

Federal Law Affecting Donations of Conservation Easements

In December, 2015, Congress made important changes to the law affecting deductible donations of conservation easements. Essentially, the change reinstates the law as it existed before January 1, 2015, makes an addition relative to Alaska Native Corporations, and removes what had been expiration dates. It is possible some law texts and websites may not yet have the correct and up-to-date statutory language. It is reproduced below.

- Text in blue is new language from the December 2015 statute; and,
- Text shown ~~struck through~~ was removed from the law by that statute.

Below is the statutory language that was enacted into law on December 18, 2015. It may be referred to as Section 111 of Division Q of HR 2029. It can be found on page 805 of [the bill](#).

SEC. 111. Extension and modification of special rule for contributions of capital gain real property made for conservation purposes.

(a) Made permanent.—

(1) INDIVIDUALS.—[Section 170\(b\)\(1\)\(E\)](#) is amended by striking clause (vi).

(2) CORPORATIONS.—[Section 170\(b\)\(2\)\(B\)](#) is amended by striking clause (iii).

(b) Contributions of capital gain real property made for conservation purposes by native corporations.—

(1) IN GENERAL.—[Section 170\(b\)\(2\)](#) is amended by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following new subparagraph:

“(C) QUALIFIED CONSERVATION CONTRIBUTIONS BY CERTAIN NATIVE CORPORATIONS.—

“(i) IN GENERAL.—Any qualified conservation contribution (as defined in subsection (h)(1)) which—

“(I) is made by a Native Corporation, and

“(II) is a contribution of property which was land conveyed under the Alaska Native Claims Settlement Act, shall be allowed to the extent that the aggregate amount 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 taxable years in order of time.

“(iii) NATIVE CORPORATION.—For purposes of this subparagraph, the term ‘Native Corporation’ has the meaning given such term by section 3(m) of the Alaska Native Claims Settlement Act.”.

(2) CONFORMING AMENDMENTS.—

(A) Section 170(b)(2)(A) is amended by striking “subparagraph (B) applies” and inserting “subparagraph (B) or (C) applies”.

(B) Section 170(b)(2)(B)(ii) is amended by striking “15 succeeding years” and inserting “15 succeeding taxable years”.

(3) VALID EXISTING RIGHTS PRESERVED.—Nothing in this subsection (or any amendment made by this subsection) shall be construed to modify the existing property rights validly conveyed to Native Corporations (within the meaning of section 3(m) of the Alaska Native Claims Settlement Act) under such Act.

(c) Effective dates.—

(1) EXTENSION.—The amendments made by subsection (a) shall apply to contributions made in taxable years beginning after December 31, 2014.

(2) MODIFICATION.—The amendments made by subsection (b) shall apply to contributions made in taxable years beginning after December 31, 2015.

How The Tax Code Looks Now

Section 170(b) limits the deductions for charitable contributions. Subparagraph (E) creates a special limit for donations of “qualified conservation contributions” (see above), and an even more generous limit applicable to a “qualified farmer or rancher”, and defines that term. The expiration dates on these limits were stricken by the December, 2015 statute, making them a permanent part of the tax code.

IRC 170(b)(1)(E)

(E) CONTRIBUTIONS OF QUALIFIED CONSERVATION CONTRIBUTIONS.--

(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 paragraphs 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 in 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 enactment of this paragraph 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.

Subsection 170(b)(2) limits the charitable deduction for corporations, but now incorporates a special limitation for donations of conservation easements by certain farmers and ranchers. The December, 2015 statute added a provision for donations of conservation easements by Alaska Native Corporations, and struck out the expiration date for these provisions, making them a permanent part of the tax code.

170(b)(2)

(2) **CORPORATIONS-** In the case of a corporation--

(A) **IN GENERAL.**-- The total deductions under subsection (a) for any taxable year (other than for contributions to which subparagraph (B) or (C) 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 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 taxable years in order of time.

(C) QUALIFIED CONSERVATION CONTRIBUTIONS BY CERTAIN NATIVE CORPORATIONS.—

(i) **IN GENERAL.**—Any qualified conservation contribution (as defined in subsection (h)(1)) which—

(I) is made by a Native Corporation, and

(II) is a contribution of property which was land conveyed under the Alaska Native Claims Settlement Act, shall be allowed to the extent that the aggregate amount 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 taxable years in order of time.

(iii) **NATIVE CORPORATION.**—For purposes of this subparagraph, the term 'Native Corporation' has the meaning given such term by section 3(m) of the Alaska Native Claims Settlement Act.”.

~~(C)~~ **(D) TAXABLE INCOME.**-- For purposes of this paragraph, taxable income shall be computed without regard to--

(i) this section,

(ii) part VIII (except section 248),

- (iii) any net operating loss carryback to the taxable year under section 172,
- (iv) section 199, and
- (v) any capital loss carryback to the taxable year under section 1212(a)(1).

Effective dates

- Large parts of these provisions were temporary, and had an expiration date of December 31, 2015. Section 111 of HR 2029 of 2015 reinstates those provisions and removes all expiration dates, so that the provisions laid out above have no expiration date.

Qualifying Farmer or Rancher Definition

Section 170(b)(1)(E)(4) defines a “qualified farmer or rancher” in terms of IRC 2032A(e)(5). The relevant paragraph from that statute is reproduced below.

- “(5) The term "farming purposes" means -
- (A) cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm;
 - (B) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and
 - (C)(i) the planting, cultivating, caring for, or cutting of trees, or (ii) the preparation (other than milling) of trees for market.”

*The content in this document is provided for informational purposes only and should not be construed as legal advice.