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Questions and Answers: Massachusetts Conservation Incentives Act

What is the Massachusetts Conservation Incentives Act?

The Act provides a new state income tax credit to taxpayers who donate conservation land to a municipality, the state or a nonprofit conservation organization (as defined in the Act).

The Act offers a state income tax credit of as much as 50% of the appraised fair market value of the donation. The credit is worth up to \$50,000 per donation. The credit cannot exceed the donor's state income tax liability in any one year; however, any unused portion may be carried forward for up to 10 consecutive years.

For example, if a person paying \$2,000 in state income tax each year donated a property interest valued at \$40,000, then the landowner is eligible to receive a \$20,000 credit towards his/her tax. In this example, the donor could receive a \$2,000 credit toward his/her state income tax each year, for ten years.

What lands could be protected under the Act?

Under the Act, the Massachusetts Executive Office of Energy and Environmental Affairs must first determine whether the lands proposed for donation are in the public interest for natural resource protection. Lands that protect drinking water supplies, wildlife habitat, agricultural and forest products, archaeological and historical resources, scenic vistas and recreational opportunities may be eligible for certification. All donations must be made in perpetuity.

Why does Massachusetts need a new incentive to promote natural resource protection?

Many acres are lost daily to poorly planned development. To ensure the preservation of our most critical natural resources, the state must employ a variety of tools—from improved local zoning and increased capital investments in land protection to enhanced tax incentives for voluntary land donations by private landowners.

This credit is designed to be a modest incentive to encourage donations of certified conservation land. It will help land rich/cash poor citizens who would benefit from selling their resource-important land to be developed by giving them a compelling option to protect our natural heritage.

May a taxpayer donate the development rights over his/her land to be eligible for the tax credit?

In many cases, municipalities, state agencies and the 106 nonprofit conservation organizations in Massachusetts determine that extinguishing the development rights on a property is the best, or most affordable, way to protect that land. As such, approximately 50% of all transactions involve protecting land through the purchase of development rights, known as “easements.” Such “easements” are known under Massachusetts law as “Conservation Restrictions,” “Agricultural Preservation Restrictions” and “Watershed Preservation Restrictions.” Massachusetts is the only state in the country that requires both state and municipal review and authorization before the Restriction can be recorded and enforced. Thus, “CRs” in Massachusetts are among the best reviewed in the nation.

What are the results in other states that have enacted conservation tax incentives?

Twelve states and Puerto Rico have passed similar laws. In these states, tax incentives have increased the amount of land donated. California, Colorado, Connecticut, Delaware, Georgia, Maryland, Mississippi, New Mexico, New York, South Carolina and Virginia all offer generous tax incentives for gifts of land.

The Massachusetts legislation most closely mirrors the North Carolina law, where taxpayers are offered a \$250,000 tax credit based on 25% of the fair

market value of the donation, and may carry the credit forward for six years. For every \$1 lost in revenue, \$12 in land is permanently protected. Average annual donations now approximate 11,500 acres. For more information, visit www.enr.state.nc.us/conservationtaxcredit.

Are conservation incentives a good investment for the Commonwealth?

A 2007 Department of Revenue (DOR) Impact Analysis shows the bill to be affordable. Under the ambitious estimate that land donations increase by 50% after this law is enacted, DOR projects the new incentive to reach a ceiling of \$4,000,000 annually by year five. The bill requires that the Secretary of Energy and Environment and the Commissioner of Revenue file a report with the Legislature showing the number of acres conserved under this proposed law and the revenue cost. In year five, the actual costs would be reviewed.

In addition, costs to towns or state agencies of purchasing land will be reduced by some owners availing themselves of the tax credit rather than demanding payment of the full market value of their lands.

What are the economic benefits of conserving land?

- Massachusetts ranks high in the nation based on the state's innovation capacity and concentration of knowledge workers (e.g., research and development, patents, scientists, venture capital), according to The State New Economy Index prepared by the Technology and New Economy Project of the Progressive Policy Institute. Quality of life is a top relocation criterion for corporations to attract and retain skilled labor. For more information, visit www.neweconomyindex.org/states/2002/overall_rank.html.
- According to the Office of Travel and Tourism, in 2006 tourism brought \$14.2 billion to the state, supported 125,800 jobs and \$3.4 billion in wages and provided \$887 million in state and local revenue. In Berkshire County, visitors spent \$260 million, and tourism supported 3,700 jobs. Tourism is the third largest industry in the Commonwealth, and it relies in great part on Massachusetts' diverse lands and waters. For more information, visit www.mass-vacation.com.
- The forestry and farm industries are critical components of our rural economy with combined product sales of about \$1 billion (\$400-500 million

in farms and \$500-800 million in forestry). According to the Executive Office of Energy and Environmental Affairs, agriculture employs about 22,000 people and forestry (harvesting and wood production) employs about 3,500 people.

- According to the U.S. Fish & Wildlife Service, \$1.3 billion was spent in Massachusetts on wildlife watching, fishing and hunting in 2006.

What are the benefits to a municipality of conserving land?

Protected natural areas and working agricultural and forest lands have financial benefits for towns. For example, according to the Fiscal Analysis of Highland Communities study, for every \$1.00 collected in Shelburne, the Town must spend \$1.12 on public services for residential land use and only \$0.42 for conserved lands.

Communities pay a high price for unplanned growth. Scattered development causes traffic congestion, air and water pollution, increased need for clean drinking water and wastewater treatment and increased demand for costly public services. Smart conservation is a critical component of smart growth planning.

Natural areas provide environmental services: watershed lands filter and purify groundwater and drinking water supplies, regulate air quality, retain storm water runoff and prevent erosion and flooding. Natural areas also protect biodiversity, rare and endangered species and irreplaceable wetlands, lakes and streams. Natural areas stimulate local economies.

Will the Act impact local property taxes?

The Act is not expected to have an impact on local revenues.

- Property taxes are paid on lands protected by Conservation Restrictions and Agricultural Preservation Restrictions, two commonly employed land protection tools.
- State and federal governments make annual Payments in Lieu of Taxes to municipalities on state and federally owned lands.
- Although nonprofit conservation organizations are generally exempt from property taxes, nonprofits often volunteer to pay local property taxes.

Isn't there a federal tax deduction for taxpayers who donate land?

Donors may be eligible for both the federal deduction and the state credit for the same donation. The combination of the two provides more of an incentive to donate than either one does alone.

Section 170(h) of the I.R.S. Code allows for a federal tax deduction for donations of conservation land. Individual landowners may deduct the appraised market value of a gift of land up to 30% of his or her Adjusted Gross Income and can carry forward the unused balance for up to five additional years. Corporations may deduct up to 10% of taxable income and carry the credit forward for five years.

An enhanced federal tax deduction for donations of conservation land expired at the end of 2007, but it is included in the most recent version of the Federal Farm Bill that is working its way through Congress (as of March 2008). The popularity of the enhanced deduction caused an increase of conservation easement donations at the end of 2007.

How are conservation tax incentives different from the Community Preservation Act?

The Community Preservation Act (CPA) is a tool adopted by 127 cities and towns across Massachusetts as of March 2007. CPA monies are administered by towns and must be used for affordable housing, historic preservation and open space protection. The law requires communities to spend a minimum of 10% on each of the three purposes.

The Massachusetts Municipal Association endorses this conservation tax incentive legislation because it will help cities and towns maintain their dwindling natural resources without further tapping municipal revenues.

Does the Act include protections against abuse and fraud?

Yes. The Act includes provisions to prevent the generation of multiple state tax credits on the same property. It also requires a taxpayer to file a summary of a Qualified Appraisal with the Department of Revenue.

Can land protected under the Act be developed?

No. All donated lands must be permanently protected.

Massachusetts is the only state that requires Conservation, Agricultural or Watershed Restrictions to be approved by the state and municipality in which the property lies and has staff dedicated to reviewing and strengthening Restrictions.

Nonprofit organizations are legally bound by the terms and conditions of every donation. The I.R.S. monitors these organizations to ensure that fraud and abuse do not occur.

What can I do to help the Act become law?

Here's how you can help:

- Contact your Representative and Senator and ask him/her to urge legislative leadership to move H.799, the Conservation Incentives Act, for a floor vote.
- Dial 617-722-2000 and ask for your representative by name. If you don't know your representative's name, then mention your town and the operator will connect you, or visit www.wheredoivotema.com
- You can also get your legislator's contact information at:

House: www.mass.gov/legis/memmenuh.htm

Senate: www.mass.gov/legis/memmenus.htm

For more information, please contact:

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