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## 2008 TAX ISSUES

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### Conservation easements serve an important public purpose and have potential tax benefits

Conservation easements serve an important public purpose and if donated to a charitable entity or public agency the value of the easement may be deducted as a charitable contribution for federal income tax purposes. Landowners who contemplate donating conservation easements, however, should be aware that the Internal Revenue Service ("IRS") is concerned with abuses in this area and is disallowing improper deductions as well as imposing penalties in some cases.

A conservation easement is an agreement through which a landowner typically restricts the type and extent of development on, or the use of, his or her property. The landowner may continue to use the land in any way he or she wishes, subject to the restrictions contained in the easement agreement or deed.

Conservation easements may be sold but are usually donated



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to a charitable land conservation organization. Conservation easements benefit the public and landowners because they protect land while leaving it in private ownership.

There are two types of federal tax benefits available to donors of conservation easements: income tax and estate tax. Donors of conservation easements may claim an income tax deduction under Section 170 of the Internal Revenue Code ("Code"). To qualify, an easement must be perpetual and made to a tax-exempt entity or public agency for the public benefit. The amount of the deduc-

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tion is based on the fair market value of the easement. Fair market value is usually the difference between the fair market value of the land without the easement and the fair market value of the land with the easement.

Generally, donors of conservation easements may take a federal income tax deduction of up to 30% of their adjusted gross income. Any excess amount may be carried forward and deducted in each of the next five years.

Legislation in 2006 allowed a deduction for qualified conservation easements of up to 50% of adjusted gross income. This legislation also extended the period in which the excess amount may be carried forward for 15 years. This legislation,

however, applies only to the years 2006 and 2007. Bills have been introduced in Congress to extend the law but it cannot be predicted whether the proposed legislation will be enacted.

Code § 2031(c) allows an executor to exclude from the decedent's gross estate the value of land encumbered by a conservation easement subject to a cap of \$500,000 for an individual or up to 40% of the value of the land, whichever is less. This statute also allows an executor, trustee or family member of the decedent to place conservation easements on properties on or before the due date of the estate tax return.

Conservation easements serve an important public benefit.

They often safeguard land bordering state and national parks, spectacular views, historic properties, critical watersheds and fragile ecosystems. Although the misuse of conservation easements is a rising concern of the IRS, with proper planning landowners can achieve both their conservation and tax reduction goals.

**Barry A. Furman is a principal of the firm and a member of the Corporate Law & Business Planning and Tax & Estates Departments. He represents a wide range of business clients for whom he provides corporate law, taxation, healthcare law, employment law, estate planning and estate administration services. ■**