Land Trust Alliance

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Frequently Asked Questions About New York's Conservation Easement Tax Credit: A Guide for Landowners and Land Trusts

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In 2006, New York State enacted a new conservation easement tax credit (CETC). The CETC offers taxpayers whose land is restricted by a conservation easement an annual New York State income tax credit of up to 25% of the school district, county, and town real estate taxes paid on the restricted land, up to an annual maximum of $5,000 per taxpayer. Landowners will be able to claim this credit for the taxes they paid in calendar year 2006 when they file their 2006 New York State income tax forms and annually thereafter.

What's a tax credit?

Unlike a tax deduction, which is an adjustment to taxable income, a tax credit offsets a taxpayer's tax liability on a dollar-for-dollar basis. Having a tax credit is as if someone were writing a check for part of your taxes. The CETC is a *refundable* income tax credit, which means that if a landowner's tax credit exceeds the amount he or she owes in state income taxes, the landowner gets a check for the difference.

Who is eligible for the CETC?

The Conservation Easement Tax Credit is available to individual landowners and also to estates and trusts (including beneficiaries of an estate or trust), partners in a partnership (including a limited liability corporation that is treated as a partnership for federal income tax purposes), and business corporations taxed under Article 9-A of the Tax Law. It is *not* available to Subchapter S corporations, not-for-profit corporations, or other kinds of corporations.

Are landowners who do not reside in New York State eligible for the CETC?

Yes, as long as the land restricted by the conservation easement is located in New York State.

How much will I get under the CETC?

If you are eligible for the Conservation Easement Tax Credit, you will receive 25% of the county, town, and school district property taxes paid on your easement-restricted land, up to an annual maximum of $5,000. Note that village and city taxes cannot be used to compute the credit; nor can special assessments for water, sewer, or fire protection, etc.

What qualifies as a conservation easement?

To qualify a landowner for the Conservation Easement Tax Credit, an easement must meet several requirements:

• It must be a perpetual and permanent conservation easement as defined in Article 49 of New York's Environmental Conservation Law.

• The land subject to the easement must be located in New York State.

• The easement must be held by a public or private conservation agency.

- *Public conservation agencies* include any agency of federal, state, and local governments. A partial list of public agencies: the New York State Department of Environmental Conservation, the Palisades Interstate Park Commission, the Central Pine Barrens Joint Planning and Policy Commission, and the New York City Department of Environmental Protection.

- *Private conservation agencies* include non-profit land trusts and any other non-profit organizations whose charitable purposes include the protection of open space, scenic, natural, agricultural, or historic resources, and that have the power to acquire interests in real property.

• The easement must serve to protect open space, biodiversity, or scenic, natural, agricultural, watershed, or historic preservation resources by limiting or restricting development, management, and/or use of the property.

• The easement must be filed with the Department of Environmental Conservation.

• The easement must comply with Section 170 (h) of the Internal Revenue Code; i.e. it was donated or partially donated (sold for less than fair market value) to a public or private conservation agency.

Does it matter when the easement was created?

No. The Conservation Easement Tax Credit applies to all conservation easements, regardless of when they were created, provided that they meet the criteria listed above.

Are there easements that don't qualify for the credit?

Yes. The Conservation Easement Tax Credit does not apply to non-conservation easements, such as utility or transportation rights of way, etc. Nor does it apply to conservation easements that were created for the purpose of obtaining subdivision or building permits or to easements that were required as mitigation. (These easements do not comply with IRC Section 170 (h)). Similarly, deed restrictions that do not conform to the definition of "conservation easement" in Article 49, Title 3 do not qualify for the credit, even if they have a conservation purpose.

What if there is more than one easement on my land?

You can claim a tax credit for each of the easements on your land, up to a total of $5,000 per year for all of them.

How does a landowner claim the CETC?

The landowner claims the Conservation Easement Tax Credit when filing his or her state income tax returns.

• *Individual landowners* file the new Form IT-242 with their personal New York State income tax returns (IT-201 for New York residents and IT-203 for nonresidents and part-year residents).

• *Estates and trusts* file Form IT-242 with Form IT-205 to show each beneficiary's share of the credit.

• *Partnerships* file Form IT-242 with Form IT-204, showing the total amount of the credit.

• *Corporations* file Form CT-242 with Form CT-3 or CT-3-A.

What if the land is owned by more than one person, partnership, or corporation? Can they all claim the credit?

Yes, but each individual, partnership, or corporation can only claim credit for taxes it has actually paid, up to a maximum of $5,000 a year.

What information does a landowner need to claim the CETC? And where does the landowner get it?

In order to claim a Conservation Easement Tax Credit, a landowner will need the following information

• Location of the easement-restricted property.

• Date the easement was conveyed. (The date should be stated on the easement itself; the landowner can also obtain this information from the county clerk's office or the conservation agency that holds the easement.)

• Recording information: County the easement was recorded in; and liber and page instrument number, or control number. (Obtain from the county clerk's office or the conservation agency that holds the easement.)

• Name of the public or private conservation agency holding the easement.

• DEC identification number assigned to the easement when it was filed with DEC. (Obtain from the land trust or other conservation agency that holds the easement.)

• County, town, and school district property taxes paid on the easement-restricted land. (Obtain from tax bill, tax receiver, or compute from information provided by local assessor.)

How do I demonstrate that the easement complies with Section 170 (h) of the Internal Revenue Code?

The instructions for claiming the Conservation Easement Tax Credit state that the taxpayer must have records that prove that the easement was wholly or partially donated. The records don't have to be filed with the tax form, but the taxpayer should have easy access to them in case of an audit.

There are several ways in which landowners can substantiate compliance with Section 170 (h):

1) If the landowner who donated the easement claimed a federal tax deduction, the land trust or governmental agency that holds the easement should be able to provide you with a copy of the

Federal Tax Form 8283 that was filed at the time of the donation. This alone is sufficient substantiation.

2) If the easement was donated or sold to the land trust or governmental agency for a nominal amount, you can ask the land trust or governmental agency to send you a letter stating this fact.

3) If the easement was sold to the land trust or governmental agency for more than a nominal amount but less than fair market value, a letter from the land trust stating this fact will be sufficient but only if it is accompanied by an appraisal report written by a qualified appraiser who meets federal standards.

What if the easement covers only part of my land? How do I allocate the taxes?

The credit applies only to that portion of your land that is protected by the easement. Ask your local assessor to calculate the fraction of your assessment that applies to your land (and not to buildings and other structures). Then calculate the fraction of the land that is protected by the easement. Multiplying these numbers times the total property taxes will give you the allocated taxes:

[fraction of assessment represented by land]
x [fraction of land protected by easement]
x [total property tax]
= allocated taxes

For example, a landowner pays a total of $10,000 in property taxes on a 100-acre parcel, of which 75 acres is protected by a conservation easement. The landowner learns from the assessor that the house and garage account for 50% of the assessed value of the property. The landowner would calculate the allocated taxes as follows:

.75 (fraction of land)
x .5 (fraction of assessment that applies to land)
x $10,000 (total property taxes)

= $3,750 (allocated taxes)

The tax credit is 25% of the allocated taxes. In this example, it would be $937.50.

What if the easement-restricted land has buildings or other structures on it? Can I claim credit for taxes paid on them?

No, the credit applies only to the *land* protected by a conservation easement. Ask your assessor to calculate the percentage of your assessment that applies to the land only. Then you can calculate how much of your taxes were paid on only the easement-restricted land. No structures—not even structures with historic value—are eligible for the conservation easement tax credit.

What if the assessor can't or won't give me the information I need to allocate the taxes?

Then the law asks only that you employ a *reasonable* method to allocate the taxes. For example, you could use recent sales data for open land in your town to calculate the value of your easement-restricted land and then calculate the taxes on that land based on the school district, county and town tax rates. Or, if your assessment does not distinguish between the value of land and the value of structures, you could use market data to estimate the value of the structures and deduct this amount to calculate the value of the land.

Can a landowner get the CETC if he or she is also receiving the Farmer's School Tax Credit or other property tax credits?

Yes, but only for that portion of the property taxes on the easement-restricted land that is not rebated by the other tax credits. The tax forms for claiming the credit (IT-242 and CT-242) and accompanying instructions will help you determine whether there is any unrebated portion.

What happens when I sell my land? Will I still be able to claim the CETC?

No. Entitlement to the conservation tax credit runs with the land. That is, the new owner will be able to apply for it provided he or she meets the eligibility criteria.

What if I find out that the easement was never filed with DEC?

Tell the holder of the easement to contact the Land Trust Alliance (tel: 518-587-0774 or e-mail: northeast@lta.org) for instructions on how to file an easement. The easement must be filed in order for you to claim the tax credit.

Where can I get more information?

Contact the Land Trust Alliance (tel: 518-587-0774 or e-mail: northeast@lta.org).

IMPORTANT NOTE:

The information about the New York State Conservation Easement Tax Credit contained in this document is furnished as a tool to assist land trusts and landowners. It is provided with the understanding that the Land Trust Alliance is not engaged in rendering legal, accounting, tax, or other counsel. If legal advice or other expert assistance is required, the services of a competent professional should be sought. This document is not a substitute for legal, accounting, or tax advice and should not be relied on as such.