

Tax Considerations in Conveying Land*

Types of Conveyances	Applicable Laws	Types of Transactions and Tax Considerations		
		Sale During Life	Donation During Life	Donation by Will or After Death
Whole Interest (Fee)	Federal	Seller may pay capital gains tax . ¹	Donor may receive an income tax deduction ² if land is donated to a qualified organization ³ exclusively for conservation purposes. ^{4,5}	Donor may receive an estate tax reduction . ⁶
	State	Transaction may be subject to recordation & transfer taxes . ⁷	Transaction may be exempt from recordation & transfer taxes . ⁸	(1) Donor may receive an inheritance tax reduction . ⁹ (2) Transaction may be exempt from recordation & transfer taxes . ¹⁰
	Local	Transaction may be subject to recordation & transfer taxes . ¹¹	Transaction may be exempt from recordation and transfer taxes . ¹²	Transaction may be exempt from recordation & transfer taxes . ¹³
Conservation Easement ¹⁴	Federal	Seller may pay capital gains tax . ¹⁵	(1) Donor may receive an income tax deduction if easement is donated to a qualified organization exclusively for conservation purposes. ¹⁶ (2) Donor may receive an estate tax reduction . ¹⁷ (3) Donor may receive an estate tax exemption for up to 40% of the remainder value of land under a conservation easement. ¹⁸	(1) Donor may receive an estate tax reduction . ¹⁹ (2) Donor may receive an estate tax exemption for up to 40% of the remainder value of land under a conservation easement. ²⁰
	State	Transaction may be subject to recordation & transfer taxes . ²¹	(1) Donor may receive an income tax credit for land over which the Md. Environmental Trust (MET) and NeighborSpace co-hold an easement for up to \$5,000 per year for up to 15 years. ²² (2) Donor may receive a property tax credit for land over which MET and NeighborSpace co-hold an easement, resulting in no State property tax being owed for 15 yrs from the date of donation. ²³ (3) Transaction may be exempt from recordation & transfer taxes . ²⁴	(1) Transaction may be exempt from recordation & transfer taxes . ²⁵ (2) Donor may receive an inheritance tax reduction . ²⁶
	Local	Transaction may be subject to recordation & transfer taxes . ²⁷	(1) Donor may receive a property tax exemption for 5 years. ²⁸ (2) Transaction may be exempt from recordation & transfer taxes . ²⁹	Transaction may be exempt from recordation & transfer taxes . ³⁰

*NeighborSpace provides this information for example only. Please consult your attorney and accountant for professional advice.

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¹The capital gains tax is charged on the profit realized on the sale of an asset that was purchased at a lower price. Through 2012, the maximum long-term capital gains rate is 15% and will rise to 20% in 2013. Options for ameliorating this tax include: (1) An installment purchase agreement that allows for deferral of capital gains tax until the end of the agreement, except for any cash taken at settlement (26 U.S.C. § 453); (2) a like-kind exchange, where cash payment for the land is used to purchase additional real estate (26 U.S.C. § 1031); and (3) a bargain sale, where land is sold to a land trust for less than fair market value and the seller takes a charitable income tax deduction for the difference between fair market value and sales price (26 U.S.C. § 1011(b)).

²See 26 U.S.C. § 170(h). A donor may be entitled to a deduction of up to 30 percent of his or her income in the year of the transaction and for up to an additional 5 years. 26 U.S.C. §170(b)(1)(B)(i).

³A qualified organization includes a nonprofit or governmental unit that has the commitment to protect the conservation purposes of a donation and the resources to enforce the restrictions. A conservation group like NeighborSpace operated for one of the conservation purposes listed in note 4, below, is considered to have the required commitment. See 26 CFR §1.170A-14(c).

⁴A conservation purpose includes:

- (i) Land preservation for outdoor recreation by, or education of, the general public, provided that the contemplated use by the general public is substantial and regular;
- (ii) Protection of natural habitats of fish, wildlife, or plants, or similar ecosystem or natural areas which are included in or contribute to, the ecological viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area or other similar conservation area regardless of whether public access to the area is limited.
- (iii) Preservation of open space, including farmland and forest land, provided that the preservation: (a) Is pursuant to a clearly delineated Federal, state or local governmental conservation policy or for the scenic enjoyment of the general public; (b) Does not result in access limitations that undermine or frustrate the conservation purpose; and (c) Yields a significant public benefit, in light of (1) the uniqueness of the property, (2) the intensity of current and prospective land development; (3) the consistency of the proposed open space use with public and private conservation programs and with mandated programs identifying particular parcels of land for future protection; (4) the likelihood that development would degrade the area's scenic, natural, or historic character; (5) the public's opportunity to use the property or to appreciate its scenic values; (6) the property's importance in preserving a local or regional landscape or resource that attracts

tourism or commerce; (7) the donee's likelihood of acquiring equally desirable and valuable substitute property; (8) the donee's cost of enforcing the terms of the conservation restriction; and (9) local population density;

(iv) Preservation of a historically important land area or a certified historic structure, provided there is at least some visual public access. See 26 CFR §. 1.170A-14(d).

⁵A hybrid of this transaction is a conveyance of the entire parcel subject to a life estate, wherein the donor retains the right to continue to use the property during his or her lifetime, after which full title transfers to the land trust. This result produces limited income tax benefits but may result in substantial estate tax benefits.

⁶The estate tax is imposed on the transfer of the taxable estate of a deceased person. See 26 U.S.C. § 2001. Transfers to spouses and children typically are exempt and an amount equal to the federal Unified Credit, which in 2011 amounts to \$5 million per person, is also exempt. The maximum federal estate tax rate in 2011 and 2012 is 35 percent.

⁷A recordation or transfer tax is a tax on the privilege of transferring property. Maryland counties set the recordation tax rate. See Md. Code Ann., Tax-Prop. § 12-103(b). In Baltimore County, the recordation tax rate is \$2.50 per \$500 dollars or fraction thereof of consideration paid for recording a deed or mortgage, with proceeds payable to the County, and a transfer tax of 2.0% of the consideration under the contract, with 1.5% going to the County and .5% going to the State. See Balt. County Code § 11-3-203.

⁸State law exempts the transfer of conservation easements and fee simple interests in land to qualified land trusts (nonprofits with a cooperative agreement with the Maryland Environmental Trust (MET)) from County and State recordation and transfer taxes, provided that, in the case of fee interests, the land trust files a declaration of intent that the land will be used (i) to assist in the preservation of a natural area; (ii) for the environmental education of the public; (iii) to conserve agricultural land and to promote a continued agricultural use of the land; (iv) in general to promote conservation; or (v) for the maintenance of a natural area for public use or sanctuary for wildlife. See Md. Code Ann., Tax-Prop. § 12-108(cc) (Exemption from recording tax), § 13-207(a) (Exemption from State transfer tax) and 13-410 (Exemption from County transfer tax). These provisions are, however, supplementary to county laws that relate to transfer taxes. See Md. Code Ann., Tax-Prop. § 13-402(b). In Baltimore County, transfers to charitable organizations are exempt so long as no part of their net income inures to private individuals. Balt. County Code § 11-3-202.

⁹The inheritance tax is imposed on the value of property passing from a decedent to beneficiaries. Property passing to a nonprofit organization is exempt. See Md. Code Ann., Tax-Gen. § 7-203(e).

¹⁰See note 8. See also Balt. County Code § 11-3-202(g) exempting transfers by will or descent from the transfer tax.

¹¹See note 7.

¹²See note 8.

¹³See note 8.

¹⁴A conservation easement is a legal agreement between a landowner and a land trust that permanently limits uses of the land in order to protect its conservation values. It allows landowners to continue to own and use their land, and they can also sell it or pass it on to heirs.

¹⁵See note 1.

¹⁶Through 2011, there was a conservation easement incentive that (a) raised the deduction a donor can take for donating an easement from 30% of his or her income in any given year to 50%; and, (b) extended the carry-forward period for a donor to take tax deductions from 5 to 15 years. Although we are hopeful that the incentive will be renewed and made retroactive in 2012, that has not yet happened. See 26 U.S.C. §170(b)(1)(E). See note 4, above, for the definition of "conservation purpose." Contributions not in trust of partial interests in property are specifically allowed under 26 CFR Sec 1.170A-7 (a), (b)(5).

¹⁷Property encumbered by a donated conservation easement is valued differently under federal law and, therefore, typically results in estate taxes being reduced. See 26 U.S.C § 2055(f).

¹⁸See 26 U.S.C. § 2031(c). The exemption applies only to donated easements and there is a cap of \$500,000 for individuals and \$1,000,000 for a married couple and a further reduction if the easement reduces a property's value by less than 30 percent. Prior to 2001, the 2031(c) exclusion applied only to properties near metropolitan statistical areas, national parks, wilderness areas and urban national forests but these restrictions have been lifted through 2012. <http://www.landtrustalliance.org/policy/tax-matters/rules/documents/Conservation-Options-for-Heirs.pdf>.

¹⁹See note 6.

²⁰When a landowner dies without having donated a conservation easement, the heirs may be allowed to elect to do so and receive estate tax benefits *post-mortem*. See 26 U.S.C. §§ 6007(g), 2031(c).

²¹See note 7.

²²Maximum credit is the smaller of \$5,000 or the amount of State income taxes owed in a given year. Md. Code Ann., Tax-Gen. § 10-723. Typically, a property must be 25 acres or more in size and environmentally or historically significant for MET to consider co-holding an easement with NeighborSpace. See <http://www.dnr.state.md.us/bay/services/summaries.html>

²³See Md. Code Ann., Tax-Prop. § 9-107.

²⁴See note 8.

²⁵See note 8.

²⁶See note 9.

²⁷See note 7.

²⁸The County and State tax rates are \$1.10 and \$ 0.112 per \$100 of assessed value, respectively. This renewable credit applies to land used (1) to preserve a natural area; (2) for environmental education; (3) to promote conservation; (4) for a park; (5) to conserve agricultural land; or (6) for the maintenance of (i) a natural area for public use; or (ii) wildlife sanctuary. Balt. County Code, § 11-2-110 (b).

²⁹See note 7.

³⁰See note 7.