



TAX BENEFITS OF DONATING LAND

While a majority of the Vermont Land Trust's projects involve donations of conservation easements, some landowners have elected to donate their property outright. In a few cases, they have reserved a life estate for themselves and their spouses. If the donated land has conservation value, the Vermont Land Trust (VLT) will place a easement on the property before it is sold or reconveyed. **This summary describes the tax benefits associated with an outright gift of land.** VLT has other summaries describing the tax benefits of a gift of a conservation easement or a gift of land subject to a reserved life estate.

General Principles. There are a number of general principles which apply to gifts of land. The first is that in order to be deductible for income or estate tax purposes, the donation must be given to a qualified 501(c)(3) organization. VLT meets this requirement. The second is that with a few limited exceptions, the donor must give up his or her entire interest in the property. The retention of any substantial property interest could defeat the deduction. The exceptions which are allowed are:

- The donation of a qualified conservation easement (described in a separate bulletin).
- The retention of a life estate in a personal residence (including a vacation home), a farm, or a conservation property which meets the criteria for donations of conservation easements.
- The donation of an undivided (percentage) interest in property. This technique is sometimes used when a donor wants to spread the deduction for a gift of land over many years and is usually accompanied by a pledge agreement to gift the entire property by a certain date.
- The IRS may ignore a reserved interest that is considered "de minimus" ("the right to picnic on the land once a year," for example). However, the safer practice is to exclude all reserved rights that do not fall within one of the exceptions.

The third general principle is that, because a gift of land almost always has a value of more than \$5,000, the donor must obtain a qualified appraisal in order to claim a tax deduction. The appraisal must be prepared by an independent, qualified appraiser and must contain certain factual information specified by IRS regulations. The donor must file a summary report (IRS Form 8283), signed by the appraiser and VLT, with the donor's federal income tax return. For donations valued in excess of \$500,000, the complete qualified appraisal report must be appended to the tax return. For more information on these requirements, please refer to VLT's bulletin "Appraisal Requirements for Conserving Land."

Finally, if the land has appreciated in value, the donor's income tax deduction is limited to 30% of the donor's Adjusted Gross Income in the year of the gift. If the gifted value exceeds the 30% limit, the donor may carry over the unused deduction for up to five years.

INCOME TAX BENEFITS OF A GIFT OF LAND

When a gift of land meets the requirements described above and the value is established by a qualified appraisal, the donation will be deductible against the donor's federal and, in some cases, state income taxes. This deduction can mean substantial tax savings. For example, suppose a Vermont resident who has an adjusted gross income (AGI) of \$70,000 donates land to VLT valued at \$100,000. Under the 30% rule, the donor can claim a charitable deduction of \$21,000 ($\$70,000 \times 30\%$) in the year of the gift. If the donor's income remains constant, she may

take an additional deduction of \$21,000 in each of the next three tax years. A final deduction of \$16,000 may be claimed in year five. In summary:

30% Limitation: 30% of \$70,000 AGI = \$21,000 per year

Thus, the charitable deduction in:

Years 1 through 4 is \$21,000 per year, or \$84,000
Year 5 is \$16,000 (\$100,000 total gift less \$84,000)

Cumulative deduction over five-year period: \$ 100,000

Assuming the donor is in a 33% combined federal and state income tax bracket, the total tax savings from this gift of land would be approximately \$33,000 over the five-year period.

INCOME TAX BENEFITS OF GIFTING A “REMAINDER INTEREST”

If a donor retains a life interest in a residence, farm or qualified conservation property, the donor may still take a deduction for the value of the “remainder interest” gifted to the charity. The value of the remainder interest is determined from the IRS actuarial tables and is based primarily on the number and the ages of the life interest holders.

In general, the fewer the life interest holders and the older they are, the greater the amount of the deduction. For example, a single woman (age 75) who owns a house and 100 acres of agricultural land may be able to deduct 66% of the property’s value if she donates a remainder interest. If she is married and her husband (aged 80) will also have a life interest, the deduction may be only 59%. In contrast, if both spouses are 60 years old, the deduction may be only 35% of the property’s value. These figures can change somewhat with changes in federal discount rates, but the variation in the amount of the available deduction is principally a function of the age and number of life tenants.

The Vermont Land Trust has prepared a more detailed explanation of this option entitled “Remainder Interests.” If you would like to explore this option further, please ask VLT staff for a copy of this bulletin.

ESTATE TAX BENEFITS

There is no limit on the amount of a charitable deduction for estate tax purposes. If a person bequeaths a tract of land to VLT through a Will or Living Trust, that property is ignored entirely in calculating the federal estate tax. Because estate tax rates run as high as 45%, the estate tax savings can be significant.

If a bequest of land is made subject to a life estate for one or more heirs who survive the donor, then only the value of the “remainder interest” is deductible for estate tax purposes. (If the life tenant is a surviving spouse, the entire value of the property is exempt from estate taxes.) The percentage values for the life interest and remainder interest are calculated in the same manner as for a lifetime donation of a remainder interest.

Future estate tax benefits are unclear. The federal estate tax is scheduled to expire in 2010, but then spring back to 2001 levels in 2011. If current law remains unchanged, this could meet estate taxes applying to estates as low as \$675,000 and estate tax rates reaching as high as 55%.

PROPERTY TAX BENEFITS

When a donor makes an outright gift of land, VLT is responsible for any property taxes which accrue against the property after that date. If the property is subject to one or more life interests, however, the life tenants are responsible for payment of the property taxes. In addition, the life tenants must maintain adequate insurance coverage and keep the property in good repair until full ownership passes to VLT.

DISPOSITION OF GIFTED PROPERTY

Most donors who gift land to VLT do so without restricting the property's use. This approach maximizes the donor's income or estate tax benefits. If the property has conservation value VLT will place a conservation easement on the land prior to its resale. VLT usually discusses the terms of the easement with the donor, or the donor may prepare a letter expressing his or her desires regarding the disposition of the property. The final decision is generally left to the Vermont Land Trust.

VLT generally does not retain long-term ownership of gifted land. First, it believes in the benefits of private land ownership and management and usually prefers to hold only a conservation easement to protect the resource values. Second, VLT does not have the staff or financial resources to manage all the lands it has been gifted or may receive in the future. Third, the sale of gifted land, appropriately protected, helps VLT build the endowment and other funds necessary to protect more land over the long term.

CONCLUSION

This document summarizes complex federal and state laws. A summary of these laws must, by necessity, be an over-simplification. VLT can provide more detailed information about the tax laws affecting gifts of land and can often prepare preliminary calculations of the tax benefits. However, it is essential that the landowner seek independent legal and tax advice before finalizing a land conservation transaction. This will ensure that the donor fully understands the nature of the transaction and what the anticipated tax benefits will be.

It is also important that the donor consult with VLT prior to making a gift of land or executing a Will to make a bequest of land. This ensures that VLT not only understands what the donor's objectives are, but it allows it to make a hazardous waste assessment and take other steps that are necessary before it can accept the gift.

Charitable gifts of land have had an enormous impact upon the growth and success of the Vermont Land Trust's conservation program. They will also play an important role in the implementation of VLT's strategic plan for land protection in Vermont in the years ahead.

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