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California landowners can realize up to 94.6% in tax savings for conservation easement donations

by Lawrence I. Grossman

The California Natural Heritage Preservation Tax Credit Act of 2000 now offers a state income tax credit equal to 55% of the value of a donated easement for properties approved by the Wildlife Conservation Board. Combined with state and federal income tax deductions for the donation, California landowners can now realize up to 94.6% of the value of the donated easement in tax savings.

Conservation easements are one of the least known and most powerful conservation and charitable planning tools available to California landowners. A conservation easement is a legal agreement by which a property owner voluntarily restricts activities, such as residential or commercial development, that may take place on the land.

The value of a conservation easement is the difference between the appraised value of the land before and after the existence of the easement. For example, assume that the fair market value of a property, without a conservation easement, is \$2 million to a developer who would subdivide the land and sell home sites or completed homes. If the property were subject to a conservation easement that prohibited residential construction, the value might drop to \$1 million. The value of the conservation easement would then be \$1 million. That is the amount from which income tax deductions and credits as well as estate tax deductions would be based.

Chart:

Valuing a conservation easement

Value of land prior to easement	\$2,000,000
Value of land after easement	<u>\$1,000,000</u>
Value of easement	<u>\$1,000,000</u>

Income Tax Savings

Value of easement	\$1,000,000
State Inc. Tax Savings <i>(Natural Heritage Preservation Act of 2000)</i>	\$ 550,000
Fed. Inc. Tax Savings	<u>\$ 396,000</u>
Total Tax Savings	<u>\$ 946,000</u>
Net cost of donation	<u><u>\$ 54,000</u></u>

Conservation easements are used by landowners interested in the stewardship of open space. Every easement is a unique agreement between the landowner and a qualified conservation organization. Conservation easements protect the agricultural, ranching, ecological, recreational or other uses of the land in perpetuity.

Conservation easements are entirely voluntary and they allow the family to remain on the land and continue its income producing activities, such as ranching or farming.

Later, additional tax savings for a charitable contribution can be realized if the landowner donates the land itself to a charitable organization. If instead the land passes to the landowner's heirs, there could be significant estate tax savings for land that has a conservation easement as estate taxes are based on a lower estate value.

California's Natural Heritage Preservation Tax Credit Act of 2000 promotes habitat conservation for native species of plants and animals, for agricultural lands, for water rights, and/or for parks and open space. The Wildlife Conservation Board must approve properties eligible to participate in the program.

The California Oak Foundation recommends that landowners consult with their financial and tax advisors to review their individual situations.

*Lawrence I. Grossman is Principal of Grossman Financial Management ([www.grossmanfinancial.com](http://www.grossmanfinancial.com)), a Certified Financial Planner, and he holds a Master of Business Administration in Finance from the Wharton School (University of Pennsylvania). Mr. Grossman has a particular expertise in the area of estate planning for owners of open space, such as farmers and ranchers, with an interest in land conservation. He has spoken frequently on this topic over the past few years at forums sponsored by organizations the California Oak Foundation.*

## **PRESERVING FAMILY LANDS IN CALIFORNIA**

### An Online Guide to Planning Your Estate

California agricultural landowners are challenged each day by the unpredictable tests of nature and markets. Fire, drought, floods, pests and market prices are but a few of the obstacles which have for generations threatened the lands, businesses and families of California farmers, timberland owners and ranchers.

In this generation, however, estate taxes are emerging as one of the most monumental threats to the lifestyles and estates of California landowners and their families. Estate taxes also threaten the public good, as the health and vitality of California's forests, woodlands, watersheds and wildlife habitats depend on natural open spaces found on these privately-owned lands.

Estate taxes are taxes due to the federal government upon the death of an individual. Tax rates can be as high as 60%!

The United States Congress' Joint Tax Committee estimates that estate tax revenues are growing at double-digit rates and that the annual number of families paying estate taxes will double in the next ten years.

Estate taxes are calculated on the assets of the deceased individual and must be paid by heirs usually within nine months from the time of death. Often, a landowner's most valuable asset is land. Estate tax obligations therefore may force the landowner's heirs into the unwanted sale of the property. When this happens, the heirs may lose their homes and the land that they may have needed to continue the family agricultural business.

In addition to the personal losses faced by heirs, the public may lose the natural open space values of the land as lands are slated for subdivisions. Wildlife habitat is threatened, and watersheds critical to the quality and availability of drinking water are diminished. The land may become more prone to disasters from fires and flooding.

While taxes paid on an individual estate can be staggering, the problem is not insurmountable. Landowners can employ a number of strategies to preserve land for agricultural use, pass land on to their children, and maintain the family business for years to come.

This brochure is designed to help you organize your estate and understand the value of prudent estate planning.

### **LIFESTYLES AND LIFELINKS**

There are as many reasons for owning and working the land as there are landowners.

*It is a challenging and rewarding way of life.* Most landowners have life-long roots to the land that many urban residents share to some degree.

*It is a daily connection to nature.* It is the opportunity to steward land for the benefit of your family, other living creatures which inhabit your land, and Californians, who depend on agricultural products, clean air and drinking water, and beautiful open spaces.

*Your land is important to you.* So is your family. Begin to plan early. Find good financial and legal counsel to help you develop an economical and long-term plan for your land, your business, and your family.

### **"DEATH AND TAXES"**

Estate taxes, as well as government regulations, property taxes, and urban development pressures, make difficult the transfer of land from one generation to the next. Through previous experiences of your family, friends or neighbors

you may be all too familiar with the consequences of poor estate planning. Poor or no estate tax planning leaves your heirs facing some difficult financial and emotional circumstances:

- Estate taxes and legal fees may be very expensive.
- Probating the estate may be a lengthy, emotionally stressful public process for your family members, and conflicts may ensue.
- Your dependents may be left uncared for.
- Assets may not be distributed as you wished (unless you are lucky).
- It may become necessary for your heirs to sell assets that you would have liked to preserve for your family or community, such as your land, in order to pay the estate taxes.
- Land sold to pay estate taxes may be developed, resulting in a dramatically changed landscape and a reduction of the natural open space values which your family, neighbors and community may have been counting on.

Estate planning can be challenging and complex. Some families are more comfortable than others when it comes to discussing death and personal financial information within the family or with a financial or legal advisor. These advisors may be expensive. It may be difficult to find qualified estate planning professionals who are also knowledgeable in agricultural land issues. With a modicum of effort, however, the impediments to estate planning can be overcome, and the results can be very rewarding.

### **ESTATE PLANNING BASICS**

If your estate is valued at more than \$625,000 (which is very common among California landowners) it will be subject to taxes of 37 – 60% of the amount over the \$625,000 threshold. Assets bequeathed to grandchildren as well as IRA/pension-type assets may be subject to tax rates as high as 90%! It is not surprising that in many cases heirs are forced to sell family lands in order to pay estate taxes.

### **AVOID THE PITFALLS**

Here are five steps you and your tax advisor can use to begin organizing your estate:

1. Clearly determine your goals, your spouse's goals, and goals that you may have set for your land, business or other family members. Your secure retirement will undoubtedly be your first goal.
2. Estate taxes are based on the value of your estate at the time of your death. It is important to determine the value of your current estate, and the projected value of your estate to your life expectancy.
3. Consider all readily available tax deductions.
4. Investigate strategies that will reduce the value of your estate, in order to reduce your future tax liability.
5. Develop a "liquidity plan" to ensure that there will be cash available to pay any foreseen estate taxes, which are generally due within nine months from date of death.

### **ESTATE PLANNING TOOLS**

In this section, we will discuss a variety of tools which can be employed for your estate plan:

- Living Trust
- Gifting to Family
- Valuation Discounts and Family Partnerships
- Life Insurance and Life Insurance Trust
- Charitable Remainder Trust
- Gift of Remainder Interest with Retained Life Estate
- Charitable Gifts
- Agricultural or Conservation Easements

While this is not an all-inclusive list, it is intended to introduce you to the most common estate planning techniques when land represents a significant portion of your estate. It is strongly advised that you seek professional counsel when preparing your estate plan so that the combination of tools used will yield the highest benefit.

### **LIVING TRUST**

A living trust is a relatively simple tool that is the foundation of most estate plans. A living trust should ensure that probate is avoided and provide that each decedent within a married couple can bequeath \$625,000 without a net tax

due.

For estates larger than \$625,000 per decedent, consider using additional estate planning techniques:

### **GIFTING TO FAMILY**

Lifetime giving to family members is another approach to estate planning. Federal tax law allows you to give away up to \$10,000 a year (\$20,000 a year if spouses give together) to an unlimited number of recipients without incurring any gift tax liability. Each individual may transfer property worth up to \$625,000 during his or her lifetime or at death without a net tax liability, and there is a special, although complex, \$1,000,000 exemption for members of a "skip generation" (such as grandchildren). Gifts or bequests above these limits are subject to taxes.

Lifetime gifts reduce the taxable estate. For example, if a couple were to gift \$20,000 to each of four children for ten years, they would remove \$800,000 from their estate. That would save up to \$480,000 in estate taxes, plus taxes on all the growth of those assets!

**\*\*UPDATE: Taxpayer Relief Act of 1997\*\*** Inflation indexing will begin in 1998 and apply to the \$10,000 annual gift-tax exclusion, the \$750,000 maximum special use valuation, the \$1,000,000 generation-skipping transfer tax exemption, and the \$1,000,000 maximum amount available for special low-interest financing of estate tax payments.

**\*\*UPDATE: Taxpayer Relief Act of 1997\*\*** The Unified Credit, the amount that individuals may gift or bequeath without taxation, has increased from \$600,000 (the old maximum) to \$625,000 in 1998. The Unified Credit will continue to increase gradually up to \$1,000,000 by the year 2006.

**\*\*UPDATE: Taxpayer Relief Act of 1997\*\*** Family-owned business interests that comprise more than 50% of a decedent's estate may qualify for an additional exemption from estate taxes after 1997. The maximum amount exempt would be \$1,300,000, including the applicable Unified Credit amount used. To qualify for this exemption, the estate and heirs would need to meet several criteria concerning the ongoing operation of the family business.

### **VALUATION DISCOUNTS AND FAMILY PARTNERSHIPS**

Discounting the value of an asset for estate tax purposes is another technique to reduce the tax burden, because the estate tax is based upon the value of the estate. There are different ways of discounting values.

For example, family partnerships holding assets may generate valuation discounts if children are gifted limited partnership interests that would trade on the open market at a discount relative to their proportional interest in the partnership as a whole. A discount could occur, for example, if such shares lacked control of the enterprise and if the marketability of such shares was difficult.

Discounts of substantial amounts may be generated this way, though a partnership with only this as its purpose would be open to an IRS challenge. The partnership needs to have a substantive economic motive other than to avoid taxes.

### **LIFE INSURANCE AND LIFE INSURANCE TRUST**

Life insurance can play a critical role in your estate plan. It may be needed to provide income for a survivor to help your heirs, pay the estate taxes or to "equalize" an estate where the other estate assets are not equally divided among the heirs.

Life insurance is an asset of the decedent's estate that is subject to estate taxes unless it is specifically owned by someone other than the insured. Ownership by a spouse may meet that criterion but still may be unsound from an estate planning perspective because the insurance proceeds could be later subject to estate taxes at the spouse's death.

To ensure that the insurance is not included in either estate, and therefore not subject to estate taxes, it is often owned by the children, either outright or in a special life insurance trust. Policies currently owned by the insured or a spouse can be transferred to the heirs. Current law requires that three years pass after the policy is transferred before the policy is not included in the insured's estate for estate tax calculations.

The correct design and ownership structure of life insurance depends on individual circumstances. Consult your financial and/or legal advisor to make this determination.

### **CHARITABLE REMAINDER TRUST**

One particularly valuable vehicle to achieve various planning purposes is the Charitable Remainder Trust (CRT). CRT's can be used to increase current income, to reduce current capital gains and income taxes, reduce estate taxes, gift to charity and preserve your family lands.

With a CRT, you place assets in a trust that permits you to use the assets for the remainder of your lives (or a shorter period if you desire) and then transfers the remaining assets in the trust to a charity or charities of your choice. The trust may either be controlled by you or by a charity, whichever you choose.

That CRT would generate for you a current income tax deduction. The size of the deduction can be substantial; it is based on the current value of the assets placed in the CRT, less the "present value" of the future benefits from the property that you reserve for yourselves during your lifetimes.

The CRT may also reduce your current capital gains exposure. For example, assume that you have highly appreciated property that is generating little or no income. For retirement income, you might prefer to sell the property so that you could reinvest the assets in a diversified and profitable portfolio; but, you may be deterred from selling the property by the magnitude of the capital gains taxes due on such a transaction. In this situation, the CRT can be particularly helpful because such property could be placed in the trust, sold without a capital gains tax liability, and then all the proceeds could be used as an investment pool to provide a stream of income for your retirement.

Various assets can be used with CRT's, such as cash, stocks, bonds and business interests.

### **GIFT OF REMAINDER INTEREST WITH RETAINED LIFE ESTATE**

In a manner similar to a CRT, charitable gifts of real estate can be made using a technique known as a "gift of a remainder interest with a retained life estate." This is not a CRT, *per se*, but the effect is essentially the same.

The donor may use the property for a period of time, including the remainder of one's life, and have the property transferred to charity at the end of that period. Tax advantages like those involving the use of a CRT would result.

To maximize your tax benefits from a gift using a gift of a remainder interest with a retained life estate, you can gift a conservation easement before making the remainder gift of property. This combination strategy works in situations where you want to preserve the openspace of land (with conservation value), to live on the land for the remainder of your lives, and to bequeath the land to a charity after your death. By combining the techniques, the current tax deduction may be substantially larger than using either technique alone. This is an important opportunity; please seek competent professional advice when considering it.

### **CHARITABLE GIFTS**

If you have goals for your land other than passing the land on to children or preserving a family agricultural business, consider making a charitable gift. Charitable gifts can preserve in perpetuity the natural open space values of all or certain parcels of your land while providing financial benefits to you and your spouse. Charitable gifts of land are permanent, and you need only obtain approval for the gift from the recipient, such as a land trust or public conservation agency.

A gift of land can reduce your heirs' estate tax liability, and it can reduce your income taxes if the gift is made during your lifetime. In this situation, the terms of the gift can allow you and your spouse to live on the property with very few restrictions for the rest of your lifetimes. During this time, you may work with the recipient organization to prepare the land to benefiting the community as you intended.

Of primary interest to recipient charitable organizations are properties with conservation values such as views, wildlife habitat, and watershed or agricultural values. Gifts of land without conservation value, for example a home, may still enable you to take a charitable deduction and give the organization an asset that can be sold or traded to

purchase conservation properties.

### **AGRICULTURAL OR CONSERVATION EASEMENTS**

*Unlike the other estate tax planning methods just mentioned, an agricultural or conservation easement is a mechanism employable only by landowners who own agricultural and natural openspace lands. Therefore, this section will be covered in more detail.*

If your goal as an agricultural landowner is to pass on your land to your family members, reduce the value of your estate and the estate tax obligations of your heirs, while at the same time preserving the character and uses of your land, an agricultural or conservation easement may be a useful tool. any property that contains significant conservation or historic resources can be protected by an easement. Under the appropriate circumstances, conservation easements can generate significant estate tax reductions by reducing the appraised value of your property, while limiting the use of your land only to an extent agreeable to you.

#### What is a Conservation Easement?

A conservation easement is a legal agreement by which a property owner voluntarily restricts the activities, such as residential or commercial development, that may take place on the land. This is done to protect the agricultural or forestry uses of the land. Every easement is a unique agreement between the landowner and a qualified conservation organization, setting forth the limitations the owner has chosen to apply to particular parcels. Conservation easements are permanent and binding on all future owners.

#### How to determine the value of a Conservation Easement

The value of a conservation easement is typically derived by comparing the appraised value of the land before and after the existence of the easement. The difference between the two appraisals is the value of the easement. The more restrictive the easement, the greater value you can potentially derive from estate tax reductions.

For example, assume that the fair market value of a property, without a conservation easement, is \$5 million to a developer who would subdivide the land and sell home sites or completed homes. If the property were subject to a conservation easement that prohibited residential construction, the value might drop to \$2 million. The value of the conservation easement would then be \$3 million. That is the amount from which income tax deductions (if applicable) and estate tax deductions would be based.

#### Financial benefits of a Conservation Easement

***Conservation Easements can reduce the estate tax obligations of your heirs.*** The Federal estate tax is levied on the value of the property retained in the estate. Therefore, reducing the value of your property with restrictions may lower, and in some cases, eliminate Federal estate taxes.

***Conservation Easements can reduce your income taxes.*** Charitable gifts of land or conservation easements made during your lifetime can generate income tax deductions subject to certain limitations.

***Conservation Easements can reduce your property taxes.*** Property tax assessments are usually based on the land's market value, which reflects the property's development potential. Therefore, reducing the development potential can reduce your property tax.

#### How Conservation Easements Work

Conservation easements are particularly attractive to landowners and their heirs, land trusts, and the community at large because the property remains in private hands, agricultural business activities may continue, and the unique natural resource features of the land can be preserved forever. The conservation organization that owns the easement, such as a local land trust, will work with you and future landowners to manage the easement as you intended.

A landowner may either donate or sell the conservation easement to the conservation organization. The easement

must be donated in order to also qualify for an income tax deduction. Not every easement that restricts the future uses of property will qualify for a tax deduction as a charitable gift. The tax law requires that it be “for conservation purposes.”

Conservation easements are tailored to the needs of you, your family, your land, your business, and the recipient conservation organization. Conservation easements typically restrict some or all of your land’s development potential in order to protect the land’s significant resources. Very often, the conservation easement can reserve the right for your heirs to build their own residences on designated parcels.

A conservation easement can provide for public access for trail use or nature study purposes, which may enhance the value of the conservation easement, but this is not required.

We encourage you to determine if a conservation easement is an estate planning method that can assist you in meeting your goals. Many landowners have used conservation easements with success. Please examine this option carefully. Your local land trust or land conservation organization may be able to assist you.

**\*\*UPDATE: Taxpayer Relief Act of 1997\*\*** Conservation easements have been made more attractive by permitting estates with land subject to such easements to exclude up to 40% of those lands from estate taxation. The maximum exclusion amount is \$100,000 in 1998 and will increase \$100,000 yearly until 2002 when it caps at \$500,000. To qualify, the land must meet location criteria concerning proximity to national parks, wilderness areas and/or urban forests.

#### **COMMON QUESTIONS AND ANSWERS ABOUT CONSERVATION EASEMENTS**

*If I donate or sell a Conservation Easement, do I still own and control my property?*

Yes. Only the specific use rights that you choose to transfer are removed from your property value. You can still own, build upon, sell, lease, mortgage, farm, ranch, log or otherwise use your property consistent with the terms of the conservation easement.

*Does a Conservation Easement also restrict my heirs?*

Yes. The restrictions are in perpetuity and those restrictions which you voluntarily put in place will guide you and all future owners of the land, including your children.

*Does a Conservation Easement require me to allow public access to my land?*

No. The conservation easement does not give the public any rights to your land unless you decide to include such rights in the easement.

*To whom is a Conservation Easement given?*

A conservation easement can be given either to a qualified non-profit organization or to a public body such as a town, a county, or a state agency. The recipient of the easement must accept it in writing and agree to enforce the terms of the conservation easement to assure that future owners of the property abide by it.

*Can I donate a Conservation Easement and still develop my land?*

Yes. A conservation easement can be used to control the number, location, and design of parcels and buildings, thus assuring that a quality development plan is maintained in perpetuity. Used in this manner, an easement may be able to enhance the value of each lot created.

#### **A FINAL THOUGHT**

A recent survey of California landowners found:

- Most landowners are concerned that estate taxes will prevent them from transferring their land to their children; and
- Most landowners have not done adequate estate planning to ensure that estate taxes will not force their children to sell the family land to pay the taxes.

While the two findings may seem contradictory, they are not surprising in light of the emotional difficulty and

practical complexity of estate planning.

Participants in the study overwhelmingly recommended that their peers become proactive by beginning their estate planning with appropriate counsel, attending estate tax seminars through agricultural organizations, and looking toward cooperative relationships with land conservation organizations whose goals are consistent with theirs.

Time is both on your side and working against you as you prepare your estate. While you are healthy and resourceful and have time, you can take great strides toward your goals of a secure financial future for yourself and securing for your heirs the land that you love. It takes time to devise and implement an effective estate plan. Too often people delay to the point of running out of time. With regard to estate planning, "making hay while the sun shines" is the adage of the day for you, for your heirs, and the future of our great state.

### **ESTATE TAX PLANNING: TWO CASE STUDIES**

Compiled by Larry Grossman, Grossman Financial Management

If a major portion of your estate is a very valuable piece of land, your family may face a significant estate tax problem. Fortunately, with proper advance planning you may turn such a potential liability into an opportunity to preserve land and keep estate taxes manageable.

#### **Case Study #1: Tom and Virginia Jantzen**

Tom and Virginia Jantzen are extremely fortunate. Twenty-five years ago they bought Rolling Oaks, a 200-acre property in the foothills, for \$100,000. The value of the land crept up steadily for fifteen years, but in the past decade its value has skyrocketed.

Tom and Virginia are in their seventies now, and they love the quiet at Rolling Oaks, the California black oak-studded hills and the open meadows. Although suburban development is advancing toward their property lines, Tom and Virginia would like to see their land permanently protected. A developer recently offered \$5 million for Rolling Oaks, but they refused the offer. The land is too important to be regarded simply as an investment. Tom and Virginia do not need cash at this time. They plan to leave Rolling Oaks to their children along with \$2 million in other assets accumulated during their lifetime.

The Jantzens both have wills, which stipulate that the first to die leaves an interest equal to the Unified Credit in Rolling Oaks in trust for the surviving spouse and their children (a "bypass trust") and everything else to the surviving spouse. The surviving spouse retains the right to use the property in the bypass trust during his or her lifetime, and, on the surviving spouse's death, the children inherit the property in the bypass trust and the balance of the estate.

Let's assume that Tom dies first, in 1998, and Virginia dies in 2000; the Unified Credit will be \$625,000 for Tom's estate and \$675,000 for Virginia's estate. Under federal estate tax laws, there is no tax due on the \$625,000 placed in the bypass trust or on the assets passing to Virginia. *When Virginia dies, the combined federal and California estate tax on her \$6,375,000 estate is \$2,927,000.* For simplicity's sake, we are assuming no changes in values of the assets in the estate – Rolling Oaks worth \$5 million, less \$625,000 passed in trust to the children by John, plus \$2 million in other assets.

There are several ways to deal with this enormous tax burden. The estate has \$2 million in other assets that might be liquidated and applied against the estate tax. If the children owned a \$1 million dollar life insurance policy on Virginia's life, the insurance proceeds could be used to pay the remainder of the estate tax. This would allow Rolling Oaks to be passed to the children but would leave little or no other assets to pay for administration of the estate or to pass to the children.

Alternatively, all or part of Rolling Oaks could be sold for development and the proceeds used to pay estate tax. The estate tax is due nine months after Virginia's death, so the family may or may not be able to wait for the "best offer." Without very careful advance planning, a sale of all or part of Rolling Oaks is likely to destroy its integrity as a refuge from the urban scene. The visual majesty of the estate may be replaced by the ordinary.

If Tom and Virginia have a strong desire to preserve Rolling Oaks as it is, they have another option, which may

reduce their income and property taxes and enable their heirs to satisfy the estate tax obligation.

The fair market value of Rolling Oaks is \$5 million because this is the amount a developer would pay. The developer would subdivide Rolling Oaks and either sell home sites or completed homes. If Rolling Oaks were covered by a conservation easement prohibiting subdivision, the property would have no development potential. Without development potential, the market value of Rolling Oaks would drop considerably, to perhaps \$2 million.

With the addition of a conservation easement over Rolling Oaks, Tom and Virginia’s total estate would be reduced to \$4 million (Rolling Oaks worth \$2 million plus \$2 million in other assets.) Assuming Tom dies first and uses a \$625,000 bypass trust, at Virginia’s death her estate would consist of \$1,375,000 in value in Rolling Oaks and \$2 million in other assets. The combined federal and California state tax on her \$3,375,000 estate would be \$1,276,500. Other assets in Virginia’s estate can pay the estate tax and administration expenses. A \$1 million life insurance policy would make these expenses even more manageable. The children would receive Rolling Oaks intact.

The \$3 million reduction in the value of Rolling Oaks has another benefit for Tom and Virginia; it is a charitable deduction for income tax purposes if it is gifted rather than sold. While the precise income tax saving calculation is complex, the \$3 million gift could potentially reduce their income taxes as much as \$1,300,000.

	Bypass Trust <u>NO Conservation Easement</u>	Bypass Trust <u>WITH Conservation Easement</u>
Property value	\$5,000,000	\$2,000,000
Value of other assets	2,000,000	2,000,000
Amount excluded upon death of first spouse	625,000	625,000
Estate value upon death of second spouse	\$6,375,000	\$3,375,000
Estate taxes due	\$2,927,000	\$1,111,500
<b>Estate tax savings</b>	<b>n/a</b>	<b>\$1,805,500</b>
<b>Potential income tax savings</b>	<b>n/a</b>	<b>\$1,300,000</b>

**\*\*UPDATE: Taxpayer Relief Act of 1997\*\*** Tom and Virginia’s estate taxes may be lowered further, by \$165,000 to \$1,111,500, if their property subject to the conservation easement qualifies for exclusion (in part) from their estate subject to taxation, because of the land’s proximity to a metropolitan area or a national forest or park.

**Case Study #2: Robert and Ann McCains** Robert and Ann McCains own Oakridge Farm, 500 acres of productive agricultural land on the California coast. The property has been farmed by the family since Robert’s father bought the land fifty years ago for \$50 an acre. All the family’s energy and nearly all of its cash have been poured into the farm. In addition to Oakridge Farm, Robert and Ann have approximately \$200,000 in cash and stocks, most of that inherited from Ann’s parents.

Robert and Ann are in their late fifties. They know there are things they could do, other than farm, that might make life a little easier.

They have been offered \$1,750,000 for Oakridge Farm by a real estate developer, but they are proud of their way of life. They are gratified that their children want the farm in order to follow in their parents’ and grandparents’ footsteps. Robert and Ann certainly don’t feel like millionaires, but their prime agricultural land on the urban fringe puts them in that category.

According to Robert's will, if he dies first, he leaves an interest equal to the Unified Credit in Oakridge Farm for Ann and the children in a bypass trust and everything else to Ann. Ann retains the right to use the property in trust during her lifetime. On Ann's death, the children inherit her entire estate and the property in the trust.

There is a federal estate tax valuation program and a California property tax relief program, either or both of which could materially affect Oakridge Farm. But the purpose of this example is to point out the consequence to the family if these programs are not available, not used, or for some reason not applicable.

Let's assume that Robert dies first in 2000 and Ann dies in 2002; the Unified Credit in those years will be, respectively, \$675,000 and \$700,000. When Ann dies, combined federal and California estate tax on her \$1,275,000 estate is \$229,000.

There are several ways to deal with the estate tax. The estate has \$200,000 in other assets that might be liquidated and applied against the estate tax. If the children owned an insurance policy of \$100,000 or more on Ann's life, the proceeds of the insurance could be used to pay some or all of the estate tax and administration expenses. This would allow Oakridge Farm to be passed to the children without restrictions.

Robert and Ann have much simpler estate tax problems to deal with than the Jantzens in Case Study #1; therefore, they may not wish to restrict the potential uses of their property to the same extent as the Jantzens. However, because the McCains' children also wish to operate the farm, it may be to the entire family's advantage to use a conservation easement.

If Robert and Ann restrict future use of Oakridge Farm to agriculture and farming, they will significantly reduce the property's \$1,750,000 market value to, say, \$750,000. Their total estate would be \$950,000 (Oakridge Farm worth \$750,000 plus \$200,000 in other assets.) Robert and Ann could avoid paying any estate taxes by using a bypass trust for the first to die.

As in the previous case study, if the reduction in the value of Oakridge Farm is a charitable deduction for income tax purposes, the \$1 million gift could potentially reduce their income taxes as much as \$440,000.

#### **HOW ESTATE TAXES MAY AFFECT YOU**

Like the families in the foregoing examples, your family may wish to preserve land you own in its present condition. You may also need to solve potentially significant estate tax problems. There are many techniques for helping you accomplish both goals. These techniques may also generate income tax deductions and reduced property tax assessments. Even if you have property significantly less valuable than Rolling Oaks or Oakridge Farm, your planning efforts may be important. *We highly recommend that you consult professional advisors (i.e., financial, tax, legal, land use advisors) when developing your plan.*

\* \* \*

For more information, consult your financial or tax advisor or contact:

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