

# Conservation Related Grants and Real Estate Transfers

## Tax Fact Sheet

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#### Introduction

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The Pennsylvania Association of Conservation Districts, Inc. ("PACD") is a non-profit organization that supports, enhances, and promotes Pennsylvania's Conservation Districts and their programs. Conservation Districts work to enhance and promote locally led conservation efforts that support the wise use of the state's natural resources. Included in these efforts are the directing of federal, state and local grants to landowners to fund conservation projects and assistance with the transfer of real estate for conservation purposes. PACD has prepared this Fact Sheet to highlight certain tax considerations that may be applicable to the receipt of a publicly funded grant in connection with development of conservation projects or with the granting of a conservation easement to a tax-exempt entity. This Fact Sheet is intended to be used for informational purposes only, and all readers are encouraged to discuss the specific tax implications of any transaction with their independent legal or tax counsel.

#### What should you know regarding your receipt of a grant?

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##### Federal Income Tax

- ***The receipt of a grant may be subject to Federal income tax!***

- Taxpayers are required to report gross income for the taxable year to determine the amount of tax owed. The Internal Revenue Code broadly defines gross income as "all income from whatever source derived."<sup>1</sup>
- Unless excluded under some provision of the Internal Revenue Code, the receipt of a grant from a federal, state or local government may be includable in your gross income. Payments are typically reported to grant recipients on IRS Form 1099-G.
- To encourage participation in conservation programs, the Internal Revenue Code contains certain provisions that may be applicable to exclude some or all of the grant from your gross income.<sup>2</sup>
- ***You should consult with your own independent legal or tax counsel prior to accepting grant funds associated with a conservation project to determine whether or not your receipt of the grant will constitute taxable income and whether it may be excluded from your gross income.***<sup>3</sup>

#### What should you know regarding the transfer of an interest in real estate?

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##### Pennsylvania Realty Transfer Tax

- ***The transfer of an interest in real estate, even for conservation purposes such as the creation of a conservation easement, may be subject to the Pennsylvania Realty Transfer Tax!***

- The Pennsylvania Realty Transfer Tax is imposed on all transactions that result in a transfer of a beneficial interest in real estate located in Pennsylvania.<sup>4</sup>
- However, certain transfers to conservancies which possess a tax-exempt status pursuant to § 501(c)(3) of the Internal Revenue Code and which have as its primary purpose the preservation of land for historic, recreational, scenic, agricultural or open-space opportunities may be exempt from the Pennsylvania Realty Transfer Tax.<sup>5</sup>
- ***You should consult with your own independent legal or tax counsel prior to transferring an interest in real estate for conservation purposes to determine whether an exemption to the Pennsylvania Realty Transfer Tax may be applicable.***

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<sup>1</sup> IRC § 61.

<sup>2</sup> IRC § 126(a) ("Gross income does not include the *excludable portion* of payments received under (1) The rural clean water program authorized by section 208(j) of the Federal Water Pollution Control Act (33 U.S.C. § 1288(j));... (3) The water bank program authorized by the Water Bank Act (16 U.S.C. § 1301 *et seq.*);... (5) The agricultural conservation program authorized by the Soil Conservation and Domestic Allotment Act (16 U.S.C. § 590a); (6) The resource conservation and development program authorized by the Bankhead-Jones Farm Tenant Act and by the Soil Conservation and Domestic Allotment Act (7 U.S.C. § 1010; 16 U.S.C. 590a *et seq.*);... (8) Any small watershed program administered by the Secretary of Agriculture which is determined by the Secretary of the Treasury or his delegate to be substantially similar to the type of programs described in paragraphs (1) through (7); (9) Any program of a State, possession of the United States, a political subdivision of any of the foregoing, or the District of Columbia under which payments are made to individuals primarily for the purpose of conserving soil, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.") (emphasis added); IRC § 1255.

<sup>3</sup> To the extent a § 126 exclusion applies, taxpayers should so indicate on an attachment to their tax return for the taxable year in which the taxpayer received the last payment made for the improvement. Treas.Reg. § 16A.126-2(b).

<sup>4</sup> 72 P.S. § 8102-C.

<sup>5</sup> 72 P.S. § 8102-C.3(18).

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