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Private Letter Ruling: Extinguishable Conservation Easement May Qualify as Conservation Contribution.

The IRS stated that granting a deed for a conservation easement that allows the easement to be extinguished under state law if circumstances change to make the easement impractical or impossible may nonetheless be a qualified conservation contribution under section 170(h).

Release Date: 3/29/2013

Date: September 18, 2012

Attention: * * *

Dear * * *:

This letter responds to your request for information dated July 19, 2012.

In your request, you asked whether a contribution of an easement can be a qualified conservation contribution if the easement deed simply allows for extinguishment under applicable State law upon subsequent, unexpected changes in the conditions surrounding the property that make impractical or impossible the continued use of the property for conservation purposes.

Property rights have been described "as a 'bundle of sticks' — a collection of individual rights which, in certain combinations, constitute property." U.S. v. Craft, 535 U.S. 274, 278 (2002) (citations omitted). State law dictates what rights make up a person's bundle. Id. Once a person's property rights are established under State law, the tax consequences of a transaction involving that property are decided under Federal law. Patel v. Commissioner, 138 T.C. No. 23, slip op. 16, 2012 WL 2427326 at *7 (2012) (citing Commissioner v. Estate of Bosch, 387 U.S. 456 (1967); Aquilino v. United States, 363 U.S. 509, 512-513 (1960); Morgan v. Commissioner, 309 U.S. 78, 80-81 (1940)).

A "qualified conservation contribution" is a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. I.R.C. § 170(h)(1). A contribution is not exclusively for conservation purposes unless it protects the conservation purpose in perpetuity. I.R.C. § 170(h)(5)(A).

Under the Treasury regulations, a conservation purpose may be treated as protected in perpetuity if, upon a subsequent change in conditions that makes impossible or impractical the continued use of the subject property for conservations purposes, the easement is extinguished by judicial proceeding and all of the donee's proceeds from a subsequent sale, exchange, or involuntary conversion of the property are used by the donee in a manner consistent with the conservation purposes of the original contribution. Treas. Reg. § 1.170A-14(g)(6)(i). The donee's proceeds must be at least equal to the proportionate value of the perpetual conservation restriction. Treas. Reg. § 1.170A-14(g)(6)(ii).

State law may provide a means for extinguishing an easement for State law purposes. However, the

requirements of § 170(h) and the regulations thereunder must nevertheless be satisfied for a contribution to be deductible for Federal income tax purposes.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See section 2.04 of Rev. Proc. 2012-1, 2012-1 I.R.B. 7 (Jan. 3, 2012). If you have any additional questions, please contact me or * * * at * * *.

Sincerely,

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