Tax Aspects
Of Conservation Easements

A woodland owner may wish to guarantee that his or her forest land always remains as forest. Persons in this situation sometimes consider placing a conservation easement on the property to achieve that goal. A qualified conservation easement is defined as a transfer of a qualified real property interest to a qualified organization exclusively for conservation purposes. A qualified real property interest means a restriction, granted in perpetuity, on the use that may be made of the property. A conservation easement on woodland can be created by either selling or donating the interest.

For example, a restriction on the use of the property for purposes other than forest land—such as housing or commercial development—can be transferred. The restriction can be structured to permit the transferor and the transferor’s heirs to continue to live on the property and manage it for commercial timber production. This type of transfer permits a woodland owner to control the use of the land both during and after his or her lifetime. Selling such a restriction, although not providing an income tax deduction, will produce income from the development rights. On the other hand, donating the restriction to a qualified organization will provide an income tax charitable deduction, as well as remove the value of the donated interest from the donor’s estate where it would perhaps be subject to the federal estate tax and possibly also state death taxes. Additionally, there is no gift tax on a conservation easement charitable contribution.

Income Tax Benefits
The criteria necessary to qualify for a conservation easement charitable donation need to be carefully evaluated. These are discussed in IRS Publication 526, Charitable Contributions. Two basic criteria must be considered.

Qualified Organization
The contribution must be made to one of the following types of qualified organizations:

- A unit of local, state or federal government.
- A publicly supported charitable, religious, scientific, educational or similarly qualified organization.
- An organization that is controlled by, and operated for, the exclusive benefit of a government unit or a publicly supported charity.

Conservation Purpose
The contribution must be made only for one of the following purposes:

- Preservation of land areas for outdoor recreation by, or for the education of, the general public.
- Protection of a relatively natural habitat for fish, wildlife, plants or a similar ecosystem.
- Preservation of open space, including farmland and forest land. The preservation must yield a significant public benefit. Additionally, it must either be for the scenic enjoyment of the general public or under a clearly defined federal, state or local government conservation policy.
- Preservation of an historically important land area or structure.

Valuation of the Donation
The value of a donation of a conservation easement generally is equal to the value of the entire property before the donation minus its value after the donation. The best evidence of this difference in value is found by examining sales of similar properties in the area, some without restrictions and some with restrictions similar to those associated with the easement in question. The basic principle is demonstrated in the following example.

Example: Mr. Smith owns 300 acres of woodland. Similar property in the area has a bare land fair market value of $1,600 an acre. However, comparable woodland in the vicinity that is restricted solely to forestry uses under the state’s special use forest property tax law has a fair market value of $600 per acre. The county is interested in preserving 200 of Mr. Smith’s acres as part of its green space program. Mr. Smith grants the county a conservation easement in perpetuity on the 200 acres which restricts the use of this acreage to sustainable timber management and harvesting. The fair market value of the property before the easement was $480,000 (300 X $1,600). The fair market value of the property after the easement is $220,000 (100 X $1,600 plus 200 X $600). The value of the easement is therefore $200,000 ($480,000 minus $280,000).

Because of the need for accuracy, a professional appraisal should be used to determine the value of the donation. In fact, if the deduction is more than $5,000, a written appraisal by a qualified appraiser is required.

A federal income tax charitable contri-
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FLTC
Tax Report
by Frank Stewart, RF

Death Tax: On April 19, Senate Majority Leader Bill Frist wrote, “The death tax is simply unfair. It tells every American that no matter how hard you work or how wisely you manage your affairs, in the end the federal government is going to take it away. The death tax is double and, in some cases triple, taxation. It punishes hard work and savings, and it fails to raise the kind of revenues that might conceivably justify some of the damage it causes. It has been destroying businesses and ruining lives for four generations. Let us not make this mistake with our children. I am proud to declare that the days of the death tax are numbered. I am committed to a FULL REPEAL. Next month, I’ll bring it to the Senate floor and I’ll do everything in our power to bury the death tax once and for all!”

Research: The Forest Landowners Tax Council is seeking funding, through Congressional appropriation, for research into the tax structures for non-industrial private forest landowners in other countries, for clarification on the actuarial data used in calculation of forest casualty losses, and how other nations have chosen to regulate woody biomass as an alternative energy feedstock.

Mississippi Legislature Passes Fed Tax Resolution: A concurrent resolution of the state of Mississippi legislature urges the United States Congress to enact federal income tax relief to tree farmers who have suffered loss as a result of the hurricane Katrina disaster. The Resolution: NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MISSISSIPPI, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN, That we do hereby urge the United States Congress to enact one-time federal Income Tax relief to Mississippi tree farmers who have suffered loss as a direct result of the Hurricane Katrina disaster by authorizing a generous casualty write-off. BE IT FURTHER RESOLVED, That this resolution be forwarded to the President of the United States, the Commissioner of the Internal Revenue Service and members of Mississippi’s Congressional delegation, and be made available to the Capitol Press Corps.

Conclusion
A conservation easement on woodland can ensure that the woodland will always remain as such and not be commercially developed. At the same time, if the easement is donated rather than sold, it can provide significant tax benefits. However, careful thought should be given to the granting of an easement. The transfer must be in perpetuity and is not reversible. With a donated easement, unless the donor’s estate is large enough to be subject to the federal estate tax, there will be no estate tax benefit. Legal fees and appraisal costs will reduce the income tax deduction. In summary, a conservation easement may be ideal for certain woodland owners but something that others will want to avoid.

William C. Siegel is an attorney and consultant in private practice specializing in timber tax law and forestry estate planning. He is retired from the US Forest Service where he served as Project Leader for Forest Resource Law and Economics Research with the Southern Forest Experiment Station, where he still serves as a volunteer. He provides this column as a regular service to National Woodlands readers. Mr. Siegel welcomes comments and questions. They may be directed to him at: 9110 Hermitage Place, River Ridge, LA 70123; tel. (504) 737-0583.

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On the Cover: In the face of dramatically higher energy prices, emerging markets for wood-based fuels like biomass and methanol should make timber stand improvement operations more profitable. This woodlot, which was thinned in 2005 for firewood, is an example of how private, non-industrial timberland can produce energy today and quality sawtimber in the future.