

# Tax Incentives for Land Conservation in the United States

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November, 2018



# The Nature Conservancy

**Mission: ‘*Conserve the lands and waters on which all life depends.*’**

***Founded in 1951, TNC now works in all 50 US states and in 72 countries.***

***TNC owns 1,457 preserves totaling 2,508,721 acres in all 50 states and TNC holds 2,581 conservation easements totaling 3,237,918 acres (as of 2018.)***

***TNC’s seeks to ‘protect, transform and inspire’ to find solutions so that nature and people can thrive together.***






# Topics to cover

**Overview of Tax Incentives**

**Philanthropy and Charitable Giving in the US**

**Conservation Tax Incentives**

**Case Study**



**Enacting Tax Incentives: Readiness Factors, Lessons Learned**

**Current Issues and New Tax Proposals**



# What are 'Tax Incentives for Conservation?'

**Tax provision that provides a positive financial benefit (by reducing tax liability) for some conservation action by landowner.**

**Tax provision that imposes a penalty or a higher financial impact on landowner to prevent adverse activities.**

**Tax provision that raises revenue for use in conservation.**

**But: Tax 'subsidies' exist for**



# Why Tax Incentives for Conservation?

**Landowners:**

**Conservation NGO/Agency:**

**Conservation Institutions:**

**Conservation Activity:**



# The Power of Taxes for Private Lands Conservation

- **As of 2015, 1400 land trusts had protected 16.7 million acres by conservation easement.**
  - **In 1980, some 200 land trusts were operating.**
- **An estimate 2012 by Congress' Joint Committee on Taxation for the fiscal cost to extend the 'enhanced' easement tax incentive was approximately \$87.5M annually over a ten year period (which would generate approximately \$175M annually in easement gifts.)**
- **According to a study in NC, for every dollar of lost tax revenue in NC with its state conservation tax credit, \$12 worth of land has been protected.**
- **In 2016, open space/conservation spending measures on ballots around the US had generated \$4 billion to preserve land, funded through tax levies or bond authorizations.**



# What conservation activities are incentivized under the US tax system?

- **Gifts of land or easements.**
- **Sales of land or easements at favorable prices.**
- **Defraying the cost of habitat management or restoration activities for conservation.**
- **Reducing the cost of ownership of conservation properties by private landowners.**
- **Subsidizing the transaction expenses incurred by a private landowner in conservation projects.**
- **Gifts of cash or property to support charities.**





# Philanthropy in the US

**Charitable giving in the US is strongly encouraged by incentives in the US tax code:**

**Charitable contributions**

**Gifts of Property**

**'Bargain-sales' of property to charity**

**Charitable planned gifts**

**--to 'qualified donee organizations.'**

**Private philanthropy through tax-exempt organizations:**

**Grant making foundations**

**Program-related investments (PRI's)**

**Operating foundations**





# Charitable Giving in the US

The US is ranked in the top spot in total charitable giving (over a five year period) among the world's top 20 countries. (source: 2014 "World Giving Index")

- Question: culture vs. tax policy?

Total charitable giving in the US in 2012: \$316 Billion:

- Of that amount, approximately \$8 Billion given to the 'environment' category
  - Of the 'environment' amount, approximately \$1 Billion given in the form of the value of donated conservation easements. (\$971 Million.)



# Charitable Giving: Easements

**In 2014, the value of conservation easement donations increased to \$3.2 billion – (but the increase is likely due to syndicated easement transactions.)**

***Note in comparison:* the total Federal appropriated direct funding for conservation land acquisition in 2015 was only \$306 Million.**



# Short history of Easements and Tax Incentives in the US

**1891 -- A Massachusetts land trust creates the country's first conservation easement in Boston.**

**1961 -- The Conservancy acquires its first easement to protect .6 acres of the Gallup Salt Marsh in Connecticut.**

**1976 -- Federal tax reform allows landowners to begin reporting the value of an easement as a tax deduction.**

**1980 -- Congress codifies the Federal tax deduction for easement gifts, making them permanent.**

**1997 -- A new federal law passes that reduces the estate tax burden for properties under easement.**

**2008 -- Congress raises limits on the amount landowners can deduct from income taxes and the number of years they can carry over any excess value. Made permanent in 2016.**



# What are the current Federal tax incentives specifically for conservation?

## Federal

1. *Income Tax Deduction* for gifts of partial interests in land (e.g. qualified conservation contributions (aka: conservation easements))
2. *Income Tax Exclusion* for certain cost-share payments to landowners for conservation practices.
3. *Estate Tax Exclusion* for a portion of the value of land that has been covered by a conservation easement.
4. *Estate Tax Reduction* for land valued at current use if land is committed to a farm or forestry use for a specified period.





# What other current Federal tax incentives are used for conservation?

## Other Federal:

**Like – Kind Property Exchanges**

**Installment Sales: Payments over time**

**Other Philanthropic provisions:**

**Gifts of Property Outright**

**Bargain – Sales**

**Planned Giving or Charitable**

**Trusts**



# What US state and local tax incentives are used specifically for conservation?

## State:

- Income tax credits for gifts of land or easements for conservation purposes.
  - > transferable; refundable?
- Tax exclusion if land or easements are sold for conservation
- Income tax credits for costs of managing or for restoring land for conservation purposes.
- Tax credit for the cost of conservation transactions.

## Local:

- Land subject to conservation easement may be exempt from or enjoy reduced local real property taxes.



# Tax Provisions as a Source of Revenue for Conservation

- Many types of taxes provide dedicated sources funding for conservation activities (in addition to other revenue sources such as direct appropriations):
  - Real Estate Transfer Taxes: *Florida; Maryland; North Carolina.*
  - Sales Taxes: *Suffolk County, NY; Missouri.*
  - Wildlife License Fees: *Oregon, Washington.*
  - Hotel and Tourism Taxes: *Westchester, NY Greenway.*
  - Severance Taxes: *LWCF; Alabama; Michigan.*



# Conservation tax legislative case study : 'Enhanced' Federal Tax Benefits for Easement Gifts

## What:

**\*\*'Enhanced'\*\* tax benefits provided for easement gifts enacted on a temporary 2 yr. basis in 2008.**

## Objective:

**Secure permanent enactment of 'enhanced' easement tax benefits.**

## Strategy:

**Provision renewed in 4 tax bills enacted from 2008 to 2015. Ongoing mobilization of local land trusts**

## Timeframe:

**1996 – 2016**

## Result:

**Permanent tax benefit enacted in 2016.**

## Takeaway:

**Continuity of purpose despite iterations of tax proposals; local support to influence national**





# Readiness factors for conservation tax policy advocacy

1. What is the conservation goal/benefit/objective?  
*'systems thinking' approach*
2. What is the urgency? Threatened landscape?
3. Why do other laws or incentives not work?
4. How much will it cost? Is there a 'pay-for' for the fiscal impact?
5. How will the advocacy be organized?  
*Is there a dedicated staff person and funding?*  
*Is there a coalition of interest groups? An 'unusual' partnership?*  
*Is there respected 'Legislative Champion?' A charismatic spokesperson?*



# Lessons learned from conservation tax policy advocacy

**Advance multiple conservation tax proposals concurrently.**

**‘All politics is local.’**

**Expand the time horizons.**

**What is enacted will be different than what is proposed.**

**Use ‘the land’ to sell the policy.**

**Information, data is power.**

**There is no “silver bullet.”**



# Current Challenges in Tax Incentives for Private Land Conservation

1. **What is included in “conservation purpose?”**
  - a. **Golf courses?**
2. **Valuation and the monetization of easement tax benefits**
  - a. **Syndicated conservation easements.**
3. **Perpetuity and easement amendments**
  - a. **natural changes in habitat- climate change.**
  - b. **changes in conservation understanding/science.**
4. **Unqualified easement holders**
  - a. **Government agencies?**
  - b. **Rogue land trusts?**



# New Federal Conservation Tax Policy Proposals

- **Capital Gain Tax Exclusion for sales of land or easements for conservation purposes.**
- **Tax-favored financing for green infrastructure projects.**
- **Income tax benefits for expenses in habitat management.**
- **Proposals to address syndicated conservation easement abuses.**







**Thank you!**

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