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THE TAX LAWYER

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Rich “Conservation Easement” Tax Break Ends 12/31/11

The year-end compromise [tax deal](#) put a 2 year band aid on the [Bush tax cuts](#) and a generous [2 year estate tax exemption](#). It also left in place many so-called tax “extenders,” most through 2012, but some only through 2011. See [Extended Individual Tax Benefits in Compromise Bill](#) and [Tax Bill’s Boomerang Benefits For Business](#).

One controversial extender for 2011 only: [conservation easements](#).

Unlike many easements, a conservation easement is not a right of passage over land. It is a legal right to enforce **preservation** of the land, restricting property’s future development.

Since you are giving away legal rights to charity, you can claim a tax deduction. The controversial question is what they’re 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.

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 Are Key! 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](#). Many conservation easement tax deductions hover around 10% of the value of the property. That means a façade easement on a \$10 million historic building would yield a \$1 million tax deduction. That's attractive.

Yet some taxpayers have claimed outsized 40% to 50% deductions. The IRS has taken some of them to court but hasn't done terribly well. These disputes often come down to dueling appraisers, and taxpayers can usually afford good ones.

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.

Get them while you can.

For more, see:

[Conservation Easements Conserve Taxes and More](#)

[Courts to IRS: Ease up on Conservation Easement Valuations](#)

[Conservation Easements, Valuation, and Substantiation](#)

[Conservation Easements, the IRS & Charity](#)

[An Updated Look At Conservation Easements](#)

[ABCs of Charitable Conservation Easements](#)

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