

Summary of Internal Revenue Code, Section 170(h)

PERTINENT PARTS OF INTERNAL REVENUE CODE RELATIVE TO CONSERVATION EASEMENTS

U.S.C.,
170(b)(1)(E),
Contributions of
Qualified
Conservation
Contributions for
Individuals

- (i) In general. Any qualified conservation contribution (as defined in subsection (h)(1)) shall be allowed to the extent the aggregate of such contributions does not exceed the excess of 50 percent of the taxpayer's contribution base over the amount of all other charitable contributions allowable under this paragraph.
- (ii) Carryover. If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution to which clause (i) applies in each of the 15 succeeding years in order of time.
- (iii) Coordination with other subparagraphs. For purposes of applying this subsection and subsection (d)(1), contributions described in clause (i) shall not be treated as described in subparagraph (A), (B), (C), or (D) and such subparagraphs shall apply without regard to such contributions.
- (iv) Special rule for contribution of property used in agriculture or livestock production
 - (I) In general. If the individual is a qualified farmer or rancher for the taxable year for which the contribution is made, clause (i) shall be applied by substituting "100 percent" for "50 percent".
 - (II) Exception. Subclause (I) shall not apply to any contribution of property made after the date of the enactment of this subparagraph which is used in agriculture or livestock production (or available for such production) unless such contribution is subject to a restriction that such property remain available for such production. This subparagraph shall be applied separately with respect to property to which subclause (I) does not apply by reason of the preceding sentence prior to its application to property to which subclause (I) does apply.
- (v) Definition. For purposes of clause (iv), the term "qualified farmer or rancher" means a taxpayer whose gross income from the trade or business of farming (within the meaning of section 2032A (e)(5)) is greater than 50 percent of the taxpayer's gross income for the taxable year.
- (vi) Termination. This subparagraph shall not apply to any contribution made in taxable years beginning after December 31, 2011.

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U.S.C., 170(b)(2),
Contributions of
Qualified
Conservation
Contributions for
Corporations

(A) In general

The total deductions under subsection (a) for any taxable year (other than for contributions to which subparagraph (B) applies) shall not exceed 10 percent of the taxpayer's taxable income.

(B) Qualified conservation contributions by certain corporate farmers and ranchers

(i) In general. Any qualified conservation contribution (as defined in subsection (h)(1))—

(I) which is made by a corporation which, for the taxable year during which the contribution is made, is a qualified farmer or rancher (as defined in paragraph (1)(E)(v)) and the stock of which is not readily tradable on an established securities market at any time during such year, and

(II) which, in the case of contributions made after the date of the enactment of this subparagraph, is a contribution of property which is used in agriculture or livestock production (or available for such production) and which is subject to a restriction that such property remain available for such production, shall be allowed to the extent the aggregate of such contributions does not exceed the excess of the taxpayer's taxable income over the amount of charitable contributions allowable under subparagraph (A).

(ii) Carryover. If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(2)) as a charitable contribution to which clause (i) applies in each of the 15 succeeding years in order of time.

(iii) Termination. This subparagraph shall not apply to any contribution made in taxable years beginning after December 31, 2011.



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U.S.C., 170(h)(1), In
General

For purposes of subsection (f)(3)(B)(iii), the term “**qualified conservation contribution**” means a contribution—

- (A) of a qualified real property interest,
- (B) to a qualified organization,
- (C) exclusively for conservation purposes.

U.S.C., 170(h)(2),
Qualified Real
Property Interest

For purposes of this subsection, the term “**qualified real property interest**” means any of the following interests in real property:

- (A) the entire interest of the donor other than a qualified mineral interest,
- (B) a remainder interest, and
- (C) a restriction (granted in perpetuity) on the use which may be made of the real property.

U.S.C., 170(h)(3),
Qualified
Organization

For purposes of paragraph (1), the term “**qualified organization**” means an organization which—

- (A) is described in clause (v) or (vi) of subsection (b)(1)(A), or
- (B) is described in section 501 (c)(3) and—
 - (i) meets the requirements of section 509 (a)(2), or
 - (ii) meets the requirements of section 509 (a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

U.S.C.,
170(h)(4)(A),
Conservation
Purpose

For purposes of this subsection, the term “**conservation purpose¹**” means—

- (i) the preservation of land areas for outdoor recreation by, or the education of, the general public,
- (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- (iii) the preservation of open space (including farmland and forest land) where such preservation is—
 - (I) for the scenic enjoyment of the general public, or
 - (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or
- (iv) the preservation of an historically important land area or a certified historic structure.

U.S.C., 170(h)(5),
Exclusively For
Conservation
Purposes

For purposes of this subsection—

- (A) Conservation purpose must be protected

A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is **protected in perpetuity²**.

¹ See Fact Sheet entitled, “Interpretation of ‘Conservation Purpose,’” for additional information.

² See Fact Sheet entitled, “Interpretation of ‘Exclusively for Conservation Purposes,’” for additional information.



U.S.C.,
170(h)(11)(D),
Substantiation For
Contributions
Greater Than
\$500,000

In the case of contributions of property for which a deduction of more than \$500,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation attaches to the return for the taxable year a qualified appraisal of such property.

U.S.C.,
170(h)(11)(E),
Qualified Appraisal
and Appraiser

For purposes of this paragraph—

- (i) Qualified appraisal. The term “qualified appraisal” means, with respect to any property, an appraisal of such property which—
 - (I) is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and
 - (II) is conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed under subclause (I).
- (ii) Qualified appraiser. Except as provided in clause (iii), the term “qualified appraiser” means an individual who—
 - (I) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,
 - (II) regularly performs appraisals for which the individual receives compensation, and
 - (III) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance.
- (iii) Specific appraisals. An individual shall not be treated as a qualified appraiser with respect to any specific appraisal unless—
 - (I) the individual demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and
 - (II) the individual has not been prohibited from practicing before the Internal Revenue Service by the Secretary under section 330 (c) of title 31, United States Code, at any time during the 3-year period ending on the date of the appraisal.

To learn more about the Internal Revenue Service Code related to conservation easements and the conservation easement process in general, contact Arthur H. Howland & Associates, P.C. at (860) 354-9346 and ask for Paul Szymanski. You can also visit us on the web at <http://ahhowland.com>.

Arthur H. Howland & Associates, P.C., specializes in assisting donors step-by-step with the conservation easement process offering a full array of civil engineering, land surveying, land planning, soil science and consulting services.

One should always consult their attorney or accountant for legal or tax advice.



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