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Assessing Trump's Conservation Tax Write-Offs

The news that [Donald Trump takes advantage of conservation tax breaks](#) should hardly be a surprise. He has said that he pays as little tax as possible, echoing Warren Buffett and many others in business. One reason he pays as little tax as possible is that he hates how Washington spends the money. And like many who may rail at the unfairness and complexity in the tax law, Mr. Trump also admits that he takes advantage of the tax laws and their Byzantine complexity.

In this light, it makes sense that Mr. Trump has his reduced taxes with conservation easements at golf clubs in Florida and New Jersey. Reports suggest that he granted easements in California and New York too. They were probably done as charitable donations of [conservation easements](#). Although Mr. Trump has still not released his tax returns, he has granted a number of such easements, and he almost surely deducted their value. But value is a fluid concept, and perhaps particularly so with conversation easements. Unlike many easements, they are not rights of passage over land.

Instead, they are legal rights to enforce the *preservation* of the land. Conservation easements restrict property's future development, which might sound odd for a developer. Of course, since you are giving away legal rights to charity, you can claim a tax deduction. One of the most controversial questions is what they are worth.

Conservation easements may preserve natural habitat or the historical façade of a building. In the latter case, you donate (usually to a historical preservation society) a permanent right preserving the outside of your historic office building or historic residence. Of course, local zoning and historic preservation laws may *already* prevent you from altering the historical character of the building.



Republican Presidential candidate Donald Trump speaks to supporters during a rally the Peabody Opera House on March 11, 2016 in St. Louis, Missouri. (Photo credit: MICHAEL B. THOMAS/AFP/Getty Images)

In that sense, adding an easement may not add significant restrictions. Still, you can claim your deduction. Many technical requirements apply to donee charities, the type of property, and permitted purposes. For façade easements, the building must be certified as historic or be in a certified historic district. The rules are technical enough that you need professional help.

Appraisals before and after the easement are critical. One figure reveals the value of your property without it. The second reveals its value subject to the easement. The IRS targets inflated appraisals, claiming inflated values for building façades are a [tax scam](#).

Some taxpayers have claimed excessive valuations for their donated easements. The IRS has taken some of them to court. These disputes often come down to dueling appraisers, and taxpayers can usually afford good ones. Still, court battles over the tax benefits are not uncommon.

When you slap an easement across your land and transfer it to a charity, you are clearly giving something away. This is a partial interest in property, and transfers of partial interests of property are often suspect. Yet here, it is a partial interest that can qualify for a charitable contribution deduction.

Lest you think this is a bonanza anyone can claim, beware of many technical

requirements for the donee organizations and the type of property. The organization must be tax exempt. Moreover, there are four broad categories of conservation purposes:

- The preservation of land areas for outdoor recreation by, or the education of, the general public.
- The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem
- The preservation of certain open space (including farmland and forest land).
- The preservation of an historically important land area or a certified historic structure.

For a restriction on a building exterior to be considered exclusively for historic purposes, the donor and donee must agree in writing that the donee (among other things) has the resources to manage and enforce the restriction, and a commitment to do so. Furthermore, such buildings must be certified as historic, or be in a certified historic district. The rules are technical enough that you need professional help. And in light of the way some organizations and promoters hawk easements, you will want someone independent who is solely looking out for your interests.

Conservation easements can provide attractive tax benefits to the donor and nice societal benefits too. There are details to be observed and overly rich appraisals can (and probably should) draw scrutiny. Still, with a properly planned and documented donation, and a deduction that isn't greedy, everyone wins. Mr. Trump seems to know that.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.