

The Tax Deduction for Conservation Easement Contributions

November 29, 2022

Taxpayers may be able to claim a [charitable deduction](#) for donating real property, or certain interests in real property that restrict how land or buildings can be used. These types of donations are referred to as qualified conservation contributions, and include conservation easements, which effectively provide recipients with a right to use someone's land for conservation purposes. In recent years, deductions for conservation contributions have increased. There are concerns that some of this increase has been driven by [syndicated conservation easements](#), where a pass-through business entity acquires real property (e.g., land) on behalf of investors, makes a conservation contribution to a qualified organization, and then allocates the associated tax benefits among the investors. Conservation contributions made through syndicated conservation easement transactions often have seemingly inflated property appraisals, which could generate excessive tax deductions for investors.

What Are Charitable Conservation Contributions?

Qualified conservation contributions are charitable donations to qualified organizations of a real property interest designated for conservation purposes. Taxpayers do not have to donate their full interest in the property to claim a deduction. With conservation easements, use restrictions on the property serve a conservation purpose. In these cases, the value of the deduction is the foregone land value associated with the use restrictions. For individuals, [conservation contributions are allowed in a given tax year as long as they do not exceed 50% of the taxpayer's income \(100% for farmers and ranchers\), and unused contributions can be carried forward for 15 years.](#) (Generally, deductions of gifts of appreciated property are limited to 30% of income and can be carried forward for five years.)

A conservation purpose may be the preservation of open land or natural habitats, for example. Conservation contributions may also include façade easements, where the donation preserves a historically important structure. Qualified recipient organizations include charitable organizations or governments.

Syndicated conservation easement transactions allow multiple taxpayers to claim a deduction for a particular conservation easement. Typically, with a syndicated easement, a pass-through entity owns the property for which the easement contribution is being made. Investors share in the charitable contribution deduction, the value of which may reflect enhancements to neighboring or nearby property made by the

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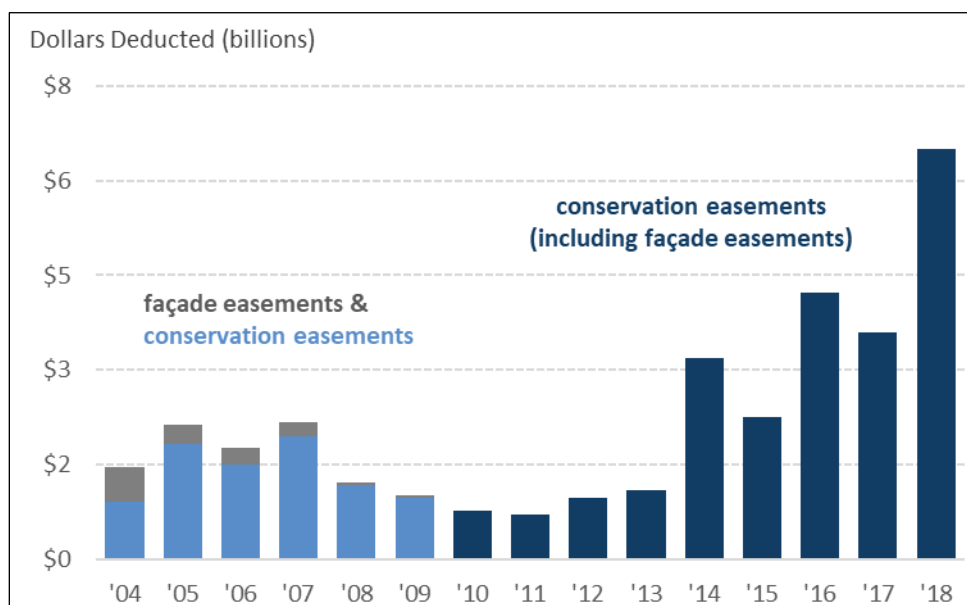
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pass-through entity. As discussed further below, there are concerns that syndicated conservation easement transactions are associated with abuse of the charitable conservation easement deduction.

The Charitable Deduction for Qualified Conservation Contributions: Data

Experts have observed that the charitable deduction for conservation contributions has been a “critical tool in protecting environmentally and historically important land.” In recent years, the amount of deductions claimed for these types of donations has increased, as have both the number of easements for which the deduction was claimed and the number of taxpayers claiming the deduction. In 2018, the amount deducted was \$6.5 billion, a near sixfold increase over the 2013 deduction amount of \$1.1 billion (see Figure 1).

Figure 1. Charitable Conservation Easement Deductions, 2004-2018
Façade Easements and Conservation Easements

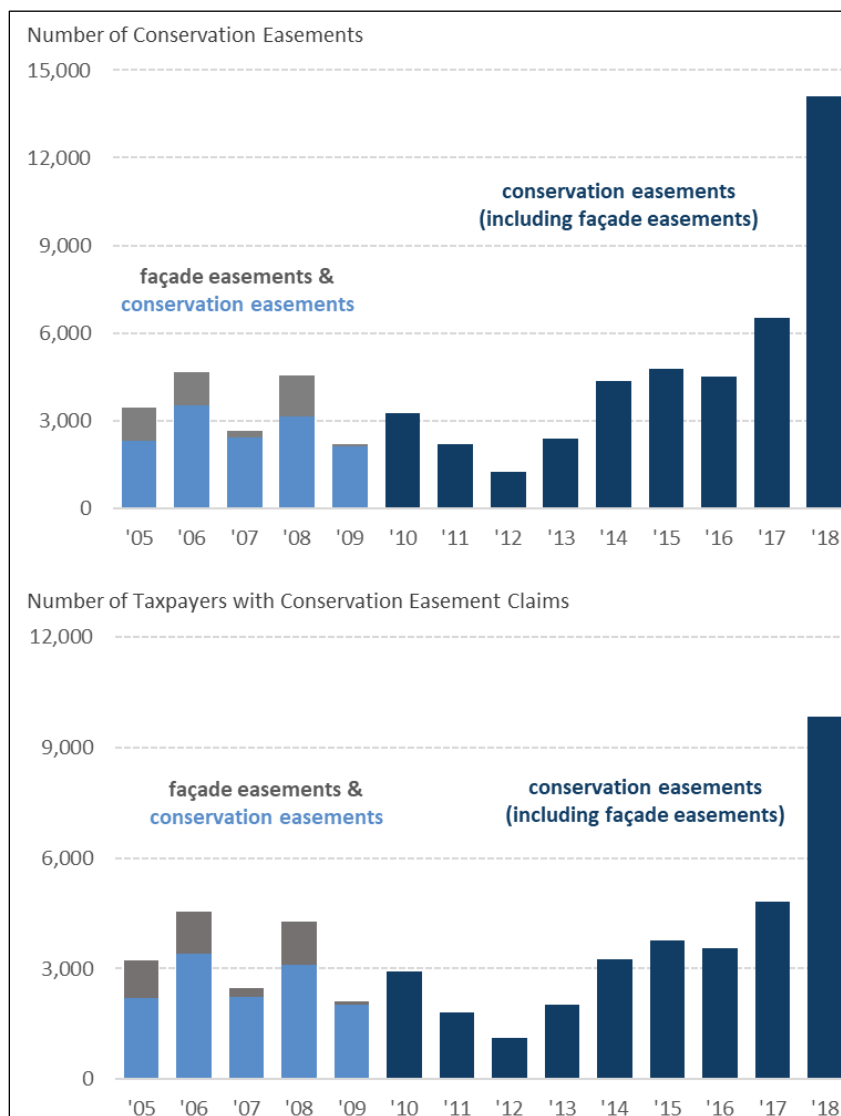


Source: Internal Revenue Service (IRS), Statistics of Income (SOI), [Individual Noncash Charitable Contributions](#).

Notes: Amounts for conservation easements and façade easements are listed separately from 2004 through 2009. After 2009, the total amount deducted includes deductions for conservation contributions and façade easements.

In 2018, an estimated 9,844 taxpayers claimed a deduction for conservation contributions, and deductions were claimed for a total of 14,095 easements (see Figure 2). The number of taxpayers claiming a deduction for easement contributions and the number of easements for which deductions were claimed generally rose from 2012 through 2018.

Through the mid-2000s, a substantial portion of conservation contributions were for façade easements. The Pension Protection Act of 2006 (P.L. 109-280) added [new requirements for façade easement contributions](#), effective July 25, 2006. The amount deducted for façade easements declined as a result, and the IRS stopped reporting data on façade easements separately from conservation easements.

Figure 2. Number of Easements and Number of Taxpayers with Easements, 2005-2018**Façade Easements and Conservation Easements**

Source: IRS, SOI, [Individual Noncash Charitable Contributions](#).

Notes: The number of easements and number of taxpayers claiming deductions are listed separately for conservation easements and façade easements from 2005 through 2009. After 2009, the number of easements and number of taxpayers claiming deductions includes both conservation contributions and façade easements.

IRS Actions to Curb Abuse of the Deduction

There are [concerns that the rise in charitable conservation contributions is driven by abusive syndicated conservation easement transactions](#). The IRS includes these transactions on its annual “Dirty Dozen” list of tax avoidance scams and has taken steps to limit them.

In 2016, the IRS issued a notice identifying syndicated conservation easement transactions as potential tax-avoidance transactions when certain factors are met, including when investors in a pass-through entity receive promotional materials offering the possibility of a charitable deduction worth at least 2.5 times

their investment. Under the notice, such transactions are “listed transactions,” which means investors and material advisors are subject to disclosure and record-keeping requirements.

The IRS also [developed an enforcement strategy](#) to shut down abusive transactions and [highlighted successful court challenges](#) to the transactions. In 2020, the IRS [offered to settle pending cases](#) for significant amounts in an effort to bring taxpayers into compliance with the law. Despite these enforcement efforts, in [May 2022](#), then-Commissioner Rettig noted that the agency has “not had an impact on essentially slowing the volume of these transactions” and urged Congress to enact legislation to curb abusive transactions.

In November 2022, the [U.S. Tax Court invalidated](#) the 2016 notice for failure to comply with the Administrative Procedure Act’s notice-and-comment requirements. A few days later, a [U.S. district court in Ohio](#) invalidated the notice on the same grounds. Importantly, the courts did not address the validity of syndicated conservation easement transactions as charitable deductions, but rather invalidated the IRS’s ability to assess penalties for failure to comply with the listed transaction requirements.

Action in the 117th Congress

The Charitable Conservation Easement Program Integrity Act of 2021 (S. 2256/H.R. 4164) would attempt to address abuse in syndicated conservation easement transactions by limiting the amount that could be deducted. Specifically, under this proposal, a contribution made by a pass-through entity could not be deducted if it exceeded 2.5 times the amount initially invested in the property (the taxpayer’s basis in the property), with an exception for contributions made outside a three-year holding period.

A modified version of S. 2256 was included in the EARN Act (S. 4808), as reported in the Senate. As stated in S.Rept. 117-142, the policy would “protect the integrity of the conservation easement tax deduction for easement donations that have a legitimate conservation purpose.” The Joint Committee on Taxation (JCT) estimates that the changes as proposed in S. 4808, if effective upon enactment, would generate \$7.7 billion in additional revenue between FY2022 and FY2032.

An [early version of the legislative recommendations for the budget reconciliation legislation](#) known as the “Build Back Better Act” included a provision to modify the tax treatment of the deduction for conservation easement contributions. The [JCT estimated](#) that this version of the provision would have generated \$12.5 billion in additional tax revenue from FY2022 through FY2031, if generally effective for contributions made after December 16, 2016. This provision was not included in the House-passed version of the Build Back Better Act.

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