

The Internal Revenue Service (IRS) has included conservation easement donation/deduction in the "dirty dozen" list. Clearly this is a tax avoidance tool which can easily be abused. That doesn't mean that it always is. Let's look at the abuses first, and second, how to distinguish the valid deduction from the dubious.

A conservation easement is a restriction on a property which limits its further development, or, in some cases more intensive use. It might limit the development of houses to a greater extent than zoning, for example, or, perhaps, limit timber harvest to "sustainable yield", banning clear cutting. If the property is in a remote location, the right to develop it more intensely might be pretty limited, and, correspondingly, the value of such a right. If the timber had already been clearcut and was not close to another harvest, the right to selectively cut or clearcut might not be very different in value. Indeed, thinning a growing stand of trees, aka selective (sustainable) harvest, might be the best way to go. Other permutations of restriction might involve a donation of the right to redevelop an urban property which already has a building on it. If there is no trend to (private) redevelopment in an area, that might not be a very valuable right. Alternatively, if the use of the building is already restricted by, say, a historic designation. Or, what if the easement in question stands in place of a covenant or restriction that might actually enhance value...?

Conversely, there is a long history of payment for partial interests. Unfortunately, most of these are transactions made pursuant to, or under threat of, eminent domain. The admissibility of that sort of transaction as evidence of value is limited. But there is also a long history of private not-for-profit organizations acquiring property. Probably the clearest case is Ducks Unlimited which has been paying farmers to leave land wet during migration and breeding season of migratory wildfowl. Duck clubs are another related example. Private purchase of timber harvest rights is pretty common. The spectrum includes non-governmental-organizations (NGOs) dedicated to open space preservation. To the extent that your property can be demonstrated to be useful and attractive to such organizations, your case is improved. Beware, however, of NGOs which are simply conduits, quickly "flipping" property to various tax funded government agencies.

Briefly, the validity of a value for donation purposes must be supported by good evidence, not simply an assertion, that a donation has a value. The IRS is working on standards for valuation and accreditation of valuation professionals.

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