

IRS Hearing on Proposed SALT Rule
Testimony by Andrew J. Bowman, President
Land Trust Alliance
FINAL Testimony
11-5-18

Good morning, my name is Andrew Bowman, and I am president of the Land Trust Alliance.

The Land Trust Alliance is a nonprofit corporation and national land conservation organization based in Washington, D.C. We work to save the places people need and love by strengthening land conservation across America. We are the voice of private land conservation, unifying American ideals premised on personal initiative, landowner empowerment and individual private property rights.

On behalf of our 1,000 member land trusts and the nearly 5 million land trust supporters that we represent, I appreciate this opportunity to comment on the proposed rule and how it will directly affect the deductibility of donations of land and of qualified conservation interests in land received by our member organizations and by state and local governments across the country.

Together, national, state and local land trusts hold more than 42,000 conservation easements throughout the United States, covering approximately 17 million acres of land. In addition, they own over 8 million acres and collectively have conserved over 56 million acres as of 2015. These lands provide myriad benefits to people across the United States and will continue to do so for generations to come.

In a world where many landowners are land rich and cash poor, federal and state tax incentives for land conservation are important tools that can often mean the difference between lands being conserved or being converted to another use. Yet the proposed rule clearly reduces the federal tax incentive for donations of conservation easements made a permanent part of the tax code by Congress in 2015, in full knowledge of the various state and local incentives for conservation.

The proposed rule, initiated by a desire to prevent state governments from allowing their citizens to avoid the effects of the new Internal Revenue Code section 164(b), is too sweeping in its application because conservation donations – and other true charitable donations – are in no way tax avoidance. Stated another way, they are not donations in lieu of a state tax bill that must otherwise be paid – they are entirely voluntary donations. Moreover, these conservation deductions are for real property interests and not cash – a significant difference from the section 164(b) avoidance the Service seeks to address. Accordingly, the unnecessary breadth of the proposed rule as currently drafted will cause fewer conservation donations, a result quite

contrary to the intent of Congress, which expanded the deductibility of section 170(h) donations in 2015 and declined to limit them in any way in its 2017 tax reform legislation.

The Land Trust Alliance is proud to have worked with Congress to make permanent the federal tax incentive for donations of conservation easements in 2015. Good conservation happens directly as a result of this federal support for conservation easement donations, which has been, by and large, an incredibly successful policy.

We are concerned that the proposed rule will not only reduce the federal tax incentive for donations of conservation easements, but also undermine various conservation incentives offered by state governments and the Commonwealth of Puerto Rico by withdrawing the federal benefit in the amount each state has provided.

In fact, the conservation incentives offered by state governments were designed to enhance the federal deduction and bolster the federal government's policy in support of conservation. Without the ability to utilize a state tax credit in combination with the federal tax deduction, financial pressures may force landowners to sell lands with important conservation values to raise funds. As such, the outcome of limiting incentives for landowners to permanently dedicate their land as open space or a working farm or ranch will likely be the loss of farm and ranch lands, wildlife refuges, forests and other remarkable places that otherwise might be conserved.

Unfortunately, just by releasing the proposed rule, the Service has created uncertainty, which is already having a chilling effect on conservation. I want to share one example.

Colorado's Eagle County is experiencing enormous development pressure, threatening the natural habitat, agricultural heritage and scenic beauty that characterize the region. The Eagle Valley Land Trust works with local landowners to conserve land to continue their rural traditions of family land ownership and working lands.

As such, the land trust is currently working with a ranching family which owns a property along Gypsum Creek Road that they have managed and grazed for four generations. The property also includes acres of intact habitat, including critical elk calving areas as well as land for deer, wild turkey, bear and mountain lion. They were planning to complete the donation of a conservation easement to the land trust by the end of this year to permanently conserve their land.

However, with the uncertainty created by the proposed rule, these conservation-minded landowners have reluctantly indicated that they cannot finalize a donation at this time. Without the assurance that they can utilize the federal incentive *and* the state tax credit, a

charitable donation does not make sense at this time and the family may be forced instead to sell the property to raise funds needed for other priorities.

This result is contrary to Congressional intent, is unnecessary to limit tax avoidance, and is a loss for the family, for Eagle County and for America.

This family in Colorado is not alone; we are hearing of similar situations from across the country.

Many landowners, such as the family I have just described, who are land rich and cash poor, are not in a position to protect their land without the combination of federal and state tax incentives. This is not a story of the rich getting richer or people avoiding payment of taxes due to the federal government; this is about providing incentives to allow cash-strapped Americans across our nation to do the right thing: Protect our lands, our wildlife, our waters and our ways of life.

As the Eagle County example makes clear, the timing for the proposed rule is causing harm as many easement donations take years to negotiate and are often completed toward the end of the calendar year. The uncertainty created by the proposed rule brings into question whether conservation-minded landowners can fulfill their dreams for their properties and for future generations.

With these thoughts in mind, I urge the Service to withdraw the proposed rule. At a minimum, the Service should exempt truly charitable donations, as exemplified by conservation gifts.

Again, I thank you for the opportunity to share the concerns of the land conservation community about the proposed rule. I am happy to answer questions while acknowledging that other conservationists scheduled to testify today may provide additional information about how the proposed rule will impede conservation.