

Reducing Federal Estate Tax

A Conservation Easement Benefit for Large Estates



For large estates, death triggers the possibility of federal estate tax. A conservation easement on the deceased person's land, whether granted in life, by will, or by the person's heirs — can reduce or eliminate the tax owed.

Summary

In 2019, an individual can leave \$11.4 million to heirs and pay no federal estate tax; a married couple can leave \$22.8 million. (The IRS announces new inflation adjusted numbers each year under tax rules that expire at the end of 2025.) Estates larger than these amounts can reduce estate taxes with the grant of a conservation easement on property in the estate. This tax advantage is available whether the grant occurs during the person's lifetime, [by will](#), or by the deceased person's heirs.

Land that is perpetually restricted by a [conservation easement](#) is valued at its restricted value for federal estate tax purposes. In addition, up to 40% (capped at \$500,000) of the value of land restricted by a conservation easement can be excluded from the value of the deceased person's estate if the easement conforms with section 2031(c) of the tax code.

Reduction in Value of Estate

When land subject to a [conservation easement](#) is valued for federal estate tax purposes, the restrictions on subdivision, construction of improvements, and activities and uses imposed by the conservation easement are taken into consideration. Thus the conservation easement may reduce or, if the land is the primary asset of the estate, eliminate the estate tax that otherwise would be due in the absence of an easement.

Deduction for Contribution After Death

If the deceased landowner failed to grant a conservation easement while alive, the persons handling the estate can take advantage of a tax benefit by donating a conservation easement on property of the estate *before the filing of the estate tax return*. If the conservation easement otherwise qualifies as a charitable contribution under [Code §170\(h\)](#), the appraised value of the conservation easement can be claimed as a charitable

deduction for estate tax purposes under the authority of [Code §2055\(f\)](#). In general, the appraised value of the charitable contribution will be calculated as the difference between the value of the property before restriction less the value of the property as restricted.

Code §2031(c) Exclusion

Exclusion of up to \$500,000

If property included in an estate is restricted by a conservation easement that qualifies as a charitable contribution under [Code §170\(h\)](#), up to 40% of the value of the eased property may be excluded from the value of the estate for purposes of estate tax. This exclusion, subject to certain qualifying factors set forth in [Code §2031\(c\)](#), applies whether the conservation easement was granted during the deceased owner's lifetime or after death. The exact percent reduction depends on the extent to which the conservation easement reduces the value of the property.

Weigh Exclusion Benefit vs. Loss of Stepped-up Basis

The [Code §2031\(c\)](#) exclusion (capped at \$500,000) may prove beneficial in some circumstances but any immediate savings in estate tax must be weighed against the risk that, when the eased property is eventually sold or otherwise transferred, the burden of capital gain tax on the proceeds of sale will be greater. As a general rule, the advantage of re-starting the calculation of an owner's tax basis in the property as of the date of death (called a stepped-up basis) is a great tax benefit. The increase in investment value from the date it was acquired to the date of owner's death is never taxed at all. Code §2031(c) denies the benefit of a stepped-up basis in the eased property if the exclusion is taken.

[Patricia L. Pregmon](#), attorney at law, and [Andrew M. Loza](#) are the authors.

The [Pennsylvania Land Trust Association](#) produced this guide with support from the Colcom Foundation, the William Penn Foundation, and the Community Conservation Partnerships Program, Environmental Stewardship Fund, under the administration of the Pennsylvania Department of Conservation and Natural Resources, Bureau of Recreation and Conservation.

Nothing contained in this or any other document available at [ConservationTools.org](#) is intended to be relied upon as legal advice or to create an attorney-client relationship. The material presented is generally provided in the context of Pennsylvania law and, depending on the subject, may have more or less applicability elsewhere. There is no guarantee that it is up to date or error free.

© 2019, 2010 Pennsylvania Land Trust Association

Text may be excerpted and reproduced with acknowledgement of [ConservationTools.org](#) and the Pennsylvania Land Trust Association.

v. 10/10/2019