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October 2006

CHARITABLE CONSERVATION EASEMENTS

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The Pension Protection Act of 2006, Pub. L. No. 109-280 (the “PPA”) was enacted on August 17, 2006. Although the primary scope of the PPA is to address issues involving pensions and deferred compensation, the PPA also contains provisions concerning charitable deductions. The modification to charitable deductions allowed for qualified conservation contributions is the subject of this article.

Qualified conservation contributions are defined in the Internal Revenue Code as either: 1) the entire interest of the property other than certain mineral interests; 2) a remainder interest in the property; or 3) a perpetual restriction on the use of the property. A contribution can be made to public charities or certain government agencies.

In addition, the contribution must be for a conservation purpose. A conservation purpose is defined as: 1) the preservation of land for outdoor recreation by, or the education of, the general public; 2) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; 3) the preservation of open space including farm land and forest land or the preservation for the scenic enjoyment of the general public or pursuant to a federal, state or local governmental conservation policy; or 4) the preservation of historically important land area or certified historic structure. For example, a taxpayer could grant a perpetual easement to restrict all development of its land and allow public access for hiking or boating.

There are several tax benefits for charitable conservation easements. Taxpayers may receive a current income tax deduction for the value of their contribution (the PPA changes the amount of this deduction); a reduction in the value of the property for local property taxes; and a reduction in value for estate tax purposes.

Prior to the PPA, the donation of a qualified conservation contribution was considered a contribution of a capital asset. The deductions for contributions of capital assets are limited to 30% of a taxpayer’s income (10% for a corporation). Any unused deduction may be carried forward to the next five years. For the 2006 and 2007 tax years, the PPA increases the allowable income tax deduction to 50% of the taxpayer’s income. In addition, any unused deduction is carried forward for fifteen years.

If the taxpayer (whether an individual or corporation) is a “qualified farmer or rancher,” then the deduction limitation is increased to 100% of a taxpayer’s income. However, if the conservation contribution for a qualified farmer or rancher was made after August 17, 2006 of property used in agriculture or livestock production (or was available for such use), then in order to qualify for the 100% income limitation, the property owner must retain the right to use the property for agriculture or livestock production after the contribution.

The primary issue facing taxpayers who desire to make conservation contributions is that the contribution must be made in tax years beginning before January 1, 2008. Given the tendency for governments and charitable organizations to not operate at peak efficiency, anyone interested in making a contribution should immediately begin working with the receiving entity to consummate the transfer before this date.

Given the recent trend in Florida to counter the development of our vacant and rural lands into new communities by local governments to require retention of green space and undeveloped land, the timing of the PPA increased benefits may be very fortuitous. We encourage our clients who have property at the intersection of preservation and development to explore such contributions to obtain immediate benefit from their land. Because of the multiple potential tax benefits available for property, income, and estate and gift taxes, it is prudent to undertake such contributions under the advice of expert tax counsel.

You should consult with your legal and tax advisers to determine if a charitable conservation easement is appropriate for you.

The members of the Dean Mead Estate and Succession Planning Team are familiar with all aspects of charitable giving, and are available to discuss the application of the charitable conservation easement to your unique situation.

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