

Death and Taxes —

A monthly column on tax issues and estate planning

Marjorie Rawls Roberts, Esq., P.C.

How Green Was My Valley – and Contribution? Deductions for Transfers of Real Property for Conservation Purposes

Taxpayers in the U.S. Virgin Islands are surrounded by rolling green hills, historic structures, and beaches that alternate between creamy white sand and colorful pebbles glistening from recent waves. Some territory residents have bought or inherited land that they may not want to develop, or own property with an historic sugar mill or other historic structures. Other people own land bordering the National Park on St. John or parks owned by the U.S. Virgin Islands Government such as Magens Bay.

Instead of developing or selling their property, some taxpayers may want to consider making a contribution of the property for conservation purposes. A contribution can consist of all of an owner's interest in the property or it can be limited to an easement or restrictive covenant that prevents the development of land so as to safeguard the property's natural character. Conservation contributions can also preserve a historically significant land area or structure.

To claim the deduction, a taxpayer must contribute a qualified real property interest to a qualified organization exclusively for a conservation purposes. What does this mean in practice?

- A qualified real property interest includes the donor's entire interest, or a remainder interest, or a perpetual restriction on the use that can be made of the real property. (A donor can retain an interest in subsurface oil, gas, or other minerals and this will not prevent a conservation contribution from being a qualified real property interest. However, so far oil and minerals haven't been found in the U.S. Virgin Islands except for above ground.)

- A qualified organization is the Federal Government, the government of the U.S. Virgin Islands, or a pub-

licly supported charity such as the Nature Conservancy or the Friends of the National Park.

- Eligible conservation purposes are the preservation of land areas for outdoor recreation by, or the education of, the general public, the protection of a natural habitat of fish, wildlife, plants, or a similar ecosystem, the preservation of open space for the scenic enjoyment of the general public and the preservation of a historically important or certified historic structure. Interestingly, visual, rather than physical, access to or across property by the general public is sufficient to satisfy the scenic enjoyment requirement. Also, the entire property doesn't need to be visible to the public for a donation to qualify for the deduction. However, in order for a contribution to be exclusively for conservation purposes, it must be a contribution in perpetuity.

Following the contribution, the basis of the property retained must be adjusted by reducing it by that part of the total basis that is allocable to the interest granted.

For contributions made after August 17, 2006, the definition of certified historic structures was restricted to buildings located in a registered historic district and structures, buildings, or land areas listed on the National Register. Further, new rules came into place for façade easements made after July 25, 2006. Specifically, a donated easement for buildings located in a registered historic district must preserve the entire exterior of the building and prohibit any change to the exterior that is inconsistent with the historical character of the exterior. Some buildings in downtown Christiansted, Frederiksted, and Charlotte Amalie could qualify for a façade easement.



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How does a taxpayer value a restriction? Basically, the amount of the deduction for the contribution of a conservation easement or other restriction is the fair market value of the interest conveyed to the qualifying organization. Generally the interest is valued by determining the fair market value before and after the grant of the easement. However, if the restriction increases the value of any other property owned by the donor, then the deductible amount is reduced by the amount of the increase in value of the other property. For example, if a taxpayer puts a restriction on one lot to provide visual access, that would reduce the value of that lot but raise the value of the taxpayer's adjacent lot. The increase in value of Lot 2 would offset the reduction in the value of Lot 1.

It is important to note that making a contribution of an easement doesn't have to eliminate the owner's ability to develop the property. In one case, the Court of Appeals held that the grant of a scenic easement to a conservation organization was a transfer of value. Although the taxpayers retained significant property rights including the right to subdivide their land and improve it, the court found that the grant of the easement placed material limitations upon their rights in the property and the taxpayers could deduct an amount equal to the reduction in value.

Suggestions for future columns should be sent to: AskJorie@TradewindsHouseandHome.com.

"In this world nothing can be said to be certain, except death and taxes." Benjamin Franklin, 1789.