions of Section 170(h) of the Internal Revenue Code and the regulations promulgated thereunder.

19. If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Conservation Easement; provided that no amendment shall be made that will adversely affect the qualification of this Conservation Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c) (3) of the Internal Revenue Code and Georgia law. Any such amendment shall be consistent with the purposes of this Conservation Easement, shall not affect its perpetual duration, and shall result in greater protection of the conservation values on the Protected Property. Nothing in this section shall require Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

TO HAVE AND TO HOLD this Conservation Easement, together with all and singular the appurtenances and privileges belonging or in any way pertaining thereto, either in law or in equity, either in possession or expectancy, for the proper use and benefit of the Grantee forever.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed and sealed this document the day and year first above written.

GRANTOR:

Signed, Sealed, and Delivered before me this _____ day of _____, 2004.

Grantor _____ Date _____

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Grantee _____ Date _____

Witness

STATE OF GEORGIA
COUNTY OF _____

I, _____, a Notary Public in and for the said County in said State, hereby certify that -
_____, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged
before me on this day that, being informed of the contents of the conveyance, he executed the same
voluntarily on the day the same bears date.

Given under my hand this _____ day of _____, A.D., 200.

Notary Public

My Commission Expires:

Witness

STATE OF GEORGIA
COUNTY OF _____

I, _____, a Notary Public in and for the said County in said State, hereby certify
that _____, whose name is signed to the foregoing conveyance, and who is known to me,
acknowledged before me on this day that, being informed of the contents of the conveyance, he executed
the same voluntarily on the day the same bears date.

Give under my hand this _____ day of _____, A.D., 200_.

Notary Public

My Commission Expires:

Grantor _____ Date _____

Grantee _____ Date _____

GRANTEE: The Chattowah Open Land Trust, Inc., a nonprofit corporation organized and existing under the laws of Georgia

BY:

Rick Gilbert
Its: President

Witness

STATE OF GEORGIA

COUNTY OF _____

I, _____, a Notary Public in and for the said County in said State, hereby certify that Rick Gilbert, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he with full authority executed the same voluntarily on the day the same bears date.

Give under my hand this _____ day of _____, A.D., 200_.

Notary Public
My Commission Expires:

Debra Gilbert
Secretary

Witness

I, _____, a Notary Public in and for the said County in said State, hereby certify that, Debra Gilbert, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she with full authority executed the same voluntarily on the day the same bears date.

Give under my hand this _____ day of _____, A.D., 200_.

Notary Public
My Commission Expires:

Grantor _____ Date _____

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Grantee _____ Date _____

EXHIBIT A
LEGAL DESCRIPTION

Grantor _____ Date _____

Grantee _____ Date _____

**AGRICULTURAL/FORESTRY
CONSERVATION EASEMENT**

This instrument prepared by,
Return to:
Katherine Eddins
Chattowah Open Land Trust, Inc.
226 Old Ladiga Road
Piedmont, Alabama 36272

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (this "Deed") is made this ___th day of ___, 200_, by and between _____, having an address at _____ (the "Grantor"), in favor of THE CHATTOWAH OPEN LAND TRUST, INC, a nonprofit Georgia corporation, authorized to do business in Georgia, and having an address at 135 Christopher's Run, Alpharetta, Georgia 30004("Grantee").

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in _____ County, Georgia, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, _____ acres more or less (the "Property"); and

WHEREAS, the Property in its present state has not been developed and possesses significant agricultural, natural, scenic, aesthetic, historical, cultural, watershed, wildlife, forest and open space and plant habitat features, and ecological air and water quality values (collectively the "Conservation Values"). In particular, said Conservation Values include:

- The preservation of open space for the scenic enjoyment of the general public from a paved County Roads _____.
- The protection of a relatively natural habitat of upland mixed pine and hardwood forest and bottomland and riparian forest for migratory birds and other wildlife.
- The preservation of a land area of historic importance. Relatively large tracts of forestland such as this are rapidly disappearing from the landscape in and around this area, which is near the ___ corridor.
- The property is part of a larger ___ protection effort. Several farms and forests near this farm are also being protected with conservation easements.
- Adjoins national forest..

Grantor _____ Date _____

Grantee _____ Date _____

WHEREAS, said Conservation Values are of great importance to Grantor, the people of _____ County, the people of the State of Georgia, and the public in general, and are worthy of preservation; and

WHEREAS, the preservation of the Property in its present state will clearly enhance and preserve the Conservation Values; and

WHEREAS, preservation of this open space is in keeping with the following clearly delineated governmental conservation policies:

Georgia Conservation Easement Law [GA Code Sec. 44-10-1 et seq.];

The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. Section 4201, *et seq.*

WHEREAS, the Conservation Values of the Property are documented in an inventory of relevant features of the Property, on file at the offices of Grantee and incorporated by this reference (the "Baseline Documentation"), which inventory consists of a collection of reports, maps, photographs, and other documentation which the parties agree provide, collectively, an accurate representation of the Property at the time of this Easement and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement; and

WHEREAS, Grantor intends that the Conservation Values of the Property be preserved and maintained by the continuation of land use patterns existing at the time of this Easement, including, without limitation, those relating to timber and wildlife management existing at the time of this Easement; and

WHEREAS, Grantor further intends, as the owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity in substantially its existing state; and

WHEREAS, by this Easement, Grantor and Grantee mutually intend that the Property be preserved in perpetuity in substantially its existing state, thereby furthering conservation protection and the preservation of open space for the scenic enjoyment of the general public, which preservation will yield a significant public benefit; and

WHEREAS, Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Section 501(c)(3) and 170(h)(3) of the Internal Revenue Code, whose primary purposes include the preservation and conservation of areas such as the Property in order to preserve the Conservation Values; and

WHEREAS, Grantee is a qualified "holder" within the meaning of O.C.G.A. § 44-10-2; and

WHEREAS, Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come;

Grantor _____ Date _____

Grantee _____ Date _____

NOW, THEREFORE, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) in hand paid at or before the sealing of these presents, the mutual intentions expressed in the foregoing recitals, the mutual covenants, terms, conditions and restrictions herein contained and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and pursuant to the Official Code of Georgia Annotated §§ 44-10-1 et. seq., which expressly authorizes the conveyance herein contained, Grantor has freely and voluntarily granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does freely and voluntarily grant, bargain, sell, alien, convey and confirm, unto Grantee and its successors and assigns, a perpetual, irrevocable, non-exclusive conservation easement (the "Conservation Easement") over, across and through the Property for the purposes hereinafter set forth. Grantee, by its execution hereof, accepts the foregoing grant of the Conservation Easement, and the recordation of this Deed of Conservation Easement shall constitute a "recordation of the acceptance" by Grantee within the meaning of O.C.G.A. § 44-10-3(b). Upon the recordation hereof, Grantee shall be entitled to enforce the Conservation Easement pursuant to O.C.G.A. § 44-10-4.

1. Purpose. It is the purpose of this Conservation Easement to assure that the Property will be retained forever predominantly in its present scenic, aesthetic, agricultural and undeveloped condition, and with its Conservation Values intact, and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, as generally defined in the Baseline Documentation. Grantor intends that this Deed will confine the use of the Property to such activities as are consistent with the purpose of this Conservation Easement.

2. Rights of Grantee. To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Deed:

(a) To preserve and protect the Conservation Values of the Property;

(b) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of the Conservation Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of the Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to Paragraph 7 hereof.

3. Use Limitations. Any activity on, or use of, the Property which is inconsistent with the purpose of this Conservation Easement is prohibited. The Property shall be maintained as habitat for wildlife and restricted from any development with buildings or otherwise or any use other than as forest land and agricultural fields, except for purposes, defined in Paragraph 4 below, and also (i) those improvements existing on the Property on the date hereof, (ii) those buildings and improvements expressly approved as set forth in Paragraph 4 hereof, or (iii) any use existing as of the date hereof as documented by the Baseline Documentation. It is mutually agreed and understood, however, that the Conservation Easement permits Grantor and its successors-in-interest to use the Property for all purposes, present and future, not inconsistent with the Conservation Easement. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

Grantor _____ Date _____

Grantee _____ Date _____

(a) The change, disturbance, alteration or impairment of the natural, scenic, and aesthetic features of the Property, except as expressly provided herein.

(b) Any residential, commercial or industrial use of, or activity on, the Property except as expressly set forth herein; or, the legal subdivision of the Property. except with written permission of Grantee.

(c) The construction or maintenance on the Property of any buildings, trailers, mobile homes, structures or other improvements, other than described in Paragraph 4 and as otherwise expressly permitted herein.

(d) The exploration for, or extraction of, oil, gas or other minerals, hydrocarbons, soils or other materials on or below the surface of the Property..

(e) The dumping or other disposal of trash, garbage or other refuse of any nature whatsoever on the Property.

(f) Any use or activity that causes or presents a risk of causing soil erosion or significant water pollution including without limitation excavation, land filling, dredging, and mining, except as described in Paragraph 4 and as otherwise expressly permitted herein. Excavation required for the construction of the improvements expressly permitted herein will also be permitted.

(g) No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, or outdoor recreational uses of the Property, and provided such signs do not significantly impair or interfere with the Conservation Values of the Property.

(h) The construction or extension of utility systems, except that such systems may be constructed at reasonable locations depicted on the Baseline Documentation Report so long as they (i) are constructed to serve the existing buildings and improvements on the Property, or (ii) are constructed to serve the buildings and improvements which may be constructed in compliance with the terms of Paragraph 4 hereof.

(i) Any construction of permanent roads on the Property, or widening of the now existing roads on the Property, shown in said baseline data report, other than the repair and maintenance of the now existing road and trails, construction of firebreaks for silvicultural purposes, or the construction of residential driveways built to serve the new buildings built in accordance with Paragraph 4 hereof.

(j) No commercial antennas, radio towers or the like shall be installed on property.

(k) No harvest area: No harvesting of timber will be allowed within ___ feet of ___ River and ___ feet of ___ Creek or in accordance with the then suggested Best Management

Practices of Georgia, whichever is greater. The goal here is to maintain a permanent forested buffer along said Creek and River.

OR (l) No harvest area: Commercial harvesting of timber is prohibited in the “no harvest areas” more particularly depicted in the baseline documentation report and timber inventory on file at Grantees office. The purpose of this area is to provide a mature bottomland hardwood forest and protected wetland area.

4. Reserved Rights. Grantor reserves to itself, and to its personal representatives, beneficiaries, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) The right to take action reasonably necessary to prevent erosion on the Property or to protect public health or safety.

(b) The right to lease or to give, sell, assign or otherwise transfer the Property by operation of law or by deed, in each case subject and subordinate to this Conservation Easement.

(IF PUBLIC USE IS CONTEMPLATED) The right to construct a trail along the _____ River and to maintain _____ area for use by the public. The general location of said trail and other potential public use areas are set forth in the baseline documentation report. If Grantee chooses to allow public access, he shall indemnify the Grantor from any and all liability connected therewith in accordance with the Paragraph __ below, entitled “HOLD HARMLESS PROVISION”.below. He shall also maintain adequate comprehensive general liability insurance coverage against any and all claims regarding use of said Property by the public.

(c) The right to use the land depicted on the Baseline Documentation Report for “agricultural purposes.” Agriculture shall be performed to the extent reasonably practicable, in accordance with a plan which takes into consideration the topography and soils of the Property. Agricultural management activities shall be in accordance with the then current scientifically based practices, including best management practices, generally recommended by the University of Georgia Cooperative Extension, United States Natural Resource Conservation Service, or other government or private, nonprofit natural resource conservation and management agencies then active. Such agricultural activities shall not significantly impair or interfere with the Conservation Values of the Property. Domestic farm animals may be kept on the property so long as not in sufficient numbers or location so as to cause significant soil erosion problems. Areas may be fenced as needed to contain such domestic animals. Domestic animals will be fenced or otherwise kept out of _____ Creek and _____ River. Agricultural activities, including but not limited to the raising, cultivation and harvesting of plants and the breeding, raising, training, care and sale of livestock, horses, poultry, waterfowl, fish and other domesticated animals, shall be conducted on a traditional scale such as characterized uses of the Property in the past and shall not be conducted as industrial or factory-type agricultural operations or by the continuous confinement of livestock, horses, poultry, waterfowl or fish in tightly confined environments for the purpose of raising, feeding, and

Grantor _____ Date _____

Grantee _____ Date _____

fattening for market. Intense feeding of trout and other game fish that interferes with the ecology of ____ Creek or ____ River is also prohibited.

(d) The right to use the land depicted on the Baseline Documentation Report for "forestry purposes":

Forestry and agricultural operations shall be performed, to the extent reasonably practicable, as is hereinafter specified and in accordance with the following goals, and in a manner that will not significantly impair or interfere with the Conservation Values of the Property. The goals are:

- (1) maintenance of soil productivity;*
- (2) protection of water quality, wetlands, and riparian zones;*
- (3) maintenance or improvement of the overall quality of existing forest products and continued development and maintenance of the Property as a functioning mixed pine hardwood ecosystem, with some areas predominately pine and others predominately hardwood;*
- (4) conservation of scenic quality;*
- (5) protection of the unique or fragile natural areas. These areas are outlined in the Baseline Documentation Report;*
- (6) conservation of native plant and animal species;*
- (7) Large scale clearcutting of the forest shall be prohibited. However, small clearcuts and thinnings will be permitted.*

Forestry, agricultural operations and wildlife management on the Property shall be performed in accordance with a written Land Management Plan consistent with the purposes of this Easement and the goals set forth above. The plan shall be prepared by a registered forester, wildlife biologist or a similar natural resource professional. The Land Management Plan shall be updated by said natural resource professional every 5 years, or prior to a timber harvest or significant change in agricultural activities, whichever is sooner. The plan and all updates will be provided to Grantee and attached to the Baseline Documentation Report as an Addendum.

Forestry and agricultural operations on the Property shall be carried out in accordance with all applicable local, state and federal laws and regulations, and, in accordance with the then current, generally accepted best management practices for the sites, soils, and terrain of the Property. For references, see "Best Management Practices for Forestry in Georgia", or similar successor publications.

Or

(d) The right to use the land depicted on the Baseline Documentation Report and also forth on Exhibit B for "forestry purposes": As set forth above, agriculture, such as row crop and grazing, will be prohibited, except that the Grantor may create a few food plots and wildlife openings for enhancing wildlife habitat and viewing.

Forestry operations shall be performed, to the extent reasonably practicable, as is hereinafter specified and in accordance with the following goals, and in a manner that will not significantly impair or interfere with the Conservation Values of the Property. The goals are:

Grantor _____ Date _____

Grantee _____ Date _____

- (1) maintenance of soil productivity;*
- (2) protection of water quality, wetlands, and riparian zones;*
- (3) maintenance or improvement of the overall quality of existing forest products and continued development and maintenance of the Property as a functioning mixed pine hardwood ecosystem, with some areas predominately pine and others predominately hardwood;*
- (4) conservation of scenic quality;*
- (5) protection of the unique or fragile natural areas;*
- (8) conservation of native plant and animal species;*
- (9) Largescale clearcutting of the forest shall be prohibited. However, small clearcuts and thinnings will be permitted.*

Forestry, and wildlife management on the Property shall be performed in accordance with a written Land Management Plan consistent with the purposes of this Easement and the goals set forth above. The plan shall be prepared by a registered forester, wildlife biologist or a similar natural resource professional. The Land Management Plan shall be updated by said natural resource professional every 5 years, or prior to a timber harvest or significant change in agricultural activities, whichever is sooner. The plan and all updates will be provided to Grantee and attached to the Baseline Documentation Report as an Addendum.

(e) The right to maintain existing uses of the Property.

(f) The right to construct a limited number of new improvements and buildings, in a location and number, and pursuant to conditions, as follows:

(i) No more than ____ single-family residential dwellings, together with reasonable appurtenances typically associated with single-family dwellings, such as garages, barns and sheds, may be built on the Property. The lots related to said single-family residential dwellings shall not exceed ____ acres each. Said lots shall be located within the building envelopes depicted in the baseline documentation report on file at Grantee's office. Grantor reserves the right to construct roads and install utilities to serve said residence in the areas set forth on the baseline documentation report.

(ii) The existing single family home, and all other structures allowed herein may be repaired, reasonably enlarged and maintained as necessary. Said existing single family home is depicted on the baseline documentation report.

(iii) House placement and any construction performed shall be done in such a manner as to minimize damage to the environment and the Conservation Values, and shall be done and approved in accordance with all zoning, governmental and permitting standards. Houses, roads and utilities shall not be placed in locations which significantly interfere with the conservation values set forth herein. Silt fences shall be placed so as to minimize run-off. The Property shall be restored to its pre-construction appearance within a reasonable time period following completion of said construction.

(iv) No trailer homes shall be allowed on the Property.

Grantor _____ Date _____

Grantee _____ Date _____

(g) The right to use the Property for any environmental or educational purpose so long as said purpose or use does not conflict with the other provisions herein.

(h) The right to hunt and fish on the Property.

(i) The right to maintain and reasonably enlarge the existing lakes and ponds on the property, depicted on the Baseline Documentation Report.

(j) Except as expressly provided herein, Grantor retains exclusive access to and use of the Property.

(k) Except as limited in this Deed, Grantor reserves all rights as fee owner of the Property, including, without limitation, the right to use the Property for all purposes not inconsistent herewith; and provided further, that Grantor hereby acknowledges that, pursuant to O.C.G.A. § 44-10-4(b), Grantee is a necessary party in any proceeding of or before any governmental agency which may result in a license, permit or order for any demolition, alteration or construction on the Property.

5. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Conservation Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Deed.

6. Grantee's Approval. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefore. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Deed.

7. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Deed or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Deed, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Deed, to enjoin the violation, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Deed or injury to any Conservation Values protected by this Deed, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Grantee, in its

Grantor _____ Date _____

Grantee _____ Date _____

sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this Paragraph apply equally in the event of either actual or threatened violations of the terms of this Deed, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Deed are inadequate and that Grantee shall be entitled to the injunctive relief described in this Paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Deed, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

8. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Deed against Grantor, including, without limitation, costs of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Deed shall be borne by Grantor, if Grantee prevails in any action to enforce the terms of this deed. If Grantor prevails in any action to enforce the terms of this Deed, Grantor's costs of suit, including, without limitation, reasonable attorneys' fees, shall be borne by Grantee.

9. Grantee's Discretion. Enforcement of the terms of this Deed shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Deed in the event of any breach of any term of this Deed by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Deed or of any of Grantee's rights under this Deed. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

10. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.

11. Acts Beyond Grantor's Control. Nothing contained in this Deed shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, acts of third parties, wildlife, insects and disease of plant, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

12. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

13. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

Grantor _____ Date _____

Grantee _____ Date _____

14. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Deed, and shall furnish Grantee with satisfactory evidence of payment upon request; provided, however, that to the extent that the granting of the Conservation Easement shall entitle Grantor to a revaluation or other tax relief, Grantee agrees to cooperate fully and promptly with Grantor in securing the benefits of the same as such; provided, further, that Grantor shall have no liability for the payment of Taxes, if any, levied upon or assessed against the Conservation Easement. Grantee is authorized but in no event obligated to make or advance any payment of taxes, upon three (3) days' prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the lesser of five percentage points over the prime rate of interest from time to time charged by the largest banking institution in Georgia or the maximum rate allowed by law.

15. Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively the "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of any of the Indemnified Parties; (2) the existence or administration of this Deed.

16. Extinguishment. If circumstances arise in the future such as render the purpose of this Deed impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction pursuant to O.C.G.A. § 44-10-4(c). The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property contemporaneously with, or subsequent to, such termination or extinguishment, shall be determined, unless otherwise provided by Georgia law at the time, in accordance with Paragraph 17 below. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this Deed.

17. Proceeds. This Conservation Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of this Paragraph 17, the parties stipulate to have a current fair market value determined by multiplying the fair market value of the Property unencumbered by the Conservation Easement (minus any increase in value after the date of this Deed attributable to improvements) by the ratio of the value of the Conservation Easement at the time of this Deed to the value of the Property, without deduction for the value of the Conservation Easement, at the time of this Deed, according to that certain Property Appraisal Report, dated _____, 200__ and prepared by _____, _____. The values at the time of this Deed shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this Deed, pursuant to Section 170(h) of the Internal Revenue Code of 1954, as amended. For the purposes of this Paragraph, the ratio of the value of the Conservation

Grantor _____ Date _____

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Grantee _____ Date _____

Easement to the value of the Property unencumbered by the Conservation Easement shall remain constant.

18. Condemnation. If the Conservation Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law and Paragraph 17 above, and Grantor and Grantee agree to join in all necessary and appropriate actions to recover the full value of such condemnation, including all incidental damages.

19. Assignment. The Conservation Easement is transferable, but Grantee may assign its rights and obligations under this Deed only to (Georgia Land Trust, Inc, and if it is not in existence at the time of said assignment) to an organization that is a qualified organization at the time of transfer under Section 170(h)(3) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated there under, and authorized to acquire and hold conservation easements under Section 501(c)(3) and 170(h) of the Internal Revenue Code (or any successor provision then applicable). As a condition precedent to any such transfer, Grantee and its successors and assigns shall require a specific written assumption of and agreement to be bound by this Deed from each transferee hereunder, which assumption shall state that the purposes that the Conservation Easement is intended to advance shall continue to be carried out by such transferee. A copy of each such assumption shall be sent to grantor or the heirs, executors, administrators, personal representatives, successors or assigns of Grantor.

20. Subsequent Transfers and Transfer Fee. Grantor agrees to incorporate the terms of this Deed in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least sixty (60) days prior to the date of such transfer. The failure of Grantor to perform any act required by this Paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way. There shall be assessed by the Grantee, and collected from all purchasers of the Protected Property, a transfer fee equal to one (1) percent of the sales price or other consideration paid in connection with the transfer of any interest in such Protected Property, which transfer fee shall be paid to the Grantee at the time of the transfer. This sum shall be placed in Grantee's stewardship fund, or such similarly named successor fund, to finance Grantee's efforts to uphold its duties and responsibilities under the Easement on the Protected Property as well as on Grantee's other protected properties. In the event of non-payment of such transfer fee, Grantee shall have the right to file a lien for such unpaid transfer fees which shall be a lien on the Protected Property but which lien shall be subordinate to this Easement and to the lien of any first mortgage on the Protected Property. Any such lien may be enforced and/or foreclosed in accordance with the laws of the State of Georgia. Grantee may require the Grantor and/or any subsequent purchaser to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deeds or other such evidence. Any transfer subsequent to the conveyance of this conservation easement without consideration shall be exempt from the assessment of such transfer fee. An exchange of properties pursuant to Code §1031, or similar statute, shall be deemed to be for consideration based on the market value of the property received at the time of such transfer. Market value shall be determined by agreement of the Grantor and the Grantee, or in the absence of such agreement, by an MAI appraiser selected by the Grantee, whose appraisal fee shall be paid by

the Grantee. Any transfer to Chattowah Open Land Trust shall be exempt from the assessment of such transfer fee.

21. Estoppel Certificates. Upon request by Grantee, Grantor shall within twenty (20) days execute and deliver to Grantee any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Deed and otherwise evidences the status of this Easement as may be requested by Grantee.

22. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other hereunder shall be in writing and either served personally or sent by nationally-recognized, overnight courier service or U.S. registered or certified mail, postage prepaid, return receipt requested, addressed as follows (or to such other address(es) as may be specified by any such party to the other hereunder by written notice delivered in accordance with this Paragraph 22:

To Grantor:

To Grantee: The Chattowah Open Land Trust, Inc.
135 Christopher's Run
Alpharetta, Georgia 30004
Attn: Executive Director

Any notice or other communication mailed as hereinabove provided shall be deemed effectively given or received on the date of delivery, if personally served or if delivered by nationally recognized, overnight courier service, or on the date indicated on the return receipt, if sent by U.S. registered or certified mail as described above. If any notice mailed is properly addressed but returned for any reason, such notice shall be deemed to be effective notice given on the date of mailing.

23. Recordation. Grantor and Grantee agree that this Deed shall be promptly recorded in the official records of _____ County, Georgia.

24. Amendment. If circumstances arise under which an amendment to or modification of this Deed would be appropriate, Grantor and Grantee are free to jointly amend this Deed; provided that no amendment shall be allowed that will affect the qualification of this Conservation Easement or the status of Grantee under any applicable laws, including O.C.G.A. § 44-10-1, et.seq., or Section 170(h) of the Internal Revenue Code of 1954, as amended, and any amendment shall be consistent with the purpose of this Deed, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of _____ County, Georgia.

25. General Provisions.

(a) Controlling Law. The interpretation and performance of this Deed shall be governed by the laws of the State of Georgia.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the

Grantor _____ Date _____ 12 Grantee _____ Date _____

purpose of this Deed and the policy and purpose of O.C.G.A. § 44-10-1, et. seq.. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Deed that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Deed, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Deed and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Paragraph 24 hereof.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Joint Obligation. The obligations imposed by this Deed upon Grantor shall be joint and several.

(g) Successors and Assigns: Covenants, Etc. Run With Land. The covenants, terms, conditions and restrictions of this Deed shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns, and shall continue as an easement and servitude running with the Property in perpetuity and enforceable against Grantor and all present and future owners, tenants and other holders of any interest in the Property. The benefits herein conferred upon Grantee shall be in gross and assignable by Grantee, but only in accordance with Paragraph 19 above. The terms "Grantor" and "Grantee", when used herein, shall be deemed to refer to Grantor or Grantee, as the case may be, and its personal representatives, heirs, executors, administrators, successors and assigns.

(h) Termination of Rights and Obligations. A party's rights and obligations under this Deed terminate upon transfer of the party's interest in this Deed or Property pursuant to the terms of Paragraphs 19 and 20 hereof, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(i) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(j) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

Grantor _____ Date _____

Grantee _____ Date _____

(k) Grantor's Representations and Warranties. Grantor hereby represents and warrants that it is seized of the Property in fee simple and has good right to grant and convey the Conservation Easement, that the Property is free and clear of any and all encumbrances, and that Grantee and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of the Conservation Easement.

(l) Baseline Documentation. Grantee acknowledges, by its acceptance of the Conservation Easement, that Grantor's historical and present uses of the Property are compatible with the purposes of the Conservation Easement. In order to establish a present condition of the Conservation Values so as to be able to properly monitor future uses of the Property and assure compliance with the terms hereof, Grantee has prepared or caused to be prepared the Baseline Documentation. The Baseline Documentation shall be used to assist in establishing the condition of the Property as of the date of this Deed. Grantor and Grantee acknowledge and agree that, in the event that a controversy arises with respect to the nature and extent of Grantor's historical and present use or the physical condition of the Property subject to the Conservation Easement as of the date hereof, the parties may look beyond the Baseline Documentation, if necessary, to other relevant or material documents, surveys, reports and other evidence showing conditions at the time of execution of this Deed to assist in the resolution of the controversy.

TO HAVE AND TO HOLD the Conservation Easement unto Grantee and its successors and assigns, together with all and singular the rights, members and appurtenances thereof to the same being, belonging or in anywise appertaining, to the only proper use, benefit of Grantee forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall not only be binding upon Grantor but also its personal representatives, heirs, executors, administrators, successors and assigns, and shall continue as an easement and servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed and sealed this document the day and year first above written.

Signed, Sealed and Delivered in our presence:

GRANTOR:

WITNESS

Print Name:

By:

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public in and for the said County in said State, hereby certify that _____, whose name is signed to the foregoing conveyance, and who is

Grantor _____ Date _____

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Grantee _____ Date _____

known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, with full authority, executed the same voluntarily on the day the same bears date.

Give under my hand this _____ day of _____, A.D., 200_.

Notary Public

My Commission Expires:

Grantor _____ Date _____

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Grantee _____ Date _____

GRANTEE:

The Chattowah Open Land Trust, a nonprofit corporation organized and existing under the laws of Georgia

WITNESS

By: _____
_____(CORPORATE SEAL)
Its: Board President

Print Name

STATE OF GEORGIA
COUNTY OF _____

I, _____, a Notary Public in and for the said County in said State, hereby certify that Rick Gilbert, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance and with full authority, he executed the same voluntarily on the day the same bears date.

Give under my hand this _____ day of _____, A.D., 200_.

Notary Public
My Commission Expires:

WITNESS

By: _____
_____(CORPORATE SEAL)
Its: Secretary

Print Name

STATE OF GEORGIA
COUNTY OF _____

I, _____, a Notary Public in and for the said County in said State, hereby certify that _____, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she, with full authority, executed the same voluntarily on the day the same bears date.

Give under my hand this _____ day of _____, A.D., 200_.

Notary Public
My Commission Expires:

EXHIBIT A –LEGAL DESCRIPTION OF PROPERTY
EXHIBIT B- BASELINE DOCUMENTATION REPORT NOT FILED IN COURT RECORDS
BUT ON FILE AT GRANTEE’S OFFICE

Grantor _____ Date _____

Grantee _____ Date _____

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Grantor _____ Date _____

Grantee _____ Date _____

A GUIDE TO THE TAX BENEFITS
of
DONATING A CONSERVATION EASEMENT
By C. Timothy Lindstrom, Esq.

© May, 2004, by C. Timothy Lindstrom

The Jackson Hole Land Trust

P.O. Box 2897

555 East Broadway, Suite 228

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A GUIDE TO THE TAX BENEFITS OF DONATING A CONSERVATION EASEMENT

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Summary

There are five types of tax benefits available to easement donors and their families, all of which can be enjoyed in combination.

Income Tax Deduction: A gift of a permanent conservation easement to a qualified organization or governmental agency constitutes a charitable contribution and the value of the easement (generally, the difference in the value of the property subject to the easement before and after the easement is put in place) may be deducted from the donor's income for purposes of calculating state and federal income tax.

Income Tax Credits: In some states (e.g. Virginia and Colorado) conservation easements generate credits against state income tax liability. Credits are more powerful incentives than deductions because they represent a direct offset against tax due rather than a reduction of the income against which tax is assessed.

Reduction in Taxable Estate: The restrictions imposed by a conservation easement reduce the value of real property in a decedent's estate. This reduction in value results in estate tax savings.

Exclusion from Taxable Estate: Section 2031(c) of the Internal Revenue Code allows the executor of a decedent's estate to exclude 40% of the value of land subject to a qualified conservation easement, taking into account the reduction in value resulting from the conservation easement. The maximum amount that may be excluded under this provision is \$500,000 per estate.

Reduced Real Estate Tax Assessment: Under the provisions of many state and local laws land subject to a conservation easement is entitled to a lower real estate tax assessment to reflect the restrictions of the easement. This can result in substantial local real estate tax savings.

DESCRIPTION OF A CONSERVATION EASEMENT

Conservation easements are voluntary restrictions on the use of land negotiated by a landowner and a private charitable conservation organization or government agency chosen by the landowner to “hold” the easement (essentially, holding the easement means having the right to enforce the restrictions imposed by the easement).

The terms of conservation easements are entirely up to the landowner and the prospective easement holder to negotiate. However, the Internal Revenue Code establishes requirements that must be met if the donation of an easement is to qualify for federal tax benefits. Many states also grant tax benefits for easement donations that comply with the federal requirements.

Conservation easements do not generally provide third parties, or the public, with the right to access or use the land subject to the conservation easement. Unless the purpose of the easement is the conservation of some feature that is meaningless without public access, such as preservation of a scenic view, no public access is required to qualify for federal tax benefits.

The protection of farm land, ranch land, timber land, and open space (particularly where such land is under residential or commercial development pressure and where local planning identifies such activities as valuable to the community) are typical objectives of conservation easements. In addition, the protection of wetlands, floodplains, important wildlife habitat, scenic views, and historic land areas and structures are also appropriate purposes for easements.

Easements that are permanent, donated by the landowner (or conveyed pursuant to a qualified bargain sale), and that conserve publicly significant natural resource values (described in the preceding paragraph), typically qualify for federal and state tax benefits. The amount of the deduction must be determined by an independent appraisal of the value of the easement.

In addition, easements normally permit the continuation of the rural uses being enjoyed by the landowner at the time of the donation of the easement. Land subject to conservation easement may be freely sold, donated, passed on to heirs and transferred in every normal fashion, so long as it remains subject to the restrictions of the easement. It is also possible to retain some rights to limited residential development (e.g. one unit per 100 acres), so long as the retention of such rights does not conflict with the conservation purposes of the easement.

To qualify for federal and state tax benefits easements must be held either by a federal, state, or local government agency, or by a private charitable organization that has the capacity to enforce the terms of the easement. Such an organization does not need to be an environmental organization. A landowners association could qualify, so long as it is dedicated to the conservation of the features identified in the easement. For example, an association of ranch owners established for the purpose of protecting ranch land and qualifying as a charitable organization under section 501(c)(3) of the Internal Revenue Code would be qualified to hold easements on ranch land if it has the capacity to enforce the easement.

REQUIREMENTS FOR INCOME TAX BENEFITS

Section (§) 170(h) of the Internal Revenue Code (IRC) requires that a conservation easement (often referred to in this Guide as an “easement”) meet the definition of a “qualified conservation contribution” to be eligible for a federal income tax deduction. The Treasury Regulations (Regs) have elaborate provisions controlling eligibility. The provisions of IRC §2031(c) providing federal estate tax benefits also require that an easement comply with §170(h). A detailed summary of §170(h) is contained in the Appendix. An excellent, detailed discussion of the requirements of §170(h) can also be found in *The Federal Tax Law of Conservation Easements*, by Stephen J. Small, published by the Land Trust Alliance.

Generally, to be eligible for federal tax benefits a conservation easement must comply with the following requirements:

1. The easement must convey a “qualified real property interest.”

A “qualified real property interest” includes restrictions (granted in perpetuity) on the use that may be made of the real property. IRC §170(h)(2)(c).

A “perpetual conservation restriction” is “a restriction granted in perpetuity on the use which may be made of real property—including, an easement or other interest in real property that under state law has attributes similar to an easement (e.g. a restrictive covenant or equitable servitude).” Regs §1.170A-14(b)(2). In other words, it is the law of the state in which the easement is donated that dictates the basic form of the easement. 48 states currently have specific enabling legislation for conservation easements (the exceptions, as of 2004, were Wyoming and North Dakota). Easements in states having enabling legislation must comply with the specifics of the enabling legislation to qualify as a “perpetual conservation restriction.”

“Any rights retained by the donation of a perpetual conservation restriction must conform to the requirements of this section.” Regs § 1.170A-14(h)(2).

2. The easement must provide a “qualified conservation contribution.”

“A qualified conservation contribution is the contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes.” Regs §1.170A-14(a).

3. The easement must be in perpetuity.

To be eligible for an income tax deduction the “conservation purposes” advanced by the easement must be protected in perpetuity. Regs §1.170A-14(a).

Note that the requirement that the easement be in perpetuity does not mean that the easement violates the “Rule Against Perpetuities” found in the common or statutory law of many states. The Rule Against Perpetuities requires that interests in real property “vest” in (become owned and possessed by) trust beneficiaries within a specified period of time. Conservation easements “vest” in the easement holder immediately upon recordation of the easement, thereby satisfying the requirements of the Rule.

4. Existing mortgages must be subordinated to the easement.

Existing mortgages must be subordinated to the conservation easement in order for the easement to be deductible. Regs §1.170A-14(g)(2). Although this may appear a difficult requirement to meet, where landowners have sufficient equity in the property being placed under easement it is rarely a problem.

Note that the Regs do not specify when the subordination must occur. Best practice is for the mortgage holder to join in the easement deed. In any event, it seems likely that the subordination must be completed by the date of filing of the tax return on which the easement donation is first deducted.

5. The easement must be conveyed to a “qualified organization.”

“To be considered an eligible donee under this section, an organization must be a qualified organization, have a commitment to protect the conservation purposes of the donation, and have the resources to enforce the restrictions.” Regs §1.170A-14(c).

Qualified organizations include local, state, and federal governmental agencies; and charitable organizations qualified under IRC §501(c)(3).

The easement document must limit any future transfer of the easement to qualified organizations that agree to carry out the conservation purposes of the donation.

The Regs do not preclude a trade organization from establishing a qualified organization to hold easements. For example, in Colorado and Wyoming associations of cattlemen have established land trusts to hold easements on ranch land. In other words, easements may be held by organizations that are not purely environmental.

Although the Regs do not elaborate on what “resources” are required to enforce restrictions, it is unlikely that an organization that has neither staff nor funding to monitor and enforce the terms of conservation easements would comply with this requirement.

6. The easement must advance a qualified “conservation purpose.”

Qualified conservation purposes include the preservation of land areas for outdoor recreation by, or the education of the general public; the protection of a relatively natural habitat for fish, wildlife, or plants; the preservation of certain open space (including farm land and forest land); or the preservation of an historically important land area or certified historic structure. Regs §1.170A-14(d)(1).

7. Requirements for easements protecting “open space.”

Easements protecting “open space” qualify if they fit one of two categories: easements that advance a specific governmental conservation policy and easements protecting scenic values. The Regs contain the following provisions governing easements preserving open space:

“(4) *Preservation of open space* – (i) *In general.* The donation of a qualified real property interest to preserve open space (including farmland and forestland) will meet the conservation purposes test of this section if such preservation is —

“(A) Pursuant to a clearly delineated federal, state, or local governmental conservation policy and will yield a significant public benefit, or

“(B) For the scenic enjoyment of the general public and will yield a significant public benefit.”

Regs §1.170A-14(d)(4)(i).

“Governmental conservation policies” include local agricultural zoning or other specific land use designations recognizing the conservation value of the land. To the extent that there are specific public expenditures associated with these designations, e.g. a real estate assessment program providing tax relief to farms or open space, the policy is stronger and more likely to support the deductibility of the easement. See Regs §1.170A-14(d)(4)(iii).

In order to qualify as a “scenic easement” there must be visual access (not necessarily physical access) by the public to those features of the land considered scenic. See Regs §1.170A-14(d)(4)(ii).

The Regs specifically provide that “A deduction will not be allowed for the preservation of open space . . . if the terms of the easement permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land or with the governmental conservation policy . . .” Regs §1.170-14(d)(4)(v).

The Regs contain unusually detailed requirements for easements the purpose of which is the preservation of open space. See Regs §1.170(d)(4).

8. Uses inconsistent with conservation values must be prohibited.

Generally, a deduction will be denied if the donor has retained rights to the use of land that would permit the destruction of significant conservation values, even if those values are not specifically identified for protection in the easement. The Regs give an example of an easement the purpose of which was to support a government flood control program. The easement permitted the unrestricted use of pesticides that could destroy a naturally occurring ecosystem on the property. The Regs state that such an easement would violate this requirement and would not be deductible. Regs §1.170A-14(e)(2).

A deduction will be denied for open space easements that retain rights to use land that would interfere with the essential scenic qualities of the land or with the governmental policy to be furthered by the easement. See Regs §1.170A-14(d)(4)(v).

However, where uses inconsistent with “significant conservation values” are necessary for the specific conservation purposes of the easement, the reservation of the rights to such uses in the easement will not preclude deductibility. Regs §1.170A-14(e)(3).

9. Public access is not required for most “open space” easements.

Easements to preserve open space pursuant to a governmental conservation policy normally are not required to provide public access in order to be deductible. Regs §1.170A-14(d)(4)(iii)(C).

Only when the purpose of the easement requires public access for there to be a public benefit is access required. Examples of easements requiring public access would be scenic easements (scenic qualities must be publicly visible (Regs §1.170A-14(d)(4)(ii)(B)), or historic easements (public must have at least visual access to the historic area or structure) (Regs §1.170A-14(d)(5)(iv)).

10. No deduction is allowed where surface mining rights are retained.

An easement that reserves the right to recover a “qualified mineral interest” by any surface mining method is not deductible. Regs §1.170A-14(g)(4)(i).

Provided that the easement prohibits surface mining, an exception exists where mineral interests have been severed from the fee and are not owned by the grantor of the easement and the probability of surface mining such minerals is “so remote as to be negligible.” Regs §1.170A-14(g)(4)(ii). A letter from a qualified geologist that the probability of surface mining on property where mineral interests have been separated from the surface “is so remote as to be negligible” provides evidence (not necessarily conclusive) that this condition has been satisfied, in case of an audit.

Note that a right reserved in an easement to remove gravel from a riverbed on the protected property for use in maintaining roads on the property and for use in construction of a permitted structure on the property was considered by the U.S. Court of Claims to be a reserved surface mining right defeating a \$19 million tax deduction. See *Great Northern Nekoosa Corp. v.*

U. S., (38 Fed. Cl. 645, 1997).

11. Reservation of other mining or mineral extraction rights.

No deduction will be allowed where mining rights of any kind inconsistent with the conservation purposes of the easement are retained. No deduction will be allowed for any easement reserving the right to recover any qualified mineral interest by any method that is inconsistent with the conservation purposes of the easement. Regs §1.170A-14(g)(4).

A “qualified mineral interest” is the retention by “any person” of an interest in subsurface oil, gas, or other minerals and the right of access to such minerals. Regs §§1.170A-14(b)(1)(i) and 1.170A-14(g)(4).

However, a deduction will not be denied if the easement retains the right to engage in a form of mining (but not surface mining) that has only a limited, localized impact on the land and that is not irretrievably destructive of significant conservation interests. Regs §1.170A-14(g)(4)(i).

12. An inventory of natural resources is required.

If the donor retains any rights to use the property subject to the easement (e.g. farming, limited residential use, recreational use) a written “natural resource inventory” must be prepared and made available to the donor and the prospective holder of the easement prior to the conveyance of the easement. Regs §1.170A-14(g)(5).

13. Notice requirements.

The easement must require that the donor/landowner notify the easement holder prior to exercising any rights reserved in the easement if such exercise might impair the conservation interests. Regs §1.170A-14(g)(5)(ii).

14. Monitoring of the property must be provided for.

The easement must require that the easement holder have the right to enter the property at reasonable times to inspect the property for compliance with the terms of the easement. Regs §1.170A-14(g)(5)(ii).

15. Enforcement terms required.

The easement must provide the easement holder with the right to enforce the terms of the easement, including the right to require restoration of the property subject to the easement to the condition that existed on the date of the conveyance of the easement. Regs §1.170A-14(g)(5)(ii).

16. Extinguishment (termination) of an easement.

The possibility that an easement may be extinguished will not defeat deductibility if

- a) the termination was by court order;
- b) the termination was due to changed circumstances making continued use of the property for the conservation purposes impractical or impossible; and
- c) any proceeds accruing to the easement holder as a result of the termination are required by the terms of the easement to be used by the holder in a manner that is consistent with the conservation purposes of the easement.

Regs §1.170A-14(g)(5)(ii).

17. Division of sales proceeds in the event of termination.

The easement must provide:

- a) that the easement holder's interest in the easement is a vested property interest;
- b) that the fair market value of the holder's interest is at least equal to the proportionate value that the easement at the time of the donation bears to the value of the unrestricted property as a whole at the time of the conveyance of the easement;
- c) that the proportionate value of the easement described in the previous paragraph will remain constant; and
- d) that in the event that the easement is extinguished the proceeds of any sale, exchange, or involuntary conversion of the property that was subject to the easement will be divided between the landowner and the easement holder on the basis of that proportionate value.

Regs 1.170A-14(g)(6)(ii).

Example:

If River Ranch is worth \$1,000,000 (not counting improvements unaffected by the easement) in its unrestricted state and is worth \$300,000 as restricted by the easement, the proportionate value represented by the easement is 70% (\$700,000/\$1,000,000). If the Ranch is subsequently condemned for public use as the site of a new school and the proceeds of the condemnation are \$2,000,000, the proceeds must be divided and distributed \$1,400,000 (70% x \$2,000,000) to the easement holder and \$600,000 (30% x \$2,000,000) to the owner of the Ranch.

INCOME TAX BENEFITS

There are significant income tax benefits associated with the donation of conservation easements provided that the easement document complies with all of the requirements of IRC §170(h) and the accompanying Regs (beginning at §1.170A-14).

1. The value of the easement is deductible.

A conservation easement donor that complies with the requirements of IRC §170(h) may deduct the value of the easement from his or her income. The value of the easement for purposes of the deduction is typically the difference in the value of the easement property before the donation and after the donation (pages 11 and 12 discuss valuation). Regs §1.170A-14(h)(3)(ii).

Example:

Mr. Jones donates an easement on land that is valued at \$1,000,000 before the donation. After the donation the land is valued at \$700,000. The value of the easement is the difference in these values of \$300,000 (\$1,000,000 – \$700,000).

The maximum possible federal income tax benefit from any easement donation is calculated by multiplying the value of the easement by the top federal tax rate. Most states with an income tax provide a deduction for easement donations as well. Adding the applicable top federal and state tax rates together and multiplying the value of the easement by these combined rates provides the maximum possible combined federal and state income tax benefit of any easement donation.

Note: Federal tax rates for “C” corporations (i.e. corporations taxed as separate entities, rather than like partnerships as is the case with “S” corporations or limited liability companies) range from 15% to 39%, but not incrementally.

Example:

If Mr. Jones, in the previous example, earned sufficient income that the entire \$300,000 represented by the easement deduction was taxed at the current top federal rate of 35%, the value of the deduction would be \$105,000 ($35\% \times \$300,000$).

If Mr. Jones resides in a state with a 6% income tax that recognizes the federal charitable deductions, he would enjoy an additional state income tax benefit of \$18,000 ($6\% \times \$300,000$).

Some states, in addition to the charitable deduction for the donation of a conservation easement, allow a credit against state tax due for easement donations. For example, Virginia allows a tax credit equal to 50% of the value of any conservation easement donated by a Virginia taxpayer over land in Virginia (providing that the easement qualifies as a charitable contribution under IRC §170(h)). See *Virginia Code* §58.1-512. That credit is limited to \$600,000. State tax credit programs are few and far between and can vary significantly from state to state.

Example:

Mr. Jones (the donor of the \$300,000 easement in the previous examples) is a Virginia resident with a Virginia tax liability of \$200,000. In addition to his federal and state charitable deductions, he can take a credit against his Virginia tax liability of \$150,000 ($50\% \times \$300,000$). This credit reduces his Virginia tax liability to \$50,000.

2. The amount of the federal deduction is subject to an annual limitation.

When an individual makes a gift of “long-term capital gain” property (a capital asset held more than one year, e.g. a conservation easement on land owned for more than one year) the federal income tax deduction for that donation is limited to 30% of the donor’s “contribution base” (adjusted gross income without regard to the amount of the contribution and without regard to any “net operating loss carryback”). Regs §1.170A-8(d)(1).

If the easement donation is made in the first year of ownership the deduction is allowed up to 50% of the donor’s contribution base because the gift is considered a gift of “ordinary income property.” However, a deduction for ordinary income property cannot exceed the donor’s basis in the property (basis is essentially what the donor paid for the property). Regs 1.170A-8(b).

After the first year of ownership an individual donor may elect to limit the amount of the deduction to his or her basis and thereby qualify for the 50% limitation rather than the 30% limitation. See Regs §1.170A-8(d)(2).

In any event, the entire amount of a donor’s charitable deductions made during a tax year is limited to 50% of the donor’s contribution base. Thus if the donor has made gifts for which charitable deductions are available in addition to the conservation easement gift, the value of the other donations may reduce the amount of the deduction that may be taken for the easement donation.

Note: C corporations are limited to deducting no more than 10% of their “taxable income” for charitable contributions, regardless of the length of time the property that is contributed has been owned by the corporation. IRC §170(b)(2).

Example 1:

Mr. Jones’s easement is worth \$300,000. He has owned the property that is subject to his easement donation for five years. Therefore, the gift is considered a gift of long-term capital gain property subjecting him to the 30% limitation. Mr. Jones’s income is \$124,000 annually. Thus he may only deduct \$37,200 of his easement gift ($30\% \times \$124,000$), even though the value of the easement is \$300,000.

Example 2:

If Mr. Jones has made other charitable gifts amounting to \$50,000 during the year in which he donates the conservation easement he may only deduct \$12,000 of his easement gift because his total deduction for charitable gifts is limited to 50% of his contribution base ($50\% \times \$124,000 - \$50,000 = \$12,000$). However, as described below, Mr. Jones may “carry forward” the unused portion of his deduction to future tax years.

Example 3:

Mr. Jones donates his easement six months after he purchases the property. Thus, the property is treated as “ordinary income property” and the deduction may be used up to 50% of his contribution base. In this case he may deduct \$62,000 of the value of the easement ($50\% \times \$124,000$), and carry the unused balance of the gift forward.

Example 4:

Assume that Mr. Jones only paid \$250,000 for the property that he placed under easement. Also assume that he donates the easement six months after he acquired the property. Given these assumptions, even though the easement may be valued at \$300,000 (which suggests that \$250,000 was a real bargain), Mr. Jones may not deduct more than he paid for the property subject to the easement, so his easement deduction will be limited to \$250,000. As noted above, because the easement was donated in the first year of Mr. Jones's ownership of the property, he may take the deduction up to 50% of his contribution base.

3. Unused portions of the deduction may be used in future years.

Any unused portion of an easement deduction may be "carried forward" for 5 years after the year of the donation (allowing a maximum of 6 years within which the deduction may be utilized), or until the amount of the deduction has been used up, whichever comes first. Regs §170A-10(c)(1)(ii).

Example:

In Example 1 on page 9, Mr. Jones was only able to use \$37,200 of his \$300,000 easement deduction in the year of the donation due to the 30% annual limitation. Assume that donation was made in 2004. Mr. Jones can carry the unused balance of \$262,800 ($\$300,000 - \$37,200$) forward to 2005, 2006, 2007, 2008 and 2009. Assume Mr. Jones's income in 2005 and 2006 is \$150,000; in 2007 it is \$175,000, and in 2008 and 2009 it is \$200,000. Given this increase in income and the ability to carry the deduction forward for five years, Mr. Jones will be able to use \$299,700 of the \$300,000 easement gift over the six years in which he can use the deduction ($\$37,200 + \$45,000 + \$45,000 + \$52,500 + \$60,000 + \$60,000 = \$299,700$).

4. "Phasing" easement donations to extend income tax benefits.

As noted above, deductions for easement donations are limited to either 30% or 50% of the donor's contribution base. These limitations prevent some easement donors from deducting the full value of their easement gift. This problem can be addressed by "phasing" easement gifts.

Example:

Mrs. Blue donates a conservation easement over her 1,000-acre ranch. The value of the easement is \$2,000,000. Mrs. Blue's average annual income is \$500,000. The maximum deduction that Mrs. Blue can realize, assuming she is subject to the 30% annual limitation for gifts of appreciated property, is \$900,000 ($30\% \times \$500,000 \times 6$).

However, Mrs. Blue could increase the amount of the deduction she can use by protecting her ranch in two phases, using two separate easements donated at different times. For example, the first easement could cover 500 acres of her ranch. Assume that the value of that easement is \$800,000 (taking into account enhancement of the value of the unrestricted portion of the ranch due to the conservation easement; see page 12 for a discussion of "enhancement").

Over a six year period Mrs. Blue will be able to fully deduct this gift ($30\% \times \$500,000 \times 6 = \$900,000$). Once this gift has been fully deducted Mrs. Blue donates a second easement over the remaining 500 acres of the ranch. The second easement is worth \$1,200,000. By the time of this gift, Mrs. Blue's average annual income has increased to \$700,000. Over the six years beginning with the second easement donation Mrs. Blue will be able to fully deduct this \$1,200,000 gift ($30\% \times \$700,000 \times 6 = \$1,260,000$).

Note: Mrs. Blue could have phased her easement gifts differently by donating an easement over the entire ranch that eliminates only half of the development potential that she ultimately intends to eliminate. The second easement eliminates the balance of the development potential. In any case, each easement must independently meet the standards of IRC §170(h), including the generation of a significant public benefit.

In a phased conservation plan, such as Mrs. Blue's, it may be important to include a provision in the donor's will insuring that easements planned for the future will be bequeathed in the event the donor does not live long enough to donate them during his or her lifetime.

5. "Phase-Out" of itemized deductions.

For individuals whose adjusted gross income in 2004 exceeds the "threshold" level of \$142,700 (\$71,300 for married taxpayers filing separately) the amount of most itemized deductions, including charitable deductions for conservation easement gifts, is required to be reduced. The reduction required is 3% of the amount by which the taxpayer's income exceeds the threshold, or 80% of the total amount of itemized deductions, whichever is less. IRC §68.

Example:

Mrs. Blue (from the example on page 10) earns \$500,000 annually. In the year of the donation of her \$2,000,000 conservation easement she is allowed a deduction for the gift of \$150,000 due to the 30% limitation ($\$500,000 \times 30\%$). The phase-out rule requires Mrs. Blue to reduce the amount of this deduction by the lesser of 3% of her income over \$142,700, or 80% of the total of her itemized deductions. Assume that Mrs. Blue has itemized deductions (including the deduction for the easement) totaling \$200,000. 3% of her income over \$142,700 amounts to \$10,719 ($\$500,000 - \$142,700 \times 3\%$). 80% of her total itemized deductions amounts to \$160,000 ($\$200,000 \times 80\%$). Therefore, she must reduce the total of her itemized deductions by \$10,719. Because the easement gift generated 75% of her total of itemized deductions, it could be said that 75% of the phase-out of \$10,719, or \$8,039.25 ($\$10,719 \times 75\%$) applies to her easement deduction, reducing it from \$150,000 to \$141,960.75.

6. The alternative minimum tax (AMT).

The AMT does not apply to conservation easement donations. Charitable contributions of conservation easements are not considered "tax preference items." The provision treating gifts of appreciated property as tax preference items (IRC §57(a)(5)(C)(iv)), was repealed for gifts of appreciated property effective 12/31/92 by P.L. 103-66 (1993).

7. The extent of the tax deduction depends upon the value of the easement.

One of the most critical and frequently challenged aspects of easement donation is the valuation of the easement. Easements resulting in reductions in fair market value have been judicially recognized ranging from 16% to over 90%.

a. The "before and after" valuation method.

In the before and after approach the property subject to the easement is valued before the easement is in place and after the easement is in place. The difference represents the value of the easement donation for deduction purposes. Regs §1.170A-14(h)(3); Rev. Rul. 73-339, 1973-2 C.B. 68, and Thayer v. Commissioner, T.C. Memo 1977-370. Of course, an experienced appraiser can estimate the value of a potential donation by knowing the terms of the proposed easement and assuming it is in place. Such pre-donation estimates can be a valuable tool for prospective donors.

b. The “comparable sales” valuation method.

Although the before and after method is recognized by the IRS when there are no comparable sales of easements, the comparable sales method is preferred, using actual easement sales (as in a “purchase of development rights” program) as comparables. However, the Regs recognize that in many cases there will not be a “substantial record” of comparable easement sales and in such cases the IRS will accept valuations based upon the before and after method. Regs §1.170A-14(h)(3)(i).

c. The value of the deduction must be substantiated.

Any claim for a charitable donation deduction exceeding \$5,000 must be supported by a “qualified appraisal” (Regs §1.170A-13(c)(2) conducted by a “qualified appraiser.” Regs §1.170A-13(c)(3), see Regs §1.170A-13(c)(5) for a definition of “qualified appraiser.”

Form 8283, “Noncash Charitable Contributions,” must accompany any return claiming an easement deduction. The gift must be acknowledged by the donee organization. The organization is required to state whether the donor has received any goods or services in exchange for the gift. Regs §1.170A-13(f).

Substantiating appraisals are complex and sometimes costly. They must be conducted no earlier than 60 days prior to the conveyance, and no later than the due date for the tax return on which the deduction is first claimed. Regs §1.170A-13(c)(3)(A).

Regardless of when the appraisal is made it must reflect the value of the easement on the date of the conveyance. Regs §1.170A-13(c)(3)(ii)(I).

For further information about the valuation and substantiation of easements see Appraising Easements, Third Edition (1999), a project of The National Trust and The Land Trust Alliance.

d. “Enhancement” may reduce the deduction.

Enhancement occurs when a landowner donates an easement that has the effect of increasing the value of unrestricted land owned by the donor or a member of the donor’s family, whether or not the unrestricted land is contiguous to the conservation easement. Regs §1.170A-14(h)(3)(i).

Example:

The land Mr. Jones placed under easement is just a quarter of a mile from 200 acres that overlooks the easement property. Mr. Jones also owns the 200 acres. The easement reduces the value on the subject property by \$300,000, but the 200 acres increases in value by \$100,000 because the view from this property will be permanently protected by the easement. This \$100,000 "enhancement" must be subtracted from the \$300,000 value of the easement. Therefore, Mr. Jones's deduction will be reduced to \$200,000.

- e. Financial benefits received must be subtracted from the deduction.

The amount of an easement deduction must be reduced by any cash payment or other economic benefit received, or reasonably expected, by the donor or family member of the donor as a result of the donation of the easement. Regs §1.170A-14(h)(3)(i).

Example 1:

Mr. Blue agrees with the ABC Land Trust that he will donate an easement over his land if ABC will acquire and protect a parcel of land adjoining Mr. Blue's. ABC agrees to do this. The acquisition by ABC enhances the value of Mr. Blue's land by \$150,000. The value of Mr. Blue's easement is \$400,000. ABC is required to notify Mr. Blue that, in exchange for his easement donation to ABC, he has received \$150,000 in "goods and services" from ABC, thereby reducing the amount of Mr. Blue's deduction to \$250,000 (\$400,000 - \$150,000).

Example 2:

Ms. Brown agrees with the XYZ Land Trust to sell it a conservation easement to XYZ on land that she owns adjoining one of XYZ's most important holdings. The agreed price for the easement is \$50,000. An appraisal of the easement shows that its value is \$150,000. Ms. Brown is allowed a deduction of \$100,000 for this qualified "bargain sale." See IRC §1011(b) for provisions regarding bargain sales.

8. "Donative intent" is required.

In order for the grant of a conservation easement to be a deductible gift the grantor of the easement must intend the grant to be a charitable contribution. U.S. Treasury Revenue Ruling (Rev. Rul.) 67-246. The intent to make a charitable contribution is known as "donative intent."

The requirement for donative intent should not be confused with the requirements of the Regs described in paragraph 7.e. above that any financial or economic benefit received in exchange for a conservation easement be subtracted from the value of the easement deduction. In the cases to which this economic benefit rule applies the grantor of the easement intends that the excess of the value of the easement over the benefit received be a charitable gift. However, where the grant of the easement is required by some regulatory or contractual arrangement (unless the contract is with a government agency or public charity recognized under IRC §501(c)(3)) there is no donative intent, even if the value of the benefit received is less than the value of the easement.

The requirement of donative intent precludes deductions for the conveyance of conservation easements in a number of circumstances. A few of the more common are outlined below.

a. Cluster development projects.

A growing number of localities allow a landowner increased residential density, or simply the right to cluster permitted residential density, in exchange for the grant of a conservation easement on that portion of the property from which the clustered density has been derived. Because the grant of the easement is a requirement of local regulation it precludes donative intent. See Technical Advice Memorandum ("TAM") 9239002, 1992.

b. Reciprocal easements.

Where one landowner agrees to grant a conservation easement over his land if his neighbor does the same and the agreement is legally binding, the contractual obligation to grant the easement precludes donative intent. Performance of a contractual obligation owed to a private individual does not constitute a charitable gift.

However, where a land trust seeks to obtain conservation easements from a number of landowners within a region to advance a conservation goal that could not be met with the piecemeal contribution of easements, it may agree to escrow easements until it has received a certain number of easements. Such an arrangement does not preclude donative intent. However, until the easements are put to record no deductible gift has been made.

c. "Conservation Buyer" arrangements.

Occasionally a landowner decides to offer his land for sale but only to a buyer who will place a conservation easement on the property after closing. Where the sales contract imposes an obligation on the buyer to convey the easement after closing the grant of the easement is the performance of a contractual obligation to a private individual, not a charitable contribution. This is true even though the buyer receives no compensation for the easement grant.

A variation of the foregoing is where the seller grants an option to a land trust to acquire a conservation easement on his land and the land is sold subject to the option. In such a situation the option is a feature of the title to the property and is a binding part of the private contract between the buyer and the seller. For this reason, conveyance of the easement pursuant to the option is the discharge of an obligation to a private party, not a charitable contribution.

There is a different outcome where the prospective buyer himself grants an option to acquire an easement directly to a land trust if the buyer closes the purchase. Assuming that the option is to sell the easement for less than fair market value, the "bargain sale" should be deductible because the buyer is discharging an obligation he has made voluntarily to the land trust rather than discharging an obligation to a private party.

For a more detailed discussion of this topic see "The Use of Options in Conservation Transactions" by the author, published in the Fall 2003 issue of the Land Trust Alliance magazine *Exchange*.

9. The donation of a conservation easement will reduce the donor's basis.

When a landowner donates a conservation easement he must reduce his basis (essentially, what was paid for the property, see discussion of basis on page 27) in the property to reflect the value of the easement donated. This reduction in value must reflect the proportion of the unrestricted fair market value of the land at the date of the donation represented by the value of the easement. Regs §1.170A-14(h)(3)(iii).

Example:

Mr. Brown donates an easement on his land. Before the easement was imposed the land was valued at \$1,000,000. After the easement was imposed the land was valued at \$700,000. Therefore, the value of the easement donation is \$300,000 (\$1,000,000 - \$700,000). Mr. Brown's basis in his land was \$100,000. The easement represents 30% of the unrestricted value of the land when the donation was made. Therefore, Mr. Brown's adjusted basis after the easement donation will be \$70,000 (\$100,000 - 30% x \$100,000).

Note: The basis adjustment does not reflect "enhancement" of adjoining unrestricted land. See example (11), Regs §1.170A-14(h)(3)(iii).

10. Treatment of easement donations by "dealers" in real estate.

Tax deductions for easement donations by "dealers" in real estate are limited to the donor's basis in the property subject to the easement donation. Regs §1.170A-4(a)(1) requires that the deduction for gifts of "ordinary income property" be reduced by the amount of gain that would not have been considered long-term gain had the property been sold on the day of the contribution. Because the sale of ordinary income property generates ordinary income rather than capital gain ("long-term gain") this rule essentially limits the deduction to the donor's basis.

Regs §1.170A-4(b)(1) provides that "ordinary income property" include property "held by the donor primarily for sale to customers in the 'ordinary course of his trade or business.'" It is possible for a dealer in real estate to hold property primarily as investment property and not for sale to customers. The donation of a conservation easement on such property will not be limited to basis.

Example:

Jack Hoyle is a real estate developer. He has developed 50 lots for sale, but has identified 100 acres of the development property for "open space" protection and it has never been offered for sale. On his books Jack carries the 50 lots as "inventory" and the 100 acres as a capital asset.

Five years later after having sold 40 lots Jack decides to start a new project and wrap this one up. He agrees with a local land trust to donate a conservation easement on the remaining 10 lots plus the 100 acres. His basis in the 10 lots, including development costs, is \$10,000 each. His basis in the 100 acres is \$100,000, his original cost (he made no improvements). The easement on the 10 lots is valued at \$2,000,000 and on the 100 acres at \$5,000,000.

Jack will be allowed to deduct \$100,000 for the donation of the easement on the lots. This is because his deduction must be reduced by \$1,900,000, which is the amount that would have been ordinary income if he had sold the property (\$2,000,000 - (\$10,000 x 10 lots) = \$1,900,000). He will be allowed to deduct the full \$5,000,000 on the 100 acres because this property was clearly not held for "sale to customers in the ordinary course of his trade or business" and is treated as a capital asset held for investment.

ESTATE and GIFT TAX BENEFITS

A decedent's estate that holds land subject to a conservation easement may qualify for two specific estate tax benefits. In addition a conservation easement controls the future use of property in the hands of a decedent's heirs more effectively than any other technique available. For these reasons conservation easements compliment and increase the power of many estate planning techniques. More importantly, because of the substantial estate tax benefits associated with conservation easements, in and of themselves easements are important tools for estate planning.

A Note on the Future of the Federal Estate Tax

In 2001 Congress repealed the federal estate tax effective in 2010. Between 2001 and 2010 the estate tax is phased-out in stages. In 2011 the entire estate tax, as constituted in 2001, is automatically reinstated. What will in fact happen to the estate tax in 2011 is hard to predict. It is unlikely that Congress will allow full reinstatement, but it is also unlikely that Congress will make the repeal permanent.

The two principal components of the estate tax are the amount exempt from the tax (the "exclusion amount") and the top rate of the tax. These components will be changing over the next six years as follows:

- In 2004 the exclusion amount is \$1.5 million; the tax rate on assets between \$1.5 million and \$2 million is 45% and on all assets over \$2 million it is 48%.
- In 2005 the exclusion amount remains at \$1.5 million; the tax rate on assets between \$1.5 million and \$2 million remains at 45% and on all assets over \$2 million is 47%.
- In 2006 the exclusion amount increases to \$2 million; the tax on assets over \$2 million is 46%.
- In 2007 and 2008 the exclusion amount remains at \$2 million; the tax on assets over \$2 million is 45%.
- In 2009 the exclusion amount increases to \$3.5 million; the tax on assets over \$3.5 million is 45%.

Note that all of the examples that follow are based upon the exclusion amount and tax rates for 2004.

The Reduction in Value and the Estate and Gift Tax Deductions

1. The restrictions of a conservation easement reduce the value of the taxable estate.

The restrictions imposed by a conservation easement on real property assets included in a decedent's estate reduce the value of that property for estate tax purposes. This "reduction" in value is available regardless of whether the easement was sold or donated. The value of real property subject to a conservation easement will be determined at the same time as other estate assets: the decedent's death, or on the alternate valuation date (the date six months after the death of the decedent) if the executor elects the alternate date.

Example:

Mrs. Smith owns land at her death worth \$2,000,000 in its unrestricted state. However, before she died Mrs. Smith donated a conservation easement on that land reducing its value to \$1,500,000 on the date of her death. Thus, the easement has reduced the size of Mrs. Smith's taxable estate by \$500,000. Assuming that the other assets in Mrs. Smith's estate were substantial enough that the entire \$500,000 removed by the easement would have been taxed at the top estate tax rate of 48% (the top 2004 rate), the estate tax savings due to the easement would be \$240,000 ($48\% \times \$500,000$).

Example:

Mr. Blue sold a conservation easement in 2000 for \$550,000. After the easement was conveyed the value of the land subject to the easement dropped by \$1,700,000 to \$700,000. Thus the easement was worth \$1,000,000. Mr. Blue is entitled to a "bargain sale" deduction for the difference between what he received for the easement and what it was worth: \$450,000 ($\$1,000,000 - \$550,000$).

Mr. Blue dies in 2004. At his death the value of his land is \$2,500,000, taking into account the restrictions of the easement. If the land were unrestricted the value in 2004 would have been \$5 million. Therefore, the easement has reduced Mr. Blue's estate by \$2,500,000, generating estate tax savings of \$1,200,000 ($48\% \times \$2,500,000$). However, Mr. Blue invested the proceeds of the sale of his conservation easement in stocks that have a value at the date of his death of \$1,000,000. The estate tax on this value will be \$480,000 ($48\% \times \$1,000,000$).

Taking into account the tax savings due to the restrictions imposed by the conservation easement, and the tax on the stocks purchased with the proceeds of sale of the conservation easement, the net estate tax savings for Mr. Blue's estate is \$720,000 ($\$1,200,000 - \$480,000$).

2. The effect of restrictions other than qualified conservation easements.

Generally, restrictions on real property (e.g. options, restrictions on use, the right to acquire or use property for less than fair market value) cannot be taken into account by an estate in valuing the property for estate tax purposes. Regs § 25.2703-1.

However, "qualified easements" pursuant to IRC §170(h) made during a decedent's lifetime are exempt from this provision (Regs §25.2703-1(b)(4)), and are deductible for gift tax purposes under IRC §2522(d). In addition, easements qualified under IRC §170(h) conveyed by the terms of a decedent's will are qualified for estate tax deductions under IRC §2055(f), as noted on page 18.

In addition, other restrictions that do not comply with the requirements of IRC §170(h) may also be recognized for estate valuation purposes, provided that all of the following requirements are met:

- a) the restrictions are the result of a “bona fide business arrangement;”
- b) the restrictions are not a device to transfer the property to family members for less than adequate consideration; and
- c) the terms of the restriction are comparable to similar arrangements entered into by persons in an arm’s length transaction.

Regs §25.2703-1(b)(1) and (2).

Example:

Mr. Brinkman sells a “scenic easement” over his ranch, Greenacre, to his neighbor the owner of Brownacre. The easement is in perpetuity and operates as a restrictive covenant benefiting his neighbor and any future owners of Brownacre. The scenic easement prohibits construction over an area of some 200 acres within view of Brownacre. It also reduces the value of Greenacre by 25%.

Although this scenic easement does not qualify as a “qualified conservation contribution” within the meaning of IRC §170(h), it does meet the three requirements of IRC §2703 described above. Therefore, when Mr. Brinkman dies his executor is allowed to take into account the effect of the scenic easement on the value of Greenacre.

3. Estate and gift tax deductions for conservation easements.

Generally, gifts made during a person’s lifetime are subject to the “unified estate and gift tax.” However, IRC §2522(d) allows a deduction for donations of conservation easements that meet the requirements of IRC §170(h).

For donations of conservation easements made by will there is a formal deduction available valued in the same manner as an easement donated during the decedent's life, IRC §2055(f).

Both §§2055(f) and 2522(d) allow deductions regardless of whether the easement meets the “conservation purposes” test established for lifetime donations of easements by IRC §170(h)(4)(A) (the conservation purposes test is discussed on page 4).

According to the Committee Report issued in 1986 the reason for not requiring that the conservation purposes test be met in the case of a testamentary easement bequest is to avoid a situation in which a decedent makes an irrevocable bequest of a valuable property interest but, because the easement failed to meet a technical standard of the tax code, that property interest is still taxed in the decedent’s estate even though it is permanently restricted. See the Committee Reports on P.L. 99-514 (Tax Reform Act of 1986). Regulations have not been promulgated nor cases decided under this provision to give further guidance.

Note that it is also possible that a conservation easement failing to meet the conservation purposes test might constitute a restriction on the use of real property that a decedent's executor could take into account in valuing such property for estate tax purposes under IRC §2703, as discussed on page 17.

Example:

Mr. Brown, a farmer, has a very large estate because of the value of his farm land, but he has only a small income. An income tax deduction is not going to do him much good. However, his children love the farm and don't want it to be sold out of the family, nor does Mr. Brown. Because of the uncertainty of his financial situation Mr. Brown doesn't want to restrict his ability to sell the farm for top dollar while he is living (Mrs. Brown left, thoroughly disgusted with farming many years earlier). Therefore, he provides in his will for the donation of a conservation easement on the farm (including a completed draft of the instrument so that his executor doesn't have to guess what should go into the easement).

The executor values the farm land on the date of Mr. Brown's death at \$4,000,000, and after the easement at \$2,000,000. The executor is able to deduct the \$2,000,000 value of the easement under IRC §2055(f). This saves Mr. Brown's children \$960,000 in estate taxes because the entire \$2,000,000 is subject to the 48% marginal rate (the top rate in 2004). This, coupled with the exclusion available under IRC §2031(c) (discussed below) entirely eliminates the estate tax on Mr. Brown's estate.

Note: Under the terms of new §2031(c)(9) (see the discussion of "post-mortem" easements on page 28), even if Mr. Brown hadn't made a provision in his will for the easement his heirs could have directed the executor to donate a "post-mortem" easement that would have given the estate the same tax benefits as the testamentary easement.

The 40% Exclusion

In addition to the reduction in value of estate property resulting from the restrictions of a conservation easement, federal tax law allows 40% of the restricted value of property subject to a conservation easement to be excluded from a decedent's estate. The exclusion was enacted in 1997. Formerly known as the American Farm and Ranch Protection Act, the new exclusion is provided for in IRC §2031(c). §2031(c) is a relatively new provision in the tax code. To date no regulations or cases are available to provide guidance.

Note that this "exclusion" should not be confused with the "exclusion amount" described on page 16. The §2031(c) exclusion is allowed in addition to the exclusion amount.

1. Extent of the exclusion.

IRC §2031(c) provides that a decedent's executor may elect to exclude 40% of the value of land subject to a qualified conservation easement. In other words, the exclusion applies to the value of the land taking into account the restrictions of the easement. Values are determined as of the date of the decedent's death, or 6 months thereafter if the executor elects the "alternate valuation date." IRC §§2031(c)(1) and (2).

Example:

In the previous example, Mr. Brown's farm was worth \$2,000,000 taking into account the restrictions of the conservation easement. Mr. Brown's executor may elect to exclude 40% of that value from his estate under §2031(c). Therefore, \$800,000 (40% x \$2,000,000) may be excluded.

However, because the amount that can be excluded under §2031(c) is limited to \$500,000 (see page 22) Mr. Brown's estate will be able to exclude only \$500,000. Thus, the easement has

reduced the taxable value of the land in Mr. Jones's estate by \$2,500,000: \$2,000,000 from the initial reduction in value and \$500,000 due to the exclusion.

If Mr. Brown died in 2004 his easement donation would eliminate all federal tax on his estate. This is because the reduction in value of the farm due to the easement and the \$500,000 exclusion under §2031(c) has reduced the size of Mr. Brown's estate so that it does not exceed the \$1.5 million exclusion amount.

2. The easement must meet the requirements of IRC §170(h) to qualify for the exclusion.

The easement must meet the requirements of IRC §170(h), described beginning on page 3, including the conservation purposes test. IRC §2031(c)(8)(B). Therefore, while it is possible for a conservation easement that does not meet the conservation purposes test of IRC §170(h)(4)(A) to be deductible for estate and gift tax purposes, and for permanent restrictions on the use of property to reduce the value of that property for estate tax purposes under IRC §2703, such restrictions or easements will not qualify for the §2031(c) exclusion, because they do not comply with IRC §170(h).

3. The exclusion applies to land only.

The exclusion applies only to the value of land, not to improvements on the land. IRC §2031(c)(1)(A). (This limitation does not apply to the income tax deduction and the estate tax benefits resulting from the reduction in value due to the easement. However, in order for any tax benefits to apply to the value of improvements the conservation easement must expressly restrict those improvements in a manner that reduces their fair market value.)

Example:

Mrs. White died owning a 200-acre farm subject to a conservation easement that meets the requirements of IRC §170(h). The easement allows only agricultural use of the land and imposes architectural standards on the house, a certified historic structure. Without the easement the land would be worth \$1 million and the house and outbuildings \$350,000. Taking the easement into account, the land is valued at \$750,000 and the house and outbuildings at \$300,000 for estate tax purposes. Mrs. White's executor elects the §2031(c) exclusion. As a result he can exclude \$300,000 of the restricted value of the land ($40\% \times \$750,000$). The exclusion does not apply to the house and outbuildings. Thus, for estate tax purposes, the conservation easement results in a total reduction in the value of Mrs. White's farm of \$600,000. This is due to a reduction of \$250,000 in the value of the farm land; a reduction of \$50,000 in the value of the structures; and the exclusion of \$300,000 in the value of the farm land as restricted by the easement.

4. The exclusion does not apply to the gift tax.

Federal law taxes gifts made during a person's lifetime as well as transfers at death. The gift tax closely tracks the federal estate tax. The §2031(c) exclusion does not apply to the tax imposed on lifetime gifts of property subject to a conservation easement. For this reason estate-planning strategies based upon lifetime transfers of property should carefully evaluate the effect of making a lifetime gift of land subject to a conservation easement. A lifetime gift of land subject to a conservation easement that otherwise qualifies for the §2031(c) exclusion will waste the exclusion. However, there may be other overriding reasons to make lifetime transfers.

Example:

Mr. Smith donates a conservation easement on 100 acres. The value of the land as restricted by the easement is \$200,000. Before he dies Mr. Smith gives the land to his son. This gift is subject to the full federal gift tax on a \$200,000 gift; none of the value of the land can be excluded under §2031(c).

If Mr. Smith had transferred the land to his son by will, only \$120,000 of the value of the land would have been subject to tax. This is because the exclusion would reduce the taxable value by \$80,000 ($40\% \times \$200,000$). Assuming that both the gift and the bequest would have been taxed at 48% (the maximum gift tax rate in 2004), transferring the land by a lifetime gift rather than by will would cost Mr. Smith \$38,400 ($48\% \times \$80,000$) in gift tax over and above what the estate tax would have been had the transfer been made at death.

5. The exclusion does not apply to easements that are historic only.

The §2031(c) exclusion does not apply if the only conservation purpose of the easement is the preservation of the historic character of the land (historic structures, being improvements rather than land, aren't eligible for the exclusion either). IRC §2031(c)(8)(B). However, the fact that land is historic does not disqualify it for the exclusion if there is another bona fide conservation purpose for the easement.

Example:

Sally owns an historic 18th Century New England farm. The land is identified in the local comprehensive plan and zoning ordinance as prime agricultural land and is accorded a special reduced real estate tax assessment because of its agricultural value. Sally donates a conservation easement protecting the historic and agricultural characteristics of the farm. When she dies her executor may elect to exclude 40% of the value of the land making up the farm after taking the value of the easement into account. Even though the easement has an historic purpose, it also has the purpose of the preservation of open space pursuant to a local plan.

If the sole purpose of the easement and the only significant characteristic of the farm were its historical significance the exclusion would be unavailable. However, assuming that the easement complies with IRC §1700(h), the easement would qualify for an income tax deduction. In addition, such an easement would reduce the value of Sally's property for estate tax purposes.

6. The exclusion is available for the estates of decedents dying after 12/31/97.

Example:

Mary donated a conservation easement in 1980 that meets all of the requirements of §2031(c). She died December 1, 2000. Because she died after December 31, 1997, Mary's estate is eligible to make use of the exclusion.

7. Three-year holding period required.

The decedent or a member of the decedent's family must have owned the land subject to the easement for at least three years prior to the decedent's death to be eligible for the

exclusion. IRC §2031(c)(8)(A)(ii). For purposes of this provision the term “member of the decedent’s family” means:

- a) an ancestor of the decedent;
- b) the spouse of the decedent;
- c) a lineal descendent of the decedent, or the decedent’s spouse, or of a parent of the decedent; and
- d) the spouse of any such lineal descendent.

IRC §2031(c)(8)(C), which incorporates the definition of “member of the family” contained in IRC §2032A(e)(2).

Example:

Joel’s father gave him 200 acres. His father owned the land for two years before he made the gift to Joel. Joel promptly donated a conservation easement on the land. He died two years after donating the easement. This land will qualify for the exclusion because the total period of time that Joel and a member of his family owned the land amounted to at least three years.

8. The exclusion is limited to \$500,000 per estate.

§2031(c) limits the amount that may be excluded to \$500,000 per estate. The limitation was phased-in beginning in 1998, in \$100,000 increments. The \$500,000 limit applies to the estates of decedent’s dying after 12/31/01. IRC §2031(c)(3).

Example:

James owns land subject to a conservation easement that meets all of the requirements of §2031(c). The value of the land after subtracting the value of the easement is \$2,000,000. James dies in 2004. 40% of the value of the restricted land is \$800,000 ($40\% \times \$2,000,000$). However, the maximum amount that may be excluded by James’s estate under §2031(c) is \$500,000. Note, as explained in the next paragraph, that if James was married the amount that could be excluded might be greater.

9. The benefits of the exclusion may be multiplied.

Because the \$500,000 limitation on the exclusion applies per estate (IRC §2031(c)(1)) one conservation easement can generate multiple exclusions.

Example 1:

Mr. Green and his wife own land as “tenants in common” with each entitled to a 50% share in the land. Each of them provide in their wills that their share of the land goes directly to their children rather than to the surviving spouse. The Greens put extensive easements on the land reducing the value of each share from \$3,250,000 to \$1,250,000. The exclusion available to each of the Greens’ estates would be \$500,000 ($40\% \times \$1,250,000 = \$500,000$). Therefore, by dividing the ownership of the land and keeping it separate, the Greens have been able to reduce the aggregate value of their two estates by \$1,000,000 through the exclusion.

A commonly used alternative to passing land directly to the children would be for the Greens to have bequeathed their share of the land to a “by-pass trust” that allows the surviving

spouse to use the land but not to control it. Upon the death of the surviving spouse the by-pass trust distributes the land directly to the Greens' children or other beneficiaries.

Example 2:

Four brothers own a ranch inherited from their parents as equal tenants in common. They donate a conservation easement on the ranch that meets the requirements of §2031(c). The value of the ranch before the easement was \$10,000,000 and after the easement it was worth \$5,000,000. The brothers all die in a blizzard in 2004. Their executors each elect to take advantage of the 40% exclusion. Each estate receives the decedent brother's 25% interest, worth \$1,250,000 ($25\% \times \$5,000,000$), taking into account the restrictions of the easement. The value of the exclusion is \$500,000 ($40\% \times \$1,250,000$) per estate. Therefore, the total value of the ranch that may be excluded is \$2,000,000 ($4 \times \$500,000$). In this manner one conservation easement qualified for four separate exclusions of \$500,000 each.

The net effect of the conservation easement in this example was to reduce the taxable value of the ranch by \$7,000,000. This is the combination of the initial reduction in value due to the restrictions of the conservation easement ($\$10,000,000 - \$5,000,000 = \$5,000,000$) and the exclusion of \$500,000 available to each brother's estate ($4 \times \$500,000 = \$2,000,000$). Assuming that this value would have been taxed at the 48% federal estate tax rate, total estate tax savings between the four estates would amount to \$3,360,000 ($48\% \times \$7,000,000 = \$3,360,000$).

Note: If the brothers had held their interests in the ranch as partners in a partnership, as members in a limited liability company, or as stockholders in a corporation, the result would not have been the same. Because each brother would have owned less than 30% of the partnership, limited liability company, or corporation, their estates would not have been eligible for the exclusion. IRC §2031(c)(10) allows the exclusion for partnership, corporation, and trust interests held by a decedent, but only if the decedent owned at least 30% of such entity (see page 28).

10. The exclusion may be used in conjunction with other tax benefits for easements.

The exclusion, the reduction in value of a decedent's estate due to the existence of a conservation easement, and the income tax deduction attributable to the original donation of the easement, may all be used in connection with the same easement donation.

Example:

Mr. Jones's land is valued at \$1,000,000 and his easement reduces that value to \$700,000. Mr. Jones is entitled to a \$300,000 income tax deduction; his estate can report the value of the easement restricted land as \$700,000, rather than \$1,000,000; and the executor can elect to exclude \$280,000 of the remaining value under §2031(c) ($40\% \times \$700,000$). In this manner the easement removes \$580,000 ($\$300,000 + \$280,000$) from the taxable value of the estate, in addition to generating state and federal income tax deductions.

Assume that Mr. Jones's income is taxed at the federal rate of 35%, a state rate of 6%, and that the assets in his estate are taxed at the rate of 48%. Given these assumptions, donation of an easement valued at \$300,000 would save Mr. Jones and his estate a total of \$401,400 in state and federal taxes. These savings are made up of income tax savings of \$123,000 ($41\% \times \$300,000$); estate tax savings of \$144,000 due to the reduction in the value of the estate resulting from the conservation easement ($48\% \times \$300,000$); and additional estate tax savings of \$134,400 due to the §2031(c) exclusion ($40\% \times \$700,000 \times 48\%$).

In addition, the exclusion may be layered on top of the unified estate and gift tax credit (the "exclusion amount" described on page 16, the tax benefits available under the special

valuation rules of IRC §2032A for qualified family farms, and the family-owned business exclusion provided for by IRC §2033A for qualified family businesses.

11. The exclusion may be passed from one generation to the next.

The benefit of the exclusion is available to each succeeding generation of landowners so long as the land remains in the family of the donor. IRC §2031(c)(8)(C). Once the land passes outside of the family the exclusion is no longer available unless the new owner donates another easement on the land that independently qualifies under IRC §2031(c). If such a contribution can be made the exclusion will be revived for the estate of the new donor and his heirs, so long as the land remains in his family.

Example 1:

Mr. Jones donates a conservation easement on his land that qualifies under §2031(c). When Mr. Jones dies the property passes to his son, John. John marries and passes his land to his wife Sarah at his death. Sarah has a daughter by a subsequent marriage (John died young), Julie. Julie inherits the land at Sarah's death, marries and has children who ultimately become beneficiaries of the land. Mr. Jones's estate is eligible for the exclusion, as are the estates of John, Sarah, Julie, and Julie's children, if the land is included in their estates at their deaths.

In addition, the reduction in value due to the restrictions imposed by the easement will be available to future generations in the family of the donor. However, unlike the exclusion, the reduction in value attributable to the restrictions of the easement remains available to owners outside of the family of the original donor in the event that the land is transferred outside of the family.

Example 2:

Mr. Green donates an easement on his land that qualifies under §2031(c). The easement reduces the development potential on his land from 100 houses to 10 and generates a significant public conservation benefit. When he dies the land passes to his son, Alfred. Alfred sells the land to his neighbor, Mrs. Brown. Mrs. Brown dies leaving the land to her daughter Melissa. Melissa donates a second conservation easement that eliminates all remaining 10 house sites so that the land cannot be developed at all. The easement donated by Melissa qualifies under §2031(c). Melissa passes the land on to her daughter Joan, and it is included in Joan's estate at her death.

Mr. Green's estate is eligible for the exclusion. Alfred's estate doesn't contain the property so no exclusion is available and the proceeds of sale that remain in his estate at his death will be fully taxable. Mrs. Brown's estate is not eligible for the exclusion because neither she nor any of her ancestors donated the easement. However, due to the new easement donated by Melissa, Melissa's estate is eligible for the exclusion, as is Joan's estate.

12. The exclusion must be "elected."

In order to take advantage of the exclusion a decedent's executor or trustee must make an affirmative election to use the exclusion before the date on which the estate tax return for the decedent is due, including extensions. IRC §§2031(c)(1) and (6). Federal law requires estate tax returns to be filed within nine months of a decedent's death. Extensions are available, however they are not automatic.

Failure to elect the exclusion does not preclude subsequent generations from electing the exclusion. Form 706, Schedule U ("Qualified Conservation Easement Exclusion") provides that

an executor is deemed to have made this election by filing Schedule U and excluding the value of land subject to a conservation easement from the estate.

Note that an executor would probably not choose to elect the exclusion if the estate is not otherwise subject to estate tax (e.g. because the total value of the estate is less than the amount sheltered by the unified credit). This is because, to the extent of the election, land passing through a decedent's estate is denied a "stepped-up" basis, see page 26.

13. The easement must reduce land value by at least 30% to qualify for the full exclusion.

The 40% exclusion will be reduced if the conservation easement is valued at less than 30% of the unrestricted value of the land to which it applies. The statute provides that the 40% exclusion is to be reduced by two percentage points for each percentage point that the easement fails to reduce the land's value by 30%. Values are to be determined as of the date of the decedent's death (or the alternate valuation date if elected). IRC §2031(c)(2). The purpose of this provision is to prevent landowners from donating minimal easements in order to take advantage of the exclusion.

The values for determining compliance with the 30% requirement are the values of the land and easement at the time of the original donation of the easement. IRC §2031(c)(2). To determine compliance with this standard the executor must obtain information about the value of the easement and the value of the land as restricted by the easement at the time of the original donation. However, if the estate qualifies for the exclusion, the exclusion is applied to the restricted value of land under easement as of the date of the decedent's death (or the alternate valuation date, if selected).

Example:

Mrs. Johnson's land was valued at \$1,250,000 before she donated her easement and \$1,000,000 after she donated her easement. The value of the easement was \$250,000 (\$1,250,000 - \$1,000,000). Therefore the easement reduced the value of the unrestricted land by 20% (\$250,000/\$1,250,000). 20% is ten percentage points less than 30% reduction in value required by §2031(c).

To determine the amount by which the 40% exclusion must be reduced Mrs. Johnson's executor must subtract two percentage points from the exclusion for every one percentage point by which the easement falls short of the 30% requirement, in this case 20% (2 x 10%). Therefore, the executor may only exclude 20% of the restricted value of the land.

However, the value of the land restricted by the easement has appreciated to \$2,500,000 on the date of Mrs. Johnson's death. 20% of this value is \$500,000 (20% x \$2,500,000). \$500,000 is the maximum amount that can be excluded under §2031(c). Had the value of the land subject to the easement not appreciated between the date of the easement donation and the date of Mrs. Johnson's death, the amount that could have been excluded would have been \$200,000 (20% x \$1,000,000).

14. Retained development rights are not eligible for the exclusion.

Any "development rights" retained in the easement agreement are not eligible for the exclusion. However, if the heirs agree before the due date for the decedent's estate tax return (including extensions) to terminate some or all such retained rights the exclusion will apply as though the terminated rights never existed. Heirs have two years after the decedent's death to put their agreement into effect (presumably by recording an amendment to the original easement or recording a supplemental easement). IRC §§2031(c)(5)(A) and (B).

Development rights for purposes of this provision are defined in the law as any right to use the land for a commercial purpose “not subordinate to and directly supportive of the use of such land as a farm for farming purposes.” Rights to maintain a residence for the owner’s use, as well as normal farming, ranching, and forestry practices probably would not be considered retained development rights. Retained rights to sell land for development, or establish houses for sale or rent, probably would be considered as retained development rights. IRC §2031(c)(5)(D).

Example:

An easement otherwise meeting the requirements of IRC §2031(c) reserves the right to develop and sell five home sites, each worth \$50,000. The land is valued at \$2,000,000 before the easement and \$1,000,000 after the easement (including the value of the retained home sites). Before calculating the exclusion the executor must subtract the value of the retained development rights from the restricted value of the land (\$1,000,000 - \$250,000 = \$750,000). The exclusion is then applied to the adjusted value of \$750,000. The value that can be excluded from the decedent’s estate is therefore \$300,000 (40% x \$750,000).

If the heirs agree to terminate these retained development rights the exclusion will increase to \$400,000 (40% x \$1,000,000). If the value excluded were subject to the 48% federal estate tax rate terminating these rights would save the heirs \$48,000 (48% x \$100,000) in estate taxes.

Note that the heirs could take advantage of the “post mortem” easement provisions of §2031(c)(9) (see the discussion of post-mortem easements on page 28) and eliminate the retained development rights by donating a new easement before the estate tax return is due. This would qualify the termination of the retained rights for both an expanded exclusion as well as an estate tax deduction under §2055(f). These benefits would be in addition to the reduction in value already attributable to the restrictions of the easement donated by the decedent during his lifetime.

As noted above, retained development rights are defined by §2031(c)(5)(D) as “any right to use the land subject to the qualified conservation easement . . . for any commercial purpose which is not subordinate to and directly supportive of the use of such land as a farm for farming purposes (within the meaning of section 2032A(e)(5)).”

Many conservation easements retain the right for the grantor to use an existing residence, or to construct a residence for use by the grantor. While there are no regulations, cases, or rulings to the knowledge of the author on this point, it would seem that such a retained right is not a “retained development right” because the reserved right by the grantor to personally use a residence does not constitute a “commercial purpose.”

15. Commercial recreational uses must be prohibited.

Any easement in which the right is retained to use the land subject to the easement for more than “*de minimis*” commercial recreational purposes is disqualified for the §2031(c) exclusion. IRC § 2031(c)(8)(B).

The official explanation of this provision provided by the Joint Committee on Taxation includes a statement that retaining in an easement the rights to grant hunting or fishing licenses on land subject to the easement is within the exemption for “*de minimis*” uses and does not disqualify the easement for the exclusion. See Joint Committee on Taxation, “General Explanation of Tax Legislation Enacted in 1997.”

No other official clarifications of this provision have been provided. From a drafting standpoint, until more information about the meaning of this provision is made available, easement donors intending to qualify for the §2031(c) exclusion should include language in their easements expressly prohibiting “any commercial recreational use, except those uses considered *de minimis* according to the provisions of §2031(c)(8)(B) of the Internal Revenue Code.” An equally effective alternative is a blanket prohibition in the easement against any “commercial recreational” activity.

Existing conservation easements that do not include such prohibitions should be re-examined and possibly amended. The staff of the Joint Committee on Taxation has verbally taken the position that a prohibition against all but *de minimis* commercial recreational uses may be supplied by a decedent’s executor or trustee in a “post-mortem” amendment to an existing easement (see the discussion of post-mortem easements on page 28). If the easement donor is unable to amend the easement, such a post-mortem correction may be the only alternative. However, amendment of the easement is a far more reliable approach to compliance with this requirement of §2031(c).

16. The exclusion imposes a carryover basis.

IRC §1014(a)(4) provides that, to the extent of the §2031(c) exclusion, land received from a decedent shall have a “carryover basis” in the hands of heirs rather than a “stepped-up basis.” As noted elsewhere in this Guide, basis is, essentially, what the owner paid for the land plus amounts paid for improvements. The significance of basis is that when property is sold the seller pays tax on the difference between the property’s basis and what the property sold for.

Carryover basis refers to passing on a decedent’s basis in his property to his heirs. Normally, land passing from a decedent to his heirs receives a stepped-up basis. This means that the decedent’s basis in the property is replaced with a new basis reflecting the fair market value of the property when the decedent died. The stepped-up basis substantially reduces or eliminates income tax on sales of property received from a decedent’s estate by heirs.

Example:

Mr. Smith’s estate includes land subject to a conservation easement. The restricted value of the land, as valued by the executor, is \$750,000. Mr. Smith’s basis in the land (adjusted to reflect the easement donation, see page 15) is \$5,000. The exclusion allowed is \$300,000 ($\$750,000 \times 40\%$). The carryover basis rule requires that 40% of Mr. Smith’s \$5,000 basis is carried over to the heirs, along with the stepped-up basis on that portion of the value of the land not subject to the exclusion. Thus \$2,000 ($\$5,000 \times 40\%$) must be carried over to the heirs. That portion of the value of the land that was not subject to the exclusion ($\$750,000 - \$300,000 = \$450,000$) will receive a stepped-up basis. The total adjusted basis for the land is therefore \$452,000 ($\$2,000 + \$450,000$).

Improvements are not eligible for the exclusion. Therefore, improvements will continue to receive a stepped-up basis, regardless of whether or not the exclusion is elected.

17. Geographic limitations on the exclusion.

When originally enacted the provisions of §2031(c) applied only to land in or within a twenty-five mile radius of Metropolitan Statistical Areas (MSA), national parks and national wilderness areas. IRC §2031(c)(8)(i). This requirement was eliminated by the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16). The current provision only requires that land, to be eligible under §2031(c), must be located within the United States or any U.S. possession. IRC §2031(c)(8)(i).

18. Debt-financed property.

If a landowner incurred debt to purchase land with respect to which the §2031(c) exclusion is elected, the amount of that debt that remains unpaid when the landowner dies must be subtracted from the value of the land before calculating the exclusion. IRC §2031(c)(4). However, the debt is deductible under other provisions of the federal estate tax code.

Example:

If land has a value of \$700,000 after taking into account the restrictions of a conservation easement, and it is subject to a \$300,000 mortgage when the decedent dies, the exclusion can only be applied to \$400,000 (\$700,000 - \$300,000). The exclusion amount in this case would be \$160,000 (40% x \$400,000).

19. Property owned by partnerships, corporations, limited liability companies, and trusts.

If the decedent's interest in land eligible for the exclusion is held indirectly through a partnership, corporation, or trust his estate may still enjoy the benefit of the exclusion to the extent of the decedent's ownership interest in such an entity. However, the decedent must own at least a 30% interest in the entity in order for his estate to be able to take advantage of the exclusion. IRC §2031(c)(10).

Although the statute does not speak of limited liability companies it is likely that such entities will qualify for similar treatment because they are treated like partnerships for most other purposes under the tax code.

Example:

Mrs. Sanders, a widow, placed the land making up the family farm to a family corporation in order to facilitate the transfer of interests in the farm to her four children. She donated a conservation easement on the farm before transferring it to the corporation. At the date of her death the farm's land was worth \$4,000,000, taking into consideration the restrictions imposed by the conservation easement. The other assets in the corporation were worth \$1,000,000 (farm improvements and equipment). Mrs. Sanders owned 35% of the stock of the corporation when she died.

Mrs. Sanders' executor may elect to exclude 40% of the value of her stock attributable to the farm's land from her estate because she owned over 30% of the stock in the corporation at her death. If we assume that the portion of the stock value attributable to the land value is \$1,400,000 (35% x \$4,000,000 - remember that the exclusion applies to the value of land only, not improvements), then the executor may exclude \$500,000 of that value from the estate. Note that 40% of Mrs. Sanders' share of the land is \$560,000, however, because of the limitation on the amount of the exclusion (see page 22) her estate can only exclude \$500,000.

20. Easements donated after the decedent's death ("post-mortem" easements).

§2031(c) provides that the 40% exclusion is available for easements donated by a decedent's executor or trustee after the decedent's death - even though the decedent failed to donate an easement before his death. IRC §§2031(c)(8)(A)(iii) and (C), and §2031(c)(9). The grant of a post-mortem conservation easement must be completed prior to the due date for the estate

tax return (9 months after the date of the decedent's death), plus any extensions granted for filing the return. IRC §2031(c)(9).

§2031(c)(9) provides that a post-mortem easement will qualify for both the exclusion and an estate tax deduction under IRC §2055(f), provided that no income tax deduction is taken for the conveyance of the easement. This provision makes available an important "retroactive" estate planning technique. See P.L.R. 200418005, confirming use of the post-mortem election by a trust.

Example:

Sam and Susie had tried for years to get their aging father to put a conservation easement on his farm. The old man never seemed to get around to it and died without having donated the easement. At the time of his death the farm's land was valued at \$1,000,000. Sam and Susie, being the only persons with any legal claim to the land, directed their father's executor to donate an easement on the farm and the donation was completed within 9 months of their father's death. The easement was worth \$400,000, thereby generating a \$400,000 deduction under §2055(f). The value of the farm's land, taking the restrictions of the easement into account, was \$600,000. Therefore, the exclusion removed an additional \$240,000 ($40\% \times \$600,000$) from the estate. Given the value of other assets, the entire value of the land subject to the easement would have been taxed at 48%. Thus, the post-mortem election saved Sam and Susie \$307,200 ($48\% \times (\$400,000 + \$240,000)$) in estate tax.

Note: §2031(c) merely controls the tax consequences of a post-mortem easement donation; it does not authorize the donation. State law governs the powers of executors and trustees to make such a donation. Unless state law specifically allows executors and trustees to donate a conservation easement, a decedent must specifically authorize his executor or trustee to donate the easement. If there is no provision in the decedent's will and no authority granted by state law a court order may be required. However, at least three states (Colorado, Maryland and Virginia) have recently amended their laws to allow post-mortem easements to be donated by an executor or trustee in order to take advantage of §2031(c).

PLANNING CONSIDERATIONS IN THE USE OF CONSERVATION EASEMENTS

1. Addressing fears over “giving away” land value by easement donation.

Many landowners are reluctant to donate easements, even though they are concerned about conserving their land and would benefit significantly from the income tax and estate tax savings. The reason is their fear of reducing the value of assets available for their children. Responses to this fear include the following:

- a. Tax benefits may make up most of, if not more than, the lost value.

With enactment of §2031(c) it is possible that the entire value of the easement, or more, can be recovered through the various federal and state tax benefits associated with easement donation.

Example:

Mr. Jones's land is valued at \$1,000,000 and his easement reduces that value to \$700,000. Mr. Jones is entitled to a \$300,000 income tax deduction; the restrictions of the easement remove at least \$300,000 in taxable value from his estate; and the executor can elect to exclude \$280,000 of the remaining value under §2031(c). Thus, the easement removes \$580,000 from the estate, in addition to generating state and federal income tax deductions.

Assume that Mr. Jones's income is taxed at the top federal rate of 35%, a top state rate of 6%, and that the assets in his estate are taxed at the top marginal rate of 48%, an easement donation would save Mr. Jones and his estate a total of \$401,400 in state and federal taxes. This reflects income tax savings of \$123,000 ($41\% \times \$300,000$) plus estate tax savings of \$278,400 ($48\% \times \$580,000$).

These tax savings represent 134% of the value lost by the easement donation.

- b. Conservation easements protect intergenerational transfers from estate tax.

When a landowner's goal is to keep land in the family rather than to maximize the value of the land as an asset in the hands of the heirs, a conservation easement can be an important estate planning tool. Compared to the requirements of IRC §§2032A (the special use valuation provisions pertaining to farmland, etc.) and 2057 (pertaining to family-owned businesses) the tax benefits available for donation of a conservation easement may be more extensive and more easily obtained.

- c. “Value replacement.”

Income tax savings from easement donation can be used to replace value lost in the donation by providing premium payments for the purchase of life insurance or other investments. If the insurance is placed in an “inter-vivos” trust that also holds all of the “incidents of ownership,” proceeds of the policy will be exempt from both income and estate taxes.

Tax savings generated by the donation of a conservation easement can be applied to the payment of premiums on a whole life policy or other investments held by an inter-vivos trust. This strategy can replace the value lost by the donation of an easement. In many cases of value replacement the total value passing to an easement donor's heirs may be substantially greater than it would have been had the easement not been donated.

Example:

Assume that John and Joan are aged 51 and 43 respectively. Assume that they donate an easement worth \$1,800,000 and that the income tax deduction saves them \$738,000 in income tax. They spend \$58,000 on a new car and buy a "second to die" life insurance policy with the remaining \$680,000 of their income tax savings. They place the policy into an "inter-vivos" trust for the benefit of their children and transfer all of the "incidents of ownership" to the trust.

A premium payment of \$680,000 for a second to die policy on a couple John's and Joan's ages will buy \$12,500,000 in coverage. Properly placed in an inter-vivos trust there will be no tax on the policy proceeds. Thus, John and Joan have replaced \$1,800,000 in land value lost due to the easement with \$11,820,000 (face value of the policy less the premium) in tax-free cash payable directly to their children.

Note that investing the \$680,000 in stocks or mutual funds transferred to an inter-vivos trust could generate substantial results as well. There are many variations.

2. Using easements to maximize credits and exclusions.

Easements can significantly reduce the value of an important real estate asset without significantly affecting (in most cases) the current use of the real estate or its utility to the donor or donor's family. This attribute of a conservation easement provides important leverage for various estate tax credits and exclusions.

a. Maximizing the annual gift tax exclusion.

By reducing the value of land, conservation easements can increase the amount of acreage that can be transferred by gift under the annual \$11,000 (in 2004) gift tax exclusion. (The \$11,000 exclusion is adjusted annually for inflation.) Conservation easements also insure that land gifted to another individual will continue to be used in a manner that is consistent with the wishes of the person making the gift.

Donating an easement prior to beginning the transfer of ownership through a gifting program insures that the value of the income tax deduction is available to the family members most likely to be able to take full advantage of the deduction. However, consideration should be given to identifying which "generation" has the most income in order to maximize use of the deduction, as it may not necessarily be the parents.

Example:

Mr. and Mrs. Savage own a 20,000-acre ranch valued at \$5,000,000. They have five children, each married. Mr. and Mrs. Savage want to begin giving the ranch to their children using the \$11,000 annual gift tax exclusion. The Savages can each give \$11,000 a year to each child and to each child's spouse. Thus, the Savages can transfer a total of \$220,000 in ranch value annually ($\$11,000 \times 2 \times 10$). If they make the transfer based upon the value of the ranch unrestricted by a conservation easement it will take them 25 years to complete the transfer, assuming the ranch doesn't change in value (which it certainly will).

If a conservation easement were donated on the land reducing its value to \$2,000,000 it would be possible for the Savages to make the transfer in 10 years (again, assuming no inflation in value). In addition, the Savages would be assured that the

ranch would not be developed, even after control passes to their children. Furthermore, if the Savages invest the income tax savings realized from the easement donation in a value replacement scheme (see page 30) they could provide their children with potentially substantial cash to operate the ranch.

b. Transfers using partnerships, limited liability companies, family corporations, etc.

By reducing the value of land transferred via partnerships, corporations, etc., conservation easements can accelerate the transfer of land to family members.

c. Increasing the amount of land passing under the unified credit provisions of IRC §2010.

In a similar fashion, easements can reduce the value of land passed either outright or in trust under the unified credit provided for in IRC §2010, thereby maximizing the use of the credit and minimizing the problem of overloading the surviving spouse's estate with taxable value.

d. Increasing the amount of land passing under the valuation provisions of IRC §2032A.

Easements can be used to maximize the amount of land that can be covered by the reduced assessment for agricultural land included in a decedent's estate provided by IRC §2032A.

Care must be taken that an easement conveyance does not reduce the value of qualified land and personal property used in an agricultural operation that would otherwise qualify under §2032A below 50% of the total value of the adjusted gross estate, or reduce the value of qualified land below 25% of the value of the adjusted gross estate. These percentages are a prerequisite to qualifying under §2032A.

e. Increasing the Generation-Skipping Tax (GST) exemption under IRC §2631.

Easements can maximize the amount of land that can be passed under the exemption for "generation-skipping transfers."

3. Controlling future use.

Easements can control the future use of the land in estate planning programs that depend upon transfer of all, or portions, of the land to heirs prior to a landowner's death.

a. Controlling gifts of undivided land interests to family members.

In programs which depend upon transferring undivided interests in land to children using the \$11,000 annual gift tax exclusion, imposing a conservation easement on the land prior to the transfers insures that the conservation intentions of the grantors will not be violated when ownership becomes fragmented, should a majority of the new owners later consider development, or a minority of owners seek partition. The same principle applies where land is given outright in its entirety, but the grantors wish it to remain in rural use.

b. Controlling gifts of stock, partnership interests, etc.

Where interests in land are conveyed indirectly by the use of a corporation, partnership, limited liability company, trust, etc. imposition of a conservation easement on the land prior to beginning the transfer program will have the same benefits as described in the preceding paragraph.

"C" corporations are only entitled to deduct 10% of their taxable income for charitable gifts, as opposed to 30% or 50% for individuals (see page 9), so making the easement donation before transferring land out of individual ownership and into corporate ownership may result in improved tax savings. Note that the 10% limitation does not apply to "S" corporations where donations are deductible at the shareholder level rather than the corporate level.

c. Controlling future use of charitable transfers.

Easements insure that future land use is controlled in the event of the transfer of land to a charity, either as an outright bequest, gift, or transfer to a charitable remainder trust.

1) Avoiding unpleasant surprises.

Donors to land conservation organizations (and other charities and public agencies) are sometimes surprised to see the organization sell the land or use it in a fashion inconsistent with the donor's expectations. The best way to insure future use is not to rely upon expectations and assurances, but to legally bind the donee and its successors to specified uses through the imposition of a conservation easement.

2) Avoiding the effect of "merger."

A conservation easement and the fee interest in the land subject to the easement must be held by legally separate entities to avoid "merger" of the interests. Merger essentially terminates the restrictions imposed by the easement. Therefore, easement land should not be donated to an organization that already holds the easement on that land, or *vice versa*, unless it is intended that the organization own unrestricted land.

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APPENDIX

Summary of the Provisions of the Treasury Regulations Governing The Deductibility of Conservation Easement Donations

(There is NO Substitute for Reading the Regulations!)

To be deductible a conservation easement must fit the definition of a “qualified real property interest.” Regs. §1.170A-14(a)

There are two types of qualified real property interests:

1. The entire interest of the donor other than a “qualified mineral interest.” Regs §1.170A-14(b)(1); and
2. A “perpetual conservation restriction.” Regs §1.170A-14(a)(2). Conservation easements are perpetual conservation restrictions if they:
 - a. Impose a restriction on the use of real property. Regs §1.170A-14(b)(2) (Easements or other similar restrictions recognized by state law.)
 - b. Are in perpetuity. Regs §1.170A-14(b)(2)
 - c. Are held by a qualified organization. Regs §1.170A-14(c). Qualified organizations:
 - 1) Must have commitment to protect conservation purposes. Regs §1.170A-14(c)
 - 2) Must have resources to enforce restrictions (funds need not be set aside). Regs §1.170A-14(c)
 - 3) Must be governmental units. Regs § 1.170A-14(c)(i), or
 - 4) Public charities qualified under IRC § 501(c)(3). Regs §1.170A-14(c)(ii)-(iv)

The easement document must:

1. Prohibit the donee from transferring the easement unless the conservation purposes are required to be carried out by the transferee. Regs §1.170A-14(c)(2)
2. Prohibit the donee from transferring the easement to other than qualified organizations qualified at the time of the transfer. Regs §1.170A-14(C)(2)
3. Require that in the event of an unexpected change making the purposes of the easement impossible or impractical to achieve the proceeds of any sale or exchange be used consistently with conservation purposes of the original donation. Regs §1.170A-14(C)(2)

Qualified conservation purposes include:

1. The preservation of land for recreational use by the public. Regs §1.170A-14(d)(1)(i)
 - a. The easement must provide for substantial public use, Regs §1.170A-14(d)(2)(ii), and for
 - b. Regular public use. Regs §1.170A-14(d)(2)(ii)

2. The preservation of a significant, relatively natural animal or plant habitat.

Regs §1.170A-14(d)(1)(ii)

- a. Some alteration by man is allowed if animals or plants continue to live in relatively natural state. Regs §1.170A-14(d)(3)(i)
- b. Significant habitats include:
 - 1) habitats of rare, endangered or threatened species; Regs §1.170A-14(d)(3)(ii)
 - 2) natural high quality examples of terrestrial or aquatic communities;
Regs §1.170A-14(d)(3)(ii)
 - 3) natural areas contributing to ecological viability of public parks or preserves.
Regs §1.170A-14(d)(3)(ii)
- c. Public access is not required for habitat preservation easements. Regs §1.170A-14(d)(3)(iii)

3. The preservation of open space (including farm and forest land). Regs §1.170A-14(d)(1)(iii)

- a. Preservation may be pursuant to a clearly delineated governmental policy;

Regs §1.170A-14(d)(4)(i)(A)

- 1) A general declaration by a single official or legislative body isn't enough.
Regs §1.170A-14(d)(4)(iii)
- 2) There is no requirement for certification of specific properties. Regs §1.170A-14(d)(4)(iii)
- 3) Donations furthering a specific, identified, conservation project must meet this requirement. Regs §1.170A-14(d)(4)(iii), examples include:
 - a) preservation of significant land within a local landmark district
 - b) preservation of wild or scenic rivers
 - c) preservation of farmland pursuant to a state flood prevention or control program
 - d) protection of scenic, ecological, or historic character of land contiguous to or an integral part of the surroundings of existing recreation or conservation sites
- 4) Programs must involve a significant governmental commitment.

Regs §1.170A-14(d)(4)(iii)(A)

- a) Program need not be funded to satisfy this requirement; however
- b) Preferential tax assessment programs, or
- c) Preferential zoning for property deemed worthy of protection demonstrate requisite commitment. Regs §1.170A-14(d)(4)(iii)(A).

5) Acceptance of the easement by a governmental agency tends to establish compliance with clearly delineated governmental policy, depending upon existence of other factors and rigor of agency review. Regs §1.170A-14(d)(4)(iii)(B)

6) Public access is not a requisite unless the conservation purpose would be undermined without such access. Regs §1.170A-14(d)(4)(iii)(C)

b. Or, for the scenic enjoyment of public. Regs §1.170A-14(d)(4)(i)(B)

1) Development would impair scenic character of local rural or urban landscape Regs §1.170A-14(d)(4)(ii)(A), or

2) Development would interfere with a scenic panorama viewed from a

- a) park,
- b) preserve,
- c) road,
- d) water body,
- e) trail,
- f) historic area or structure,

Regs §1.170A-14(d)(4)(ii)(A); and

3) The land area or transportation way is open to or used by the public.

Regs §1.170A-14(d)(4)(ii)(A)

4) Visual access, not physical access, to the view is required. Regs §1.170A-14(d)(4)(ii)(B).

5) See 1.170A-14(d)(4)(ii)(A)(1)-(8) for criteria to evaluate scenic quality.

c. Open space contributions must yield a significant public benefit. Regs §1.170A-14(d)(i)(A) and (B). Factors include:

1) Uniqueness of property subject to easement to the area, Regs §1.170A-14(d)(4)(iv)(A)(1);

2) The intensity of existing and planned development in the area,

Regs §1.170A-14(d)(4)(iv)(A)(2);

3) The consistency of proposed open space with public conservation programs in the region, Regs §1.170A-14(d)(4)(iv)(A)(3); including

- a) outdoor recreation,
- b) irrigation or water supply protection,
- c) water quality maintenance or enhancement,
- d) flood prevention and control,
- e) erosion control,
- f) shoreline protection,
- g) protection of land areas included in or related to a government master plan or land management area;

Regs §1.170A-14(d)(4)(iv)(A)(3)

4) The consistency of proposed open space with existing private conservation programs in the area. Regs §1.170A-14(d)(4)(iv)(A)(4)

5) The likelihood that development of the property would lead to degradation of scenic, natural or historic character of area. Regs §1.170A-14(d)(4)(iv)(A)(5)

6) The opportunity of the public to use property or enjoy its scenic values.

Regs §1.170A-14(d)(4)(iv)(A)(6)

7) The importance of the property in preserving a local or regional landscape or resource that attracts tourism or commerce in the area. Regs §1.170A-14(d)(4)(iv)(A)(7)

8) The likelihood that the donee organization will acquire equally desirable and valuable property or property rights. Regs §1.170A-14(d)(4)(iv)(A)(8)

9) The cost to donee of enforcing the easement. Regs §1.170A-14(d)(4)(iv)(A)(9)

10) The population density in the area of property. Regs §1.170A-14(d)(4)(iv)(A)(10)

11) The consistency of the proposed open space with a legislatively mandated program identifying specific parcels for future protection. Regs §1.170A-14(d)(4)(iv)(A)(11).

d. Open space easements can't allow retention of development rights that would interfere with the scenic quality or governmental conservation policy furthered by donation. Regs §1.170A-14(d)(4)(v)

4. The preservation of historically important land or certified structures. Regs §1.170A-14(d)(1)(iv)

a. Historic easements on land in an historic district must require that any development allowed conform to applicable construction standards for the district. Regs §1.170A-14(d)(5)(i)

Historic land area includes:

- 1) Independently significant land areas, Regs §1.170A-14(d)(5)(ii)(A);
- 2) Land and buildings in an historic district which contribute to the significance of the district, Regs §1.170A-14(d)(5)(ii)(B);
- 3) Land areas adjacent to National Register properties if the features of the land area contribute to the character of the Register property, Regs §1.170A-14(d)(5)(ii)(C);

Certified historic structure means any structure or land area:

- 1) Listed on the National Register, Regs §1.170A-14(d)(5)(iii)(A);
- 2) Located in a registered historic district certified by the Secretary of Interior, Regs §1.170A-14(d)(5)(iii)(B);
- 3) Structures include residences. Regs §1.170A-14(d)(5)(iii)

b. There must be visual access to a structure or at least a meaningful portion of a land area to qualify for a deduction. If the property isn't accessible, then arrangements must be made to allow the public visual access on a regular basis.

Regs §1.170A-14(d)(5)(iv)(A).

Subparagraphs (B) and (C) provide guidelines for public access to historic land areas and structures.

5. Regs §1.170A-14(f) contains examples of conservation purposes.

An easement must prohibit Inconsistent Uses. Regs §1.170A-14(e):

1. An easement must be exclusively for conservation purposes. Regs §1.170A-14(e):
 - a. An easement may not allow uses inconsistent with significant conservation interests even though they are not the conservation purposes enumerated in the easement. Regs §1.170A-14(e)(2)
 - b. The retention of rights to use property which rights do not impair significant conservation interests are not inconsistent uses. Regs §1.170A-14(e)(2)
 - c. Uses destructive of conservation interests are permitted if necessary for the protection of the conservation purposes of the easement. Regs §1.170A-14(e)(3)
2. An easement may preserve a preexisting use of property if the use is not in conflict with the conservation purposes of the easement. Regs §1.170A-14(e)(3)

An easement must be enforceable in perpetuity. Regs §1.170A-14(g):

1. Uses retained in the easement must be subject to legally enforceable restrictions preventing their exercise in a manner that would be inconsistent with conservation purposes of the easement. Regs §1.170A-14(g)(1)
2. A remainder interest contribution must be restricted so that life tenants will not be able to diminish the conservation values protected by the contribution. Regs §1.170A-14(g)(1)

3. The holder of any mortgage on the property must subordinate its interest to the rights of the easement holder to enforce the terms of the easement. Regs §1.170A-14(g)(2)

4. Events that might defeat the purpose of the contribution do not violate the requirement that the easement be in perpetuity so long as the events are, at the time of the donation, so remote as to be negligible. Regs §1.170A-14(g)(3)

5. Retention of a qualified mineral interest will not violate the requirement of perpetual enforceability unless:

1) Surface mining of such minerals is possible. Regs §1.170A-14(g)(4)(i)

2) Mining in a manner inconsistent with the conservation purposes is allowed.

Regs §1.170A-14(g)(4)(i)

3) Mining having a localized, limited impact not irremediably destructive of significant conservation interests is permissible. Regs §1.170A-14(g)(4)(i)

4) A separation of the mineral interests in property is allowable so long as the probability of surface mining such minerals is so remote as to be negligible.

Regs §1.170A-14(g)(4)(ii)

Documentation of conditions is required if the donor retains any rights to use the property that is subject to the easement. Regs §1.170A-14(g)(5):

1. Documentation sufficient to establish property condition must be given to the donee prior to the donation if rights to use the property are retained which could impair the conservation interests of the property. Regs §1.170A-14(g)(5).

Documents should include:

a. U.S.G.S. survey maps showing property lines and nearby protected areas,

Regs §1.170A-14(g)(5)(i)(A);

b. Scale maps of the area showing manmade and natural features of significance,

Regs §1.170A-14(g)(5)(i)(B);

c. Aerial photos of the property taken as close to the time of donation as possible,

Regs §1.170A-14(g)(5)(i)(C);

d. On-site photos of the property taken from appropriate locations, Regs §1.170A-14(g)(5)(i)(D);

2. Easements with restrictions pertaining to specific natural resources must be accompanied by documentation of the condition of the resource at or near the time of donation. Regs §1.170A-14(g)(5)(i)(D)

3. All documentation must be accompanied by a statement signed by the donor and donee that "This natural resource inventory is an accurate representation of [the protected property] at the time of the transfer." Regs §1.170A-14(g)(5)(i)(D)

The donee must be able to inspect property if donor retains rights to use property. Regs §1.170A-14(g)(5)(ii)

1. The donor must agree to notify donee, in writing, before exercising any rights reserved in the easement if the exercise of those rights might impair the conservation interests of the property. Regs §1.170A-14(g)(5)(ii)
2. The easement must provide the donee with the right to enter the property at reasonable times to inspect. Regs §1.170A-14(g)(5)(ii)
3. The easement must provide that the donee may enforce the easement by appropriate legal proceedings, including, but not limited to, the right to require the restoration of the property to its condition at the time of the donation. Regs §1.170A-14(g)(5)(ii)

Extinguishment of an easement in whole or in part will not affect deductibility if:

1. The termination was by court order, Regs §1.170A-14(g)(6)(i);
2. The termination was due to a change in conditions surrounding the property making continued use for conservation purposes impractical or impossible, Regs §1.170A-14(g)(6)(i); and
3. All the donee's proceeds from a subsequent sale or exchange are used by donee in a manner that is consistent with the conservation purposes of the original donation. Regs §1.170A-14(g)(6)(i)

The value of the donee's interest in the easement must be fixed in the easement.

1. The easement must provide that the donee's interest is a vested property interest. Regs §1.170-14A(g)(6)(ii)
2. The fair market value of the donee's interest must at least equal the proportionate value that the easement at the time of the donation bears to the value of the property as a whole at the time of the donation. Regs §1.170A-14(g)(6)(ii)
3. The easement must provide that that proportionate value will remain constant. Regs §1.170A-14(g)(6)(ii)
4. The easement must provide that, in the event of extinguishment, the proceeds of any sale, exchange or involuntary conversion must be at least equal to that proportionate value. Regs §1.170A-14(g)(6)(ii)

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FEDERAL ESTATE TAX SECTION 2031(c)

(c) Estate Tax With Respect To Land Subject To a Qualified Conservation Easement.—

(1) In General.— If the executor makes the election described in paragraph (6), then, except as otherwise provided in this subsection, there shall be excluded from the gross estate the lesser of –

(A) the applicable percentage of the value of land subject to a qualified conservation easement, reduced by the amount of any deduction under section 2055(f) with respect to such land, or

(B) the exclusion limitation.

(2) Applicable Percentage.— For purposes of paragraph (1), the term "applicable percentage" means 40 percent reduced (but not below zero) by 2 percentage points for each percentage point (or fraction thereof) by which the value of the qualified conservation easement is less than 30 percent of the value of the land (determined without regard to the value of such easement and reduced by the value of any retained development right (as defined in paragraph (5))). The values taken into account under the preceding sentence shall be such values as of the date of the contribution referred to in paragraph (8)(B). **[Editor's Note: the preceding sentence applies to the estates of decedents dying after December 31, 2000. This sentence does not apply to estates of decedents dying prior to that date.]**

(3) Exclusion Limitation.— For purposes of paragraph (1), the exclusion limitation is the limitation determined in accordance with the following table:

<i>In the case of estates of decedents dying during:</i>	<i>The exclusion limitation is:</i>
1998	\$100,000
1999	\$200,000
2000	\$300,000
2001	\$400,000
2002 or thereafter	\$500,000

(4) Treatment of Certain Indebtedness.—

(A) In General.— the exclusion provided in paragraph (1) shall not apply to the extent that the land is debt-financed property.

(B) Definitions.— For purposes of this paragraph--

(i) Debt-financed property.— The term "debt-financed property" means any property with respect to which there is an acquisition indebtedness (as defined in clause (ii)) on the date of the decedent's death.

(ii) Acquisition Indebtedness.— The term "acquisition indebtedness" means, with respect to debt-financed property, the unpaid amount of—

(I) the indebtedness incurred by the donor in acquiring such property,

(II) the indebtedness incurred before the acquisition of such property if such indebtedness would not have been incurred but for such acquisition,

(III) the indebtedness incurred after the acquisition of such property if such indebtedness would not have been incurred but for such acquisition and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition, and

(IV) the extension, renewal, or refinancing of an acquisition indebtedness.

(5) Treatment of Retained Development Right. —

(A) In General.— Paragraph (1) shall not apply to the value of any development right retained by the donor in the conveyance of a qualified conservation easement.

(B) Termination of Retained Development Right.— If every person in being who has an interest (whether or not in possession) in the land executes an agreement to extinguish permanently some or all of any development rights (as defined in subparagraph (D)) retained by the donor on or before the date for filing the return of the tax imposed by section 2001, then any tax imposed by section 2001 shall be reduced accordingly. Such agreement shall be filed with the return of the tax imposed by section 2001. The agreement shall be in such form as the Secretary shall prescribe.

(C) Additional tax.— Any failure to implement the agreement described in subparagraph (B) not later than the earlier of—

(i) the date which is 2 years after the date of the decedent's death, or

(ii) the date of the sale of such land subject to the qualified conservation easement,

shall result in the imposition of an additional tax in the amount of the tax which would have been due on the retained development rights subject to such agreement. Such additional tax shall be due and payable on the last day of the 6th month following such date.

(D) Development Right Defined.— For purposes of this paragraph, the term "development right" means any right to use the land subject to the qualified conservation easement in which such right is retained for any commercial purpose which is not subordinate to and directly supportive of the use of such land as a farm for farming purposes (within the meaning of section 2032A(e)(5)).

(6) Election.— The election under this subsection shall be made on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return.

(7) Calculation of Estate Tax Due.— An executor making the election described in paragraph (6) shall, for purposes of calculating the amount of tax imposed by section 2001, include the value of any development right (as defined in paragraph (5)) retained by the donor in the conveyance of such qualified conservation easement. The computation of tax on any retained development right prescribed in this paragraph shall be done in such manner and on such forms as the Secretary shall prescribe.

(8) Definitions.— For purposes of this subsection—

(A) Land Subject To a Qualified Conservation Easement.— The term "land subject to a qualified conservation easement" means land--

[Editor's Note: The following subparagraph "(i)" applies to the estates of decedents dying prior to January 1, 2001.]

(i) which is located—

(I) in or within 25 miles of an area which, on the date of the decedent's death, is a metropolitan area (as defined by the Office of Management and Budget),

(II) in or within 25 miles of an area which, on the date of the decedent's death, is a national park or wilderness area designated as part of the National Wilderness Preservation System (unless it is determined by the Secretary that land in or within 25 miles of such a park or wilderness area is not under significant development pressure), or

(III) in or within 10 miles of an area which, on the date of the decedent's death, is an Urban National Forest (as designated by the Forest Service),

[Editor's Note: The following subparagraph "(i)" applies to the estates of decedents dying after December 31, 2000.]

(i) which is located in the United States or any possession of the United States,

(ii) which was owned by the decedent or a member of the decedent's family at all times during the 3-year period ending on the date of the decedent's death, and

(iii) with respect to which a qualified conservation easement has been made by an individual described in subparagraph (C), as of the date of the election described in paragraph (6).

(B) Qualified Conservation Easement.-- The term "qualified conservation easement" means a qualified conservation contribution (as defined in section 170(h)(1)) of a qualified real property interest (as defined in section 170(h)(2)(C)), except that clause (iv) of section 170(h)(4)(A) shall not apply, and the restriction on the use of such interest described in section 170(h)(2)(C) shall include a prohibition on more than a de minimis use for a commercial recreational activity.

(C) Individual Described.— An individual is described in this subparagraph if such individual is—

(i) the decedent,

(ii) a member of the decedent's family,

(iii) the executor of the decedent's estate, or

(iv) the trustee of a trust the corpus of which includes the land to be subject to the qualified conservation easement.

(D) Member of family.--- The term "member of the decedent's family" means any member of the family (as defined in section 2032A(e)(2)) of the decedent.

(9) Treatment of Easements Granted After Death.--- In any case in which the qualified conservation easement is granted after the date of the decedent's death and on or before the due date (including extensions) for filing the return of tax imposed by section 2001, the deduction under section 2055(f) with respect to such easement shall be allowed to the estate but only if no charitable deduction is allowed under chapter 1 to any person with respect to the grant of such easement.

(10) Application of this section to interests in partnerships, corporations, and trusts.— This section shall apply to an interest in a partnership, corporation, or trust if at least 30 percent of the entity is owned (directly or indirectly) by the decedent, as determined under the rules described in section 2057(e)(3).

#####

PLANTATION EASEMENT

This instrument prepared by,
Return to:
Katherine Eddins
Chattowah Open Land Trust, Inc.
226 Old Ladiga Road
Piedmont, Alabama 36272

CONSERVATION EASEMENT

HERE PUT NAME OF FARM

STATE OF GEORGIA

COUNTY OF _____

THIS CONSERVATION EASEMENT (herein Conservation Easement) is made as of the ____th day of _____, 200_, by and between _____, having an address at _____ (the "Grantor"), (hereinafter Grantor), and **The CHATTOWAH OPEN LAND TRUST INC.**, a Georgia nonprofit corporation, with an address of 135 Christopher's Run, Alpharetta, Georgia 30004 (hereinafter Grantee).

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

RECITALS

A. Grantee is a nonprofit corporation established for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (hereinafter, the "Internal Revenue Code"), including specifically the following corporate purposes: to foster, develop, encourage and promote to and for the public an awareness of forest resources in Georgia and to further the relationship and interdependence of man and our natural resources; to promote public awareness of the forest and the vast diversity of its resources – including the impact of those resources on the lives of the people of Georgia; and to promote privately owned forest land assets and to foster good stewardship. Further, Grantee has established a program specifically for the protection of open space that includes forest land, farm land and their associated invaluable natural habitats.

B. Grantor owns in fee simple certain real property situated, lying, and being in _____ County, Georgia, and more particularly shown and described in Exhibit A attached hereto, containing approximately _____ acres, more or less. Said property contains uplands and riparian areas. The above-described riparian areas and uplands

encompassing _____± acres (the "Property") lie within that the Farm, which includes a total of _____± acres, including the Property, all of which is owned by Grantor.

Over a period of years, additional acreage may be subjected to this Conservation Easement by amendments adding site-specific conditions. By the execution of such amendments, the additional acreage will become subject to the terms and conditions hereof as limited or expanded by site-specific reference in the amendment conditions. As herein used, the term Property shall refer to the specific _____± acres described on Exhibit A, and as acreage is added by amendment, the term Property shall include such additional acreage.

C. Grantor is willing to grant a perpetual Conservation Easement over the Property in accordance with and under authority of which authorizes the creation of conservation easements in the State of Georgia for purposes including those set forth in the Recitals herein, thereby restricting and limiting the use of the land and contiguous water areas of the Property, on the terms and conditions and for the Conservation Purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement.

D. The Property is characterized by the following Conservation Values, to wit:

1. Scenic, natural, cultural, and rural qualities that have not been subject to significant development and significant natural areas that provide a relatively natural habitat for fish, wildlife, plants, or similar ecosystem as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code; such natural areas include, both natural and old field pine stands, associated southern bottomland and upland hardwood forests, forest soils and environment capable of supporting endangered flora and fauna and various state listed protected species, creeks, and natural and man-made ponds, lakes. The abundance and diversity of the wildlife on the Property would decline or be extinguished if the habitat created by the forests, fields, and wetlands on the Property were improvidently altered or removed or subdivided into small tracts.

2. Hunting land, productive farmland, and forest land that sustains for the long term both the economic and Conservation Values of the Property and its environs, which economic and Conservation Values are preserved through management guided by the following principles (hereinafter, the Principles of Sustainable Conservation Management):

- protection of scenic and other distinctive rural characteristics of the landscape of the Property;
- maintenance of soil productivity and control of soil erosion;
- maintenance and enhancement of wildlife and game habitat;

- protection of unique and fragile natural areas, native and rare species habitats, as described in the Baseline Documentation Report and the Land Management Plan;
- maintenance and/or creation of a healthy balance of even-aged and uneven-aged timber classes;
- maintenance of the Property as a working and sustainable farming and timber operation consistent with best management practices and with the Conservation Values herein protected;
- maintenance or improvement of the overall composition and quality of the timber resource;
- maintenance of the value of the Property as significant open space, thereby avoiding land fragmentation;
- protection of surface water quality, wetlands, and riparian areas.

3. Open space, including scenic values, which can be enjoyed by the general public from _____, both graded _____ County public roads, views from productive farm and forest land characteristics of the Property consistent with and described in Section 170(h)(4)(A)(iii) of the Internal Revenue Code. Preservation of these open space values yields significant public benefit.

4. Historically important land, consistent with and described in Section 170(h)(4)(A)(iv) of the Internal Revenue Code, development and fragmentation of which would lead to or contribute to degradation of the scenic, natural, rural, and historic character of the area.

These Conservation Values are described in and are in accordance with Section 170(h) of the Internal Revenue Code.

E. The Conservation Purposes (hereinafter defined), specific features, and Conservation Values of the Property are described, documented, located, and mapped in the Baseline Documentation Report (BDR). The parties acknowledge that the BDR accurately establishes the uses, structures, improvements, condition, and Conservation Values of the Property as of the effective date hereof.

F. Grantee is a tax-exempt publicly supported charity under Sections 501(c)(3), 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code, is authorized by the laws of the state of Georgia (GA Code Sec. 44-10-1 et seq.) to accept, hold, and administer conservation easements, possesses the authority to accept and is willing to accept this Conservation Easement under the terms and conditions hereinafter described, and is a qualified organization and an eligible donee within the meaning of Section 170(h)(3) of the Internal Revenue Code and regulations promulgated thereunder.

G. Grantor and Grantee recognize the traditional uses of the Property for farming, forestry, and wildlife game management, and other naturalistic purposes, which uses have fostered and preserved the Conservation Values described above. These traditional land uses for a substantial part of the property include, but are not limited to, operation of the Property as a historic cotton plantation since the early 1800s, forestry, agriculture, game management, fishing, and quail, dove, turkey, and deer hunting.

H. The preservation of the Property protects habitat for wildlife through the long-term conservation and propagation of various species of animals and birds, including migratory waterfowl, upland game birds, and a wide variety of song birds, and preserves the recreational uses, such as shooting, hunting, and fishing, as well as agriculture, forestry, and other uses which are compatible with the conservation and protection of the Property.

I. There are three (3) exhibits to this Conservation Easement, all of which are attached hereto and made a part hereof by reference:

- | | |
|-----------|--|
| Exhibit A | Legal description (the Property), |
| Exhibit B | Conservation and Land Management Plan for the Farm (referred to herein as the Management Plan and variously referred to in said Management Plan and in the Baseline Documentation Report, below, as the "Land Management Plan" and the "LMP"), and |
| Exhibit C | Baseline Documentation Report for the Property (the BDR). |

While the LMP is attached hereto as Exhibit B, the BDR is attached hereto as Exhibit C, and both are incorporated herein by reference, in the interest of efficiency, neither the LMP (Exhibit B) nor the BDR (Exhibit C) are recorded but are maintained instead at the offices of Grantor and Grantee.

NOW, THEREFORE, as an absolute charitable gift of no monetary consideration but in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors, and assigns, forever and in perpetuity, a Conservation Easement of the nature and character, and to the extent hereinafter set forth, over the Property more particularly described in Exhibit A attached hereto, together with the right to preserve and protect the conservation values of the Property.

The Conservation Purposes of this Conservation Easement are to preserve and protect the Conservation Values of the Property referenced in the Recitals above, which the parties agree are a part of the Conservation Easement, and to maintain permanently the open space value of the Property and the dominant woodland, scenic, historic,

cultural, rural, agricultural, wildlife, game management, and natural character of the Property, including its land and water resources.

To achieve these Conservation Purposes, the following conditions and restrictions are set forth:

ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land (the Property) and is enforceable by Grantee against Grantor, his/its personal representatives, heirs, successors and assigns, lessees, agents, and licensees.

ARTICLE II. PROHIBITED, RESTRICTED, PERMITTED, AND RESERVED ACTIVITIES AND RIGHTS

Any activity on, or use of, the Property not inconsistent with the Conservation Purposes of this Conservation Easement and the provisions of the Management Plan, and not specifically prohibited by this Conservation Easement or applicable public law and regulation is permitted. The Property shall be maintained in its natural, scenic, agricultural, rural, and open condition, and restricted from any development or use that would impair or interfere with (1) the Conservation Purposes of this Conservation Easement set forth in the Recitals above, and (2) the purpose of encouraging the long-term economic sustainability of the Property as a working landscape, producing income from activities that sustain or are otherwise consistent with said Conservation Purposes, including the production of forests, agricultural crops, and active wildlife management practices which enhance hunting, shooting, and fishing.

All rights reserved by Grantor are considered to be consistent with the Conservation Purposes of this Conservation Easement and the Principles of Sustainable Conservation Management, and, except to the extent that prior written approval of Grantee is required by this Conservation Easement or Management Plan, require no prior notification to or approval by Grantee. Notwithstanding the foregoing, the Grantor and Grantee have no right to agree to any activity that would result in the termination of this Conservation Easement or that would cause it to fail to qualify as a qualified conservation contribution as described in Section 170(h) of the Internal Revenue Code, or any regulations promulgated thereunder.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited and restricted, or--to the extent allowed under all applicable federal, state or local laws, regulations or ordinances--permitted and reserved to Grantor, its successors and assigns.

A. Industrial and Commercial Use. Industrial and commercial activities are prohibited on the Property except: (1) such activities as can be conducted in existing and permitted structures without alteration of the external appearance thereof, except such alteration as is otherwise permitted herein; (2) agriculture and forestry as described herein; (3) the leasing of hunting, fishing, hiking, horseback riding rights, and suitable recreational access to and uses of the Property. "Agriculture" and "forestry" shall include but not be limited to the existing agricultural uses described in Section B of this Article, animal husbandry, floriculture, and horticulture activities; the production of plant and animal products for domestic or commercial purposes; the growing, stocking or cutting, and sale of trees; and the processing and sale of products produced on the Property. The Grantor may permit the use of the Property by guests, paying club members, or lessees so long as the other applicable provisions of this Conservation Easement are met. New construction shall be limited to buildings and improvements permitted in Section J of this Article.

B. Agricultural and Horticultural Use. Existing agricultural, grazing, and horticultural uses of the Property as described in the BDR may continue provided, however, that:

1. All such activities shall be conducted in accordance with all pertinent local, state and federal regulations and guidelines covering such activities, and Best Management Practices thereof unless the terms of the Conservation Easement (including the Management Plan) provide otherwise, in which case they shall be conducted in accordance with pertinent provisions of the Conservation Easement or Management Plan. In the event of a conflict between the terms of the Conservation Easement and those of the Land Management Plan, the terms of the Conservation Easement shall control;

2. All such activities described in the BDR (Exhibit C, attached hereto but not recorded herewith) and the Land Management Plan (Exhibit B, attached hereto but not recorded herewith) are hereby found to be consistent with the Principles of Sustainable Conservation Management set forth herein and are not, and shall not in the future be, detrimental to the scenic, historic, natural area, and native species habitat protection, wildlife and game habitat protection, bobwhite quail habitat protection, and sustainable forestry purposes of this Conservation Easement as described in the BDR and the Land Management Plan;

3. All such activities shall be designed to maintain soil productivity and prevent soil erosion, to protect water quality and to maintain the scope of traditional or existing agricultural and forestry activities. Agricultural activities, including but not limited to the raising, cultivation and harvesting of plants and the breeding, raising, training, care and sale of livestock, horses, poultry, waterfowl, fish and other domesticated animals, shall be conducted on a traditional scale such as characterized uses of the Property in the past and shall not be conducted as industrial or factory-type agricultural operations or by the continuous confinement of livestock, horses, poultry, waterfowl or fish in tightly confined environments for the purpose of raising, feeding,

and fattening for market. Agricultural activities may be rotated, such that any portion of the Property used for any of above described agricultural activities may be converted to, and used for any other above described agricultural activity subject to, and in accordance with the terms and conditions of this Conservation Easement. Slaughtering facilities are prohibited;

4. No forested area as set out in the BDR and the Land Management Plan may be cleared for agricultural or grazing activity except that Grantor may construct a few wildlife food plots in such areas that, as a consequence of such clearing, also produce better wildlife habitat. The Grantor may not introduce into the Property for raising, harvesting, and cultivation any plant species that is not native to _____ County, Georgia, as Grantor may determine in consultation with Grantee and the Extension Service of the federal Natural Resources Conservation Service. The Grantor will not construct, conduct, or operate a game farm, or raise or hold game farm animals on the Property. Game farm animals include game farm animals regulated or prohibited by the State of Georgia and also include penned, enclosed or privately-owned caribou, all species of deer other than whitetail deer (*Odocoileus virginianus*), elk, moose, antelope, mountain sheep, mountain goat, and any other cloven-hoofed ungulate which could interbreed with or spread disease to any cloven-hoofed ungulate indigenous to Georgia. For purposes of this paragraph, game farm animals do not include any species of geese, ducks, quail, pheasant, grouse, partridge, chucker, and any other upland game birds.

5. The Grantor may use agrichemicals and biological controls, including but not limited to insects, fertilizers, biocides, herbicides, pesticides, insecticides and rodenticides, but only in accordance with all applicable laws, in those amounts and with that frequency of application constituting the minimum necessary to accomplish reasonable grazing, agricultural and forestry objectives, and to the extent that there is not a demonstrable detrimental effect on the Conservation Values of the Property. The use of such agents shall be conducted in such a manner as to minimize any adverse effect upon the Conservation Values of the Property and to avoid any impairment of the natural ecosystems and their processes.

C. Forestry. Selective timber management, using both even-aged and uneven-aged harvesting practices, including thinning, harvesting, and planting of the Property, may continue, provided, however, that:

1. All such activities shall be conducted in accordance with the forestry management provisions of the Land Management Plan, which will incorporate all applicable governmental regulations or guidelines covering such activities as well as the Best Management Practices guidelines for the timber industry promulgated in the State of Georgia. In the event of a conflict between the terms of the Management Plan and the remaining terms of this Conservation Easement, the terms of the Conservation Easement shall control; and

2. Such activities shall not be detrimental to the scenic, historic, natural area and rare species habitat protection, wildlife and game habitat protection, and sustainable forestry purposes of this Conservation Easement.

D. Management Plan. The current Land Management Plan is consistent with the terms of this Conservation Easement, has been approved by the Grantor and Grantee, and is attached hereto as Exhibit B (which Exhibit B is not recorded herewith but maintained in the offices of the Grantee). It shall be amended in writing by mutual agreement of the Grantor (including all owners of parcels of the Property conveyed into separate ownership in accordance with Section I of this Article) and Grantee at least once every five (5) years beginning from the effective date of this Conservation Easement. The Land Management Plan encourages long-term sustainable stewardship forestry to provide income from sustainable, consumptive uses of wildlife and natural resources of the Property that are consistent with the Conservation Purposes of this Conservation Easement. The current Land Management Plan includes, and all future Management Plans will include at a minimum:

1. Timber harvest goals and standards specific to natural and planted loblolly and hardwood stands, as well as pine plantations and natural and planted hardwood stands;
2. Management guidelines for Special Natural Areas identified in the BDR, which include habitat for rare plants, animals, or ecosystems, hardwood bottoms and drainages, riparian areas, et cetera. See also Section N of this Article regarding timbering in Special Natural Areas;
3. A prescribed burn program; and
4. Other management practices conducive to the propagation and retention of native plants and wild populations of game and non-game species of birds, mammals and fish, and avoid any inconsistent uses described in Section L., below.

The Land Management Plan may include guidelines that are made specific to portions of the Property, including such portions conveyed into separate ownership in accordance with Section I of this Article. In the event Grantor fails to implement management activities set forth in the Land Management Plan, and such failure continues fifteen (15) days after delivery of Grantee's written notice to Grantor without a schedule of implementation having been agreed to by the Grantor and Grantee, then Grantee, by written notice to Grantor, may institute mediation proceedings to resolve the disputed issues. In the event such mediation does not resolve the disputed issues within thirty (30) days after Grantor's delivery of such notice, then the Grantee without further notice, shall have the right, but not the obligation, to implement such management activities at its expense using trained staff or outside contractors.

E. Hunting, Fishing, and Other Recreational Activities. Grantor reserves the right in accordance with all applicable law and regulations to hunt with or without dogs, shoot, fish, trap, and conduct field trials on the Property, and the right to lease all or any portion of the Property for hunting with or without dogs, shooting, trapping, fishing, hiking, biking, horseback riding, and conducting field trials, as well as the right to charge

members of a hunting club or individuals a fee to conduct such activities, and other recreational activities permitted in this Conservation Easement or the Land Management Plan.

F. Signage. Display of billboards, signs, or advertisements is prohibited on or over the Property, except for the posting of no trespassing signs, signs identifying the Conservation Values of the Property, and/or identifying the Grantor as owner of the Property, directional signs, informational signs advertising on-site permitted activities or signs advertising the Property for sale or rent, provided that these signs are no larger than 25 square feet, are permitted.

G. Dumping. Dumping of nonbiodegradable substances such as chemicals and other hazardous substances, trash, garbage, wastes, abandoned vehicles, appliances, machinery, or other nonbiodegradable material on the Property is prohibited. This prohibition shall not be construed to include the dumping on the Property in areas not visible to the public from public roads and at least two hundred (200) feet from any watercourse or water impoundment of biodegradable waste generated on the Property which results from permitted activities, including agriculture, forestry, timbering, land clearing, animal husbandry, and game management conducted in accordance with the provisions of this Conservation Easement and the Management Plan.

H. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining, or drilling, no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials, and no change in the topography of the land in any manner except as follows: (a) as reasonably necessary for the purpose of combating erosion, (b) as necessary for construction and maintenance on the Property of roads, bridges, and culverts permitted hereunder

I. Conveyance and Subdivision.

1. The Property shall not be subdivided, except the Property may be divided into parcels of not less than 750 acres, and conveyed to separate owners; however, each conveyance shall remain subject to the terms of this Conservation Easement (including the Management Plan), and no parcel shall be conveyed which is less than 750 acres in size. The location of any site for the construction of new residential structures and accessory structures thereto within a Headquarters Site within each parcel as described in Section J of this Article must be approved in writing by Grantee prior to the commencement of construction, which approval may not be unreasonably withheld. The Grantor shall have the right to convey the entire Property in one conveyance, which conveyance shall be subject to the terms and conditions of this Conservation Easement. The provisions of this paragraph do not and are not intended to limit the right of Grantor to convey interests in part or in whole in ownership entities that hold title to all or any portion of the Property.

2. Grantor shall have the right to transfer by sale, trade, or gift, all or any portion of the Property to any of the children of Grantor, or their spouses, or to trusts, corporations, partnerships, or limited liability companies owned by them or established

for their benefit. Such transfers may be in tracts of less than 750 acres if a part of a pattern of giving or transfer that will ultimately result in the transferee owning not less than 750 acres, and only if, prior to the initial transfer of any parcel of less than 750 acres, the Grantor thereof serves written notice on Grantee herein of the commencement of a pattern of transfers, provides a description of the parcel to be transferred and a description of the total acreage to be ultimately transferred, and acknowledges the responsibility of the Grantor for compliance with the terms of this Conservation Easement until a total of 750 acres is conveyed, and further confirms that such property is transferred subject to this Conservation Easement.

J. Residential Use, Improvements, New Construction, and Access Thereto. There shall be no residential use, nor any building, facility, mobile home, or other structure constructed or placed on the Property, nor any construction of any new permanent roads, nor any widening of existing roads except that Grantor may exercise the following rights in accordance with the following approval and notice provisions:

1. Each parcel in separate ownership containing at least 750 acres may include one (1) Headquarters Site, the total of such Headquarters Sites on the Property not to exceed seven (7). The location of each Headquarters Site shall be subject to the prior written approval of the Grantee, which approval may not be unreasonably withheld. The size of each Headquarters Site shall not exceed fifteen (15) acres. Each Headquarters Site may contain no more than two (2) houses solely used as residences in accordance with the provisions of this Section; no more than one (1) lodge for temporary housing of guests and for service activities; no more than three (3) guest houses; any number of sheds, barns, kennels, garages, picnic shelters, and barns not for human habitation; and wells, septic systems, utility services, pastures and other cleared areas. The total coverage on the ground within each Headquarters Site of buildings under roof shall not exceed ten thousand (10,000) square feet. Access roads to and through each Headquarters Site may be constructed in accordance with paragraph 4 of this Section J. Utilities to and through each Headquarters Site and appropriate to the management of the Property consistent with the predominantly rural, agricultural, scenic, and natural values of the Property may be constructed. There shall not be more than two (2) permanent residential units per house and per guest house, nor shall the houses and guest houses within each Headquarters Site be developed as cluster housing, nor shall they be owned under condominium or cooperative ownership but shall instead be retained under single ownership, nor shall they be used as apartments for tenants. In clarification of the above, use of the houses and guest houses for members of Grantor's family, Grantor's guests, paying club members, and/or lessees of Grantor is permitted. Grantor herein includes any current or future owner of the Property.

2. Outside the Headquarters Sites, with the prior written approval of Grantee, which approval will not be withheld if significant Conservation Values are not adversely impacted in the determination of Grantee, to construct accessory structures designed, constructed, and utilized for the purpose of serving existing or permitted residences (for example, garage, well house); accessory structures and improvements designed, constructed, and utilized for the purpose of serving traditional, existing, or

permitted uses of the Property (for example, sheds, picnic shelters, kennels, and barns); and facilities normally used in connection with supplying utilities to and removing effluent from the existing and permitted structures and improvements. The total coverage on the ground of buildings under roof outside Headquarters Sites shall not exceed ten thousand (10,000) square feet in total. In the event of subdivision in accordance with paragraph Article II.I, no more than three thousand (3,000) square feet of building under roof shall be allowed outside Headquarters Sites for each Seven Hundred Fifty (750) acres included in each parcel. Irrespective of the above, no new structures or improvements shall be permitted in Special Natural Areas, unless provided for in the Land Management Plan and specifically agreed to by Grantee in writing or unless constructed for fishing, hunting or shooting purposes in accordance with the provisions of Section N of this Article;

3. Upon prior written notice to Grantee, to replace all existing structures and improvements as identified in the BDR and other structures and improvements permitted under this Conservation Easement with structures and improvements that are used for traditional, existing, or other permitted purposes; to improve, repair, restore, alter, remodel, maintain, and expand all existing structures and improvements as identified in the BDR, and new or replacement structures and improvements permitted under this Conservation Easement, except that changes to accommodate industrial or commercial uses shall not significantly modify the size or external appearance of the structures. Significant modifications to size shall be defined as increasing the square foot area of the structure by more than 20 per cent. Significant modifications to the external appearance shall be defined as changing the external architectural style of the structure from the original structure as depicted in the BDR.

4. To construct and maintain reasonable means of access to all permitted structures for all permitted uses; provided, however, that (a) the traveled portion of any road, driveway or right of way may not be wider than twenty (20) feet; (b) construction of roads and driveways shall be limited to permeable materials; and (c) maintenance of roads and driveways shall be limited to removal of dead vegetation, necessary pruning or removal of hazardous trees and plants, application of permeable materials necessary to correct or impede erosion, grading, replacement of culverts and bridges, and maintenance of roadside ditches.

5. To remove, sell for removal, or demolish any of the existing silos, buildings, or equipment located on the Property and not defined in the BDR as having historic or Conservation Value.

K. Water Quality and Drainage Patterns. The Grantor shall manage the Property in a manner to prevent pollution, alteration, or depletion of surface water, natural water courses, subsurface water, or any other water bodies, except that Grantor reserves the following rights:

1. To continue to operate, maintain, or replace existing ground water wells and to add new wells incident to all permitted uses on the Property, including

wildlife management purposes, residential use, any farm headquarters complex, agricultural field irrigation, all subject to legally required permits and regulations; and

2. To maintain or replace the existing man-made ponds on the Property and to construct additional man-made waterfowl ponds, lakes, impoundments, and fishing ponds that in the opinion of Grantor shall enhance and support waterfowl and fishing, and to construct additional man-made waterholes for habitat improvement for deer and turkey. The location of any site for a new pond or lake must be approved in writing by Grantee prior to the commencement of construction, which approval may not be unreasonably withheld. Grantee's request for Grantor's approval shall include copies of all applicable local, state, and federal permits for the desired activity.

3. The provisions herein shall not be construed to prohibit any activity intended to restore any surface water, water course, or wetland to its natural and unpolluted condition.

L. Inconsistent Use. There may be no use or activity on the Property that, while consistent with one of the Conservation Purposes of this Conservation Easement, would permit destruction or impairment of significant Conservation Values. An inconsistent use that is destructive of Conservation Values is permitted only if such use, in the opinion of the Grantee, is necessary for the protection of the Conservation Purposes of this Conservation Easement.

M. Development Rights. With the exception of those uses and activities reserved to Grantor herein, Grantor conveys to Grantee all development rights that are now or hereafter allocated to, implied, reserved, or inherent in the Property. The parties agree that – upon their transfer to Grantee - such rights are terminated and extinguished, and may not be further used or transferred. The Property and any portion thereof shall not be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations, or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise; provided, however, that with prior written permission of the Grantee, this Section shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Property.

N. Special Natural Areas. There are certain significant naturally occurring communities within the boundaries of the Property, as more particularly identified as the Special Natural Areas in the BDR. The boundaries of Special Natural Areas may be redrawn from time to time by Grantee upon delivery of a copy of an updated map thereof by Grantee to Grantor, subject to the written approval of Grantor, which may not be unreasonably withheld. Special Natural Areas can be enlarged or modified with the concurrence of the Grantor and Grantee. Modifications to Special Natural Areas in

accordance with the provisions of this Section shall be recorded in the public records of _____ County, Georgia. Notwithstanding any other provision to the contrary, there shall be no construction of improvements as described in Section J of this Article in any Special Natural Area identified in the BDR, nor any use of the Property which would impair or destroy the significant Conservation Values of the Special Natural Areas. Management and use of the Special Natural Areas will be in accordance with the pertinent provisions of the Management Plan. Any timber harvest activity in a Special Natural Area is subject to the prior written approval of Grantee, which approval may be withheld upon Grantee's determination that significant Conservation Values will likely be impaired.

Nothing herein shall prohibit the Grantor from constructing riding trails, docks, duck blinds, platform duck blinds, deer stands, access to and from water areas for fishing, hunting and shooting including, where necessary and where approved in writing by Grantee, limited excavation and dredging for the sole purpose of access for hunting, shooting, fishing, and permitted activities. The approval by Grantee shall not be unreasonably withheld.

O. Proceeds from Permitted Activities. The Grantor has reserved and is permitted certain rights hereunder, including the right to maintain permitted agricultural activities, harvest timber, lease hunting, fishing, and other rights, all subject to the specific restrictions contained herein; and any and all proceeds from such permitted activities are and shall remain the sole property of the Grantor.

ARTICLE III. ENFORCEMENT AND REMEDIES

A. Upon any breach of the terms of this Conservation Easement by Grantor or by a third party that comes to the attention of the Grantee, the Grantee shall notify the Grantor in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to undertake actions that are reasonably calculated to correct promptly the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may exercise any or all of the following remedies:

1. Institute suits to enjoin any breach or enforce any covenant by *ex parte*, temporary, and/or permanent injunction either prohibitive or mandatory, and/or to recover any damages from injury to any Conservation Values protected by this Conservation Easement, including damages for the loss of scenic, aesthetic, environmental values; and

2. Require that the Property be restored promptly to the condition required by this Conservation Easement.

Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to Grantee at law or equity.

B. No failure on the part of Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof, or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

C. Grantee, its employees and agents, and its successors and assigns, have the right, with reasonable notice, to enter the Property twice each calendar year, in the spring/summer and fall/winter, unless a breach has been alleged by Grantee and is currently the subject of mediation or litigation, or, unless Grantee by its president has given written notice to Grantor that it has a good faith reason to believe a breach has occurred, in which event, Grantor shall allow entry of the Property by Grantee within twenty-four (24) hours of Grantee's delivery of such written notice, for the purpose of inspecting the Property to determine whether the Grantor, his/its personal representatives, heirs, successors, or assigns are complying with the terms, conditions, and restrictions of this Conservation Easement.

D. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Property resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, earth movement, or unauthorized acts of third parties, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property, or harm to the Property resulting from such causes.

E. In the event of a disagreement between the Grantor and the Grantee as to whether or not a use or activity violates the provisions hereof or whether either party has acted unreasonably in the exercise of any discretionary power, then the parties shall submit the issue(s) to mediation and shall participate in settlement negotiations and discussions in good faith. Neither party may commence any legal action with respect to any such issues(s) without undertaking good faith efforts at mediation. Any costs incurred by Grantee or Grantor in mediation and in an action to enforce or defend the terms of this Conservation Easement brought by either party, including, without limitation, costs of suit and attorneys fees, and - subject to the lien provisions of Section D of Article II - any costs of restoration shall be borne by the party incurring such cost.

ARTICLE IV. PUBLIC ACCESS AND ACCESS BY GRANTEE

The granting of this Conservation Easement does not convey to the public the right to enter the Property for any purpose whatsoever and Grantee warrants that it will cooperate with Grantor in the enforcement of this prohibition.

In addition to the access provided to Grantee under Article III, the Grantee shall have the right of access to the Property (1) for periodic site visits to observe various land management techniques at such times as are agreed to by Grantor and Grantee, subject to Grantee's providing Grantor at least seven (7) days advance notice, and (2) for scientific

research with permission from the Grantor, provided that Grantee provides the Grantor with a written description of any such research proposed and a schedule of projected site visits at least thirty (30) days prior to such proposed activities. Any research project sponsored by the Grantee on the Property requires a Memorandum of Research Agreement between the Grantee and the Grantor, which stipulates that for the duration of this research project on the study area, both Grantor and Grantee will abide by all applicable state and federal wildlife regulations.

ARTICLE V. EXHIBITS, DOCUMENTATION, AND TITLE

A. Legal Description and Title. Exhibit A, Legal Description of the Property, is attached hereto and made a part hereof by reference. The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple, has good right to grant and convey the aforesaid Conservation Easement, and that the Property is free and clear of any and all encumbrances, or any existing encumbrance has been subordinated to this Conservation Easement.

B. Management Plan. The parties acknowledge that they have entered into a Conservation and Forest Management Plan for the Farm dated as of December 19, 2003, a copy of which is attached hereto as Exhibit B (which Exhibit B is not recorded herewith but maintained in the offices of the Grantee). The Management Plan shall be amended by agreement of the Grantor and Grantee as set out in Section D of Article II, so long as such amendment is in writing and in accordance with Chattowah Open Land Trust d/b/a Georgia Land Trust Amendment Policy, as such Policy may itself be amended from time to time.

C. Easement Documentation Report. The parties acknowledge that the Conservation Easement Documentation Report dated as of December 20, 2003, a copy of which is attached hereto as Exhibit C, accurately describes the uses, improvements, Conservation Values, and condition of the Property as of the date thereof and hereof. Said Exhibit C, which is not recorded herewith but maintained in the offices of the Grantee, variously references the Conservation and Forest Management Plan as the "Management Plan" and the "FMP."

ARTICLE VI. MISCELLANEOUS

B. Subsequent Transfers and Transfer Fee. Grantor agrees to notify Grantee of the names and addresses of any party to whom all or any portion of the Property is to be transferred to allow Grantee to discuss the terms and conditions hereof with such party. Grantor agrees to make specific reference to this Conservation Easement in any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed. Grantor, and each subsequent owner of the Property shall have no personal liability for the observance or performance of the Covenants and obligations of the Grantor hereunder, after the Grantor or subsequent owner has conveyed

(his or her) interest in the Property, so long as the transfer is made in accordance with the terms hereof.

In the event of a sale or trade or exchange pursuant to Section 1031 of the Code to persons or entities not referred to in Article II.I.2. above, there shall be assessed by the Grantee, and collected from all purchasers of the Property (in whole, in part or some interest therein), subsequent to the conveyance of this Conservation Easement, a transfer fee payable to the Stewardship Fund of Chattowah Open Land Trust, Inc. equal to one percent (1%) of the sales price on each acre sold or traded (pursuant to Section 1031 of the Code) at the time of each of such sales.

The Grantor shall, at closing, provide Grantee with copies of executed closing statements as evidence of the sales, showing payment of said fee to the Stewardship Fund of Chattowah Open Land Trust, Inc.

Any transfer of the Property as a gift and without consideration subsequent to the conveyance of this Conservation Easement shall be exempt from the assessment of such transfer fee. Similarly, subject to the provisions of Article II.I.2. above, Grantor shall have the right to transfer by sale, trade, or gift, all or any portion of the Property in the manner provided therein without payment of the transfer fee described in this paragraph.

C. Conservation Purposes - Condemnation - Involuntary Conversion.

1. Grantee, for itself, its successors and assigns, agrees that this Conservation Easement shall be held exclusively for Conservation Purposes, as defined in Section 170(h)(4)(A) of the Internal Revenue code.

2. The donation of this Conservation Easement gives rise to a Property right, immediately vested in Grantee, with a fair market value equal to the proportionate value that the Conservation Easement bears to the value to the Property as a whole.

That proportionate value of the Grantee's Property rights shall remain constant. If a change in conditions that makes impossible or impractical any continued protection of the Property for Conservation Purposes, the restrictions contained herein may only be extinguished by judicial proceeding. Upon such proceeding, the Grantee, upon a subsequent sale, exchange, or involuntary conversion of the Property, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Conservation Easement (minus any increase in value to the Property attributable to buildings and structures constructed on the Property, and improvements made to the Property's buildings and structures, after the date of this Conservation Easement, which amount is reserved to Grantor). The Grantee shall use its share of the proceeds in a manner consistent with the Conservation Purposes set forth in the Recitals herein. Nothing herein shall prevent Grantor from transferring said Property, by deed, gift, or will, to a third party, subject to this Conservation Easement.

3. Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of the Grantee's and Grantor's interests as specified above; all expenses, including attorneys' fees incurred by the Grantor and the Grantee in this action, shall be paid out of the recovered proceeds to the extent not paid by the condemning authority.

D. Assignment. The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable and that such benefits and the rights and obligations that accompany same may be transferred or assigned only to a mutually acceptable party, and only if the organization receiving the interest is a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code (or any successor section) and the regulations promulgated thereunder, which is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, which is not opposed to hunting or taking of animals. The terms of the transfer or assignment will be such that the transferee or assignee will be required (1) to continue to carry out in perpetuity the Conservation Purposes that the contribution was originally intended to advance, set forth herein, and (2) to acknowledge and agree to enforce the terms and conditions of this Conservation Easement as Grantee.

Grantee covenants and agrees that it will not transfer this Conservation Easement unless Grantee is no longer capable of carrying out the purposes of the Grantee as recited herein and unless Grantee is in imminent threat of ceasing to exist for the purposes for which it was created, and the Grantor or its successor in title consents to the intended successor party as assignee of Grantee's interest. In the event the Grantor and the Grantee are unable to agree on a successor party as assignee of Grantee's interest, the matter shall be mediated in the manner set forth in Section E of Article III hereof.

E. Taxes and Assessments. The Grantor is responsible for, and agrees to pay any real estate taxes or other assessments levied on the Property and to pay all deed taxes and recording fees relating to any transfer of the Property, any portion of the Property and this Conservation Easement.

F. Construction of Terms. This Conservation Easement shall be construed to promote the purposes of the Georgia enabling statute, Official Code of Georgia Annotated §§ 38-18-1 et seq. which authorizes the creation of Conservation Easements for purposes including those set forth in the Recitals herein and the Conservation Purposes of this Conservation Easement, including such purposes as are defined in Section 170(h)(4)(A) of the Internal Revenue Code.

G. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. If

any provision is found to be invalid, the remainder of the provisions of this Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

H. Recording. Grantor shall record this instrument in the official records of _____ County, Georgia, and evidence of this instrument may be re-recorded at any time as may be required to preserve the rights of the Grantee or Grantor under this Conservation Easement. The Grantor agrees to pay all deed taxes and recording fees relating to the grant of this Conservation Easement.

I. Amendment. If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, Grantor and Grantee are free to jointly amend this Conservation Easement provided that (1) no amendment shall be allowed that will affect the qualification of this Conservation Easement as a qualified conservation contribution or the status of the Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code, (2) any amendment shall be consistent with the Conservation Purposes of this Conservation Easement set forth in the Recitals herein, (3) any amendment shall be consistent with Chattowah Open Land Trust (OR GEORGIA LAND TRUST) Easement Amendment Policy, (4) any amendment shall not affect the perpetual duration of this Conservation Easement, (5) any amendment shall be in writing, signed, sealed, and acknowledged by both parties, and (6) no amendment shall be allowed that will adversely affect Grantee's qualifications as a publicly supported charitable organization in accordance with Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code, or a "qualified organization" in accordance with Section 170(h) of said Internal Revenue Code. Nothing in this Section shall require any party to approve an amendment request of the other party.

The parties may add contiguous or non-contiguous land to this Conservation Easement by executing an Amendment to this Conservation Easement and recording such Amendment in the property records of the county or counties in which the Property is situated, which Amendment shall include a description of the newly added property, and notice of the location in the public records (Book and Page) of the original Conservation Easement for the Property.

J. Section 2031(c) Federal Estate Tax Exclusion. The Grantor and Grantee agree that the rights and activities reserved and permitted hereunder relating to recreational activities are consistent with the Conservation Purposes herein and as outlined in Section 170(h) of the Internal Revenue Code. The Grantor believes that such rights and activities do not constitute more than "de minimis" use of the Property for "commercial recreational activities" as those terms are used in Section 2031(c) of the Internal Revenue Code. This finding notwithstanding, and in the event a contesting party questions this finding, and solely for the purpose of qualifying the Conservation Easement for the estate tax exclusion and any expansion thereof under Internal Revenue Code Section 2031(c), or its successor provisions, the Grantor (including Grantor's estate, successors and assigns) may elect in writing in recordable form to release and terminate otherwise reserved and permitted "commercial recreational activities" either

inter vivos or, alternatively, post mortem, in accordance with Section 2031(c), to the extent permitted by said Section 2031(c), if necessary to qualify for the Conservation Easement estate tax exclusion under Internal Revenue Code Section 2031(c), such election to be recorded in the public records of _____ County, Georgia. Grantor shall notify Grantee in writing of such election in accordance with Section L of this Article.

K. Hazardous Waste. The Grantor covenants and represents that, to the best of his/her knowledge, no illegal hazardous substance or toxic waste is present on, or has been generated, treated, stored, used, disposed of, or deposited in or on the Property. Grantor covenants and represents that to the extent that any substance classified as hazardous, but legally permitted for use on the Property, is present on the Property, such substance shall be maintained in a safe and legal manner, and any hazardous wastes generated shall be disposed of properly off of the Property. With regard to any hazardous substances or toxic waste which may be hereafter discovered on the Property, Grantor acknowledges that this Conservation Easement is not intended to transfer any liability to Grantee that would otherwise reside with Grantor but for this Conservation Easement. Grantor agrees that Grantor will not bring an action against Grantee for cost recovery or cleanup of any contamination, unless such contamination results from the negligent or intentional acts of Grantee.

Further, Grantor shall hold harmless, indemnify, and defend the Grantee and the Grantee's members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with the presence or release of any hazardous material or substance of any kind on Grantor's Property. This paragraph shall not apply in the case of any hazardous material or substance in any manner placed on Grantor's Property by the Grantee or the Grantee's representatives or agents.

L. Notices. Any notices shall be sent by registered or certified mail, return receipt requested, addressed to the parties as set forth above, or to such other addresses such party may establish in writing to the other.

In any case, where the terms of this Conservation Easement require the consent of either Party, such consent shall be requested by written notice. Such consent shall be deemed to have been given, unless, within forty-five (45) days after receipt of notice, the party from whom consent has been requested delivers notice to the other party of disapproval and the reason therefor. Grantee's consent may be withheld only upon a determination by Grantee that the action as proposed would, in its opinion, violate the terms of this Conservation Easement or impair significant Conservation Values and be inconsistent with the Conservation Purposes of this Conservation Easement.

M. Grantor and Grantee. The term "Grantor" shall include the original Grantor, and all successors and assigns of such original Grantor. The term "Grantee"

shall include the original Grantee, Chattowah Open Land Trust, and all successors and assigns of such original Grantee.

TO HAVE AND TO HOLD unto Chattowah Open Land Trust, its successors, and assigns forever. The covenants agreed to and the terms, conditions, restrictions, and purposes imposed as aforesaid shall be binding upon Grantor, his/its personal representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantor hereto has set his/her/its hand and seal, and Grantee, by authority duly given, has hereunto caused these presents to be executed by its president and its corporate seal affixed the day and year above written to be effective upon the date of recordation of this Conservation Easement (the "effective date" herein) in the public records of _____ County, Georgia.

Witnesses: **GRANTOR:** _____

By _____
(Print) _____

By _____

By _____
(Print) _____

STATE OF GEORGIA

COUNTY OF _____

I, _____, a notary public in and for said county in said state, hereby certify that _____, is signed to the foregoing instrument, and who is personally known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, with full authority, executed the same voluntarily.

Given under my hand and official seal this _____ day of _____, 2004.

NOTARY PUBLIC

(Printed Name of Notary)
My Commission Expires:

GRANTEE:
CHATTOWAH OPEN LAND TRUST INC.

Witness: _____
(Print) _____

By _____
Rick Gilbert its Board President

Witness: _____
(Print) _____

CORPORATE SEAL

I, _____, a notary public in and for said county in said state, hereby certify that Rick Gilbert, whose name as President of Chattowah Open Land Trust Inc., is signed to the foregoing instrument, and who is personally known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such president and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this _____ day of _____, 2004.

NOTARY PUBLIC

(Printed Name of Notary)
My Commission Expires:

Witness: _____
(Print) _____

Attest: _____
Debra Gilbert its Board Secretary

CORPORATE SEAL

Witness: _____
(Print) _____

I, _____, a notary public in and for said county in said state, hereby certify that Debra Gilbert, whose name as Secretary of Chattowah Open Land Trust Inc., is signed to the foregoing instrument, and who is personally known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this _____ day of _____, 2004.

NOTARY PUBLIC

(Printed Name of Notary)

My Commission Expires:

Exhibit A
(The “Property”)

From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[CITE: 26USC170]

TITLE 26--INTERNAL REVENUE CODE

Subtitle A--Income Taxes

CHAPTER 1--NORMAL TAXES AND SURTAXES

Subchapter B--Computation of Taxable Income

PART VI--ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

Sec. 170. Charitable, etc., contributions and gifts

(a) Allowance of deduction

(1) General rule

There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

(2) Corporations on accrual basis

In the case of a corporation reporting its taxable income on the accrual basis, if--

(A) the board of directors authorizes a charitable contribution during any taxable year, and

(B) payment of such contribution is made after the close of such taxable year and on or before the 15th day of the third month following the close of such taxable year,

then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary shall by regulations prescribe.

(3) Future interests in tangible personal property

For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) or 707(b). For purposes of the preceding sentence, a fixture which is intended to be severed from the real

property shall be treated as tangible personal property.

(b) Percentage limitations

(1) Individuals

In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule

Any charitable contribution to--

(i) a church or a convention or association of churches,
(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

(v) a governmental unit referred to in subsection (c) (1),

(vi) an organization referred to in subsection (c) (2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c) (1) or from direct or indirect contributions from the general public,

- (vii) a private foundation described in subparagraph (E), or
- (viii) an organization described in section 509(a)(2) or (3),

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(B) Other contributions

Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of--

- (i) 30 percent of the taxpayer's contribution base for the taxable year, or
- (ii) the excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (C)).

If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time.

(C) Special limitation with respect to contributions described in subparagraph (A) of certain capital gain property

(i) In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies).

(ii) If charitable contributions described in subparagraph (A) of capital gain property to which clause (i) applies exceeds 30 percent of the taxpayer's contribution base for any taxable year, such excess shall be treated, in a manner consistent with the rules of subsection (d)(1), as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(iii) At the election of the taxpayer (made at such time and in such manner as the Secretary prescribes by regulations), subsection (e)(1) shall apply to all contributions of capital gain property (to which subsection (e)(1)(B) does not otherwise apply) made by the taxpayer during the taxable year. If such an election is made,

clauses (i) and (ii) shall not apply to contributions of capital gain property made during the taxable year, and, in applying subsection (d)(1) for such taxable year with respect to contributions of capital gain property made in any prior contribution year for which an election was not made under this clause, such contributions shall be reduced as if subsection (e)(1) had applied to such contributions in the year in which made.

(iv) For purposes of this paragraph, the term ``capital gain property'' means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of the preceding sentence, any property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(D) Special limitation with respect to contributions of capital gain property to organizations not described in subparagraph (A)

(i) In general

In the case of charitable contributions (other than charitable contributions to which subparagraph (A) applies) of capital gain property, the total amount of such contributions of such property taken into account under subsection (a) for any taxable year shall not exceed the lesser of--

(I) 20 percent of the taxpayer's contribution base for the taxable year, or

(II) the excess of 30 percent of the taxpayer's contribution base for the taxable year over the amount of the contributions of capital gain property to which subparagraph (C) applies.

For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions.

(ii) Carryover

If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(E) Certain private foundations

The private foundations referred to in subparagraph (A)(vii) and subsection (e)(1)(B) are--

(i) a private operating foundation (as defined in section 4942(j)(3)),

(ii) any other private foundation (as defined in section 509(a)) which, not later than the 15th day of the third month after the close of the foundation's taxable year in

which contributions are received, makes qualifying distributions (as defined in section 4942(g), without regard to paragraph (3) thereof), which are treated, after the application of section 4942(g)(3), as distributions out of corpus (in accordance with section 4942(h)) in an amount equal to 100 percent of such contributions, and with respect to which the taxpayer obtains adequate records or other sufficient evidence from the foundation showing that the foundation made such qualifying distributions, and

(iii) a private foundation all of the contributions to which are pooled in a common fund and which would be described in section 509(a)(3) but for the right of any substantial contributor (hereafter in this clause called ``donor'') or his spouse to designate annually the recipients, from among organizations described in paragraph (1) of section 509(a), of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to an organization described in such paragraph (1), of the corpus in the common fund attributable to the donor's contribution; but this clause shall apply only if all of the income of the common fund is required to be (and is) distributed to one or more organizations described in such paragraph (1) not later than the 15th day of the third month after the close of the taxable year in which the income is realized by the fund and only if all of the corpus attributable to any donor's contribution to the fund is required to be (and is) distributed to one or more of such organizations not later than one year after his death or after the death of his surviving spouse if she has the right to designate the recipients of such corpus.

(F) Contribution base defined

For purposes of this section, the term ``contribution base'' means adjusted gross income (computed without regard to any net operating loss carryback to the taxable year under section 172).

(2) Corporations

In the case of a corporation, the total deductions under subsection (a) for any taxable year shall not exceed 10 percent of the taxpayer's taxable income computed without regard to--

- (A) this section,
- (B) part VIII (except section 248),
- (C) any net operating loss carryback to the taxable year under section 172, and
- (D) any capital loss carryback to the taxable year under section 1212(a)(1).

(c) Charitable contribution defined

For purposes of this section, the term ``charitable contribution'' means a contribution or gift to or for the use of--

- (1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(2) A corporation, trust, or community chest, fund, or foundation--

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B). Rules similar to the rules of section 501(j) shall apply for purposes of this paragraph.

(3) A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization--

(A) organized in the United States or any of its possessions, and

(B) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(4) In the case of a contribution or gift by an individual, a domestic fraternal society, order, or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(5) A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

For purposes of this section, the term ``charitable contribution'' also means an amount treated under subsection (g) as paid for the use of an organization described in paragraph (2), (3), or (4).

(d) Carryovers of excess contributions

(1) Individuals

(A) In general

In the case of an individual, if the amount of charitable contributions described in subsection (b)(1)(A) payment of which is made within a taxable year (hereinafter in this paragraph referred to as the ``contribution year'') exceeds 50 percent of the taxpayer's contribution base for such year, such excess shall be treated as a charitable contribution described in subsection (b)(1)(A) paid in each of the 5 succeeding taxable years in order of time, but, with respect to any such succeeding taxable year, only to the extent of the lesser of the two following amounts:

(i) the amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of the charitable contributions described in subsection (b)(1)(A) payment of which is made by the taxpayer within such succeeding taxable year (determined without regard to this subparagraph) and the charitable contributions described in subsection (b)(1)(A) payment of which was made in taxable years before the contribution year which are treated under this subparagraph as having been paid in such succeeding taxable year; or

(ii) in the case of the first succeeding taxable year, the amount of such excess, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess not treated under this subparagraph as a charitable contribution described in subsection (b)(1)(A) paid in any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers

In applying subparagraph (A), the excess determined under subparagraph (A) for the contribution year shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases the net operating loss deduction for a taxable year succeeding the contribution year.

(2) Corporations

(A) In general

Any contribution made by a corporation in a taxable year (hereinafter in this paragraph referred to as the ``contribution year'') in excess of the amount deductible for such year under subsection (b)(2) shall be deductible for each of the 5 succeeding taxable years in order of time, but only to the extent of the lesser of the two following amounts: (i) the excess of the maximum amount deductible for such succeeding taxable year under subsection (b)(2) over the sum of the contributions made in such year plus the aggregate of the excess contributions which were made in taxable years before the contribution year and which are deductible under this subparagraph for such succeeding taxable year; or (ii) in the

case of the first succeeding taxable year, the amount of such excess contribution, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess contribution not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers

For purposes of subparagraph (A), the excess of--

(i) the contributions made by a corporation in a taxable year to which this section applies, over

(ii) the amount deductible in such year under the limitation in subsection (b) (2),

shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b) (2)) and increases a net operating loss carryover under section 172 to a succeeding taxable year.

(e) Certain contributions of ordinary income and capital gain property

(1) General rule

The amount of any charitable contribution of property otherwise taken into account under this section shall be reduced by the sum of--

(A) the amount of gain which would not have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution), and

(B) in the case of a charitable contribution--

(i) of tangible personal property, if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

(ii) to or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b) (1) (E),

the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

For purposes of applying this paragraph (other than in the case of gain to which section 617(d) (1), 1245(a), 1250(a), 1252(a), or 1254(a) applies), property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset. For purposes of applying this paragraph in the case of a charitable contribution of stock in an S corporation, rules similar to the rules of section 751 shall apply in determining whether gain on such stock would have been long-term capital gain if such stock were sold by the taxpayer.

(2) Allocation of basis

For purposes of paragraph (1), in the case of a charitable contribution of less than the taxpayer's entire interest in the property contributed, the taxpayer's adjusted basis in such property shall be allocated between the interest contributed and any interest not contributed in accordance with regulations prescribed by the Secretary.

(3) Special rule for certain contributions of inventory and
other property

(A) Qualified contributions

For purposes of this paragraph, a qualified contribution shall mean a charitable contribution of property described in paragraph (1) or (2) of section 1221(a), by a corporation (other than a corporation which is an S corporation) to an organization which is described in section 501(c)(3) and is exempt under section 501(a) (other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 4942(j)(3)), but only if--

(i) the use of the property by the donee is related to the purpose or function constituting the basis for its exemption under section 501 and the property is to be used by the donee solely for the care of the ill, the needy, or infants;

(ii) the property is not transferred by the donee in exchange for money, other property, or services;

(iii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (i) and (ii); and

(iv) in the case where the property is subject to regulation under the Federal Food, Drug, and Cosmetic Act, as amended, such property must fully satisfy the applicable requirements of such Act and regulations promulgated thereunder on the date of transfer and for one hundred and eighty days prior thereto.

(B) Amount of reduction

The reduction under paragraph (1)(A) for any qualified contribution (as defined in subparagraph (A)) shall be no greater than the sum of--

(i) one-half of the amount computed under paragraph (1)(A) (computed without regard to this paragraph), and

(ii) the amount (if any) by which the charitable contribution deduction under this section for any qualified contribution (computed by taking into account the amount determined in clause (i), but without regard to this clause) exceeds twice the basis of such property.

(C) This paragraph shall not apply to so much of the amount of the gain described in paragraph (1)(A) which would be long-term capital gain but for the application of sections 617, 1245, 1250, or 1252.

(4) Special rule for contributions of scientific property
used for research

(A) Limit on reduction

In the case of a qualified research contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

(B) Qualified research contributions

For purposes of this paragraph, the term ``qualified research contribution'' means a charitable contribution by a corporation of tangible personal property described in paragraph (1) of section 1221(a), but only if--

- (i) the contribution is to an organization described in subparagraph (A) or subparagraph (B) of section 41(e)(6),
- (ii) the property is constructed by the taxpayer,
- (iii) the contribution is made not later than 2 years after the date the construction of the property is substantially completed,
- (iv) the original use of the property is by the donee,
- (v) the property is scientific equipment or apparatus substantially all of the use of which by the donee is for research or experimentation (within the meaning of section 174), or for research training, in the United States in physical or biological sciences,
- (vi) the property is not transferred by the donee in exchange for money, other property, or services, and
- (vii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (v) and (vi).

(C) Construction of property by taxpayer

For purposes of this paragraph, property shall be treated as constructed by the taxpayer only if the cost of the parts used in the construction of such property (other than parts manufactured by the taxpayer or a related person) do not exceed 50 percent of the taxpayer's basis in such property.

(D) Corporation

For purposes of this paragraph, the term ``corporation'' shall not include--

- (i) an S corporation,
- (ii) a personal holding company (as defined in section 542), and
- (iii) a service organization (as defined in section 414(m)(3)).

(5) Special rule for contributions of stock for which market quotations are readily available

(A) In general

Subparagraph (B)(ii) of paragraph (1) shall not apply to any contribution of qualified appreciated stock.

(B) Qualified appreciated stock

Except as provided in subparagraph (C), for purposes of this paragraph, the term ``qualified appreciated stock'' means any stock of a corporation--

(i) for which (as of the date of the contribution) market quotations are readily available on an established securities market, and

(ii) which is capital gain property (as defined in subsection (b)(1)(C)(iv)).

(C) Donor may not contribute more than 10 percent of stock of corporation

(i) In general

In the case of any donor, the term ``qualified appreciated stock'' shall not include any stock of a corporation contributed by the donor in a contribution to which paragraph (1)(B)(ii) applies (determined without regard to this paragraph) to the extent that the amount of the stock so contributed (when increased by the aggregate amount of all prior such contributions by the donor of stock in such corporation) exceeds 10 percent (in value) of all of the outstanding stock of such corporation.

(ii) Special rule

For purposes of clause (i), an individual shall be treated as making all contributions made by any member of his family (as defined in section 267(c)(4)).

(6) Special rule for contributions of computer technology and equipment for educational purposes

(A) Limit on reduction

In the case of a qualified computer contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

(B) Qualified computer contribution

For purposes of this paragraph, the term ``qualified computer contribution'' means a charitable contribution by a corporation of any computer technology or equipment, but only if--

(i) the contribution is to--

(I) an educational organization described in subsection (b)(1)(A)(ii),

(II) an entity described in section 501(c)(3) and exempt from tax under section 501(a) (other than an entity described in subclause (I)) that is organized primarily for purposes of supporting elementary and secondary education, or

(III) a public library (within the meaning of section 213(2)(A) of the Library Services and Technology Act (20 U.S.C. 9122(2)(A)), as in effect on the date of the enactment of the Community Renewal Tax Relief Act of 2000, \1\ established and maintained by an entity described in subsection (c)(1),

\1\ So in original. The word ``2000'' probably should be followed by a closing parenthesis.

(ii) the contribution is made not later than 3 years after the date the taxpayer acquired the property (or in the case of property constructed by the taxpayer, the date the construction of the property is substantially completed),

(iii) the original use of the property is by the donor or the donee,

(iv) substantially all of the use of the property by the donee is for use within the United States for educational purposes that are related to the purpose or function of the donee,

(v) the property is not transferred by the donee in exchange for money, other property, or services, except for shipping, installation and transfer costs,

(vi) the property will fit productively into the donee's education plan,

(vii) the donee's use and disposition of the property will be in accordance with the provisions of clauses (iv) and (v), and

(viii) the property meets such standards, if any, as the Secretary may prescribe by regulation to assure that the property meets minimum functionality and suitability standards for educational purposes.

(C) Contribution to private foundation

A contribution by a corporation of any computer technology or equipment to a private foundation (as defined in section 509) shall be treated as a qualified computer contribution for purposes of this paragraph if--

(i) the contribution to the private foundation satisfies the requirements of clauses (ii) and (v) of subparagraph (B), and

(ii) within 30 days after such contribution, the private foundation--

(I) contributes the property to a donee described in clause (i) of subparagraph (B) that satisfies the requirements of clauses (iv) through (vii) of subparagraph (B), and

(II) notifies the donor of such contribution.

(D) Donations of property reacquired by manufacturer

In the case of property which is reacquired by the person who constructed the property--

(i) subparagraph (B)(ii) shall be applied to a contribution of such property by such person by taking into account the date that the original construction of the property was substantially completed, and

(ii) subparagraph (B)(iii) shall not apply to such contribution.

(E) Special rule relating to construction of property

For the purposes of this paragraph, the rules of paragraph (4)(C) shall apply.

(F) Definitions

For the purposes of this paragraph--

(i) Computer technology or equipment

The term ``computer technology or equipment'' means computer software (as defined by section 197(e)(3)(B)), computer or peripheral equipment (as defined by section 168(i)(2)(B)), and fiber optic cable related to computer use.

(ii) Corporation

The term ``corporation'' has the meaning given to such term by paragraph (4)(D).

(G) Termination

This paragraph shall not apply to any contribution made during any taxable year beginning after December 31, 2003.

(f) Disallowance of deduction in certain cases and special rules

(1) In general

No deduction shall be allowed under this section for a contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Contributions of property placed in trust

(A) Remainder interest

In the case of property transferred in trust, no deduction shall be allowed under this section for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)).

(B) Income interests, etc.

No deduction shall be allowed under this section for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage distributed yearly of the fair market value of the trust property (to be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying section 671. If the donor ceases to be treated as the owner of such an interest for purposes of applying section 671, at the time the donor ceases to be so treated, the donor shall for purposes of this chapter be considered as having received an amount of income equal to the amount of any deduction he received under this section for the contribution reduced by the discounted value of all amounts of income earned by the trust and taxable to him before the time at which he ceases to be treated as the owner of the interest. Such amounts of income shall be discounted to the date of the contribution. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

(C) Denial of deduction in case of payments by certain trusts

In any case in which a deduction is allowed under this section for the value of an interest in property described in subparagraph (B), transferred in trust, no deduction shall be allowed under this section to the grantor or any other person for the amount of any contribution made by the trust with respect to such interest.

(D) Exception

This paragraph shall not apply in a case in which the value of all interests in property transferred in trust are deductible under subsection (a).

(3) Denial of deduction in case of certain contributions of partial interests in property

(A) In general

In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

(B) Exceptions

Subparagraph (A) shall not apply to--

- (i) a contribution of a remainder interest in a personal

residence or farm,

- (ii) a contribution of an undivided portion of the taxpayer's entire interest in property, and
- (iii) a qualified conservation contribution.

(4) Valuation of remainder interest in real property

For purposes of this section, in determining the value of a remainder interest in real property, depreciation (computed on the straight line method) and depletion of such property shall be taken into account, and such value shall be discounted at a rate of 6 percent per annum, except that the Secretary may prescribe a different rate.

(5) Reduction for certain interest

If, in connection with any charitable contribution, a liability is assumed by the recipient or by any other person, or if a charitable contribution is of property which is subject to a liability, then, to the extent necessary to avoid the duplication of amounts, the amount taken into account for purposes of this section as the amount of the charitable contribution--

(A) shall be reduced for interest (i) which has been paid (or is to be paid) by the taxpayer, (ii) which is attributable to the liability, and (iii) which is attributable to any period after the making of the contribution, and

(B) in the case of a bond, shall be further reduced for interest (i) which has been paid (or is to be paid) by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and (ii) which is attributable to any period before the making of the contribution.

The reduction pursuant to subparagraph (B) shall not exceed the interest (including interest equivalent) on the bond which is attributable to any period before the making of the contribution and which is not (under the taxpayer's method of accounting) includible in the gross income of the taxpayer for any taxable year. For purposes of this paragraph, the term ``bond'' means any bond, debenture, note, or certificate or other evidence of indebtedness.

(6) Deductions for out-of-pocket expenditures

No deduction shall be allowed under this section for an out-of-pocket expenditure made by any person on behalf of an organization described in subsection (c) (other than an organization described in section 501(h)(5) (relating to churches, etc.)) if the expenditure is made for the purpose of influencing legislation (within the meaning of section 501(c)(3)).

(7) Reformation to comply with paragraph (2)

(A) In general

A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

(B) Rules similar to section 2055(e) (3) to apply

For purposes of this paragraph, rules similar to the rules of section 2055(e) (3) shall apply.

(8) Substantiation requirement for certain contributions

(A) General rule

No deduction shall be allowed under subsection (a) for any contribution of \$250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of subparagraph (B).

(B) Content of acknowledgement

An acknowledgement meets the requirements of this subparagraph if it includes the following information:

(i) The amount of cash and a description (but not value) of any property other than cash contributed.

(ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i).

(iii) A description and good faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

For purposes of this subparagraph, the term ``intangible religious benefit'' means any intangible religious benefit which is provided by an organization organized exclusively for religious purposes and which generally is not sold in a commercial transaction outside the donative context.

(C) Contemporaneous

For purposes of subparagraph (A), an acknowledgment shall be considered to be contemporaneous if the taxpayer obtains the acknowledgment on or before the earlier of--

(i) the date on which the taxpayer files a return for the taxable year in which the contribution was made, or

(ii) the due date (including extensions) for filing such return.

(D) Substantiation not required for contributions reported by the donee organization

Subparagraph (A) shall not apply to a contribution if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, which includes the information described in subparagraph (B) with respect to the contribution.

(E) Regulations

The Secretary shall prescribe such regulations as may be

necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.

(9) Denial of deduction where contribution for lobbying activities

No deduction shall be allowed under this section for a contribution to an organization which conducts activities to which section 162(e)(1) applies on matters of direct financial interest to the donor's trade or business, if a principal purpose of the contribution was to avoid Federal income tax by securing a deduction for such activities under this section which would be disallowed by reason of section 162(e) if the donor had conducted such activities directly. No deduction shall be allowed under section 162(a) for any amount for which a deduction is disallowed under the preceding sentence.

(10) Split-dollar life insurance, annuity, and endowment contracts

(A) In general

Nothing in this section or in section 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 shall be construed to allow a deduction, and no deduction shall be allowed, for any transfer to or for the use of an organization described in subsection (c) if in connection with such transfer--

(i) the organization directly or indirectly pays, or has previously paid, any premium on any personal benefit contract with respect to the transferor, or

(ii) there is an understanding or expectation that any person will directly or indirectly pay any premium on any personal benefit contract with respect to the transferor.

(B) Personal benefit contract

For purposes of subparagraph (A), the term ``personal benefit contract'' means, with respect to the transferor, any life insurance, annuity, or endowment contract if any direct or indirect beneficiary under such contract is the transferor, any member of the transferor's family, or any other person (other than an organization described in subsection (c)) designated by the transferor.

(C) Application to charitable remainder trusts

In the case of a transfer to a trust referred to in subparagraph (E), references in subparagraphs (A) and (F) to an organization described in subsection (c) shall be treated as a reference to such trust.

(D) Exception for certain annuity contracts

If, in connection with a transfer to or for the use of an organization described in subsection (c), such organization

incurs an obligation to pay a charitable gift annuity (as defined in section 501(m)) and such organization purchases any annuity contract to fund such obligation, persons receiving payments under the charitable gift annuity shall not be treated for purposes of subparagraph (B) as indirect beneficiaries under such contract if--

- (i) such organization possesses all of the incidents of ownership under such contract,
- (ii) such organization is entitled to all the payments under such contract, and
- (iii) the timing and amount of payments under such contract are substantially the same as the timing and amount of payments to each such person under such obligation (as such obligation is in effect at the time of such transfer).

(E) Exception for certain contracts held by charitable remainder trusts

A person shall not be treated for purposes of subparagraph (B) as an indirect beneficiary under any life insurance, annuity, or endowment contract held by a charitable remainder annuity trust or a charitable remainder unitrust (as defined in section 664(d)) solely by reason of being entitled to any payment referred to in paragraph (1)(A) or (2)(A) of section 664(d) if--

- (i) such trust possesses all of the incidents of ownership under such contract, and
- (ii) such trust is entitled to all the payments under such contract.

(F) Excise tax on premiums paid

(i) In general

There is hereby imposed on any organization described in subsection (c) an excise tax equal to the premiums paid by such organization on any life insurance, annuity, or endowment contract if the payment of premiums on such contract is in connection with a transfer for which a deduction is not allowable under subparagraph (A), determined without regard to when such transfer is made.

(ii) Payments by other persons

For purposes of clause (i), payments made by any other person pursuant to an understanding or expectation referred to in subparagraph (A) shall be treated as made by the organization.

(iii) Reporting

Any organization on which tax is imposed by clause (i) with respect to any premium shall file an annual return which includes--

- (I) the amount of such premiums paid during the year and the name and TIN of each beneficiary under the contract to which the premium relates, and
- (II) such other information as the Secretary may require.

The penalties applicable to returns required under section 6033 shall apply to returns required under this clause. Returns required under this clause shall be furnished at such time and in such manner as the Secretary shall by forms or regulations require.

(iv) Certain rules to apply

The tax imposed by this subparagraph shall be treated as imposed by chapter 42 for purposes of this title other than subchapter B of chapter 42.

(G) Special rule where State requires specification of charitable gift annuitant in contract

In the case of an obligation to pay a charitable gift annuity referred to in subparagraph (D) which is entered into under the laws of a State which requires, in order for the charitable gift annuity to be exempt from insurance regulation by such State, that each beneficiary under the charitable gift annuity be named as a beneficiary under an annuity contract issued by an insurance company authorized to transact business in such State, the requirements of clauses (i) and (ii) of subparagraph (D) shall be treated as met if--

(i) such State law requirement was in effect on February 8, 1999,

(ii) each such beneficiary under the charitable gift annuity is a bona fide resident of such State at the time the obligation to pay a charitable gift annuity is entered into, and

(iii) the only persons entitled to payments under such contract are persons entitled to payments as beneficiaries under such obligation on the date such obligation is entered into.

(H) Member of family

For purposes of this paragraph, an individual's family consists of the individual's grandparents, the grandparents of such individual's spouse, the lineal descendants of such grandparents, and any spouse of such a lineal descendant.

(I) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations to prevent the avoidance of such purposes.

(g) Amounts paid to maintain certain students as members of taxpayer's household

(1) In general

Subject to the limitations provided by paragraph (2), amounts paid by the taxpayer to maintain an individual (other than a dependent, as defined in section 152, or a relative of the taxpayer)

as a member of his household during the period that such individual is--

(A) a member of the taxpayer's household under a written agreement between the taxpayer and an organization described in paragraph (2), (3), or (4) of subsection (c) to implement a program of the organization to provide educational opportunities for pupils or students in private homes, and

(B) a full-time pupil or student in the twelfth or any lower grade at an educational organization described in section 170(b)(1)(A)(ii) located in the United States,

shall be treated as amounts paid for the use of the organization.

(2) Limitations

(A) Amount

Paragraph (1) shall apply to amounts paid within the taxable year only to the extent that such amounts do not exceed \$50 multiplied by the number of full calendar months during the taxable year which fall within the period described in paragraph (1). For purposes of the preceding sentence, if 15 or more days of a calendar month fall within such period such month shall be considered as a full calendar month.

(B) Compensation or reimbursement

Paragraph (1) shall not apply to any amount paid by the taxpayer within the taxable year if the taxpayer receives any money or other property as compensation or reimbursement for maintaining the individual in his household during the period described in paragraph (1).

(3) Relative defined

For purposes of paragraph (1), the term ``relative of the taxpayer'' means an individual who, with respect to the taxpayer, bears any of the relationships described in paragraphs (1) through (8) of section 152(a).

(4) No other amount allowed as deduction

No deduction shall be allowed under subsection (a) for any amount paid by a taxpayer to maintain an individual as a member of his household under a program described in paragraph (1)(A) except as provided in this subsection.

(h) Qualified conservation contribution

(1) In general

For purposes of subsection (f)(3)(B)(iii), the term ``qualified conservation contribution'' means a contribution--

- (A) of a qualified real property interest,
- (B) to a qualified organization,
- (C) exclusively for conservation purposes.

(2) Qualified real property interest

For purposes of this subsection, the term ``qualified real property interest'' means any of the following interests in real property:

- (A) the entire interest of the donor other than a qualified mineral interest,
- (B) a remainder interest, and
- (C) a restriction (granted in perpetuity) on the use which may be made of the real property.

(3) Qualified organization

For purposes of paragraph (1), the term ``qualified organization'' means an organization which--

- (A) is described in clause (v) or (vi) of subsection (b) (1) (A), or
- (B) is described in section 501(c) (3) and--
 - (i) meets the requirements of section 509(a) (2), or
 - (ii) meets the requirements of section 509(a) (3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

(4) Conservation purpose defined

(A) In general

For purposes of this subsection, the term ``conservation purpose'' means--

- (i) the preservation of land areas for outdoor recreation by, or the education of, the general public,
- (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- (iii) the preservation of open space (including farmland and forest land) where such preservation is--
 - (I) for the scenic enjoyment of the general public, or
 - (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy,

and will yield a significant public benefit, or

- (iv) the preservation of an historically important land area or a certified historic structure.

(B) Certified historic structure

For purposes of subparagraph (A) (iv), the term ``certified historic structure'' means any building, structure, or land area which--

- (i) is listed in the National Register, or
- (ii) is located in a registered historic district (as defined in section 47(c) (3) (B)) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or

on the due date (including extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer is made.

(5) Exclusively for conservation purposes

For purposes of this subsection--

(A) Conservation purpose must be protected

A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

(B) No surface mining permitted

(i) In general

Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

(ii) Special rule

With respect to any contribution of property in which the ownership of the surface estate and mineral interests has been and remains separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.

(6) Qualified mineral interest

For purposes of this subsection, the term ``qualified mineral interest'' means--

- (A) subsurface oil, gas, or other minerals, and
- (B) the right to access to such minerals.

(i) Standard mileage rate for use of passenger automobile

For purposes of computing the deduction under this section for use of a passenger automobile, the standard mileage rate shall be 14 cents per mile.

(j) Denial of deduction for certain travel expenses

No deduction shall be allowed under this section for traveling expenses (including amounts expended for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in such travel.

(k) Disallowance of deductions in certain cases

For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a) \2\ of the Internal Security Act of 1950 (50 U.S.C. 790).

\2\ See References in Text note below.

- (1) Treatment of certain amounts paid to or for the benefit of institutions of higher education

(1) In general

For purposes of this section, 80 percent of any amount described in paragraph (2) shall be treated as a charitable contribution.

(2) Amount described

For purposes of paragraph (1), an amount is described in this paragraph if--

(A) the amount is paid by the taxpayer to or for the benefit of an educational organization--

- (i) which is described in subsection (b)(1)(A)(ii), and
- (ii) which is an institution of higher education (as defined in section 3304(f)), and

(B) such amount would be allowable as a deduction under this section but for the fact that the taxpayer receives (directly or indirectly) as a result of paying such amount the right to purchase tickets for seating at an athletic event in an athletic stadium of such institution.

If any portion of a payment is for the purchase of such tickets, such portion and the remaining portion (if any) of such payment shall be treated as separate amounts for purposes of this subsection.

- (m) Other cross references

(1) For treatment of certain organizations providing child care, see section 501(k).

(2) For charitable contributions of estates and trusts, see section 642(c).

(3) For nondeductibility of contributions by common trust funds, see section 584.

(4) For charitable contributions of partners, see section 702.

(5) For charitable contributions of nonresident aliens, see section 873.

(6) For treatment of gifts for benefit of or use in connection with the Naval Academy as gifts to or for use of the United States, see section 6973 of title 10, United States Code.

(7) For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

(8) For treatment of gifts of money accepted by the Attorney General for credit to the ``Commissary Funds Federal Prisons'' as gifts to or for the use of the United States, see section

4043 of title 18, United States Code.

(9) For charitable contributions to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 58; Aug. 7, 1956, ch. 1031, Sec. 1, 70 Stat. 1117; Pub. L. 85-866, title I, Secs. 10(a), 11, 12(a), Sept. 2, 1958, 72 Stat. 1609, 1610; Pub. L. 86-779, Sec. 7(a), Sept. 14, 1960, 74 Stat. 1002; Pub. L. 87-834, Sec. 13(d), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 87-858, Sec. 2(a), (b), Oct. 23, 1962, 76 Stat. 1134; Pub. L. 88-272, title II, Secs. 209(a), (b), (c) (1), (d) (1), (e), 231(b) (1), Feb. 26, 1964, 78 Stat. 43, 45-47, 105; Pub. L. 89-570, Sec. 1(b) (1), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91-172, title I, Sec. 101(j) (2), title II, Sec. 201(a) (1), (2) (A), (h) (1), Dec. 30, 1969, 83 Stat. 526, 549, 558, 565; Pub. L. 94-455, title II, Sec. 205(c) (1) (A), title X, Sec. 1052(c) (2), title XIII, Secs. 1307(c), (d) (1) (B) (i), 1313(b) (1), title XIX, Secs. 1901(a) (28), (b) (8) (A), 1906(b) (13) (A), title XXI, Secs. 2124(e) (1), 2135(a), Oct. 4, 1976, 90 Stat. 1535, 1648, 1726, 1727, 1730, 1768, 1794, 1834, 1919, 1928; Pub. L. 95-30, title III, Sec. 309(a), May 23, 1977, 91 Stat. 154; Pub. L. 95-600, title IV, Secs. 402(b) (2), 403(c) (1), Nov. 6, 1978, 92 Stat. 2868; Pub. L. 96-465, title II, Sec. 2206(e) (2), Oct. 17, 1980, 94 Stat. 2162; Pub. L. 96-541, Sec. 6(a), (b), Dec. 17, 1980, 94 Stat. 3206; Pub. L. 97-34, title I, Sec. 121(a), title II, Secs. 222(a), 263(a), Aug. 13, 1981, 95 Stat. 196, 248, 264; Pub. L. 97-248, title II, Sec. 286(b) (1), Sept. 3, 1982, 96 Stat. 570; Pub. L. 97-258, Sec. 3(f) (1), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 97-354, Sec. 5(a) (21), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 97-448, title I, Sec. 102(f) (7), Jan. 12, 1983, 96 Stat. 2372; Pub. L. 97-473, title II, Sec. 202(b) (4), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98-369, div. A, title I, Sec. 174(b) (5) (A), title III, Sec. 301(a) - (c), title IV, Sec. 492(b) (1), title X, Secs. 1022(b), 1031(a), 1032(b) (1), 1035(a), July 18, 1984, 98 Stat. 707, 777, 778, 854, 1028, 1033, 1042; Pub. L. 99-514, title I, Sec. 142(d), title II, Sec. 231(f), title III, Sec. 301(b) (2), title XVIII, Sec. 1831, Oct. 22, 1986, 100 Stat. 2120, 2180, 2217, 2851; Pub. L. 100-203, title X, Sec. 10711(a) (1), Dec. 22, 1987, 101 Stat. 1330-464; Pub. L. 100-647, title VI, Sec. 6001(a), Nov. 10, 1988, 102 Stat. 3683; Pub. L. 101-508, title XI, Secs. 11801(a) (11), (c) (5), 11813(b) (10), Nov. 5, 1990, 104 Stat. 1388-520, 1388-523, 1388-554; Pub. L. 103-66, title XIII, Secs. 13172(a), 13222(b), Aug. 10, 1993, 107 Stat. 455, 479; Pub. L. 104-188, title I, Secs. 1206(a), 1316(b), Aug. 20, 1996, 110 Stat. 1776, 1786; Pub. L. 105-34, title II, Sec. 224(a), title V, Sec. 508(d), title VI, Sec. 602(a), title IX, Sec. 973(a), Aug. 5, 1997, 111 Stat. 818, 860, 862, 898; Pub. L. 105-206, title VI, Sec. 6004(e), July 22, 1998, 112 Stat. 795; Pub. L. 105-277, div. J, title I, Sec. 1004(a) (1), Oct. 21, 1998, 112 Stat. 2681-888; Pub. L. 106-170, title V, Secs. 532(c) (1) (A), (B), 537(a), Dec. 17, 1999, 113 Stat. 1930, 1936; Pub. L. 106-554, Sec. 1(a) (7) [title I, Sec. 165(a) - (e)], Dec. 21, 2000, 114 Stat. 2763, 2763A-626; Pub. L. 107-16, title V, Sec. 542(e) (2) (B), June 7, 2001, 115 Stat. 85.)

Amendment of Subsection (e) (1)

Pub. L. 107-16, title V, Sec. 542(e) (2) (B), (f) (1), title IX, Sec. 901, June 7, 2001, 115 Stat. 85, 86, 150, provided that, applicable to estates of decedents dying after Dec. 31, 2009, subsection (e) (1) of this section is temporarily amended by inserting at end ``For purposes of this paragraph, the determination

of whether property is a capital asset shall be made without regard to the exception contained in section 1221(a)(3)(C) for basis determined under section 1022.''. See Effective and Termination Dates of 2001 Amendment note below.

References in Text

The Federal Food, Drug, and Cosmetic Act, as amended, referred to in subsec. (e)(3)(A)(iv), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (Sec. 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The date of the enactment of the Community Renewal Tax Relief Act of 2000, referred to in subsec. (e)(6)(B)(i)(III), is the date of enactment of H.R. 5662, as enacted by Pub. L. 106-554, which was approved Dec. 21, 2000.

Section 11(a) of the Internal Security Act of 1950 (50 U.S.C. 790), referred to in subsec. (k), was repealed by Pub. L. 103-199, title VIII, Sec. 803(1), Dec. 17, 1993, 107 Stat. 2329.

Section 25 of the State Department Basic Authorities Act of 1956, referred to in subsec. (m)(7), is classified to section 2697 of Title 22, Foreign Relations and Intercourse.

Amendments

2000--Subsec. (e)(6). Pub. L. 106-554, Sec. 1(a)(7) [title I, Sec. 165(b)(2)], substituted ``educational purposes'' for ``elementary or secondary school purposes'' in heading.

Subsec. (e)(6)(A), (B). Pub. L. 106-554, Sec. 1(a)(7) [title I, Sec. 165(a)(1)], substituted ``qualified computer contribution'' for ``qualified elementary or secondary educational contribution'' in subpar. (A) and in heading and introductory provisions of subpar. (B).

Subsec. (e)(6)(B)(i)(III). Pub. L. 106-554, Sec. 1(a)(7) [title I, Sec. 165(a)(2)], added subcl. (III).

Subsec. (e)(6)(B)(ii). Pub. L. 106-554, Sec. 1(a)(7) [title I, Sec. 165(a)(3)], substituted ``3 years'' for ``2 years''.

Subsec. (e)(6)(B)(iv). Pub. L. 106-554, Sec. 1(a)(7) [title I, Sec. 165(b)(1)], which directed the amendment of cl. (iv) by striking ``in any grades of the K-12'', was executed by striking out ``in any of the grades K-12'' after ``educational purposes'', to reflect the probable intent of Congress.

Subsec. (e)(6)(B)(viii). Pub. L. 106-554, Sec. 1(a)(7) [title I, Sec. 165(d)], added cl. (viii).

Subsec. (e)(6)(C). Pub. L. 106-554, Sec. 1(a)(7) [title I, Sec. 165(a)(1)], substituted ``qualified computer contribution'' for ``qualified elementary or secondary educational contribution'' in introductory provisions.

Subsec. (e)(6)(D), (E). Pub. L. 106-554, Sec. 1(a)(7) [title I, Sec. 165(e)], added subpar. (D) and redesignated former subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (e)(6)(F). Pub. L. 106-554, Sec. 1(a)(7) [title I, Sec. 165(e)], redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 106-554, Sec. 1(a)(7) [title I, Sec. 165(c)], substituted ``December 31, 2003'' for ``December 31, 2000''.

Subsec. (e)(6)(G). Pub. L. 106-554, Sec. 1(a)(7) [title I,

Sec. 165(e)], redesignated subpar. (F) as (G).

1999--Subsec. (e) (3) (A), (4) (B). Pub. L. 106-170, Sec. 532(c) (1) (A), (B), substituted ``section 1221(a)'' for ``section 1221''.

Subsec. (f) (10). Pub. L. 106-170, Sec. 537(a), added par. (10).

1998--Subsec. (e) (5) (D). Pub. L. 105-277 struck out heading and text of subpar. (D). Text read as follows: ``This paragraph shall not apply to contributions made--

``(i) after December 31, 1994, and before July 1, 1996, or

``(ii) after June 30, 1998.''

Subsec. (e) (6) (B) (iv). Pub. L. 105-206, Sec. 6004(e) (2), substituted ``function of the donee'' for ``function of the organization or entity''.

Subsec. (e) (6) (B) (vi), (vii). Pub. L. 105-206, Sec. 6004(e) (1), substituted ``donee's'' for ``entity's''.

Subsec. (e) (6) (C) (ii) (I). Pub. L. 105-206, Sec. 6004(e) (3), substituted ``a donee'' for ``an entity''.

Subsec. (e) (6) (F). Pub. L. 105-206, Sec. 6004(e) (4), substituted ``2000'' for ``1999''.

1997--Subsec. (e) (5) (D) (ii). Pub. L. 105-34, Sec. 602(a), substituted ``June 30, 1998'' for ``May 31, 1997''.

Subsec. (e) (6). Pub. L. 105-34, Sec. 224(a), added par. (6).

Subsec. (h) (5) (B) (ii). Pub. L. 105-34, Sec. 508(d), amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: ``With respect to any contribution of property in which the ownership of the surface estate and mineral interests were separated before June 13, 1976, and remain so separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.''

Subsec. (i). Pub. L. 105-34, Sec. 973(a), amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows: ``For purposes of computing the deduction under this section for use of a passenger automobile the standard mileage rate shall be 12 cents per mile.''

1996--Subsec. (e) (1). Pub. L. 104-188, Sec. 1316(b), inserted at end ``For purposes of applying this paragraph in the case of a charitable contribution of stock in an S corporation, rules similar to the rules of section 751 shall apply in determining whether gain on such stock would have been long-term capital gain if such stock were sold by the taxpayer.''

Subsec. (e) (5) (D). Pub. L. 104-188, Sec. 1206(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ``This paragraph shall not apply to contributions made after December 31, 1994.''

1993--Subsec. (f) (8). Pub. L. 103-66, Sec. 13172(a), added par. (8).

Subsec. (f) (9). Pub. L. 103-66, Sec. 13222(b), added par. (9).

1990--Subsec. (h) (4) (B) (ii). Pub. L. 101-508, Sec. 11813(b) (10), substituted ``section 47(c) (3) (B)'' for ``section 48(g) (3) (B)''.

Subsec. (i). Pub. L. 101-508, Sec. 11801(a) (11), (c) (5), redesignated subsec. (j) as (i) and struck out former subsec. (i) which related to rule for nonitemization of deductions, applicable percentage for individuals, limitation for taxable years beginning before 1985, and termination.

Subsecs. (j) to (n). Pub. L. 101-508, Sec. 11801(c) (5), redesignated subsecs. (j) to (n) as (i) to (m), respectively.

1988--Subsecs. (m), (n). Pub. L. 100-647 added subsec. (m) and redesignated former subsec. (m) as (n).

1987--Subsec. (c) (2) (D). Pub. L. 100-203 inserted ``(or in

opposition to)' after 'on behalf of'.

1986--Subsec. (b)(1)(C)(iv). Pub. L. 99-514, Sec. 1831, substituted 'this paragraph' for 'this subparagraph'.

Subsec. (e)(1)(B). Pub. L. 99-514, Sec. 301(b)(2), in closing provisions, struck out '40 percent (28/46 in the case of a corporation) of' before 'the amount of gain'.

Subsec. (e)(4)(B)(i). Pub. L. 99-514, Sec. 231(f), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: 'the contribution is to an educational organization which is described in subsection (b)(1)(A)(ii) of this section and which is an institution of higher education (as defined in section 3304(f)),'.

Subsecs. (k) to (m). Pub. L. 99-514, Sec. 142(d), added subsec. (k) and redesignated former subsecs. (k) and (l) as (l) and (m), respectively.

1984--Subsec. (a)(3). Pub. L. 98-369, Sec. 174(b)(5)(A), substituted 'section 267(b) or 707(b)' for 'section 267(b)'.

Subsec. (b)(1)(A)(vii). Pub. L. 98-369, Sec. 301(c)(2)(A), substituted 'subparagraph (E)' for 'subparagraph (D)'.

Subsec. (b)(1)(B). Pub. L. 98-369, Sec. 301(a)(2), inserted at end 'If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time.'

Subsec. (b)(1)(B)(i). Pub. L. 98-369, Sec. 301(a)(1), substituted '30 percent' for '20 percent'.

Subsec. (b)(1)(C). Pub. L. 98-369, Sec. 301(c)(2)(B), inserted 'described in subparagraph (A)' in subpar. (C) heading, and in text of cl. (i) substituted 'In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies)' for 'In the case of charitable contributions of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this paragraph applies shall be taken into account after all other charitable contributions'.

Subsec. (b)(1)(D) to (F). Pub. L. 98-369, Sec. 301(c)(1), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (e)(1). Pub. L. 98-369, Sec. 492(b)(1)(A), struck out in provision following subpar. (B) '1251(c),' after '1250(a)'.

Subsec. (e)(1)(B)(ii). Pub. L. 98-369, Sec. 301(c)(2)(C), substituted 'subsection (b)(1)(E)' for 'subsection (b)(1)(D)'.

Subsec. (e)(3)(C). Pub. L. 98-369, Sec. 492(b)(1)(B), struck out '1251,' after '1250,'.

Subsec. (e)(5). Pub. L. 98-369, Sec. 301(b), added par. (5).

Subsec. (f)(7). Pub. L. 98-369, Sec. 1022(b), added par. (7).

Subsec. (h)(5)(B). Pub. L. 98-369, Sec. 1035(a), designated existing provisions as cl. (i), inserted 'Except as provided in clause (ii)',

and added cl. (ii).

Subsec. (j). Pub. L. 98-369, Sec. 1031(a), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 98-369, Sec. 1031(a), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 98-369, Sec. 1032(b)(1), added par. (1) and redesignated former pars. (1) to (8) as (2) to (9), respectively.

Pub. L. 98-369, Sec. 1031(a), redesignated subsec. (k) as (l).

1983--Subsec. (h)(4)(B)(ii). Pub. L. 97-448 substituted ``section 48(g)(3)(B)'' for ``section 191(d)(2)''.

Subsec. (k)(8). Pub. L. 97-473 added par. (8).

1982--Subsec. (c)(2). Pub. L. 97-248 inserted provision that rules similar to the rules of section 501(j) of this title shall apply for purposes of this paragraph.

Subsec. (e)(3)(A). Pub. L. 97-354, Sec. 5(a)(21)(A), substituted ``an S corporation'' for ``an electing small business corporation within the meaning of section 1371(b)''.

Subsec. (e)(4)(D)(i). Pub. L. 97-354, Sec. 5(a)(21)(B), substituted ``an S corporation'' for ``an electing small business corporation (as defined in section 1371(b))''.

Subsec. (k)(7). Pub. L. 97-258 substituted ``section 4043 of title 18, United States Code'' for ``section 2 of the Act of May 15, 1952, as amended by the Act of July 9, 1952 (31 U.S.C. 725s-4)''.

1981--Subsec. (b)(2). Pub. L. 97-34, Sec. 263(a), increased to 10 from 5 percent deduction allowable to a corporation in any taxable year for charitable contributions.

Subsec. (e)(4). Pub. L. 97-34, Sec. 222(a), added par. (4).

Subsec. (i). Pub. L. 97-34, Sec. 121(a), added subsec. (i). Former subsec. (i) redesignated (j).

Subsecs. (j), (k). Pub. L. 97-34, Sec. 121(a), redesignated former subsecs. (i) and (j) as (j) and (k), respectively.

1980--Subsec. (f)(3). Pub. L. 96-541, Sec. 6(a), reenacted subpar. (B), cls. (i) and (ii), substituted cl. (B)(iii) relating to qualified conservation contribution for prior cl. (B)(iii) relating to contribution of a lease on, option to purchase, or easement with respect to real property granted in perpetuity to a subsec. (b)(1)(A) organization exclusively for conservation purposes, deleted cl. (B)(iv) respecting contribution of a remainder interest in real property granted to a subsec. (b)(1)(A) organization exclusively for conservation purposes, and deleted subpar. (C) definition of ``conservation purposes'', now covered in an expanded subsec. (h)(4)(A).

Subsecs. (h), (i). Pub. L. 96-541, Sec. 6(b), added subsec. (h) and redesignated former subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (i)(6). Pub. L. 96-465, among other changes, inserted references to Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency, and substituted reference to section 25 of the State Department Basic Authorities Act of 1956 for reference to section 1021(e) of the Foreign Service Act of 1946.

Subsec. (j). Pub. L. 96-541, Sec. 6(b), redesignated former subsec. (i) as (j).

1978--Subsec. (e)(1)(B). Pub. L. 95-600 substituted ``40 percent'' for ``50 percent'' and ``28/46'' for ``62 1/2 percent''.

1977--Subsec. (f)(3)(B)(iii). Pub. L. 95-30 substituted ``real property granted in perpetuity to an organization'' for ``real property of not less than 30 years' duration granted to an organization''.

1976--Subsec. (a). Pub. L. 94-455, Sec. 1906(b)(13)(A), struck out ``or his delegate'' after ``Secretary''.

Subsec. (b)(1)(A)(vii). Pub. L. 94-455, Sec. 1901(a)(28)(A)(iii), substituted ``subparagraph (D)'' for ``subparagraph (E)'' after ``described in''.

Subsec. (b)(1)(B)(ii). Pub. L. 94-455, Sec. 1901(a)(28)(A)(iv), substituted ``subparagraph (C)'' for ``subparagraph (D)'' after ``without regard to''.

Subsec. (b)(1)(C). Pub. L. 94-455, Sec. 1901(a)(28)(A)(ii), struck out subpar. (C) which related to unlimited deductions for certain individuals, redesignated subpar. (D) as (C) and, as so redesignated, Sec. 1906(b)(13)(A), struck out ``or his delegate'' after ``Secretary'' in cl. (iii).

Subsec. (b)(1)(D) to (F). Pub. L. 94-455, Sec. 1901(a)(28)(A)(ii), redesignated subpars. (D) to (F) as (C) to (E), respectively.

Subsec. (b)(2). Pub. L. 95-455, Sec. 1052(c)(2), struck out subpar. (D) which related to a special deduction for Western Hemisphere trade corporations, and redesignated subpar. (E) as (D).

Subsec. (c). Pub. L. 94-455, Sec. 1901(a)(28)(A)(v), substituted ``subsection (g)'' for ``subsection (h)'' after ``amount treated under''.

Subsec. (c)(2)(B). Pub. L. 94-455, Sec. 1313(b)(1), inserted ``or to foster national or international amateur sports competition (but only if no part of its activities involves the provision of athletic facilities or equipment)'' after ``or educational purposes''.

Subsec. (c)(2)(D). Pub. L. 94-445, Sec. 1307(d)(1)(B)(i), substituted ``which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation'' for ``no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation'' after ``(D)''.

Subsec. (d)(1)(A). Pub. L. 94-455, Sec. 1901(a)(28)(B), struck out ``(30 percent in the case of a contribution year beginning before January 1, 1970)'' after ``exceeds 50 percent''.

Subsec. (e)(1). Pub. L. 94-455, Sec. 205(c)(1)(A), substituted ``1252(a), or 1254(a)'' for ``or 1252(a)'' after ``1251(c)''.

Subsec. (e)(1)(B)(ii). Pub. L. 94-455, Sec. 1901(a)(28)(A)(vi), substituted ``subsection (b)(1)(D)'' for ``subsection (b)(1)(E)'' after ``foundation described in''.

Subsec. (e)(2). Pub. L. 94-455, Sec. 1906(b)(13)(A), struck out ``or his delegate'' after ``Secretary''.

Subsec. (e)(3). Pub. L. 94-455, Sec. 2135(a), added par. (3).

Subsec. (f)(2). Pub. L. 94-455, Sec. 1906(b)(13)(A), struck out ``or his delegate'' after ``Secretary''.

Subsec. (f)(3). Pub. L. 94-455, Sec. 2124(e)(1), added subpars. (B)(iii), (iv), and (C).

Subsec. (f)(4). Pub. L. 94-455, Sec. 1906(b)(13)(A), struck out ``or his delegate'' after ``Secretary''.

Subsec. (f)(6). Pub. L. 94-455, Secs. 1307(c), 1901(a)(28)(A)(i), added par. (6). Former par. (6), which related to the partial reduction of unlimited deduction and definitions for transitional income and deduction percentages, was struck out. Section 1901(a)(28)(A)(i) of Pub. L. 94-455 struck out par. (6) a second time.

Subsec. (g). Pub. L. 94-455, Sec. 1901(a)(28)(A)(i), struck out subsec. (g) which related to application of unlimited charitable contribution deductions allowed for taxable years beginning before January 1, 1975, and redesignated subsecs. (h), (i), and (j) as (g), (h), and (i), respectively. Section 1901(a)(28)(A)(i) also struck out

former subsec. (f)(6) but this direction was not executed as such former subsec. (f)(6) had previously been stricken by section 1307(c) of Pub. L. 94-455.

Subsec. (g)(1)(B). Pub. L. 94-455, Sec. 1901(b)(8)(A), substituted ``educational organization described in section 170(b)(1)(A)(ii)'' for ``educational institution (as defined in section 151(e)(4))'' after ``grade at an''.

Subsec. (h). Pub. L. 94-455, Sec. 1901(a)(28)(A)(i), (C), redesignated subsec. (i) as (h), and struck out ``64 Stat. 996'' after ``Act of 1950''. Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 94-455, Sec. 1901(a)(28)(A)(i), (D), redesignated subsec. (j) as (i) and substituted ``6973 of title 10, United States Code'' for ``3 of the Act of March 31, 1944 (58 Stat. 135; 34 U.S.C. 1115b)'' after ``see section'' in par. (5); struck out par. (6) relating to gifts to library of Post Office Department; struck out ``60 Stat. 924'' after ``1946'' in par. (7); substituted ``as amended by the Act of July 9, 1952 (3 U.S.C. 725s-4)'' for ``(66 Stat. 73, as amended by Act of July 9, 1952, 66 Stat. 479, 31 U.S.C. 725s-4)'' after ``May 15, 1952'' in par. (8); and redesignated pars. (7) and (8) as pars. (6) and (7), respectively. Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 94-455, Sec. 1901(a)(28)(A)(i), redesignated subsec. (j) as (i).

1969--Subsec. (a)(3). Pub. L. 91-172, Sec. 201(a)(1)(B), added par. (3).

Subsec. (b). Pub. L. 91-172, Sec. 201(a)(1)(B), (h)(1), increased the general limitation on the charitable contributions deduction for individual taxpayers from 30 percent of adjusted gross income to 50 percent of his contribution base and provided that where a taxpayer makes a contribution to a public charity of property which has appreciated in value the taxpayer could deduct such contributions of property under the 50 percent limitation if he elects to take the unrealized appreciation in value into account for the tax purposes, the unlimited charitable deduction is phased out over a 5-year period and contributions to a private operating foundation and contributions to a private nonoperating foundation distributing such contributions to public charities or private operating foundations within two and half months following the year of receipt are also subjected to 50 percent limitation (30 percent in the case of gifts of appreciated property), and, in par. (1)(C), inserted provisions relating to the determination of the amount of charitable contributions and taxes paid by a married individual who previously filed a joint return with a former deceased spouse.

Subsec. (c). Pub. L. 91-172, Sec. 201(a)(1)(B), struck out references to ``Territory'' in pars. (1) and (2)(A), and inserted reference to participation in or intervention in any political campaign on behalf of any candidate for public office in par. (2)(D).

Subsec. (d). Pub. L. 91-172, Sec. 201(a)(1)(B), added subsec. (d) consisting of provisions substantially transferred from subsec. (b) in the general amendment of subsec. (b) by Pub. L. 91-172. Former subsec. (d) redesignated (b).

Subsec. (e). Pub. L. 91-172, Sec. 201(a)(1)(B), substituted provisions covering certain contributions of ordinary income and capital gain property for provisions setting out a special rule for charitable contributions.

Subsec. (f). Pub. L. 91-172, Sec. 201(a)(1)(B), substituted provisions for the disallowance of the deduction in specified cases for provision covering future interests in tangible personal property.

Subsec. (g). Pub. L. 91-172, Sec. 201(a)(2)(A), substituted ``subsection (d)(1)'' for ``subsection (b)(5)'' in two places in par. (1) and struck out par. (2)(B) covering contributions to organizations substantially more than half of the assets and the total income were devoted to charitable purposes.

Subsec. (h). Pub. L. 91-172, Sec. 201(a)(1)(A), redesignated subsec. (d) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 91-172, Secs. 101(j)(2), 201(a)(1)(A), redesignated former subsec. (h) as (i), struck out par. (1) covering disallowance of deductions for gifts to charitable organizations engaging in prohibited transactions, and removed the par. (2) designation from the provisions covering disallowance of deductions for use of communist controlled organizations. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 91-172, Sec. 201(a)(1)(A), redesignated former subsec. (i) as (j).

1966--Subsec. (e). Pub. L. 89-570 inserted reference to section 617(d)(1).

1964--Subsec. (b)(1)(A)(v), (vi), (2), (5). Pub. L. 88-272, Sec. 209(a), (c)(1), (d)(1), added cls. (v) and (vi) in par. (1)(A), and par. (5), and in par. (2), extended the 2-year carryforward of unused charitable contributions to 5 years and changed the method of computation by including the aggregate of the excess contributions made in taxable years before the contribution year, in cl. (i), and references to third, fourth or fifth succeeding years in cl. (ii).

Subsec. (e). Pub. L. 88-272, Sec. 231(b)(1), substituted ``certain property'' for ``section 1245 property'' in heading, and inserted reference to section 1250(a) in text.

Subsec. (f). Pub. L. 88-272, Sec. 209(e), added subsec. (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 88-272, Sec. 209(b), added subsec. (g). Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 88-272, Sec. 209(e), redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

1962--Subsec. (b)(1)(A)(iv). Pub. L. 87-858, Sec. 2(a), added cl. (iv).

Subsec. (b)(1)(B). Pub. L. 87-858, Sec. 2(b), substituted ``any charitable contributions described in subparagraph (A)'' for ``any charitable contributions to the organizations described in clauses (i), (ii), and (iii)''.

Subsecs. (e) to (g). Pub. L. 87-834 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

1960--Subsec. (c). Pub. L. 86-779, Sec. 7(a)(1), inserted sentence additionally defining ``charitable contribution'' for purposes of the section.

Subsecs. (d) to (f). Pub. L. 86-779, Sec. 7(a)(2), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1958--Subsec. (b)(1)(C). Pub. L. 85-866, Sec. 10(a), inserted sentence allowing substitution, in lieu of amount of tax paid during year, amount of tax paid in respect of such year, provided amount so included in the year in respect of which payment was made be not included in any other year.

Subsec. (b)(3). Pub. L. 85-866, Sec. 11, added par. (3).

Subsec. (b)(4). Pub. L. 85-866, Sec. 12, added par. (4).

1956--Subsec. (b)(1)(A)(iii). Act Aug. 7, 1956, Sec. 1, provided for the allowance, as deductions, of contributions to medical research

organizations.

Change of Name

International Communication Agency, and Director thereof, redesignated United States Information Agency, and Director thereof, by section 303 of Pub. L. 97-241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse. United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State, see sections 6531 and 6532 of Title 22.

Effective and Termination Dates of 2001 Amendment

Amendment by Pub. L. 107-16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107-16, set out as a note under section 121 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

Effective Date of 2000 Amendment

Pub. L. 106-554, Sec. 1(a)(7) [title I, Sec. 165(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A-627, provided that: ``The amendments made by this section [amending this section] shall apply to contributions made after December 31, 2000.''

Effective Date of 1999 Amendment

Pub. L. 106-170, title V, Sec. 532(d), Dec. 17, 1999, 113 Stat. 1931, provided that: ``The amendments made by this section [amending this section and sections 198, 263A, 267, 341, 367, 475, 543, 751, 775, 818, 856, 857, 864, 865, 871, 954, 988, 995, 1017, 1092, 1221, 1231, 1234, 1256, 1362, 1397B, 4662, and 7704 of this title] shall apply to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after the date of the enactment of this Act [Dec. 17, 1999].''

Pub. L. 106-170, title V, Sec. 537(b), Dec. 17, 1999, 113 Stat. 1938, provided that:

``(1) In general.--Except as otherwise provided in this section [amending this section], the amendment made by this section shall apply to transfers made after February 8, 1999.

``(2) Excise tax.--Except as provided in paragraph (3) of this subsection, section 170(f)(10)(F) of the Internal Revenue Code of 1986 (as added by this section) shall apply to premiums paid after the date of the enactment of this Act [Dec. 17, 1999].

``(3) Reporting.--Clause (iii) of such section 170(f)(10)(F) shall apply to premiums paid after February 8, 1999 (determined as if the tax imposed by such section applies to premiums paid after such date).''

Effective Date of 1998 Amendments

Pub. L. 105-277, div. J, title I, Sec. 1004(a)(2), Oct. 21, 1998, 112 Stat. 2681-888, provided that: ``The amendment made by paragraph (1) [amending this section] shall apply to contributions made after June 30, 1998.''

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

Effective Date of 1997 Amendment

Section 224(b) of Pub. L. 105-34 provided that: ``The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Section 508(e)(2) of Pub. L. 105-34 provided that: ``The amendments made by subsections (c) and (d) [amending this section and section 2032A of this title] shall apply to easements granted after December 31, 1997.''

Section 602(b) of Pub. L. 105-34 provided that: ``The amendment made by subsection (a) [amending this section] shall apply to contributions made after May 31, 1997.''

Section 973(b) of Pub. L. 105-34 provided that: ``The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Effective Date of 1996 Amendment

Section 1206(b) of Pub. L. 104-188 provided that: ``The amendment made by this section [amending this section] shall apply to contributions made after June 30, 1996.''

Section 1316(f) of Pub. L. 104-188 provided that: ``The amendments made by this section [amending this section and sections 404, 512, 1042, and 1361 of this title] shall apply to taxable years beginning after December 31, 1997.''

Effective Date of 1993 Amendment

Section 13172(b) of Pub. L. 103-66 provided that: ``The provisions of this section [amending this section] shall apply to contributions made on or after January 1, 1994.''

Amendment by section 13222(b) of Pub. L. 103-66 applicable to amounts paid or incurred after Dec. 31, 1993, see section 13222(e) of Pub. L. 103-66 set out as a note under section 162 of this title.

Effective Date of 1990 Amendment

Amendment by section 11813(b)(10) of Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any

property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 29 of this title.

Effective Date of 1988 Amendment

Section 6001(b) of Pub. L. 100-647 provided that:

“(1) In general.--The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1983.

“(2) Waiver of statute of limitations.--If on the date of the enactment of this Act [Nov. 10, 1988] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of section 170(m) of the 1986 Code (as added by subsection (a)) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore [sic] is filed before the date 1 year after the date of the enactment of this Act.”

Effective Date of 1987 Amendment

Section 10711(c) of Pub. L. 100-203 provided that: “The amendments made by this section [amending this section and sections 501, 504, 2055, 2106, and 2522 of this title] shall apply with respect to activities after the date of the enactment of this Act [Dec. 22, 1987].”

Effective Date of 1986 Amendment

Amendment by section 142(d) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 231(f) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99-514, set out as a note under section 41 of this title.

Amendment by section 301(b)(2) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99-514, set out as a note under section 62 of this title.

Amendment by section 1831 of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Effective Date of 1984 Amendment

Amendment by section 174(b)(5)(A) of Pub. L. 98-369, applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98-369, set out as a note under section 267 of this title.

Section 301(d) of Pub. L. 98-369 provided that:

“(1) Subsections (a) and (c).--The amendments made by subsections (a) and (c) [amending this section] shall apply to contributions made in

taxable years ending after the date of the enactment of this Act [July 18, 1984].

``(2) Subsection (b).--The amendment made by subsection (b) [amending this section] shall apply to contributions made after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

Section 492(d) of Pub. L. 98-369 provided that: ``The amendments made by this section [amending this section and sections 341, 453B, 751, and 1252 of this title and repealing section 1251 of this title] shall apply to taxable years beginning after December 31, 1983.''

Amendment by section 1022(b) of Pub. L. 98-369 applicable to reformations after Dec. 31, 1978, except inapplicable to any reformation to which section 2055(e)(3) of this title as in effect before July 18, 1984, applies, see section 1022(e)(1) of Pub. L. 98-369, set out as a note under section 2055 of this title.

Section 1031(b) of Pub. L. 98-369 provided that: ``The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.''

Section 1032(c) of Pub. L. 98-369 provided that: ``The amendments made by subsections (a) and (b) [amending this section and sections 501, 2055, and 2522 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984].''

Section 1035(b) of Pub. L. 98-369 provided that: ``The amendment made by subsection (a) [amending this section] shall apply to contributions made after the date of the enactment of this Act [July 18, 1984].''

Effective Date of 1983 Amendments

For effective date of amendment by Pub. L. 97-473, see section 204(1) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

Amendment by title I of Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

Effective Date of 1982 Amendments

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

Amendment by Pub. L. 97-248 effective Oct. 5, 1976, see section 286(c) of Pub. L. 97-248, set out as a note under section 501 of this title.

Effective Date of 1981 Amendment

Section 121(d) of Pub. L. 97-34 provided that: ``The amendments made by this section [amending this section and sections 3, 57, and 63 of this title] shall apply to contributions made after December 31, 1981, in taxable years beginning after such date.''

Section 222(b) of Pub. L. 97-34 provided that: ``The amendment made

by subsection (a) [amending this section] shall apply to charitable contributions made after the date of the enactment of this Act [Aug. 13, 1981], in taxable years ending after such date.'

Section 263(b) of Pub. L. 97-34 provided that: ``The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1981.'

Effective Date of 1980 Amendments

Section 6(d) of Pub. L. 96-541 provided that: ``The amendments made by subsections (a) and (b) [amending this section] shall apply to transfers made after the date of the enactment of this Act [Dec. 17, 1980] in taxable years ending after such date.'

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

Effective Date of 1978 Amendment

Section 402(c)(2) of Pub. L. 95-600 provided that: ``The amendment made by subsection (b)(2) [amending this section by substituting ``40 percent'' for ``50 percent']] shall apply to contributions made after October 31, 1978.'

Section 403(d)(2) of Pub. L. 95-600 provided that: ``The amendment made by paragraph (1) of subsection (c) [amending this section by substituting ``28/46'' for ``62 1/2 percent']] shall apply to gifts made after December 31, 1978.'

Effective Date of 1977 Amendment

Section 309(b)(1) of Pub. L. 95-30, as amended by Pub. L. 96-541, Sec. 6(c), Dec. 17, 1980, 94 Stat. 3207, provided that: ``The amendment made by subsection (a) [amending this section] shall apply with respect to contributions or transfers made after June 13, 1977.'

Effective Date of 1976 Amendment

Section 1052(d) of Pub. L. 94-455 provided that: ``The amendments made by subsection (a) and paragraph (1) of subsection (c) [amending section 922 of this title] shall apply with respect to taxable years beginning after December 31, 1975. The amendments made by subsection (b) [repealing sections 921 and 922 of this title] and by subsection (c) (other than paragraph (1)) [amending this section and sections 172, 907, 1503, and 6091 of this title] shall apply with respect to taxable years beginning after December 31, 1979.'

Amendment by section 1307 (d)(1)(B)(i), (c) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1307(e) of Pub. L. 94-455, set out as a note under section 501 of this title.

Amendment by section 1313(b)(1) of Pub. L. 94-455 effective Oct. 5, 1976, see section 1313(e) of Pub. L. 94-455, set out as a note under section 501 of this title.

Amendment by section 1901(a)(28) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Section 2124(e)(4) of Pub. L. 94-455, as amended by Pub. L. 95-30, title III, Sec. 309(b)(2), May 23, 1977, 91 Stat. 154; Pub. L. 96-541, Sec. 6(c), Dec. 17, 1980, 94 Stat. 3207, provided that: ``The amendments made by this subsection [amending this section and sections 2055 and 2522 of this title] shall apply with respect to contributions or transfers made after June 13, 1976.''

Section 2135(b) of Pub. L. 94-455 provided that: ``The amendment made by this section [amending this section] applies to charitable contributions made after the date of enactment of this Act [Oct. 4, 1976], in taxable years ending after such date.''

Effective Date of 1969 Amendment

Amendment by section 101(j)(2) of Pub. L. 91-172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

Section 201(g) of Pub. L. 91-172, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

``(1)(A) Except as provided in subparagraphs (B) and (C), the amendments made by subsection (a) [amending this section and sections 545, 556, and 809 of this title] shall apply to taxable years beginning after December 31, 1969.

``(B) Subsections (e) and (f)(1) of section 170 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall apply to contributions paid after December 31, 1969, except that, with respect to a letter or memorandum or similar property described in section 1221(3) of such Code (as amended by section 514 of this Act), such subsection (e) shall apply to contributions paid after July 25, 1969.

``(C) Paragraphs (2), (3), and (4) of section 170(f) of such Code (as amended by subsection (a)) shall apply to transfers in trust and contributions made after July 31, 1969.

``(D) For purposes of applying section 170(d) of such Code (as amended by subsection (a)) with respect to contributions paid in a taxable year beginning before January 1, 1970, subsection (b)(1)(D), subsection (e), and paragraphs (1), (2), (3), and (4) of subsection (f) of section 170 of such Code shall not apply.

``(2) The amendments made by subsection (b) [amending section 642 of this title] shall apply with respect to amounts paid, permanently set aside, or to be used for a charitable purpose in taxable years beginning after December 31, 1969, except that section 642(c)(5) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to transfers in trust made after July 31, 1969.

``(3) The amendment made by subsection (c) [amending section 673 of this title] shall apply to transfers in trust made after April 22, 1969.

``(4)(A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraphs (1) and (2) of subsection (d) [amending sections 2055 and 2126 of this title] shall apply in the case of decedents dying after December 31, 1969.

``(B) Such amendments shall not apply in the case of property passing under the terms of a will executed on or before October 9, 1969--

``(i) if the decedent dies before October 9, 1972, without

having republished the will after October 9, 1969, by codicil or otherwise,

``(ii) if the decedent at no time after October 9, 1969, had the right to change the portions of the will which pertain to the passing of the property to, or for the use of, an organization described in section 2055(a) [section 2055(a) of this title], or

``(iii) if the will is not republished by codicil or otherwise before October 9, 1972, and the decedent is on such date and at all times thereafter under a mental disability to republish the will by codicil or otherwise.

``(C) Such amendments shall not apply in the case of property transferred in trust on or before October 9, 1969--

``(i) if the decedent dies before October 9, 1972, without having amended after October 9, 1969, the instrument governing the disposition of the property,

``(ii) if the property transferred was an irrevocable interest to, or for the use of, an organization described in section 2055(a), or

``(iii) if the instrument governing the disposition of the property was not amended by the decedent before October 9, 1972, and the decedent is on such date and at all times thereafter under a mental disability to change the disposition of the property.

``(D) The amendment made by paragraph (3) of subsection (d) [amending section 2522 of this title] shall apply to gifts made after December 31, 1969, except that the amendments made to section 2522(c) (2) of the Internal Revenue Code of 1986 shall apply to gifts made after July 31, 1969.

``(E) The amendments made by paragraph (4) of subsection (d) [amending sections 2055, 2106, and 2522 of this title] shall apply to gifts and transfers made after December 31, 1969.

``(5) The amendment made by subsection (e) [enacting section 664 of this title] shall apply to transfers in trust made after July 31, 1969.

``(6) The amendments made by subsection (f) [amending section 1011 of this title] shall apply with respect to sales made after December 19, 1969.'

Section 201(h) (2) of Pub. L. 91-172 provided that: ``The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1968.'

Effective Date of 1966 Amendment

Amendment by Pub. L. 89-570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89-570, set out as an Effective Date note under section 617 of this title.

Effective Date of 1964 Amendment

Section 209(f) of Pub. L. 88-272, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

``(1) The amendments made by subsections (a), (b), and (c) [amending this section and sections 545 and 556 of this title], shall apply with respect to contributions which are paid in taxable years beginning after December 31, 1963.

``(2) The amendments made by subsection (d) [amending this section

and section 381 of this title] shall apply to taxable years beginning after December 31, 1963, with respect to contributions which are paid (or treated as paid under section 170(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) in taxable years beginning after December 31, 1961.

``(3) The amendments made by subsection (e) [amending this section] shall apply to transfers of future interests made after December 31, 1963, in taxable years ending after such date, except that such amendments shall not apply to any transfer of a future interest made before July 1, 1964, where--

``(A) the sole intervening interest or right is a nontransferable life interest reserved by the donor, or

``(B) in the case of a joint gift by husband and wife, the sole intervening interest or right is a nontransferable life interest reserved by the donors which expires not later than the death of whichever of such donors dies later.

For purposes of the exception contained in the preceding sentence, a right to make a transfer of the reserved life interest to the donee of the future interest shall not be treated as making a life interest transferable.''

Amendment by section 231(b)(1) of Pub. L. 88-272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88-272, set out as an Effective Date note under section 1250 of this title.

Effective Date of 1962 Amendments

Section 2(c) of Pub. L. 87-858 provided that: ``The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1960.''

Amendment by Pub. L. 87-834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87-834, set out as an Effective Date note under section 1245 of this title.

Effective Date of 1960 Amendment

Amendment by Pub. L. 86-779 applicable with respect to taxable years beginning after Dec. 31, 1959, see section 7(c) of Pub. L. 86-779, set out as a note under section 162 of this title.

Effective Date of 1958 Amendment

Section 10(b) of Pub. L. 85-866 provided that: ``The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957.''

Amendment by section 11 of Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85-866, set out as a note under section 165 of this title.

Section 12(b) of Pub. L. 85-866 provided that: ``The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1957, but only with respect to charitable contributions made after such date.''

Effective Date of 1956 Amendment

Section 2 of act Aug. 7, 1956, provided that: ``The amendment made by this Act [amending this section] shall apply only with respect to taxable years beginning after December 31, 1955.''

Savings Provision

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 29 of this title.

Transfer of Functions

United States International Development Cooperation Agency (other than Agency for International Development and Overseas Private Investment Corporation) abolished and functions and authorities transferred, see sections 6561 and 6562 of Title 22, Foreign Relations and Intercourse.

Authority To Waive Appraisal Requirement for Certain Charitable Contributions of Property

Section 6281 of Pub. L. 100-647 provided that: ``Notwithstanding paragraph (2) of section 155(a) of the Tax Reform Act of 1984 [section 155(a)(2) of Pub. L. 98-369, set out below], the Secretary of the Treasury or his delegate may in the regulations prescribed pursuant to such section waive the requirement of a qualified appraisal in the case of a qualified contribution (within the meaning of section 170(e)(3)(A) of the 1986 Code) of property described in section 1221(1) [probably means section 1221(1) of the 1986 Code] with a claimed value in excess of \$5,000.''

Plan Amendments Not Required Until January 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [Secs. 1101-1147 and 1171-1177] or title XVIII [Secs. 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

Treatment of Certain Amounts Paid to or for the Benefit of Certain Institutions of Higher Education

Section 1608 of Pub. L. 99-514, which related to treatment of certain amounts paid to or for the benefit of certain institutions of

higher education, was repealed by Pub. L. 100-647, title I, Sec. 1016(b), Nov. 10, 1988, 102 Stat. 3575.

Substantiation of Charitable Contributions of Property

Section 155(a) of Pub. L. 98-369, as amended by Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

``(1) In general.--Not later than December 31, 1984, the Secretary shall prescribe regulations under section 170(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], which require any individual, closely held corporation, or personal service corporation claiming a deduction under section 170 of such Code for a contribution described in paragraph (2)--

``(A) to obtain a qualified appraisal for the property contributed,

``(B) to attach an appraisal summary to the return on which such deduction is first claimed for such contribution, and

``(C) to include on such return such additional information (including the cost basis and acquisition date of the contributed property) as the Secretary may prescribe in such regulations. Such regulations shall require the taxpayer to retain any qualified appraisal.

``(2) Contributions to which paragraph (1) applies.--For purposes of paragraph (1), a contribution is described in this paragraph--

``(A) if such contribution is of property (other than publicly traded securities), and

``(B) if the claimed value of such property (plus the claimed value of all similar items of property donated to 1 or more donees) exceeds \$5,000.

In the case of any property which is nonpublicly traded stock, subparagraph (B) shall be applied by substituting '\$10,000' for '\$5,000'.

``(3) Appraisal summary.--For purposes of this subsection, the appraisal summary shall be in such form and include such information as the Secretary prescribes by regulations. Such summary shall be signed by the qualified appraiser preparing the qualified appraisal and shall contain the TIN of such appraiser. Such summary shall be acknowledged by the donee of the property appraised in such manner as the Secretary prescribes in such regulations.

``(4) Qualified appraisal.--The term 'qualified appraisal' means an appraisal prepared by a qualified appraiser which includes--

``(A) a description of the property appraised,

``(B) the fair market value of such property on the date of contribution and the specific basis for the valuation,

``(C) a statement that such appraisal was prepared for income tax purposes,

``(D) the qualifications of the qualified appraiser,

``(E) the signature and TIN of such appraiser, [sic] and

``(F) such additional information as the Secretary prescribes in such regulations.

``(5) Qualified appraiser.--

``(A) In general.--For purposes of this subsection, the term 'qualified appraiser' means an appraiser qualified to make appraisals of the type of property donated, who is not--

``(i) the taxpayer,

``(ii) a party to the transaction in which the taxpayer

acquired the property,
 `` (iii) the donee,
 `` (iv) any person employed by any of the foregoing persons
 or related to any of the foregoing persons under section 267(b)
 of the Internal Revenue Code of 1986, or
 `` (v) to the extent provided in such regulations, any person
 whose relationship to the taxpayer would cause a reasonable
 person to question the independence of such appraiser.
 `` (B) Appraisal fees.--For purposes of this subsection, an
 appraisal shall not be treated as a qualified appraisal if all or
 part of the fee paid for such appraisal is based on a percentage of
 the appraised value of the property. The preceding sentence shall
 not apply to fees based on a sliding scale that are paid to a
 generally recognized association regulating appraisers.
 `` (6) Other definitions.--For purposes of this subsection--
 `` (A) Closely held corporation.--The term 'closely held
 corporation' means any corporation (other than an S corporation)
 with respect to which the stock ownership requirement of paragraph
 (2) of section 542(a) of such Code is met.
 `` (B) Personal service corporation.--The term 'personal service
 corporation' means any corporation (other than an S corporation)
 which is a service organization (within the meaning of section
 414(m) (3) of such Code).
 `` (C) Publicly traded securities.--The term 'publicly traded
 securities' means securities for which (as of the date of the
 contribution) market quotations are readily available on an
 established securities market.
 `` (D) Nonpublicly traded stock.--The term 'nonpublicly traded
 stock' means any stock of a corporation which is not a publicly
 traded security.
 `` (E) The secretary.--The term 'Secretary' means the Secretary
 of the Treasury or his delegate.''

Charitable Lead Trusts and Charitable Remainder Trusts in Case of Income and Gift Taxes

For includibility of provisions comparable to section 2055(e) (3) of
 this title in this section, see section 514(b) of Pub. L. 95-600, set
 out as a note under section 2055 of this title.

Deduction of Contributions to Certain Organizations for Judicial Reform

Section 29 of Pub. L. 87-834, as amended by Pub. L. 99-514, Sec. 2,
 Oct. 22, 1986, 100 Stat. 2095, provided that: ``For purposes of section
 170 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]
 (relating to deduction for charitable, etc., contributions and gifts), a
 contribution or gift made after December 31, 1961, with respect to a
 referendum occurring during the calendar year 1962 to or for the use of
 any nonprofit organization created and operated exclusively--

`` (1) to consider proposals for the reorganization of the
 judicial branch of the government of any State of the United States
 or political subdivision of such State, and

`` (2) to provide information, make recommendations, and seek
 public support or opposition as to such proposals,
 shall be treated as a charitable contribution if no part of the net

earnings of such organization inures to the benefit of any private shareholder or individual. The provisions of the preceding sentence shall not apply to any organization which participates in, or intervenes in, any political campaign on behalf of any candidate for public office.'

Section Referred to in Other Sections

This section is referred to in sections 21, 41, 67, 74, 79, 108, 117, 119, 125, 151, 152, 162, 163, 381, 401, 410, 467, 501, 507, 508, 509, 512, 513, 514, 530, 535, 545, 556, 584, 642, 664, 674, 677, 702, 703, 773, 805, 873, 882, 1011, 1255, 1257, 1361, 1398, 1441, 2031, 2032A, 2055, 2056, 2057, 2503, 4041, 4221, 4253, 4911, 4940, 4941, 4942, 4944, 4945, 4947, 4948, 5214, 6033, 6050L, 6113, 6115, 6664, 7428, 7611, 7701, 7871 of this title; title 2 section 439a; title 11 section 548; title 12 section 3015; title 15 sections 80a-3, 80a-3a; title 16 sections 410yy-8, 1246, 1285; title 20 sections 954, 956; title 22 sections 3307, 4341, 4603; title 23 section 133; title 29 sections 1002, 1052; title 35 section 297; title 40 section 207c-2; title 42 sections 2996b, 10702.

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such period, range, and class shall be those which are in effect at the time that the contribution of the remainder interest was made. At the option of the taxpayer, in the case of property contributed before January 1, 1971, the estimated useful life, for purposes of this section, shall be the guideline life provided in Revenue Procedure 62-21 for the relevant asset guideline class.

(e) *Valuation of a remainder interest following more than one life or a term certain concurrent with one or more lives.*

(1)(i) If the valuation of the remainder interest in the real property is dependent upon the continuation or the termination of more than one life or upon a term certain concurrent with one or more lives, a special factor must be used.

(ii) The special factor is to be computed on the basis of—

(A) Interest at the rate prescribed under § 25.2512-5 (or, for certain prior periods, § 25.2512-5A) of this chapter, compounded annually;

(B) Life contingencies determined from the values that are set forth in the mortality table in § 20.2031-7 (or, for certain prior periods, § 20.2031-7A) of this chapter; and

(C) If depreciation is involved, the assumption that the property depreciates on a straight-line basis over its estimated useful life.

(iii) If any part of the property is subject to depletion of its natural resources, such depletion must be taken into account in determining the value of the remainder interest.

(2) In the case of the valuation of a remainder interest following two lives, the special factor may be obtained through use of the following formula:

$$\left(1 + \frac{i}{2}\right) \sum_{t=0}^{n-1} v^{(t+1)} \left[\left(1 - \frac{l_{x+t+1}}{l_x}\right) \left(1 - \frac{l_{y+t+1}}{l_y}\right) - \left(1 - \frac{l_{x+t}}{l_x}\right) \left(1 - \frac{l_{y+t}}{l_y}\right) \right] \left(1 - \frac{1}{2n} - \frac{t}{n}\right)$$

Where:

n=the estimated number of years of useful life,

i=the applicable interest rate under section 7520 of the Internal Revenue Code,

v=1 divided by the sum of 1 plus the applicable interest rate under section 7520 of the Internal Revenue Code,

x and y=the ages of the life tenants, and

lx and ly=the number of persons living at ages x and y as set forth in Table 90 CM in § 20.2031-7 (or, for prior periods, in § 20.2031-7A) of this chapter.

(3) Notwithstanding that the taxpayer may be able to compute the special factor in certain cases under paragraph (2), if a special factor is required in the case of an actual contribution, the Commissioner will furnish the factor to the donor upon request. The request must be accompanied by a statement of the sex and date of birth of each person the duration of whose life may affect the value of the remainder

interest, copies of the relevant instruments, and, if depreciation is involved, a statement of the estimated useful life of the depreciable property. However, since remainder interests in that part of any property which is depletable cannot be valued on a purely actuarial basis, special factors will not be furnished with respect to such part. Requests should be forwarded to the Commissioner of Internal Revenue, Attention: OP:E:EP:A:1, Washington, DC 20224.

[T.D. 7370, 40 FR 34337, Aug. 15, 1975, as amended by T.D. 7955, 49 FR 19975, May 11, 1984; T.D. 8540, 59 FR 30102, 30104, June 10, 1994; T.D. 8819, 64 FR 23228, Apr. 30, 1999; T.D. 8886, 65 FR 36909, 36943, June 12, 2000]

§ 1.170A-13 Recordkeeping and return requirements for deductions for charitable contributions.

(a) *Charitable contributions of money made in taxable years beginning after December 31, 1982—*(1) *In general.* If a taxpayer makes a charitable contribution of money in a taxable year beginning after December 31, 1982, the taxpayer

shall maintain for each contribution one of the following:

- (i) A cancelled check.
- (ii) A receipt from the donee charitable organization showing the name of the donee, the date of the contribution, and the amount of the contribution. A letter or other communication from the donee charitable organization acknowledging receipt of a contribution and showing the date and amount of the contribution constitutes a receipt for purposes of this paragraph (a).

- (iii) In the absence of a canceled check or receipt from the donee charitable organization, other reliable written records showing the name of the donee, the date of the contribution, and the amount of the contribution.

(2) *Special rules*—(i) *Reliability of records.* The reliability of the written records described in paragraph (a)(1)(iii) of this section is to be determined on the basis of all of the facts and circumstances of a particular case. In all events, however, the burden shall be on the taxpayer to establish reliability. Factors indicating that the written records are reliable include, but are not limited to:

- (A) The contemporaneous nature of the writing evidencing the contribution.

- (B) The regularity of the taxpayer's recordkeeping procedures. For example, a contemporaneous diary entry stating the amount and date of the donation and the name of the donee charitable organization made by a taxpayer who regularly makes such diary entries would generally be considered reliable.

- (C) In the case of a contribution of a small amount, the existence of any written or other evidence from the donee charitable organization evidencing receipt of a donation that would not otherwise constitute a receipt under paragraph (a)(1)(ii) of this section (including an emblem, button, or other token traditionally associated with a charitable organization and regularly given by the organization to persons making cash donations).

- (ii) *Information stated in income tax return.* The information required by paragraph (a)(1)(iii) of this section shall be stated in the taxpayer's income tax return if required by the return form or its instructions.

(3) *Taxpayer option to apply paragraph (d)(1) to pre-1985 contribution.* See paragraph (d)(1) of this section with regard to contributions of money made on or before December 31, 1984.

(b) *Charitable contributions of property other than money made in taxable years beginning after December 31, 1982*—(1) *In general.* Except in the case of certain charitable contributions of property made after December 31, 1984, to which paragraph (c) of this section applies, any taxpayer who makes a charitable contribution of property other than money in a taxable year beginning after December 31, 1982, shall maintain for each contribution a receipt from the donee showing the following information:

- (i) The name of the donee.
- (ii) The date and location of the contribution.

- (iii) A description of the property in detail reasonably sufficient under the circumstances. Although the fair market value of the property is one of the circumstances to be taken into account in determining the amount of detail to be included on the receipt, such value need not be stated on the receipt.

A letter or other written communication from the donee acknowledging receipt of the contribution, showing the date of the contribution, and containing the required description of the property contributed constitutes a receipt for purposes of this paragraph. A receipt is not required if the contribution is made in circumstances where it is impractical to obtain a receipt (*e.g.*, by depositing property at a charity's unattended drop site). In such cases, however, the taxpayer shall maintain reliable written records with respect to each item of donated property that include the information required by paragraph (b)(2)(ii) of this section.

(2) *Special rules*—(i) *Reliability of records.* The rules described in paragraph (a)(2)(i) of this section also apply to this paragraph (b) for determining the reliability of the written records described in paragraph (b)(1) of this section.

- (ii) *Content of records.* The written records described in paragraph (b)(1) of this section shall include the following information and such information shall be stated in the taxpayers income tax

return if required by the return form or its instructions:

(A) The name and address of the donee organization to which the contribution was made.

(B) The date and location of the contribution.

(C) A description of the property in detail reasonable under the circumstances (including the value of the property), and, in the case of securities, the name of the issuer, the type of security, and whether or not such security is regularly traded on a stock exchange or in an over-the-counter market.

(D) The fair market value of the property at the time the contribution was made, the method utilized in determining the fair market value, and, if the valuation was determined by appraisal, a copy of the signed report of the appraiser.

(E) In the case of property to which section 170(e) applies, the cost or other basis, adjusted as provided by section 1016, the reduction by reason of section 170(e)(1) in the amount of the charitable contribution otherwise taken into account, and the manner in which such reduction was determined. A taxpayer who elects under paragraph (d)(2) of § 1.170A-8 to apply section 170(e)(1) to contributions and carryovers of 30 percent capital gain property shall maintain a written record indicating the years for which the election was made and showing the contributions in the current year and carryovers from preceding years to which it applies. For the definition of the term "30-percent capital gain property," see paragraph (d)(3) of § 1.170A-8.

(F) If less than the entire interest in the property is contributed during the taxable year, the total amount claimed as a deduction for the taxable year due to the contribution of the property, and the amount claimed as a deduction in any prior year or years for contributions of other interests in such property, the name and address of each organization to which any such contribution was made, the place where any such property which is tangible property is located or kept, and the name of any person, other than the organization to which the property giving rise

to the deduction was contributed, having actual possession of the property.

(G) The terms of any agreement or understanding entered into by or on behalf of the taxpayer which relates to the use, sale, or other disposition of the property contributed, including for example, the terms of any agreement or understanding which:

(1) Restricts temporarily or permanently the donee's right to use or dispose of the donated property,

(2) Reserves to, or confers upon, anyone (other than the donee organization or an organization participating with the donee organization in cooperative fundraising) any right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire, or

(3) Earmarks donated property for a particular use.

(3) *Deductions in excess of \$500 claimed for a charitable contribution of property other than money—(i) In general.* In addition to the information required under paragraph (b)(2)(ii) of this section, if a taxpayer makes a charitable contribution of property other than money in a taxable year beginning after December 31, 1982, and claims a deduction in excess of \$500 in respect of the contribution of such item, the taxpayer shall maintain written records that include the following information with respect to such item of donated property, and shall state such information in his or her income tax return if required by the return form or its instructions:

(A) The manner of acquisition, as for example by purchase, gift bequest, inheritance, or exchange, and the approximate date of acquisition of the property by the taxpayer or, if the property was created, produced, or manufactured by or for the taxpayer, the approximate date the property was substantially completed.

(B) The cost or other basis, adjusted as provided by section 1016, of property, other than publicly traded securities, held by the taxpayer for a period of less than 12 months (6 months for property contributed in taxable years beginning

after December 31, 1982, and on or before June 6, 1988, immediately preceding the date on which the contribution was made and, when the information is available, of property, other than publicly traded securities, held for a period of 12 months or more (6 months or more for property contributed in taxable years beginning after December 31, 1982, and on or before June 6, 1988, preceding the date on which the contribution was made.

(ii) *Information on acquisition date or cost basis not available.* If the return form or its instructions require the taxpayer to provide information on either the acquisition date of the property or the cost basis as described in paragraph (b)(3)(i) (A) and (B), respectively, of this section, and the taxpayer has reasonable cause for not being able to provide such information, the taxpayer shall attach an explanatory statement to the return. If a taxpayer has reasonable cause for not being able to provide such information, the taxpayer shall not be disallowed a charitable contribution deduction under section 170 for failure to comply with paragraph (b)(3)(i) (A) and (B) of the section.

(4) *Taxpayer option to apply paragraph (d) (1) and (2) to pre-1985 contributions.* See paragraph (d) (1) and (2) of this section with regard to contributions of property made on or before December 31, 1984.

(c) *Deductions in excess of \$5,000 for certain charitable contributions of property made after December 31, 1984—(1) General Rule—(i) In general.* This paragraph applies to any charitable contribution made after December 31, 1984, by an individual, closely held corporation, personal service corporation, partnership, or S corporation of an item of property (other than money and publicly traded securities to which § 1.170A-13(c)(7)(xi)(B) does not apply if the amount claimed or reported as a deduction under section 170 with respect to such item exceeds \$5,000. This paragraph also applies to charitable contributions by C corporations (as defined in section 1361(a)(2) of the Code) to the extent described in paragraph (c)(2)(ii) of this section. No deduction under section 170 shall be allowed with respect to a charitable contribution to

which this paragraph applies unless the substantiation requirements described in paragraph (c)(2) of this section are met. For purposes of this paragraph (c), the amount claimed or reported as a deduction for an item of property is the aggregate amount claimed or reported as a deduction for a charitable contribution under section 170 for such items of property and all similar items of property (as defined in paragraph (c)(7)(iii) of this section) by the same donor for the same taxable year (whether or not donated to the same donee).

(ii) *Special rule for property to which section 170(e) (3) or (4) applies.* For purposes of this paragraph (c), in computing the amount claimed or reported as a deduction for donated property to which section 170(e) (3) or (4) applies (pertaining to certain contributions of inventory and scientific equipment) there shall be taken into account only the amount claimed or reported as a deduction in excess of the amount which would have been taken into account for tax purposes by the donor as costs of goods sold if the donor had sold the contributed property to the donee. For example, assume that a donor makes a contribution from inventory of clothing for the care of the needy to which section 170(e)(3) applies. The cost of the property to the donor was \$5,000, and, pursuant to section 170(e)(3)(B), the donor claims a charitable contribution deduction of \$8,000 with respect to the property. Therefore, \$3,000 (\$8,000-\$5,000) is the amount taken into account for purposes of determining whether the \$5,000 threshold of this paragraph (c)(1) is met.

(2) *Substantiation requirements—(i) In general.* Except as provided in paragraph (c)(2)(ii) of this section, a donor who claims or reports a deduction with respect to a charitable contribution to which this paragraph (c) applies must comply with the following three requirements:

(A) Obtain a qualified appraisal (as defined in paragraph (c) (3) of this section) for such property contributed. If the contributed property is a partial interest, the appraisal shall be of the partial interest.

(B) Attach a fully completed appraisal summary (as defined in paragraph (c) (4) of this section) to the tax return (or, in the case of a donor that is a partnership or S corporation, the information return) on which the deduction for the contribution is first claimed (or reported) by the donor.

(C) Maintain records containing the information required by paragraph (b) (2) (ii) of this section.

(ii) *Special rules for certain nonpublicly traded stock, certain publicly traded securities, and contributions by certain C corporations.* (A) In cases described in paragraph (c)(2)(ii)(B) of this section, a qualified appraisal is not required, and only a partially completed appraisal summary form (as described in paragraph (c)(4)(iv)(A) of this section) is required to be attached to the tax or information return specified in paragraph (c)(2)(i)(B) of this section. However, in all cases donors must maintain records containing the information required by paragraph (b)(2)(ii) of this section.

(B) This paragraph (c)(2)(ii) applies in each of the following cases:

(1) The contribution of nonpublicly traded stock, if the amount claimed or reported as a deduction for the charitable contribution of such stock is greater than \$5,000 but does not exceed \$10,000;

(2) The contribution of a security to which paragraph (c)(7)(xi)(B) of this section applies; and

(3) The contribution of an item of property or of similar items of property described in paragraph (c)(1) of this section made after June 6, 1988, by a C corporation (as defined in section 1361(a)(2) of the Code), other than a closely held corporation or a personal service corporation.

(3) *Qualified appraisal—(i) In general.* For purposes of this paragraph (c), the term “qualified appraisal” means an appraisal document that—

(A) Relates to an appraisal that is made not earlier than 60 days prior to the date of contribution of the appraised property nor later than the date specified in paragraph (c)(3)(iv)(B) of this section;

(B) Is prepared, signed, and dated by a qualified appraiser (within the meaning of paragraph (c)(5) of this section);

(C) Includes the information required by paragraph (c)(3)(ii) of this section; and

(D) Does not involve an appraisal fee prohibited by paragraph (c)(6) of this section.

(ii) *Information included in qualified appraisal.* A qualified appraisal shall include the following information:

(A) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was (or will be) contributed;

(B) In the case of tangible property, the physical condition of the property;

(C) The date (or expected date) of contribution to the donee;

(D) The terms of any agreement or understanding entered into (or expected to be entered into) by or on behalf of the donor or donee that relates to the use, sale, or other disposition of the property contributed, including, for example, the terms of any agreement or understanding that—

(1) Restricts temporarily or permanently a donee's right to use or dispose of the donated property,

(2) Reserves to, or confers upon, anyone (other than a donee organization or an organization participating with a donee organization in cooperative fundraising) any right to the income from the contributed property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire, or

(3) Earmarks donated property for a particular use;

(E) The name, address, and (if a taxpayer identification number is otherwise required by section 6109 and the regulations thereunder) the identifying number of the qualified appraiser; and, if the qualified appraiser is acting in his or her capacity as a partner in a partnership, an employee of any person (whether an individual, corporation, or partnerships), or an independent contractor engaged by a person other than the donor, the name, address, and taxpayer identification number (if a number is otherwise required by section 6109 and the regulations thereunder) of

the partnership or the person who employs or engages the qualified appraiser;

(F) The qualifications of the qualified appraiser who signs the appraisal, including the appraiser's background, experience, education, and membership, if any, in professional appraisal associations;

(G) A statement that the appraisal was prepared for income tax purposes;

(H) The date (or dates) on which the property was appraised;

(I) The appraised fair market value (within the meaning of § 1.170A-1 (c)(2)) of the property on the date (or expected date) of contribution;

(J) The method of valuation used to determine the fair market value, such as the income approach, the market-data approach, and the replacement-cost-less-depreciation approach; and

(K) The specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed.

(iii) *Effect of signature of the qualified appraiser.* Any appraiser who falsely or fraudulently overstates the value of the contributed property referred to in a qualified appraisal or appraisal summary (as defined in paragraphs (c) (3) and (4), respectively, of this section) that the appraiser has signed may be subject to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability and, moreover, may have appraisals disregarded pursuant to 31 U.S.C. 330(c).

(iv) *Special rules—(A) Number of qualified appraisals.* For purposes of paragraph (c)(2)(i)(A) of this section, a separate qualified appraisal is required for each item of property that is not included in a group of similar items of property. See paragraph (c)(7)(iii) of this section for the definition of similar items of property. Only one qualified appraisal is required for a group of similar items of property contributed in the same taxable year of the donor, although a donor may obtain separate qualified appraisals for each item of property. A qualified appraisal prepared with respect to a group of similar items of property shall provide all the information required by paragraph

(c)(3)(ii) of this section for each item of similar property, except that the appraiser may select any items whose aggregate value is appraised at \$100 or less and provide a group description of such items.

(B) *Time of receipt of qualified appraisal.* The qualified appraisal must be received by the donor before the due date (including extensions) of the return on which a deduction is first claimed (or reported in the case of a donor that is a partnership or S corporation) under section 170 with respect to the donated property, or, in the case of a deduction first claimed (or reported) on an amended return, the date on which the return is filed.

(C) *Retention of qualified appraisal.* The donor must retain the qualified appraisal in the donor's records for so long as it may be relevant in the administration of any internal revenue law.

(D) *Appraisal disregarded pursuant to 31 U.S.C. 330(c).* If an appraisal is disregarded pursuant to 31 U.S.C. 330(c) it shall have no probative effect as to the value of the appraised property. Such appraisal will, however, otherwise constitute a "qualified appraisal" for purposes of this paragraph (c) if the appraisal summary includes the declaration described in paragraph (c)(4)(ii)(L)(2) and the taxpayer had no knowledge that such declaration was false as of the time described in paragraph (c)(4)(i)(B) of this section.

(4) *Appraisal summary—(i) In general.* For purposes of this paragraph (c), except as provided in paragraph (c)(4)(iv)(A) of this section, the term *appraisal summary* means a summary of a qualified appraisal that—

(A) Is made on the form prescribed by the Internal Revenue Service;

(B) Is signed and dated (as described in paragraph (c)(4)(iii) of this section) by the donee (or presented to the donee for signature in cases described in paragraph (c)(4)(iv)(C)(2) of this section);

(C) Is signed and dated by the qualified appraiser (within the meaning of paragraph (c)(5) of this section) who prepared the qualified appraisal (within the meaning of paragraph (c)(3) of this section); and

(D) Includes the information required by paragraph (c)(4)(ii) of this section.

(ii) *Information included in an appraisal summary.* An appraisal summary shall include the following information:

(A) The name and taxpayer identification number of the donor (social security number if the donor is an individual or employer identification number if the donor is a partnership or corporation);

(B) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was contributed;

(C) In the case of tangible property, a brief summary of the overall physical condition of the property at the time of the contribution;

(D) The manner of acquisition (*e.g.*, purchase, exchange, gift, or bequest) and the date of acquisition of the property by the donor, or, if the property was created, produced, or manufactured by or for the donor, a statement to that effect and the approximate date the property was substantially completed;

(E) The cost or other basis of the property adjusted as provided by section 1016;

(F) The name, address, and taxpayer identification number of the donee;

(G) The date the donee received the property;

(H) For charitable contributions made after June 6, 1988, a statement explaining whether or not the charitable contribution was made by means of a bargain sale and the amount of any consideration received from the donee for the contribution;

(I) The name, address, and (if a taxpayer identification number is otherwise required by section 6109 and the regulations thereunder) the identifying number of the qualified appraiser who signs the appraisal summary and of other persons as required by paragraph (c)(3)(ii)(E) of this section;

(J) The appraised fair market value of the property on the date of contribution;

(K) The declaration by the appraiser described in paragraph (c)(5)(i) of this section;

(L) A declaration by the appraiser stating that—

(1) The fee charged for the appraisal is not of a type prohibited by paragraph (c)(6) of this section; and

(2) Appraisals prepared by the appraiser are not being disregarded pursuant to 31 U.S.C. 330(c) on the date the appraisal summary is signed by the appraiser; and

(M) Such other information as may be specified by the form.

(iii) *Signature of the original donee.* The person who signs the appraisal summary for the donee shall be an official authorized to sign the tax or information returns of the donee, or a person specifically authorized to sign appraisal summaries by an official authorized to sign the tax or information returns of such donee. In the case of a donee that is a governmental unit, the person who signs the appraisal summary for such donee shall be the official authorized by such donee to sign appraisal summaries. The signature of the donee on the appraisal summary does not represent concurrence in the appraised value of the contributed property. Rather, it represents acknowledgment of receipt of the property described in the appraisal summary on the date specified in the appraisal summary and that the donee understands the information reporting requirements imposed by section 6050L and § 1.6050L-1. In general, § 1.6050L-1 requires the donee to file an information return with the Internal Revenue Service in the event the donee sells, exchanges, consumes, or otherwise disposes of the property (or any portion thereof) described in the appraisal summary within 2 years after the date of the donor's contribution of such property.

(iv) *Special rules—(A) Content of appraisal summary required in certain cases.* With respect to contributions of non-publicly traded stock described in paragraph (c)(2)(ii)(B)(1) of this section, contributions of securities described in paragraph (c)(7)(xi)(B) of this section, and contributions by C corporations described in paragraph (c)(2)(ii)(B)(3) of this section, the term *appraisal summary* means a document that—

(1) Complies with the requirements of paragraph (c)(4)(i) (A) and (B) of this section,

(2) Includes the information required by paragraph (c)(4)(ii) (A) through (H) of this section,

(3) Includes the amount claimed or reported as a charitable contribution deduction, and

(4) In the case of securities described in paragraph (c)(7)(xi)(B) of this section, also includes the pertinent average trading price (as described in paragraph (c)(7)(xi)(B)(2)(iii) of this section).

(B) *Number of appraisal summaries.* A separate appraisal summary for each item of property described in paragraph (c)(1) of this section must be attached to the donor's return. If, during the donor's taxable year, the donor contributes similar items of property described in paragraph (c)(1) of this section to more than one donee, the donor shall attach to the donor's return a separate appraisal summary for each donee. See paragraph (c)(7)(iii) of this section for the definition of similar items of property. If, however, during the donor's taxable year, a donor contributes similar items of property described in paragraph (c)(1) of this section to the same donee, the donor may attach to the donor's return a single appraisal summary with respect to all similar items of property contributed to the same donee. Such an appraisal summary shall provide all the information required by paragraph (c)(4)(ii) of this section for each item of property, except that the appraiser may select any items whose aggregate value is appraised at \$100 or less and provide a group description for such items.

(C) *Manner of acquisition, cost basis and donee's signature.* (1) If a taxpayer has reasonable cause for being unable to provide the information required by paragraph (c)(4)(ii) (D) and (E) of this section (relating to the manner of acquisition and basis of the contributed property), an appropriate explanation should be attached to the appraisal summary. The taxpayer's deduction will not be disallowed simply because of the inability (for reasonable cause) to provide these items of information.

(2) In rare and unusual circumstances in which it is impossible for the taxpayer to obtain the signature of the donee on the appraisal summary as required by paragraph (c)(4)(i)(B) of this section, the taxpayer's deduction will not be disallowed for that reason provided that the taxpayer attaches a statement to the appraisal summary explaining, in detail, why it was not possible to obtain the donee's signature. For example, if the donee ceases to exist as an entity subsequent to the date of the contribution and prior to the date when the appraisal summary must be signed, and the donor acted reasonably in not obtaining the donee's signature at the time of the contribution, relief under this paragraph (c)(4)(iv)(C)(2) would generally be appropriate.

(D) *Information excluded from certain appraisal summaries.* The information required by paragraph (c)(4)(i)(C), paragraph (c)(4)(ii) (D), (E), (H) through (M), and paragraph (c)(4)(iv)(A)(3), and the average trading price referred to in paragraph (c)(4)(iv)(A)(4) of this section do not have to be included on the appraisal summary at the time it is signed by the donee or a copy is provided to the donee pursuant to paragraph (c)(4)(iv)(E) of this section.

(E) *Statement to be furnished by donors to donees.* Every donor who presents an appraisal summary to a donee for signature after June 6, 1988, in order to comply with paragraph (c)(4)(i)(B) of this section shall furnish a copy of the appraisal summary to such donee.

(F) *Appraisal summary required to be provided to partners and S corporation shareholders.* If the donor is a partnership or S corporation, the donor shall provide a copy of the appraisal summary to every partner or shareholder, respectively, who receives an allocation of a charitable contribution deduction under section 170 with respect to the property described in the appraisal summary.

(G) *Partners and S corporation shareholders.* A partner of a partnership or shareholder of an S corporation who receives an allocation of a deduction under section 170 for a charitable contribution of property to which this paragraph (c) applies must attach a

copy of the partnership's or S corporation's appraisal summary to the tax return on which the deduction for the contribution is first claimed. If such appraisal summary is not attached, the partner's or shareholder's deduction shall not be allowed except as provided for in paragraph (c)(4)(iv)(H) of this section.

(H) *Failure to attach appraisal summary.* In the event that a donor fails to attach to the donor's return an appraisal summary as required by paragraph (c)(2)(i)(B) of this section, the Internal Revenue Service may request that the donor submit the appraisal summary within 90 days of the request. If such a request is made and the donor complies with the request within the 90-day period, the deduction under section 170 shall not be disallowed for failure to attach the appraisal summary, provided that the donor's failure to attach the appraisal summary was a good faith omission and the requirements of paragraph (c) (3) and (4) of this section are met (including the completion of the qualified appraisal prior to the date specified in paragraph (c)(3)(iv)(B) of this section).

(5) *Qualified appraiser*—(i) *In general.* The term *qualified appraiser* means an individual (other than a person described in paragraph (c)(5)(iv) of this section) who includes on the appraisal summary (described in paragraph (c)(4) of this section), a declaration that—

(A) The individual either holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis;

(B) Because of the appraiser's qualifications as described in the appraisal (pursuant to paragraph (c)(3)(ii)(F) of this section), the appraiser is qualified to make appraisals of the type of property being valued;

(C) The appraiser is not one of the persons described in paragraph (c)(5)(iv) of this section; and

(D) The appraiser understands that an intentionally false or fraudulent overstatement of the value of the property described in the qualified appraisal or appraisal summary may subject the appraiser to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability, and, moreover, the appraiser may have

appraisals disregarded pursuant to 31 U.S.C. 330(c) (see paragraph (c)(3)(iii) of this section).

(ii) *Exception.* An individual is not a qualified appraiser with respect to a particular donation, even if the declaration specified in paragraph (c)(5)(i) of this section is provided in the appraisal summary, if the donor had knowledge of facts that would cause a reasonable person to expect the appraiser falsely to overstate the value of the donated property (*e.g.*, the donor and the appraiser make an agreement concerning the amount at which the property will be valued and the donor knows that such amount exceeds the fair market value of the property).

(iii) *Numbers of appraisers.* More than one appraiser may appraise the donated property. If more than one appraiser appraises the property, the donor does not have to use each appraiser's appraisal for purposes of substantiating the charitable contribution deduction pursuant to this paragraph (c). If the donor uses the appraisal of more than one appraiser, or if two or more appraisers contribute to a single appraisal, each appraiser shall comply with the requirements of this paragraph (c), including signing the qualified appraisal and appraisal summary as required by paragraphs (c)(3)(i)(B) and (c)(4)(i)(C) of this section, respectively.

(iv) *Qualified appraiser exclusions.* The following persons cannot be qualified appraisers with respect to particular property:

(A) The donor or the taxpayer who claims or reports a deductions under section 170 for the contribution of the property that is being appraised.

(B) A party to the transaction in which the donor acquired the property being appraised (*i.e.*, the person who sold, exchanged, or gave the property to the donor, or any person who acted as an agent for the transferor or for the donor with respect to such sale, exchange, or gift), unless the property is donated within 2 months of the date of acquisition and its appraised value does not exceed its acquisition price.

(C) The donee of the property.

(D) Any person employed by any of the foregoing persons (*e.g.*, if the donor acquired a painting from an art dealer,

neither the art dealer nor persons employed by the dealer can be qualified appraisers with respect to that painting).

(E) Any person related to any of the foregoing persons under section 267(b), or, with respect to appraisals made after June 6, 1988, married to a person who is in a relationship described in section 267(b) with any of the foregoing persons.

(F) An appraiser who is regularly used by any person described in paragraph (c)(5)(iv) (A), (B), or (C) of this section and who does not perform a majority of his or her appraisals made during his or her taxable year for other persons.

(6) *Appraisal fees*—(i) *In general*. Except as otherwise provided in paragraph (c)(6)(ii) of this section, no part of the fee arrangement for a qualified appraisal can be based, in effect, on a percentage (or set of percentages) of the appraised value of the property. If a fee arrangement for an appraisal is based in whole or in part on the amount of the appraised value of the property, if any, that is allowed as a deduction under section 170, after Internal Revenue Service examination or otherwise, it shall be treated as a fee based on a percentage of the appraised value of the property. For example, an appraiser's fee that is subject to reduction by the same percentage as the appraised value may be reduced by the Internal Revenue Service would be treated as a fee that violates this paragraph (c)(6).

(ii) *Exception*. Paragraph (c)(6)(i) of this section does not apply to a fee paid to a generally recognized association that regulates appraisers provided all of the following requirements are met:

(A) The association is not organized for profit and no part of the net earnings of the association inures to the benefit of any private shareholder or individual (these terms have the same meaning as in section 501(c)),

(B) The appraiser does not receive any compensation from the association or any other persons for making the appraisal, and

(C) The fee arrangement is not based in whole or in part on the amount of the appraised value of the donated property, if any, that is allowed as a

deduction under section 170 after Internal Revenue Service examination or otherwise.

(7) *Meaning of terms*. For purposes of this paragraph (c)—

(i) *Closely held corporation*. The term *closely held corporation* means any corporation (other than an S corporation) with respect to which the stock ownership requirement of paragraph (2) of section 542(a) of the Code is met.

(ii) *Personal service corporation*. The term *personal service corporation* means any corporation (other than an S corporation) which is a service organization (within the meaning of section 414(m)(3) of the Code).

(iii) *Similar items of property*. The phrase *similar items of property* means property of the same generic category or type, such as stamp collections (including philatelic supplies and books on stamp collecting), coin collections (including numismatic supplies and books on coin collecting), lithographs, paintings, photographs, books, nonpublicly traded stock, nonpublicly traded securities other than nonpublicly traded stock, land, buildings, clothing, jewelry, furniture, electronic equipment, household appliances, toys, everyday kitchenware, china, crystal, or silver. For example, if a donor claims on her return for the year deductions of \$2,000 for books given by her to College A, \$2,500 for books given by her to College B, and \$900 for books given by her to College C, the \$5,000 threshold of paragraph (c)(1) of this section is exceeded. Therefore, the donor must obtain a qualified appraisal for the books and attach to her return three appraisal summaries for the books donated to A, B, and C. For rules regarding the number of qualified appraisals and appraisal summaries required when similar items of property are contributed, see paragraphs (c)(3)(iv)(A) and (c)(4)(iv)(B), respectively, of this section.

(iv) *Donor*. The term *donor* means a person or entity (other than an organization described in section 170(c) to which the donated property was previously contributed) that makes a charitable contribution of property.

(v) *Donee*. The term *donee* means—

(A) Except as provided in paragraph (c)(7)(v) (B) and (C) of this section, an

organization described in section 170(c) to which property is contributed,

(B) Except as provided in paragraph (c)(7)(v)(C) of this section, in the case of a charitable contribution of property placed in trust for the benefit of an organization described in section 170(c), the trust, or

(C) In the case of a charitable contribution of property placed in trust for the benefit of an organization described in section 170(c) made on or before June 6, 1988, the beneficiary that is an organization described in section 170(c), or if the trust has assumed the duties of a donee by signing the appraisal summary pursuant to paragraph (c)(4)(i)(B) of this section, the trust.

In general, the term, refers only to the original donee. However, with respect to paragraph (c)(3)(ii)(D), the last sentence of paragraph (c)(4)(iii), and paragraph (c)(5)(iv)(C) of this section, the term *donee* means the original donee and all successor donees in cases where the original donee transfers the contributed property to a successor donee after July 5, 1988.

(vi) *Original donee*. The term *original donee* means the donee to or for which property is initially donated by a donor.

(vii) *Successor donee*. The term *successor donee* means any donee of property other than its original donee (*i.e.*, a transferee of property for less than fair market value from an original donee or another successor donee).

(viii) *Fair market value*. For the meaning of the term *fair market value*, see section 1.170A-1(c)(2).

(ix) *Nonpublicly traded securities*. The term *nonpublicly traded securities* means securities (within the meaning of section 165(g)(2) of the Code) which are not publicly traded securities as defined in paragraph (c)(7)(xi) of this section.

(x) *Nonpublicly traded stock*. The term *nonpublicly traded stock* means any stock of a corporation (evidence by a stock certificate) which is not a publicly traded security. The term *stock* does not include a debenture or any other evidence of indebtedness.

(xi) *Publicly traded securities*—(A) *In general*. Except as provided in paragraph (c)(7)(xi)(C) of this section, the term *publicly traded securities* means se-

curities (within the meaning of section 165(g)(2) of the Code) for which (as of the date of the contribution) market quotations are readily available on an established securities market. For purposes of this section, market quotations are readily available on an established securities market with respect to a security if:

(1) The security is listed on the New York Stock Exchange, the American Stock Exchange, or any city or regional exchange in which quotations are published on a daily basis, including foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis;

(2) The security is regularly traded in the national or regional over-the-counter market, for which published quotations are available; or

(3) The security is a share of an open-end investment company (commonly known as a mutual fund) registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 to 80b-2), for which quotations are published on a daily basis in a newspaper of general circulation throughout the United States.

(If the market value of an issue of a security is reflected only on an inter-dealer quotation system, the issue shall not be considered to be publicly traded unless the special rule described in paragraph (c)(7)(xi)(B) of this section is satisfied.)

(B) *Special rule*—(1) *In General*. An issue of a security that does not satisfy the requirements of paragraph (c)(7)(xi)(A) (1), (2), or (3) of this section shall nonetheless be considered to have market quotations readily available on an established securities market for purposes of paragraph (c)(7)(xi)(A) of this section if all of the following five requirements are met:

(i) The issue is regularly traded during the computational period (as defined in paragraph (c)(7)(xi)(B)(2)(iv) of this section) in a market that is reflected by the existence of an inter-dealer quotation system for the issue,

(ii) The issuer or an agent of the issuer computes the average trading price (as defined in paragraph (c)(7)(xi)(B)(2)(iii) of this section) for the issue for the computational period,

(iii) The average trading price and total volume of the issue during the computational period are published in a newspaper of general circulation throughout the United States not later than the last day of the month following the end of the calendar quarter in which the computational period ends.

(iv) The issuer or its agent keeps books and records that list for each transaction during the computational period involving each issue covered by this procedure the date of the settlement of the transaction, the name and address of the broker or dealer making the market in which the transaction occurred, and the trading price and volume, and

(v) The issuer or its agent permits the Internal Revenue Service to review the books and records described in paragraph (c)(7)(xi)(B)(i)(iv) of this section with respect to transactions during the computational period upon giving reasonable notice to the issuer or agent.

(2) *Definitions.* For purposes of this paragraph (c)(7)(xi)(B)—

(i) *Issue of a security.* The term *issue of a security* means a class of debt securities with the same obligor and identical terms except as to their relative denominations (amounts) or a class of stock having identical rights.

(ii) *Interdealer quotation system.* The term *interdealer quotation system* means any system of general circulation to brokers and dealers that regularly disseminates quotations of obligations by two or more identified brokers or dealers, who are not related to either the issuer of the security or to the issuer's agent, who compute the average trading price of the security. A quotation sheet prepared and distributed by a broker or dealer in the regular course of its business and containing only quotations of such broker or dealer is not an interdealer quotation system.

(iii) *Average trading price.* The term *average trading price* means the mean price of all transactions (weighted by volume), other than original issue or redemption transactions, conducted through a United States office of a broker or dealer who maintains a market in the issue of the security during the computational period. For this pur-

pose, bid and asked quotations are not taken into account.

(iv) *Computational period.* For calendar quarters beginning on or after June 6, 1988, the term *computational period* means weekly during October through December (beginning with the first Monday in October and ending with the first Sunday following the last Monday in December) and monthly during January through September (beginning January 1). For calendar quarters beginning before June 6, 1988, the term *computational period* means weekly during October through December and monthly during January through September.

(C) *Exception.* Securities described in paragraph (c)(7)(xi) (A) or (B) of this section shall not be considered publicly traded securities if—

(1) The securities are subject to any restrictions that materially affect the value of the securities to the donor or prevent the securities from being freely traded, or

(2) If the amount claimed or reported as a deduction with respect to the contribution of the securities is different than the amount listed in the market quotations that are readily available on an established securities market pursuant to paragraph (c)(7)(xi) (A) or (B) of this section.

(D) *Market quotations and fair market value.* The fair market value of a publicly traded security, as defined in this paragraph (c)(7)(xi), is not necessarily equal to its market quotation, its average trading price (as defined in paragraph (c)(7)(xi)(B)(2)(iii) of this section), or its face value, if any. See section 1.170A-1(c)(2) for the definition of *fair market value*.

(d) *Charitable contributions; information required in support of deductions for taxable years beginning before January 1, 1983—*(1) *In general.* This paragraph (d)(1) shall apply to deductions for charitable contributions made in taxable years beginning before January 1, 1983. At the option of the taxpayer the requirements of this paragraph (d)(1) shall also apply to all charitable contributions made on or before December 31, 1984 (in lieu of the requirements of paragraphs (a) and (b) of this section).

In connection with claims for deductions for charitable contributions, taxpayers shall state in their income tax returns the name of each organization to which a contribution was made and the amount and date of the actual payment of each contribution. If a contribution is made in property other than money, the taxpayer shall state the kind of property contributed, for example, used clothing, paintings, or securities, the method utilized in determining the fair market value of the property at the time the contribution was made, and whether or not the amount of the contribution was reduced under section 170(e). If a taxpayer makes more than one cash contribution to an organization during the taxable year, then in lieu of listing each cash contribution and the date of payment the taxpayer may state the total cash payments made to such organization during the taxable year. A taxpayer who elects under paragraph (d)(2) of § 1.170A-8 to apply section 170(e)(1) to his contributions and carryovers of 30-percent capital gain property must file a statement with his return indicating that he has made the election and showing the contributions in the current year and carryovers from preceding years to which it applies. For the definition of the term *30-percent capital gain property*, see paragraph (d)(3) of § 1.170A-8.

(2) *Contribution by individual of property other than money.* This paragraph (d)(2) shall apply to deductions for charitable contributions made in taxable years beginning before January 1, 1983. At the option of the taxpayer, the requirements of this paragraph (d)(2) shall also apply to contributions of property made on or before December 31, 1984 (in lieu of the requirements of paragraph (b) of this section). If an individual taxpayer makes a charitable contribution of an item of property other than money and claims a deduction in excess of \$200 in respect of his contribution of such item, he shall attach to his income tax return the following information with respect to such item:

(i) The name and address of the organization to which the contribution was made.

(ii) The date of the actual contribution.

(iii) A description of the property in sufficient detail to identify the particular property contributed, including in the case of tangible property the physical condition of the property at the time of contribution, and, in the case of securities, the name of the issuer, the type of security, and whether or not such security is regularly traded on a stock exchange or in an over-the-counter market.

(iv) The manner of acquisition, as, for example, by purchase, gift, bequest, inheritance, or exchange, and the approximate date of acquisition of the property by the taxpayer or, if the property was created, produced, or manufactured by or for the taxpayer, the approximate date the property was substantially completed.

(v) The fair market value of the property at the time the contribution was made, the method utilized in determining the fair market value, and, if the valuation was determined by appraisal, a copy of the signed report of the appraiser.

(vi) The cost or other basis, adjusted as provided by section 1016, of property, other than securities, held by the taxpayer for a period of less than 5 years immediately preceding the date on which the contribution was made and, when the information is available, of property, other than securities, held for a period of 5 years or more preceding the date on which the contribution was made.

(vii) In the case of property to which section 170(e) applies, the cost or other basis, adjusted as provided by section 1016, the reduction by reason of section 170(e)(1) in the amount of the charitable contribution otherwise taken into account, and the manner in which such reduction was determined.

(viii) The terms of any agreement or understanding entered into by or on behalf of the taxpayer which relates to the use, sale, or disposition of the property contributed, as, for example, the terms of any agreement or understanding which:

(A) Restricts temporarily or permanently the donee's right to dispose of the donated property,

(B) Reserves to, or confers upon, any one other than the donee organization or other than an organization participating with such organization in cooperative fundraising, any right to the income from such property, to the possession of the property, including the right to vote securities, to acquire such property by purchase or otherwise, or to designate the person to have such income, possession, or right to acquire, or

(C) Earmarks contributed property for a particular charitable use, such as the use of donated furniture in the reading room of the donee organization's library.

(ix) The total amount claimed as a deduction for the taxable year due to the contribution of the property and, if less than the entire interest in the property is contributed during the taxable year, the amount claimed as a deduction in any prior year or years for contributions of other interests in such property, the name and address of each organization to which any such contribution was made, the place where any such property which is tangible property is located or kept, and the name of any person, other than the organization to which the property giving rise to the deduction was contributed, having actual possession of the property.

(3) *Statement from donee organization.* Any deduction for a charitable contribution must be substantiated, when required by the district director, by a statement from the organization to which the contribution was made indicating whether the organization is a domestic organization, the name and address of the contributor, the amount of the contribution, the date of actual receipt of the contribution, and such other information as the district director may deem necessary. If the contribution includes an item of property, other than money or securities which are regularly traded on a stock exchange or in an over-the-counter market, which the donee deems to have a fair market value in excess of \$500 (\$200 in the case of a charitable contribution made in a taxable year beginning before January 1, 1983) at the time of receipt, such statement shall also indicate for each such item its location if

it is retained by the organization, the amount received by the organization on any sale of the property and the date of sale or, in case of any other disposition of the property, the method of disposition. In the case of any contribution of tangible personal property, the statement shall indicate the use of the property by the organization and whether or not it is used for a purpose or function constituting the basis for the donee organization's exemption from income tax under section 501 or, in the case of a governmental unit, whether or not it is used for exclusively public purposes.

(e) [Reserved]

(f) *Substantiation of charitable contributions of \$250 or more—(1) In general.* No deduction is allowed under section 170(a) for all or part of any contribution of \$250 or more unless the taxpayer substantiates the contribution with a contemporaneous written acknowledgment from the donee organization. A taxpayer who makes more than one contribution of \$250 or more to a donee organization in a taxable year may substantiate the contributions with one or more contemporaneous written acknowledgments. Section 170(f)(8) does not apply to a payment of \$250 or more if the amount contributed (as determined under § 1.170A-1(h)) is less than \$250. Separate contributions of less than \$250 are not subject to the requirements of section 170(f)(8), regardless of whether the sum of the contributions made by a taxpayer to a donee organization during a taxable year equals \$250 or more.

(2) *Written acknowledgment.* Except as otherwise provided in paragraphs (f)(8) through (f)(11) and (f)(13) of this section, a written acknowledgment from a donee organization must provide the following information—

(i) The amount of any cash the taxpayer paid and a description (but not necessarily the value) of any property other than cash the taxpayer transferred to the donee organization;

(ii) A statement of whether or not the donee organization provides any goods or services in consideration, in whole or in part, for any of the cash or other property transferred to the donee organization;

(iii) If the donee organization provides any goods or services other than intangible religious benefits (as described in section 170(f)(8)), a description and good faith estimate of the value of those goods or services; and

(iv) If the donee organization provides any intangible religious benefits, a statement to that effect.

(3) *Contemporaneous.* A written acknowledgment is contemporaneous if it is obtained by the taxpayer on or before the earlier of—

(i) The date the taxpayer files the original return for the taxable year in which the contribution was made; or

(ii) The due date (including extensions) for filing the taxpayer's original return for that year.

(4) *Donee organization.* For purposes of this paragraph (f), a donee organization is an organization described in section 170(c).

(5) *Goods or services.* Goods or services means cash, property, services, benefits, and privileges.

(6) *In consideration for.* A donee organization provides goods or services in consideration for a taxpayer's payment if, at the time the taxpayer makes the payment to the donee organization, the taxpayer receives or expects to receive goods or services in exchange for that payment. Goods or services a donee organization provides in consideration for a payment by a taxpayer include goods or services provided in a year other than the year in which the taxpayer makes the payment to the donee organization.

(7) *Good faith estimate.* For purposes of this section, good faith estimate means a donee organization's estimate of the fair market value of any goods or services, without regard to the manner in which the organization in fact made that estimate. See § 1.170A-1(h)(4) for rules regarding when a taxpayer may treat a donee organization's estimate of the value of goods or services as the fair market value.

(8) *Certain goods or services disregarded—*(i) *In general.* For purposes of section 170(f)(8), the following goods or services are disregarded—

(A) Goods or services that have insubstantial value under the guidelines provided in Revenue Procedures 90-12, 1990-1 C.B. 471, 92-49, 1992-1 C.B. 987, and

any successor documents. (See § 601.601(d)(2)(ii) of the Statement of Procedural Rules, 26 CFR part 601.); and

(B) Annual membership benefits offered to a taxpayer in exchange for a payment of \$75 or less per year that consist of—

(1) Any rights or privileges, other than those described in section 170(1), that the taxpayer can exercise frequently during the membership period. Examples of such rights and privileges may include, but are not limited to, free or discounted admission to the organization's facilities or events, free or discounted parking, preferred access to goods or services, and discounts on the purchase of goods or services; and

(2) Admission to events during the membership period that are open only to members of a donee organization and for which the donee organization reasonably projects that the cost per person (excluding any allocable overhead) attending each such event is within the limits established for "low cost articles" under section 513(h)(2). The projected cost to the donee organization is determined at the time the organization first offers its membership package for the year (using section 3.07 of Revenue Procedure 90-12, or any successor documents, to determine the cost of any items or services that are donated).

(ii) *Examples.* The following examples illustrate the rules of this paragraph (f)(8).

Example 1. Membership benefits disregarded. Performing Arts Center E is an organization described in section 170(c). In return for a payment of \$75, E offers a package of basic membership benefits that includes the right to purchase tickets to performances one week before they go on sale to the general public, free parking in E's garage during evening and weekend performances, and a 10% discount on merchandise sold in E's gift shop. In return for a payment of \$150, E offers a package of preferred membership benefits that includes all of the benefits in the \$75 package as well as a poster that is sold in E's gift shop for \$20. The basic membership and the preferred membership are each valid for twelve months, and there are approximately 50 performances of various productions at E during a twelve-month period. E's gift shop is open for several hours each week and at performance times. F, a patron of the arts, is

solicited by *E* to make a contribution. *E* offers *F* the preferred membership benefits in return for a payment of \$150 or more. *F* makes a payment of \$300 to *E*. *F* can satisfy the substantiation requirement of section 170(f)(8) by obtaining a contemporaneous written acknowledgment from *E* that includes a description of the poster and a good faith estimate of its fair market value (\$20) and disregards the remaining membership benefits.

Example 2. Contemporaneous written acknowledgment need not mention rights or privileges that can be disregarded. The facts are the same as in Example 1, except that *F* made a payment of \$300 and received only a basic membership. *F* can satisfy the section 170(f)(8) substantiation requirement with a contemporaneous written acknowledgment stating that no goods or services were provided.

Example 3. Rights or privileges that cannot be exercised frequently.

Community Theater Group *G* is an organization described in section 170(c). Every summer, *G* performs four different plays. Each play is performed two times. In return for a membership fee of \$60, *G* offers its members free admission to any of its performances. Non-members may purchase tickets on a performance by performance basis for \$15 a ticket. *H*, an individual who is a sponsor of the theater, is solicited by *G* to make a contribution. *G* tells *H* that the membership benefit will be provided in return for any payment of \$60 or more. *H* chooses to make a payment of \$350 to *G* and receives in return the membership benefit. *G*'s membership benefit of free admission is not described in paragraph (f)(8)(i)(B) of this section because it is not a privilege that can be exercised frequently (due to the limited number of performances offered by *G*). Therefore, to meet the requirements of section 170(f)(8), a contemporaneous written acknowledgment of *H*'s \$350 payment must include a description of the free admission benefit and a good faith estimate of its value.

Example 4. Multiple memberships. In December of each year, *K*, an individual, gives each of her six grandchildren a junior membership in Dinosaur Museum, an organization described in section 170(c). Each junior membership costs \$50, and *K* makes a single payment of \$300 for all six memberships. A junior member is entitled to free admission to the museum and to weekly films, slide shows, and lectures about dinosaurs. In addition, each junior member receives a bi-monthly, non-commercial quality newsletter with information about dinosaurs and upcoming events. *K*'s contemporaneous written acknowledgment from Dinosaur Museum may state that no goods or services were provided in exchange for *K*'s payment.

(9) *Goods or services provided to employees or partners of donors*—(i) *Certain goods or services disregarded.* For purposes of section 170(f)(8), goods or services provided by a donee organization to employees of a donor, or to partners of a partnership that is a donor, in return for a payment to the organization may be disregarded to the extent that the goods or services provided to each employee or partner are the same as those described in paragraph (f)(8)(i) of this section.

(ii) *No good faith estimate required for other goods or services.* If a taxpayer makes a contribution of \$250 or more to a donee organization and, in return, the donee organization offers the taxpayer's employees or partners goods or services other than those described in paragraph (f)(9)(i) of this section, the contemporaneous written acknowledgment of the taxpayer's contribution is not required to include a good faith estimate of the value of such goods or services but must include a description of those goods or services.

(iii) *Example.* The following example illustrates the rules of this paragraph (f)(9).

Example. Museum *J* is an organization described in section 170(c). For a payment of \$40, *J* offers a package of basic membership benefits that includes free admission and a 10% discount on merchandise sold in *J*'s gift shop. *J*'s other membership categories are for supporters who contribute \$100 or more. Corporation *K* makes a payment of \$50,000 to *J* and, in return, *J* offers *K*'s employees free admission for one year, a tee-shirt with *J*'s logo that costs *J* \$4.50, and a gift shop discount of 25% for one year. The free admission for *K*'s employees is the same as the benefit made available to holders of the \$40 membership and is otherwise described in paragraph (f)(8)(i)(B) of this section. The tee-shirt given to each of *K*'s employees is described in paragraph (f)(8)(i)(A) of this section. Therefore, the contemporaneous written acknowledgment of *K*'s payment is not required to include a description or good faith estimate of the value of the free admission or the tee-shirts. However, because the gift shop discount offered to *K*'s employees is different than that offered to those who purchase the \$40 membership, the discount is not described in paragraph (f)(8)(i) of this section. Therefore, the contemporaneous written acknowledgment of *K*'s payment is required to include a description of the 25% discount offered to *K*'s employees.

(10) *Substantiation of out-of-pocket expenses.* A taxpayer who incurs unreimbursed expenditures incident to the rendition of services, within the meaning of § 1.170A-1(g), is treated as having obtained a contemporaneous written acknowledgment of those expenditures if the taxpayer—

(i) Has adequate records under paragraph (a) of this section to substantiate the amount of the expenditures; and

(ii) Obtains by the date prescribed in paragraph (f)(3) of this section a statement prepared by the donee organization containing—

(A) A description of the services provided by the taxpayer;

(B) A statement of whether or not the donee organization provides any goods or services in consideration, in whole or in part, for the unreimbursed expenditures; and

(C) The information required by paragraphs (f)(2) (iii) and (iv) of this section.

(11) *Contributions made by payroll deduction—(i) Form of substantiation.* A contribution made by means of withholding from a taxpayer's wages and payment by the taxpayer's employer to a donee organization may be substantiated, for purposes of section 170(f)(8), by both—

(A) A pay stub, Form W-2, or other document furnished by the employer that sets forth the amount withheld by the employer for the purpose of payment to a donee organization; and

(B) A pledge card or other document prepared by or at the direction of the donee organization that includes a statement to the effect that the organization does not provide goods or services in whole or partial consideration for any contributions made to the organization by payroll deduction.

(ii) *Application of \$250 threshold.* For the purpose of applying the \$250 threshold provided in section 170(f)(8)(A) to contributions made by the means described in paragraph (f)(11)(i) of this section, the amount withheld from each payment of wages to a taxpayer is treated as a separate contribution.

(12) *Distributing organizations as donees.* An organization described in section 170(c), or an organization described in 5 CFR 950.105 (a Principal

Combined Fund Organization for purposes of the Combined Federal Campaign) and acting in that capacity, that receives a payment made as a contribution is treated as a donee organization solely for purposes of section 170(f)(8), even if the organization (pursuant to the donor's instructions or otherwise) distributes the amount received to one or more organizations described in section 170(c). This paragraph (f)(12) does not apply, however, to a case in which the distributee organization provides goods or services as part of a transaction structured with a view to avoid taking the goods or services into account in determining the amount of the deduction to which the donor is entitled under section 170.

(13) *Transfers to certain trusts.* Section 170(f)(8) does not apply to a transfer of property to a trust described in section 170(f)(2)(B), a charitable remainder annuity trust (as defined in section 664(d)(1)), or a charitable remainder unitrust (as defined in section 664(d)(2) or (d)(3) or § 1.664-3(a)(1)(i)(b)). Section 170(f)(8) does apply, however, to a transfer to a pooled income fund (as defined in section 642(c)(5)); for such a transfer, the contemporaneous written acknowledgment must state that the contribution was transferred to the donee organization's pooled income fund and indicate whether any goods or services (in addition to an income interest in the fund) were provided in exchange for the transfer. The contemporaneous written acknowledgment is not required to include a good faith estimate of the income interest.

(14) *Substantiation of payments to a college or university for the right to purchase tickets to athletic events.* For purposes of paragraph (f)(2)(iii) of this section, the right to purchase tickets for seating at an athletic event in exchange for a payment described in section 170(1) is treated as having a value equal to twenty percent of such payment. For example, when a taxpayer makes a payment of \$312.50 for the right to purchase tickets for seating at an athletic event, the right to purchase tickets is treated as having a value of \$62.50. The remaining \$250 is treated as a charitable contribution, which the

taxpayer must substantiate in accordance with the requirements of this section.

(15) *Substantiation of charitable contributions made by a partnership or an S corporation.* If a partnership or an S corporation makes a charitable contribution of \$250 or more, the partnership or S corporation will be treated as the taxpayer for purposes of section 170(f)(8). Therefore, the partnership or S corporation must substantiate the contribution with a contemporaneous written acknowledgment from the donee organization before reporting the contribution on its income tax return for the year in which the contribution was made and must maintain the contemporaneous written acknowledgment in its records. A partner of a partnership or a shareholder of an S corporation is not required to obtain any additional substantiation for his or her share of the partnership's or S corporation's charitable contribution.

(16) *Purchase of an annuity.* If a taxpayer purchases an annuity from a charitable organization and claims a charitable contribution deduction of \$250 or more for the excess of the amount paid over the value of the annuity, the contemporaneous written acknowledgment must state whether any goods or services in addition to the annuity were provided to the taxpayer. The contemporaneous written acknowledgment is not required to include a good faith estimate of the value of the annuity. See § 1.170A-1(d)(2) for guidance in determining the value of the annuity.

(17) *Substantiation of matched payments—(i) In general.* For purposes of section 170, if a taxpayer's payment to a donee organization is matched, in whole or in part, by another payor, and the taxpayer receives goods or services in consideration for its payment and some or all of the matching payment, those goods or services will be treated as provided in consideration for the taxpayer's payment and not in consideration for the matching payment.

(ii) *Example.* The following example illustrates the rules of this paragraph (f)(17).

Example Taxpayer makes a \$400 payment to Charity L, a donee organization. Pursuant to a matching payment plan, Taxpayer's em-

ployer matches Taxpayer's \$400 payment with an additional payment of \$400. In consideration for the combined payments of \$800, L gives Taxpayer an item that it estimates has a fair market value of \$100. L does not give the employer any goods or services in consideration for its contribution. The contemporaneous written acknowledgment provided to the employer must include a statement that no goods or services were provided in consideration for the employer's \$400 payment. The contemporaneous written acknowledgment provided to Taxpayer must include a statement of the amount of Taxpayer's payment, a description of the item received by Taxpayer, and a statement that L's good faith estimate of the value of the item received by Taxpayer is \$100.

(18) *Effective date.* This paragraph (f) applies to contributions made on or after December 16, 1996. However, taxpayers may rely on the rules of this paragraph (f) for contributions made on or after January 1, 1994.

[T.D. 8002, 49 FR 50664 and 50666, Dec. 31, 1984, as amended by T.D. 8003, 49 FR 50659, Dec. 31, 1984; T.D. 8199, 53 FR 16080, May 5, 1988; 53 FR 18372, May 23, 1988; T.D. 8623, 60 FR 53128, Oct. 12, 1995; T.D. 8690, 61 FR 65952, Dec. 16, 1996]

§ 1.170A-14 Qualified conservation contributions.

(a) *Qualified conservation contributions.* A deduction under section 170 is generally not allowed for a charitable contribution of any interest in property that consists of less than the donor's entire interest in the property other than certain transfers in trust (see § 1.170A-6 relating to charitable contributions in trust and § 1.170A-7 relating to contributions not in trust of partial interests in property). However, a deduction may be allowed under section 170(f)(3)(B)(iii) for the value of a qualified conservation contribution if the requirements of this section are met. A qualified conservation contribution is the contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. To be eligible for a deduction under this section, the conservation purpose must be protected in perpetuity.

(b) *Qualified real property interest—(1) Entire interest of donor other than qualified mineral interest.* (i) The entire interest of the donor other than a qualified mineral interest is a qualified real property interest. A qualified mineral

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-EXPCITE-

TITLE 26 - INTERNAL REVENUE CODE

Subtitle B - Estate and Gift Taxes

CHAPTER 11 - ESTATE TAX

Subchapter A - Estates of Citizens or Residents

PART III - GROSS ESTATE

-HEAD-

Sec. 2031. Definition of gross estate

-STATUTE-

(a) General

The value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

(b) Valuation of unlisted stock and securities

In the case of stock and securities of a corporation the value of which, by reason of their not being listed on an exchange and by reason of the absence of sales thereof, cannot be determined with reference to bid and asked prices or with reference to sales prices, the value thereof shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange.

(c) Estate tax with respect to land subject to a qualified conservation easement

(1) In general

If the executor makes the election described in paragraph (6), then, except as otherwise provided in this subsection, there shall be excluded from the gross estate the lesser of -

(A) the applicable percentage of the value of land subject to a qualified conservation easement, reduced by the amount of any deduction under section 2055(f) with respect to such land, or

(B) the exclusion limitation.

(2) Applicable percentage

For purposes of paragraph (1), the term ''applicable percentage'' means 40 percent reduced (but not below zero) by 2 percentage points for each percentage point (or fraction thereof) by which the value of the qualified conservation easement is less than 30 percent of the value of the land (FOOTNOTE 1) (determined without regard to the value of such easement and reduced by the value of any retained development right (as defined in paragraph (5))).

(FOOTNOTE 1) So in original. No closing parenthesis was enacted.

(3) Exclusion limitation

For purposes of paragraph (1), the exclusion limitation is the limitation determined in accordance with the following table:

In the case of estates of	The
exclusion	
decedents dying during:	limitation
is:	

1998
\$100,000
1999
\$200,000
2000
\$300,000
2001
\$400,000
2002 or thereafter
\$500,000.

(4) Treatment of certain indebtedness

(A) In general

The exclusion provided in paragraph (1) shall not apply to the extent that the land is debt-financed property.

(B) Definitions

For purposes of this paragraph -

(i) Debt-financed property

The term "'debt-financed property'" means any property with respect to which there is an acquisition indebtedness (as defined in clause (ii)) on the date of the decedent's death.

(ii) Acquisition indebtedness

The term "'acquisition indebtedness'" means, with respect to debt-financed property, the unpaid amount of -

(I) the indebtedness incurred by the donor in acquiring such property,

(II) the indebtedness incurred before the acquisition of such property if such indebtedness would not have been incurred but for such acquisition,

(III) the indebtedness incurred after the acquisition of such property if such indebtedness would not have been incurred but for such acquisition and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition, and

(IV) the extension, renewal, or refinancing of an acquisition indebtedness.

(5) Treatment of retained development right

(A) In general

Paragraph (1) shall not apply to the value of any development right retained by the donor in the conveyance of a qualified conservation easement.

(B) Termination of retained development right

If every person in being who has an interest (whether or not in possession) in the land executes an agreement to extinguish permanently some or all of any development rights (as defined in subparagraph (D)) retained by the donor on or before the date for filing the return of the tax imposed by section 2001, then any tax imposed by section 2001 shall be reduced accordingly. Such agreement shall be filed with the return of the tax imposed by section 2001. The agreement shall be in such form as the Secretary shall prescribe.

(C) Additional tax

Any failure to implement the agreement described in subparagraph (B) not later than the earlier of -

(i) the date which is 2 years after the date of the decedent's death, or

(ii) the date of the sale of such land subject to the qualified conservation easement,

shall result in the imposition of an additional tax in the amount of the tax which would have been due on the retained development rights subject to such agreement. Such additional tax shall be due and payable on the last day of the 6th month following such date.

(D) Development right defined

For purposes of this paragraph, the term ''development right'' means any right to use the land subject to the qualified conservation easement in which such right is retained for any commercial purpose which is not subordinate to and directly supportive of the use of such land as a farm for farming purposes (within the meaning of section 2032A(e)(5)).

(6) Election

The election under this subsection shall be made on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return. Such an election, once made, shall be irrevocable.

(7) Calculation of estate tax due

An executor making the election described in paragraph (6) shall, for purposes of calculating the amount of tax imposed by section 2001, include the value of any development right (as defined in paragraph (5)) retained by the donor in the conveyance of such qualified conservation easement. The computation of tax on any retained development right prescribed in this paragraph shall be done in such manner and on such forms as the Secretary shall prescribe.

(8) Definitions

For purposes of this subsection -

(A) Land subject to a qualified conservation easement

The term ''land subject to a qualified conservation easement'' means land -

(i) which is located -

(I) in or within 25 miles of an area which, on the date of the decedent's death, is a metropolitan area (as defined by the Office of Management and Budget),

(II) in or within 25 miles of an area which, on the date of the decedent's death, is a national park or wilderness area designated as part of the National Wilderness Preservation System (unless it is determined by the Secretary that land in or within 25 miles of such a park or wilderness area is not under significant development pressure), or

(III) in or within 10 miles of an area which, on the date of the decedent's death, is an Urban National Forest (as designated by the Forest Service),

(ii) which was owned by the decedent or a member of the decedent's family at all times during the 3-year period ending on the date of the decedent's death, and

(iii) with respect to which a qualified conservation easement has been made by an individual described in subparagraph (C), as of the date of the election described in paragraph (6).

(B) Qualified conservation easement

The term ''qualified conservation easement'' means a qualified conservation contribution (as defined in section 170(h)(1)) of a qualified real property interest (as defined in section 170(h)(2)(C)), except that clause (iv) of section

170(h)(4)(A) shall not apply, and the restriction on the use of such interest described in section 170(h)(2)(C) shall include a prohibition on more than a de minimis use for a commercial recreational activity.

(C) Individual described

An individual is described in this subparagraph if such individual is -

- (i) the decedent,
- (ii) a member of the decedent's family,
- (iii) the executor of the decedent's estate, or
- (iv) the trustee of a trust the corpus of which includes the land to be subject to the qualified conservation easement.

(D) Member of family

The term "member of the decedent's family" means any member of the family (as defined in section 2032A(e)(2)) of the decedent.

(9) Treatment of easements granted after death

In any case in which the qualified conservation easement is granted after the date of the decedent's death and on or before the due date (including extensions) for filing the return of tax imposed by section 2001, the deduction under section 2055(f) with respect to such easement shall be allowed to the estate but only if no charitable deduction is allowed under chapter 1 to any person with respect to the grant of such easement.

(10) Application of this section to interests in partnerships, corporations, and trusts

This section shall apply to an interest in a partnership, corporation, or trust if at least 30 percent of the entity is owned (directly or indirectly) by the decedent, as determined under the rules described in section 2057(e)(3).

(d) Cross reference

For executor's right to be furnished on request a statement regarding any valuation made by the Secretary within the gross estate, see section 7517.

-SOURCE-

(Aug. 16, 1954, ch. 736, 68A Stat. 380; Pub. L. 87-834, Sec. 18(a)(1), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XX, Sec. 2008(a)(2)(A), Oct. 4, 1976, 90 Stat. 1891; Pub. L. 105-34, title V, Sec. 508(a), Aug. 5, 1997, 111 Stat. 857; Pub. L. 105-206, title VI, Sec. 6007(g), July 22, 1998, 112 Stat. 810; Pub. L. 105-277, div. J, title IV, Sec. 4006(c)(3), Oct. 21, 1998, 112 Stat. 2681-913.)

-MISC1-

AMENDMENTS

1998 - Subsec. (c)(6). Pub. L. 105-206, Sec. 6007(g)(2), substituted "on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return." for "on the return of the tax imposed by section 2001."

Subsec. (c)(9). Pub. L. 105-206, Sec. 6007(g)(1), added par. (9). Former par. (9) redesignated (10).

Subsec. (c)(10). Pub. L. 105-277, Sec. 4006(c)(3), substituted "section 2057(e)(3)" for "section 2033A(e)(3)".

Pub. L. 105-206, Sec. 6007(g)(1), redesignated par. (9) as (10).

1997 - Subsecs. (c), (d). Pub. L. 105-34 added subsec. (c) and redesignated former subsec. (c) as (d).

1976 - Subsec. (c). Pub. L. 94-455 added subsec. (c).

1962 - Subsec. (a). Pub. L. 87-834 struck out provisions which excepted real property situated outside the United States.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to estates of decedents dying after Dec. 31, 1997, see section 508(e)(1) of Pub. L. 105-34, set out as a note under section 1014 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 18(b) of Pub. L. 87-834 provided that:

''(1) Except as provided in paragraph (2), the amendments made by subsection (a) (amending this section and sections 2033, 2034, 2035, 2036, 2037, 2038, 2040, and 2041 of this title) shall apply to the estates of decedents dying after the date of the enactment of this Act (Oct. 16, 1962).

''(2) In the case of a decedent dying after the date of the enactment of this Act (Oct. 16, 1962) and before July 1, 1964, the value of real property situated outside of the United States shall not be included in the gross estate (as defined in section 2031(a)) of the decedent -

''(A) under section 2033, 2034, 2035(a), 2036(a), 2037(a), or 2038(a) to the extent the real property, or the decedent's interest in it, was acquired by the decedent before February 1, 1962;

''(B) under section 2040 to the extent such property or interest was acquired by the decedent before February 1, 1962, or was held by the decedent and the survivor in a joint tenancy or tenancy by the entirety before February 1, 1962; or

''(C) under section 2041(a) to the extent that before February 1, 1962, such property or interest was subject to a general power of appointment (as defined in section 2041) possessed by the decedent.

In the case of real property, or an interest therein, situated outside of the United States (including a general power of appointment in respect of such property or interest, and including property held by the decedent and the survivor in a joint tenancy or tenancy by the entirety) which was acquired by the decedent after January 31, 1962, by gift within the meaning of section 2511, or from a prior decedent by devise or inheritance, or by reason of death, form of ownership, or other conditions (including the exercise or nonexercise of a power of appointment), for purposes of this paragraph such property or interest therein shall be deemed to have been acquired by the decedent before February 1, 1962, if before that date the donor or prior decedent had acquired the property or his interest therein or had possessed a power of appointment in respect of the property or interest.''

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1014, 2103, 7520 of this

title; title 43 section 1620.



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Sec. 2032A. - Valuation of certain farm, etc., real property

(a) Value based on use under which property qualifies

(1) General rule

If -

(A)

the decedent was (at the time of his death) a citizen or resident of the United States, and

(B)

the executor elects the application of this section and files the agreement referred to in subsection (d)(2),

then, for purposes of this chapter, the value of qualified real property shall be its value for the use under which it qualifies, under subsection (b), as qualified real property.

(2) Limitation on aggregate reduction in fair market value

The aggregate decrease in the value of qualified real property taken into account for purposes of this chapter which results from the application of paragraph (1) with respect to any decedent shall not exceed \$750,000.

(3) Inflation adjustment

In the case of estates of decedents dying in a calendar year after 1998, the \$750,000 amount contained in paragraph (2) shall be increased by an amount equal to -

(A)

\$750,000, multiplied by

(B)

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the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 1997" for "calendar year 1992" in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10,000, such amount shall be rounded to the next lowest multiple of \$10,000.

(b) Qualified real property

(1) In general

For purposes of this section, the term "qualified real property" means real property located in the United States which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, but only if -

(A)

50 percent or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which -

(i)

on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, and

(ii)

was acquired from or passed from the decedent to a qualified heir of the decedent.

(B)

25 percent or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of subparagraphs (A)(ii) and (C),

(C)

during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which -

(i)

such real property was owned by the decedent or a member of the decedent's family and used for a qualified use by the decedent or a member of the decedent's family, and

(ii)

there was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business, and

(D)

such real property is designated in the agreement referred to in subsection (d)(2).

(2) Qualified use

For purposes of this section, the term "qualified use" means the devotion of the property to any of the following:

(A)

use as a farm for farming purposes, or

(B)

use in a trade or business other than the trade or business of farming.

(3) Adjusted value

For purposes of paragraph (1), the term "adjusted value" means -

(A)

in the case of the gross estate, the value of the gross estate for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction under paragraph (4) of section 2053(a), or

(B)

in the case of any real or personal property, the value of such property for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction in respect of such property under paragraph (4) of section 2053 (a).

(4) Decedents who are retired or disabled

(A) In general

If, on the date of the decedent's death, the requirements of paragraph (1)(C)(ii) with respect to the decedent for any property are not met, and the decedent -

(i)

was receiving old-age benefits under title II of the Social Security Act for a continuous period ending on such date, or

(ii)

was disabled for a continuous period ending on such date,
then paragraph (1)(C)(ii) shall be applied with respect to such property by substituting "the date on which the longer of such continuous periods began" for "the date of the decedent's death" in paragraph (1)(C).

(B) Disabled defined

For purposes of subparagraph (A), an individual shall be disabled if such individual has a mental or physical impairment which renders him unable to materially participate in the operation of the farm or other business.

(C) Coordination with recapture

For purposes of subsection (c)(6)(B)(i), if the requirements of paragraph (1)(C)(ii) are met with respect to any decedent by reason of subparagraph (A), the period ending on the date on which the continuous period taken into account under subparagraph (A) began shall be treated as the period immediately before the decedent's death.

(5) Special rules for surviving spouses**(A) In general**

If property is qualified real property with respect to a decedent (hereinafter in this paragraph referred to as the "first decedent") and such property was acquired from or passed from the first decedent to the surviving spouse of the first decedent, for purposes of applying this subsection and subsection (c) in the case of the estate of such surviving spouse, active management of the farm or other business by the surviving spouse shall be treated as material participation by such surviving spouse in the operation of such farm or business.

(B) Special rule

For the purposes of subparagraph (A), the determination of whether property is qualified real property with respect to the first decedent shall be made without regard to subparagraph (D) of paragraph (1) and without regard to whether an election under this section was made.

(C) Coordination with paragraph (4)

In any case in which to do so will enable the requirements of paragraph (1)(C)(ii) to be met with respect to the surviving spouse, this subsection and subsection (c) shall be applied by taking into account any application of paragraph (4).

(c) Tax treatment of dispositions and failures to use for qualified use

(1) Imposition of additional estate tax

If, within 10 years after the decedent's death and before the death of the qualified heir -

(A)

the qualified heir disposes of any interest in qualified real property (other than by a disposition to a member of his family), or

(B)

the qualified heir ceases to use for the qualified use the qualified real property which was acquired (or passed) from the decedent,

then, there is hereby imposed an additional estate tax.

(2) Amount of additional tax

(A) In general

The amount of the additional tax imposed by paragraph (1) with respect to any interest shall be the amount equal to the lesser of -

(i)

the adjusted tax difference attributable to such interest, or

(ii)

the excess of the amount realized with respect to the interest (or, in any case other than a sale or exchange at arm's length, the fair market value of the interest) over the value of the interest determined under subsection (a).

(B) Adjusted tax difference attributable to interest

For purposes of subparagraph (A), the adjusted tax difference attributable to an interest is the amount which bears the same ratio to the adjusted tax difference with respect to the estate (determined under subparagraph (C)) as -

(i)

the excess of the value of such interest for purposes of this chapter (determined without regard to subsection (a)) over the value of such interest determined under subsection (a), bears to

(ii)

a similar excess determined for all qualified real property.

(C) Adjusted tax difference with respect to the estate

For purposes of subparagraph (B), the term "adjusted tax difference with respect to the estate" means the excess of what would have been the estate tax liability but for subsection (a) over the estate tax liability. For purposes of this subparagraph, the term "estate tax liability" means the tax imposed by section 2001 reduced by the credits allowable against such tax.

(D) Partial dispositions

For purposes of this paragraph, where the qualified heir disposes of a portion of the interest acquired by (or passing to) such heir (or a predecessor qualified heir) or there is a cessation of use of such a portion -

(i)

the value determined under subsection (a) taken into account under subparagraph (A)(ii) with respect to such portion shall be its pro rata share of such value of such interest, and

(ii)

the adjusted tax difference attributable to the interest taken into account with respect to the transaction involving the second or any succeeding portion shall be reduced by the amount of the tax imposed by this subsection with respect to all prior transactions involving portions of such interest.

(E) Special rule for disposition of timber

In the case of qualified woodland to which an election under subsection (e)(13)(A) applies, if the qualified heir disposes of (or severs) any standing timber on such qualified woodland -

(i)

such disposition (or severance) shall be treated as a disposition of a portion of the interest of the qualified heir in such property, and

(ii)

the amount of the additional tax imposed by paragraph (1) with respect to such disposition shall be an amount equal to the lesser of -

(I)

the amount realized on such disposition (or, in any case

other than a sale or exchange at arm's length, the fair market value of the portion of the interest disposed or severed), or

(II)

the amount of additional tax determined under this paragraph (without regard to this subparagraph) if the entire interest of the qualified heir in the qualified woodland had been disposed of, less the sum of the amount of the additional tax imposed with respect to all prior transactions involving such woodland to which this subparagraph applied.

For purposes of the preceding sentence, the disposition of a right to sever shall be treated as the disposition of the standing timber. The amount of additional tax imposed under paragraph (1) in any case in which a qualified heir disposes of his entire interest in the qualified woodland shall be reduced by any amount determined under this subparagraph with respect to such woodland.

(3) Only 1 additional tax imposed with respect to any 1 portion

In the case of an interest acquired from (or passing from) any decedent, if subparagraph (A) or (B) of paragraph (1) applies to any portion of an interest, subparagraph (B) or (A), as the case may be, of paragraph (1) shall not apply with respect to the same portion of such interest.

(4) Due date

The additional tax imposed by this subsection shall become due and payable on the day which is 6 months after the date of the disposition or cessation referred to in paragraph (1).

(5) Liability for tax; furnishing of bond

The qualified heir shall be personally liable for the additional tax imposed by this subsection with respect to his interest unless the heir has furnished bond which meets the requirements of subsection (e) (11).

(6) Cessation of qualified use

For purposes of paragraph (1)(B), real property shall cease to be used for the qualified use if -

(A)

such property ceases to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the property qualified under subsection (b), or

(B)

during any period of 8 years ending after the date of the decedent's death and before the date of the death of the qualified heir, there had been periods aggregating more than 3 years during which -

(i)

in the case of periods during which the property was held by the decedent, there was no material participation by the decedent or any member of his family in the operation of the farm or other business, and

(ii)

in the case of periods during which the property was held by any qualified heir, there was no material participation by such qualified heir or any member of his family in the operation of the farm or other business.

(7) Special rules**(A) No tax if use begins within 2 years**

If the date on which the qualified heir begins to use the qualified real property (hereinafter in this subparagraph referred to as the commencement date) is before the date 2 years after the decedent's death -

(i)

no tax shall be imposed under paragraph (1) by reason of the failure by the qualified heir to so use such property before the commencement date, and

(ii)

the 10-year period under paragraph (1) shall be extended by the period after the decedent's death and before the commencement date.

(B) Active management by eligible qualified heir treated as material participation

For purposes of paragraph (6)(B)(ii), the active management of a farm or other business by -

(i)

an eligible qualified heir, or

(ii)

a fiduciary of an eligible qualified heir described in clause (ii)

or (iii) of subparagraph (C),

shall be treated as material participation by such eligible qualified heir in the operation of such farm or business. In the case of an eligible qualified heir described in clause (ii), (iii), or (iv) of subparagraph (C), the preceding sentence shall apply only during periods during which such heir meets the requirements of such clause.

(C) Eligible qualified heir

For purposes of this paragraph, the term "eligible qualified heir" means a qualified heir who -

(i)

is the surviving spouse of the decedent,

(ii)

has not attained the age of 21,

(iii)

is disabled (within the meaning of subsection (b)(4)(B)), or

(iv)

is a student.

(D) Student

For purposes of subparagraph (C), an individual shall be treated as a student with respect to periods during any calendar year if (and only if) such individual is a student (within the meaning of section 151(c)(4)) for such calendar year.

(E) Certain rents treated as qualified use

For purposes of this subsection, a surviving spouse or lineal descendant of the decedent shall not be treated as failing to use qualified real property in a qualified use solely because such spouse or descendant rents such property to a member of the family of such spouse or descendant on a net cash basis. For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as the child of such individual by blood.

(8) Qualified conservation contribution is not a disposition

A qualified conservation contribution (as defined in section 170(h)) by gift or otherwise shall not be deemed a disposition under subsection (c)(1)(A).

(d) Election; agreement

(1) Election

The election under this section shall be made on the return of the tax imposed by section 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

(2) Agreement

The agreement referred to in this paragraph is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of subsection (c) with respect to such property.

(3) Modification of election and agreement to be permitted

The Secretary shall prescribe procedures which provide that in any case in which the executor makes an election under paragraph (1) (and submits the agreement referred to in paragraph (2)) within the time prescribed therefor, but -

(A)

the notice of election, as filed, does not contain all required information, or

(B)

signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the agreement does not contain all required information,

the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or signatures.

(e) Definitions; special rules

For purposes of this section -

(1) Qualified heir

The term "qualified heir" means, with respect to any property, a member of the decedent's family who acquired such property (or to whom such property passed) from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of his family, such member shall thereafter be treated as the qualified heir with respect to such interest.

(2) Member of family

The term "member of the family" means, with respect to any

individual, only -

(A)

an ancestor of such individual,

(B)

the spouse of such individual,

(C)

a lineal descendant of such individual, of such individual's spouse, or of a parent of such individual, or

(D)

the spouse of any lineal descendant described in subparagraph (C).

For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as the child of such individual by blood.

(3) Certain real property included

In the case of real property which meets the requirements of subparagraph (C) of subsection (b)(1), residential buildings and related improvements on such real property occupied on a regular basis by the owner or lessee of such real property or by persons employed by such owner or lessee for the purpose of operating or maintaining such real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use.

(4) Farm

The term "farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards and woodlands.

(5) Farming purposes

The term "farming purposes" means -

(A)

cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm;

(B)

handling, drying, packing, grading, or storing on a farm any

agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

(C)

(i)

the planting, cultivating, caring for, or cutting of trees, or

(ii)

the preparation (other than milling) of trees for market.

(6) Material participation

Material participation shall be determined in a manner similar to the manner used for purposes of paragraph (1) of section 1402(a) (relating to net earnings from self-employment).

(7) Method of valuing farms

(A) In general

Except as provided in subparagraph (B), the value of a farm for farming purposes shall be determined by dividing -

(i)

the excess of the average annual gross cash rental for comparable land used for farming purposes and located in the locality of such farm over the average annual State and local real estate taxes for such comparable land, by

(ii)

the average annual effective interest rate for all new Federal Land Bank loans.

For purposes of the preceding sentence, each average annual computation shall be made on the basis of the 5 most recent calendar years ending before the date of the decedent's death.

(B) Value based on net share rental in certain cases

(i) In general

If there is no comparable land from which the average annual gross cash rental may be determined but there is comparable land from which the average net share rental may be determined, subparagraph (A)(i) shall be applied by substituting "average annual net share rental" for "average annual gross cash rental".

(ii) Net share rental

For purposes of this paragraph, the term "net share rental" means the excess of -

(I)

the value of the produce received by the lessor of the land on which such produce is grown, over

(II)

the cash operating expenses of growing such produce which, under the lease, are paid by the lessor.

(C) Exception

The formula provided by subparagraph (A) shall not be used -

(i)

where it is established that there is no comparable land from which the average annual gross cash rental may be determined, or

(ii)

where the executor elects to have the value of the farm for farming purposes determined and that there is no comparable land from which the average net share rental may be determined under paragraph (8).

(8) Method of valuing closely held business interests, etc.

In any case to which paragraph (7)(A) does not apply, the following factors shall apply in determining the value of any qualified real property:

(A)

The capitalization of income which the property can be expected to yield for farming or closely held business purposes over a reasonable period of time under prudent management using traditional cropping patterns for the area, taking into account soil capacity, terrain configuration, and similar factors,

(B)

The capitalization of the fair rental value of the land for farm land or closely held business purposes,

(C)

Assessed land values in a State which provides a differential or use value assessment law for farmland or closely held business,

(D)

Comparable sales of other farm or closely held business land in the same geographical area far enough removed from a metropolitan or resort area so that nonagricultural use is not a significant factor in the sales price, and

(E)

Any other factor which fairly values the farm or closely held business value of the property.

(9) Property acquired from decedent

Property shall be considered to have been acquired from or to have passed from the decedent if -

(A)

such property is so considered under section 1014(b) (relating to basis of property acquired from a decedent),

(B)

such property is acquired by any person from the estate, or

(C)

such property is acquired by any person from a trust (to the extent such property is includible in the gross estate of the decedent).

(10) Community property

If the decedent and his surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in such property shall be taken into account under this section to the extent necessary to provide a result under this section with respect to such property which is consistent with the result which would have obtained under this section if such property had not been community property.

(11) Bond in lieu of personal liability

If the qualified heir makes written application to the Secretary for determination of the maximum amount of the additional tax which may be imposed by subsection (c) with respect to the qualified heir's interest, the Secretary (as soon as possible, and in any event within 1 year after the making of such application) shall notify the heir of such maximum amount. The qualified heir, on furnishing a bond in such amount and for such period as may be required, shall be discharged from personal liability for any additional tax imposed by subsection (c) and shall be entitled to a receipt or writing showing such discharge.

(12) Active management

The term "active management" means the making of the management decisions of a business (other than the daily operating decisions).

(13) Special rules for woodlands**(A) In general**

In the case of any qualified woodland with respect to which the executor elects to have this subparagraph apply, trees growing on such woodland shall not be treated as a crop.

(B) Qualified woodland

The term "qualified woodland" means any real property which

-

(i)

is used in timber operations, and

(ii)

is an identifiable area of land such as an acre or other area for which records are normally maintained in conducting timber operations.

(C) Timber operations

The term "timber operations" means -

(i)

the planting, cultivating, caring for, or cutting of trees, or

(ii)

the preparation (other than milling) of trees for market.

(D) Election

An election under subparagraph (A) shall be made on the return of the tax imposed by section 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

(14) Treatment of replacement property acquired in section 1031 or 1033 transactions**(A) In general**

In the case of any qualified replacement property, any period

during which there was ownership, qualified use, or material participation with respect to the replaced property by the decedent or any member of his family shall be treated as a period during which there was such ownership, use, or material participation (as the case may be) with respect to the qualified replacement property.

(B) Limitation

Subparagraph (A) shall not apply to the extent that the fair market value of the qualified replacement property (as of the date of its acquisition) exceeds the fair market value of the replaced property (as of the date of its disposition).

(C) Definitions

For purposes of this paragraph -

(i) Qualified replacement property

The term "qualified replacement property" means any real property which is -

(I)

acquired in an exchange which qualifies under section 1031, or

(II)

the acquisition of which results in the nonrecognition of gain under section 1033. Such term shall only include property which is used for the same qualified use as the replaced property was being used before the exchange.

(ii) Replaced property

The term "replaced property means -

(I)

the property transferred in the exchange which qualifies under section 1031, or

(II)

the property compulsorily or involuntarily converted (within the meaning of section 1033).

(f) Statute of limitations

If qualified real property is disposed of or ceases to be used for a qualified use, then -

(1)

the statutory period for the assessment of any additional tax under subsection (c) attributable to such disposition or cessation shall not expire before the expiration of 3 years from the date the Secretary is notified (in such manner as the Secretary may by regulations prescribe) of such disposition or cessation (or if later in the case of an involuntary conversion or exchange to which subsection (h) or (i) applies, 3 years from the date the Secretary is notified of the replacement of the converted property or of an intention not to replace or of the exchange of property), and

(2)

such additional tax may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(g) Application of this section and section 6324B to interests in partnerships, corporations, and trusts

The Secretary shall prescribe regulations setting forth the application of this section and section 6324B in the case of an interest in a partnership, corporation, or trust which, with respect to the decedent, is an interest in a closely held business (within the meaning of paragraph (1) of section 6166(b)). For purposes of the preceding sentence, an interest in a discretionary trust all the beneficiaries of which are qualified heirs shall be treated as a present interest.

(h) Special rules for involuntary conversions of qualified real property**(1)** Treatment of converted property**(A)** In general

If there is an involuntary conversion of an interest in qualified real property -

(i)

no tax shall be imposed by subsection (c) on such conversion if the cost of the qualified replacement property equals or exceeds the amount realized on such conversion, or

(ii)

if clause (i) does not apply, the amount of the tax imposed by subsection (c) on such conversion shall be the amount determined under subparagraph (B).

(B) Amount of tax where there is not complete reinvestment

The amount determined under this subparagraph with respect to any involuntary conversion is the amount of the tax which (but

for this subsection) would have been imposed on such conversion reduced by an amount which -

(i)

bears the same ratio to such tax, as

(ii)

the cost of the qualified replacement property bears to the amount realized on the conversion.

(2) Treatment of replacement property

For purposes of subsection (c) -

(A)

any qualified replacement property shall be treated in the same manner as if it were a portion of the interest in qualified real property which was involuntarily converted; except that with respect to such qualified replacement property the 10-year period under paragraph (1) of subsection (c) shall be extended by any period, beyond the 2-year period referred to in section 1033(a)(2)(B)(i), during which the qualified heir was allowed to replace the qualified real property,

(B)

any tax imposed by subsection (c) on the involuntary conversion shall be treated as a tax imposed on a partial disposition, and

(C)

paragraph (6) of subsection (c) shall be applied -

(i)

by not taking into account periods after the involuntary conversion and before the acquisition of the qualified replacement property, and

(ii)

by treating material participation with respect to the converted property as material participation with respect to the qualified replacement property.

(3) Definitions and special rules

For purposes of this subsection -

(A) Involuntary conversion

The term "involuntary conversion" means a compulsory or involuntary conversion within the meaning of section 1033.

(B) Qualified replacement property

The term "qualified replacement property" means -

(i)

in the case of an involuntary conversion described in section 1033(a)(1), any real property into which the qualified real property is converted, or

(ii)

in the case of an involuntary conversion described in section 1033(a)(2), any real property purchased by the qualified heir during the period specified in section 1033(a)(2)(B) for purposes of replacing the qualified real property.

Such term only includes property which is to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the qualified real property qualified under subsection (a).

(4) Certain rules made applicable

The rules of the last sentence of section 1033(a)(2)(A) shall apply for purposes of paragraph (3)(B)(ii).

(i) Exchanges of qualified real property

(1) Treatment of property exchanged

(A) Exchanges solely for qualified exchange property

If an interest in qualified real property is exchanged solely for an interest in qualified exchange property in a transaction which qualifies under section 1031, no tax shall be imposed by subsection (c) by reason of such exchange.

(B) Exchanges where other property received

If an interest in qualified real property is exchanged for an interest in qualified exchange property and other property in a transaction which qualifies under section 1031, the amount of the tax imposed by subsection (c) by reason of such exchange shall be the amount of tax which (but for this subparagraph) would have been imposed on such exchange under subsection (c)(1), reduced by an amount which -

(i)

bears the same ratio to such tax, as

(ii)

the fair market value of the qualified exchange property bears to the fair market value of the qualified real property exchanged.

For purposes of clause (ii) of the preceding sentence, fair market value shall be determined as of the time of the exchange.

(2) Treatment of qualified exchange property

For purposes of subsection (c) -

(A)

any interest in qualified exchange property shall be treated in the same manner as if it were a portion of the interest in qualified real property which was exchanged,

(B)

any tax imposed by subsection (c) by reason of the exchange shall be treated as a tax imposed on a partial disposition, and

(C)

paragraph (6) of subsection (c) shall be applied by treating material participation with respect to the exchanged property as material participation with respect to the qualified exchange property.

(3) Qualified exchange property

For purposes of this subsection, the term "qualified exchange property" means real property which is to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the real property exchanged therefor originally qualified under subsection (a)

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