

Section 170(h) of the Internal Revenue Code and Treas. Reg. §1.170A-14

Section 170(h) of the Internal Revenue Code has been expressly incorporated into the Virginia Land Conservation Incentives Act of 1999 (§58.1-511, 58.1-512(C)(2)). Section 170(h) is reproduced below in its entirety (showing revisions included in the Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780 (2006)), for purposes of reference. Also below is a one-page outline of Treas. Reg. §1.170A-14, which constitutes Treasury's interpretation of §170(h) and provides additional detail that is crucial to understanding and complying with the statute's provisions.

IRC §170. Charitable, etc., contributions and gifts.

(h) Qualified conservation contribution

(1) In general. For purposes of subsection (f)(3)(B)(iii), the term “qualified conservation contribution” means a contribution—

- (A) of a qualified real property interest,
- (B) to a qualified organization,
- (C) exclusively for conservation purposes.

(2) Qualified real property interest. For purposes of this subsection, the term “qualified real property interest” means any of the following interests in real property:

- (A) the entire interest of the donor other than a qualified mineral interest,
- (B) a remainder interest, and
- (C) a restriction (granted in perpetuity) on the use which may be made of the real property.

(3) Qualified organization. For purposes of paragraph (1), the term “qualified organization” means an organization which—

- (A) is described in clause (v) or (vi) of subsection (b)(1)(A), or
- (B) is described in section 501 (c)(3) and—
 - (i) meets the requirements of section 509 (a)(2), or
 - (ii) meets the requirements of section 509 (a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

(4) Conservation purpose defined.

(A) In general. For purposes of this subsection, the term “conservation purpose” means—

- (i) the preservation of land areas for outdoor recreation by, or the education of, the general public,
- (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- (iii) the preservation of open space (including farmland and forest land) where such preservation is—
 - (I) for the scenic enjoyment of the general public, or
 - (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or
- (iv) the preservation of an historically important land area or a certified historic structure.

(B) Special Rules with Respect to Buildings in Registered Historic Districts. In the case of any contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in subparagraph (C)(ii), such contribution shall not be considered to be exclusively for conservation purposes unless—

- (i) such interest—
 - (I) includes a restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of the building), and
 - (II) prohibits any change in the exterior of the building which is inconsistent with the historical character of such exterior,
- (ii) the donor and donee enter into a written agreement certifying, under penalty of perjury, that the donee—
 - (I) is a qualified organization (as defined in paragraph (3)) with a purpose of environmental protection, open space preservation, or historic preservation, and
 - (II) has the resources to manage and enforce the restriction and a commitment to do so, and
- (iii) in the case of any contribution made in a taxable year beginning after the date of the enactment of this subparagraph, the taxpayer includes with the taxpayer’s return for the taxable year of the contribution—

(I) a qualified appraisal (within the meaning of subsection (f)(11)(E))¹ of the qualified property interest,

(II) photographs of all the entire exterior of the building; and

(III) a description of all restrictions on the development of the building.

(C) Certified historic structure. For purposes of subparagraph (A)(iv), the term “certified historic structure” means—

(i) any building, structure, or land area which is listed in the National Register, or

(ii) any building which is located in a registered historic district (as defined in section 47 (c)(3)(B)) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district. A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor’s return under this chapter for the taxable year in which the transfer is made.

(5) Exclusively for conservation purposes. For purposes of this subsection—

(A) Conservation purpose must be protected. A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

(B) No surface mining permitted.

(i) In general. Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

(ii) Special rule. With respect to any contribution of property in which the ownership of the surface estate and mineral interests has been and remains separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.

(6) Qualified mineral interest. For purposes of this subsection, the term “qualified mineral interest” means—

(A) subsurface oil, gas, or other minerals, and

(B) the right to access to such minerals.

Treas. Reg. §1.170A-14: Qualified Conservation Contributions

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****Not legal or tax advice****