

# PUBLICATION

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## Relaxed Limitation Rules for Donations of Conservation Easements to Expire Soon

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Last year, Congress substantially increased the charitable contribution deduction that may be taken by individuals for donations of conservation easements. However, that favorable increase was intended merely as a temporary incentive, and is set to expire on January 1, 2008.

To receive a conservation easement donation deduction, an individual must donate to a qualified organization some of the individual's rights or privileges to change or alter a piece of real estate that holds some quality that is worth conserving. The limitation or right is known as the "easement," and the qualified organization to which it is donated is usually a land or historic trust.

The amount of charitable contributions that an individual may deduct in a given tax year is limited to a percentage of the individual's "contribution base," which is his or her adjusted gross income, computed without regard to any net operating loss carryback. The applicable percentage of the individual's contribution base depends upon the organization that receives the individual's donation and whether the asset contributed is cash, capital gain property or something else.

In the past, Congress limited the amount of the charitable deduction that an individual who donated a conservation easement could take on his personal income tax return to 30% of his contribution base for the year the gift was made. If the value of the donated conservation easement exceeded 30% of the individual's contribution base for that year, the individual could carry forward the undeducted portion of his gift and deduct the excess over the next five years.

In August 2006, Congress increased the limitation in the deduction of a conservation easement to 50% of an individual's contribution base. Further, Congress allowed individuals to carry forward the excess deduction and deduct it over the next 15 years. If the individual is a qualified rancher or farmer, then he may deduct up to 100% of his contribution base and still deduct any excess over the next 15 years.

Earlier this summer, the IRS issued additional guidance relating to the new 50%/100% limitations on donations of conservation easements. Some of that guidance includes the following:

- The new percentage limitations apply only to donations of conservation easements. They do not apply to donations of an individual's entire interest in a piece of real estate, even if the donation is made for conservation purposes.
- An individual is a "farmer" or a "rancher," and thereby able to deduct the fair market value of the conservation easement up to 100% of his contribution base, if his gross income from farming or ranching in the year of the contribution is greater than 50% of his total gross income for that year.
- In determining a farmer's gross income from farming, income from sales of timber are counted, but income from fees to permit hunting and fishing and income from a bargain sale of a conservation easement are not.
- A farmer does not have to donate a conservation easement over farmland in order to qualify for the 100% limitation. However, if the conservation easement does apply to farmland and was made after

August 17, 2006, then the farmland must remain available for use as farmland in order to qualify for the 100% limitation of the contribution.

The relaxed rules on donations of conservation easements are quite favorable to taxpayers who are individuals (as opposed to corporations or other entities), but they can only be used for donations made in 2006 and 2007. Individuals interested in taking advantage of this window of opportunity need to move quickly before it expires on January 1, 2008.