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FAVORABLE TAX TREATMENT AS A PROCEDURE TO ACQUIRE PARKLANDS IN TEXAS

by

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CHAPTER I

INTRODUCTION

Each passing day witnesses the increasing necessity of parkland acquisition for the urban and suburban population of this country. It has been estimated that land is being consumed for urban expansion and development at the alarming rate of one million acres per year (U.S. Urban Renewal Admin., 1963). Population growth, urban immigration, and wasteful land use have combined to threaten our country's supply of open lands and to render such lands least plentiful in areas where population is the densest. These lands perform too many vital functions as timber preserves, buffer zones, wildlife conservancies, and recreational sites. In fact, parklands in and around our nation's cities, having long served as retreats for urbanites, will attract greater use due to increased leisure time, population, per-capita income, and ease of travel (Moore, 1966). Scarcity of available open lands suitable for recreational use, not to mention the spiraling land costs in the urban fringe, has greatly compounded the problem. Naturally the financially plagued urban centers are lagging far behind the recreational needs of their inhabitants. The National Recreation and Parks Association's standard of one acre of parkland per one hundred population (National Recreation and Park Association, 1965)

must appear as forever elusive as a sylvian nymph to the municipal, regional, and state park planners.

Aside from the fact that Texans possess an innate bias against large public land holdings, the main reason for the government's inability to adequately supply parklands for the people of Texas is the high cost of land, especially within the close proximity to the metropolitan areas. Although planners have virtually exhausted all the avenues in approaching land acquisition at a cost low enough to justify the development of a parkland system, there still remains the alternative of soliciting donations or bargain sales from corporations and private landowners. The role of the private sector in preserving open space and providing parklands has been given too little consideration (Eveleth, 1964).

Whereas gifts and bequests often have humanitarian motives behind them, more often than not, gifts of land for public use have the ulterior motive of expected tax benefits that result from such a gift (Little, 1965). Because of the general unpredictable nature of such donations, park agencies are unable to develop a park or open space system based solely on this method. They can, however, bring to the attention of the potential donor the various avenues of tax benefit that are available through legitimate federal and state estate, gift, and income tax laws.

If there is a need for an inexpensive acquisition tool for protecting and providing parks, open space, and other natural areas, there is also a use for the amenities that such a tool

would provide. Donation of land by the private sector would certainly increase the flexibility and function of public park and open space agencies, but of what use is this property? How can it be utilized? What are its values?

All of the numerous reasons for and values of can be grouped under the following three basic functions:

1. The establishment of recreation opportunity;

2. The establishment of aesthetic surroundings, a visually pleasing landscape, and the environmental amenities this supplies; and

3. The maintenance of natural processes, or, in a word, conservation.

Although all three functions can be provided on one piece of land. Each has certain inherent physical, social, and economic characteristics.

This century has witnessed a tremendous growth in recreation, most of which has occurred since World War II. After the emergence of a middle class and a decrease in working hours, a majority of Americans began to make more money and have more children than ever before. The combination of more people, more money, and more leisure time caught most municipal, county, and

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state park departments off guard.

The Outdoor Recreation Resource Review Commission (ORRRC) established by act of Congress in 1958, inventoried existing outdoor recreation facilities, projected future demand, learned what people really wanted to do with their leisure time. Their report foresaw the population doubling before the end of the century and the recreation demand tripling. This is because the per capita disposable income will go up from $2,900 to $4,100, while the work week will decrease from thirty-six hours to thirty-two. To further increase the need, paid vacations will grow from 2.8 weeks to 3.9 weeks. Also there will be a shift away from organized activities to individual and family oriented recreation activities such as fishing, walking in the woods, bicycling, picnicking, camping, boating, and sightseeing (Outdoor Recreation Resource Review Commission, 1962). The demands on water for recreation has also shown a substantial increase, more in fact, than any other recreation setting. In Texas, especially, there is a tremendous immigration and normal expotential growth within the Southwest. The Corps of Engineers, one of the chief suppliers of water in Texas, reports that visitation rates at several of their projects surpassed the five and ten year projections within the first two years of the project life (Mertes, 1972).

Planners' use of open space and parks provide a method of achieving an aesthetically pleasing landscape. Although these

areas serve the recreationist, their existence visually amends the total surroundings of all the people. The natural environment is the key factor in the functioning of amenities in the community, be it urban or rural. Planners see open space preservation as a means of relieving the monotony of row houses, parking lots, and strip development. Large stands of trees, rolling meadows, and untampered streams provide the contrast that is essential to the appearance and liveability of the region (Rockwell, 1970). By creating or rather leaving the natural beauty of the landscape, beauty can become a major participant in the lives of all citizens.

Whereas recreationist and planners may conceive of open space in different roles, they share a common feeling toward it. They are in turn joined by the naturalist who sees open space as a necessary function of maintaining the natural processes in a relatively stable equilibrium. By conforming to the laws of nature and protecting the natural processes, society is itself protected (McHarg, 1971). Not only is protection insured, but it is usually cheaper in terms of money and inconvenience (Little, 1969). William H. Whyte, Jr. states:

> Quite aside from any of the other benefits produced by an open space plan, it could be justified on the basis of watershed protection. . . . When there is a heavy rainfall, the streams and the creeks that flow into a natural storm sewer system are far better accommodated than they could be by anything constructed by man (Whyte, 1959).

Conservation of natural areas which play a pivotal role in water cycles and wildlife would provide the source of open space in the face of encroaching development. To the naturalist, living things symbolize a healthy physical environment, and if driven away leaves a curse on the place they have left (Little, 1969).

Land held by a potential donor generally perform several or all of these functions by the simple fact that they exist in a natural state, and they are located in close proximity to urban areas where they are desperately needed.

Statement of Purpose

The purpose of this study was to investigate federal and Texas tax law and to determine the various kinds of tax treatment available to a private landowner contemplating the sale or donation of land to a public park agency.

Objectives

The primary objective of this study is to identify and discuss the options for favorable tax treatment available to private landowners which can be utilized as incentives to encourage transfer of land and structures to public park and open land organizations. Sub-objectives of the study are:

a. To identify case studies in other states where the "favorable tax procedure" has been used successfully in park and open land acquisition programs.

b. To construct several conceptual situations to demonstrate how the various tax benefits can be utilized by park administrators in negotiating land transfers.

CHAPTER II

REVIEW OF LITERATURE

Because of the apparent oversight on the part of park administrators to stress to potential donors the various tax benefits resulting from donated parklands, only a meager amount of literature is available to illustrate the diverse applications of this acquisition technique. In general, the most extensive use of the land gift has been experienced in the east and midwest, where states and local units of government have established records as being leaders in promoting open space systems. Brenneman points out that there is a real need for private action in preserving open space, even though public agencies are gaining momentum (Brenneman, 1967). Public action preceeded private initiative in such major efforts as preserving the redwoods in California, the Sleeping Bear Dunes in Illinois, the wetlands in New York, Connecticut, and Pennsylvania, and the Everglades in Florida (Brenneman, 1967).

Gifts of land from private citizens are not uncommon, as they account for over 50 per cent of new parklands (Shamon, 1971). During the fifteen year period from 1942 through 1956, Clawson states that 437,000 acres of land for state parks were purchased, 345,000 acres were transferred from other agencies and

282,000 acres were from gifts of private landowners (Clawson, 1958). In the Tri-State New York Metropolitan Parks, Recreation, and Open Space Project, nearly one-half of the region's state and county parks were acquired by negotiated purchase, while gifts of land accounted for almost 33 per cent of these new or expanded parks. Fifty-eight per cent of New Jersey's state parks within the same region were donated (The Race For Open Space, 1960).

On a smaller scale, Platt reports that the Iowa conservation program has attracted many gifts of pieces of rough terrain that were otherwise unusuable. The city of St. Louis, Missouri is encouraging the donation of land in the form of "living memorials" to enhance its developing greenbelts. The Morton Arboretum and the McGraw Wildlife Foundation in Illinois were established through gifts of land by their respective donors to private foundations. Wisconsin has received the tip of Door Peninsula as a private gift to the state, and Indiana has gained a magnificent remnant of the Valparaiso Moraine to be preserved as a nature preserve (Platt, 1971). Dallas, Texas has been very fortunate over the years in attracting gifts of land and money to improve its park system. Over two thousand acres of land have been in the form of outright gifts. Other gifts in the form of cash have been used for construction of specific facilities and expansion of existing ones (Houston, 1966).

Where it is important for the park administrator involved in land acquisition to know what is involved in charitable property transfers, he does not have direct bearing on such a gift. It is basically up to the owner of the property to determine if he wants to transfer his estate into public ownership. Property owners most often turn to their legal and financial counsel for guidance on how to develop the most favorable sale or donation package. Over and above pure altruism, there are a number of concrete advantages to donating land. If the generally accepted standard of 25 per cent of an area in open space is to be reached, rather than the present level of 5 per cent, public park agencies need to make known the sizable tax deduction, public appreciation and commendation, and other benefits accruing to land owners (Shamon, 1971). Siegel suggests that this education process begin by elucidating the tax implications for the donor. The taxes involved are basically:

1. A tax on the owner's gain if he should decide to sell the property. It has long been held under the federal income tax laws that upon a sale of a residential estate the seller is taxable on the gain; that is, the difference between the "adjusted basis" and the sales price represents his capital gain.

2. The estate tax. The tax is payable on the fair market value of the property at the time of death. This is likely to represent, in our inflationary times, a highly appreciated value over the original cost or other basis.

> 3. Property taxes. The owners of such estates find, like the poor farmers, that with the increasing urbanization of the hinterland their taxes are galloping upward to take care of school needs and other services for the new population (Siegel, 1960).

The owner's tax situation points out the need for farsighted open space planning and well organized acquisition program that can channel and direct the landowner's financial decisions concerning his property.

Any drive for donated land for park and open space should closely examine some of the more common techniques used by the Open Space Institute and other organizations. Briefly, these techniques are:

1. Donation: This is perhaps the simplest and cheapest method of acquiring land for public use. Unfortunately only a small number of landowners have the philanthropic capability to use it. Important income tax and estate tax savings are realized in this method along with reduced real estate taxes.

2. Bargain Sale: This method combines both purchase and donation. The land is sold to a local government or conservation organization at less than the established market price. The difference between the sale price and the market value can be

deducted as a charitable donation on the landowner's income tax and decrease the capital gains tax at the same time.

3. Life Estate: A person can donate his land for public use and still retain the right to reside on the property for the rest of his life. The owner pays the property tax but this is usually deductible when there is public use of the land.

4. Testamentary Gifts, Wills, Living Trusts: These can be used to insure the owner's open space gift and wishes are carried out after his death, while also reducing the taxable gross estate (Galantowicz, 1970).

There are other forms that a gift might take besides donating land in fee simple and still reap tax benefits. The most recently popular is the easement. Basically the landowner trades what William H. Whyte calls his "right to louse it up" (Whyte, 1970) for lowered taxes. This method is becoming increasingly popular with both landowners and public agencies as a means of "acquiring" open space. Usually this method increases the number of gifts because relatively few property owners are rich enough or public spirited enough to donate their lands outright in

spite of existing tax benefits. There are many, however, who would donate a conservation easement if it would lead to substantial tax savings (Moore, 1966). A tax advantage does, in fact, occur upon the gift of an easement. Whyte points out that:

> . . . the landowner protects himself from rising assessments based on the subdivision potential of his land. In many areas it is precisely this problem that is uppermost in landowners' minds. It may also be pointed out that if he gives the easement as a gift, the value of it is deductible in computing his income tax. In outlying countryside the value might be little, there being little difference between the market price of his land without the easement and with it. In areas where the market price is being pushed upward by developers, there might be a considerable difference, and thus more of a sacrifice of potential profit on the part of the donor. If this is the case, he has a compensating advantage in that this difference is fully deductible as a gift (Whyte, 1959).

With land prices rising at an unprecidented rate, plus the similarly escalating costs of labor, maintenance, and real estate taxes, many owners of large estates, farms, woodlands, and country homes are finding it more and more difficult to maintain them. Therefore, Galantowicz notes, many large tracts of land, especially in the estate-rural areas around metropolitan areas, are coming on the market, "usually to the surprise of the local officials and citizens." In many cases, the land is sold as a last resort in order to pay off the family debts (Galantowicz, 1970). Unfortunately at this point the would be donor cannot

consider donation or bargain sale to a public agency because he needs to sell quickly and make money. Civic responsibility and sentimentality aside, most landowners in developing areas cannot afford to keep what they own. They sell their lands, pay the capital gains tax, and reinvest their money elsewhere. "If they do return to see their trees cut, their bog filled, their hills leveled, their creeks culverted, and their fertile soil supporting crabgrass and concrete, one visit is usually too many" (Platt, 1971).

In most cases, ironically, the valuable open space assets of the land became reasons for lower land prices because of their undesirability to developers who have to alter them. Land features that have to be changed to accommodate mass construction techniques actually lower the land value. The developers view land simply as a volume into which to place dwelling units as closely as possible; the closer these dwellings can be to each other and to the centers of employment, the more valuable is the "land space" (Kaiser, 1970). Thus an owner who cares for these natural features, while becoming an accessory to the destruction of his landscape, receives a lower price than if it were flat and uninteresting. Equally distressing is that few units of government or conservation minded groups can organize fast enough to raise funds to acquire the precious and valuable natural resources.

Several writers propose the use of land trusts to meet the needs of private landowners wishing to donate land and also implement the local government's open space program. These trusts, set up to meet the needs of private donors, can accept parcels of land and hold it until the public agency is able to act on adding it to the public open space system. Guitar suggests that they can best be used in cases where municipalities show signs of hesitation in taking the responsibility of "bits and pieces of land" and complain that these parcels cannot be used, in many cases, for pure recreation (Guitar, 1972). In such situations a trust can be created to hold the land until a public or private agency can be found that will carry out the purposes of the use restrictions (Siegel, 1960), or until the city decides whether or not to act on its purchase (Guitar, 1972).

If a public park agency choses to embark on a land donation drive, the solicitor should be adequately briefed as to the advantages, limitations, and disadvantages of the various donative techniques available. Several beneficial reasons for a landowner to give property for public use has been suggested by Dunn. First, the donor benefits the public for whom the agency operates, while secondly, he secures income tax deductions, reducing estate and inheritance taxes and unnecessary probate costs. It also makes him "feel good to do good" (Dunn, 1967).

These reasons indicate that gifts of property during the donor's lifetime are more profitable from a money-saving standpoint. A public land agency should thus avoid giving property solicitations to deferred gifts, according to Mansfield, but rather stress a regular program of outright gift (Mansfield, 1971). Present giving is apparently favored by Congress as the 1969 Internal Revenue Code would indicate. Alexander and Schwartz note that a donor wishing to engage in deferred giving must now follow certain limited and rigid patterns to achieve any tax benefit, while present gifts, or those given to the agency during the donor's lifetime, offer a wide variety of options as to the specific forms these gifts might take (Alexander and Schwartz, 1971).

In presenting these facts and alternatives to the prospective donor, Kershow stresses that it is important for the agency to maintain a flexible posture. Always the first step is to learn as much as possible about the needs and interests of the property owner, so that the negotiated settlement is suited to his individual circumstances. The public official should work under the concept that the "customer is always right," and this concern over small insignificant problems can increase the confidence that finally brings the donor and the donee together (Kershow, 1971).

A working knowledge of the potential donor's emotional ties to and attitudes towards the land is of utmost importance

to the public agency in understanding his motives and wishes. Those who make up the bulk of land donors are the gentry or those gentlemen, ranchers, farmers, retired generals, older executives who have bought a country estate, third and fourth generation property holders, or those who are rich (Whyte, 1959). They are the ones who own most of the open space resources on the urban fringe. Characteristically, the gentry have a strong bias for the natural countryside, which embraces farmlands, streams, fields of wildflowers not park benches, picnic tables, and beautifully maintained parkways (Whyte, 1959). Understanding this disposition often leads to conflict with park developers, but it should be exploited rather than deplored.

Whatever the form open space lands take, their acquisition and development for future use should reflect expected patterns of leisure. Barlowe has found that most of the expected increase in demand for recreation will probably be associated with user-oriented and intermediate-use areas (Barlowe, 1963). User-oriented recreation areas are defined by Clawson, et al., as those areas being close to its users featuring games, picnicking, walks, and riding paths. Generally these areas are the city's, county's or other local government's responsibility, and their major use occurs for a few hours a day, usually after work or school. The intermediate-use areas are also located relatively close to the population but are used for day outings and week ends. Camping, picnicking, hiking, hunting, fishing, and

swimming are the chief activities due to its unique natural character. Intermediate recreation areas are generally comprised of state parks or reservoir recreation areas provided by the Corps of Engineers or the Bureau of Reclamation (Clawson, 1960). Therefore emphasis should be in acquiring and developing areas for this type of use. For the most part, these emerging needs can be satisfied through the acquisition of relatively small tracts of farm and forest land (Barlowe, 1963), ranging from a few acres to a few hundred acres and usually found in private ownership within close proximity to urban areas.

Today the park agency is in direct competition with real estate developers who have vastly more mobile capital and assets which most local open space agencies cannot match. It has been estimated that within the next generation state parks will require $22 to $30 billion to attempt to satisfy the potential recreation demands of our nation (Clawson, 1960). Surely public park agencies must exploit all areas of economic land acquisition to even begin tc fulfill this need and to compete with rampaging urban developers. The private landowner, who is in possession of land with user oriented or intermediate use recreation potential, should be encouraged to aid public agencies in acquiring the rapidly declining available open lands for public use. His knowledge of favorable tax treatments resulting from real property donations could prove to be the encouragement needed.

CHAPTER III

METHODOLOGY

The premise has been established that charitable gifts of property, either real or cash, to local and regional park systems form a basis for many open space and recreational facilities. They also reap monitary rewards in the form of tax benefits to the donor, as well as personal satisfaction and recognition. Understandably, financial advantages bear considerable weight in determining the pro or con outcome of a decision to transfer property to a governmental or charitable agency for public use. The park administrator, educated about these benefits, can play an important role in the ultimate decision the potential donor makes.

In order to bring to light the various tax benefits resulting in a donor's charitable transfer of land, the following investigative procedures were undertaken. These processes revealed federal and state tax laws which avail the charitable land donor and actual case examples of resulting tax benefits connected with land philanthropy. From this information the theoretical case studies were formulated, further clarifying and underscoring the practical uses of favorable tax treatment

as a means of acquiring parklands in the State.

1. A careful and detailed examination of the Internal Revenue Code, as amended by the 1969 Tax Reform Act, was conducted to determine what the Federal tax law provided in terms of charitable deductions and philanthropic incentives. Special attention was given to the possibilities of interpretation regarding real property when it was not specifically mentioned in the statute. Also, several analytical texts were consulted, especially Stanley S. Weithorn's indepth analysis of tax law and procedure concerning foundations and exempt organizations, to aid in the explanation and clarification of several points.

2. The Texas tax laws were reviewed in Vernon's Annotated Revised Civil Statutes of the State of Texas (VATS). Careful examination of the statutes and the legal cases cited therein provided further insight concerning the restrictions on and advantages to charitable gifts as they relate to the Texas inheritance tax.

3. A personal interview was conducted with Mr. L. B. Houston, former director of Parks in Dallas, Texas, to help uncover those instances he was particularly familiar with where tax advantages played a significant role in land donation. Other interchange was conducted either by correspondence or personal telephone conversations with Barry S. Tindall of the National Recreation and Park Association; Warren W. Kershow, Land Acquisition Officer, Maryland-National Capital Park and Planning Commission; and Mr. John Bryant, Assistant Secretary of the National Park Foundation. Their comments were very instrumental in the formulation of the theoretical models and the presentation of the Internal Revenue Code application.

4. The hypothetical case models were developed to illustrate the application of various procedural methods based on previous cases and existing State and Federal tax laws. The models were also established to test the provisions couched in the statutes under simulated conditions which could apply to local and regional acquisition situations.

CHAPTER IV

FINDINGS AND INTERPRETATIONS

Federal and State Tax Avenues Open to Landowners

Fortunately for both landowners and public open land and park agencies, a variety of favorable tax avenues are available to those wishing to indulge in land philanthropy. Congress, through the Tax Reform Act of 1969, clearly demonstrated its intentions that public spiritedness be encouraged rather than hindered by tax law. It does require, however, that "charity . . . remain an equal partner with respect to an individual's income" (Sanden, 1969).

The government's view toward land philanthropy tends to vary according to whom it is addressing. Rogovin makes the following comment explaining that Congress' attitude toward gifts is like the politician's view of alcohol:

The politician would say:

> If by alcohol you mean the seducer of the innocent, the impoverisher of children, the enslaver of mind and spirit, the thief of health and the scourge of civilization, then I'm against it. But if by alcohol you mean the noble essence of the grape and corn, the solace of the working man, the source of friendship and conviviality, the spring from which comes our greatest pleasures, the elixir of the gods, then I'm for it. This is my stand; I will not compromise.

So, if you mean by philanthropy:

> The perpetuation of business dynasties, the propagandizing of a testator's political opinions, vast accumulations of unused and unproductive wealth, the avoidance and evasions of just obligations and the scourge of the tax collector, then we're against it. But if by philanthropy you mean the education of our children, the alleviation of poverty and disease, the promotion of morality, the elimination of hate and evil, the pathway to a better life in a better society, we're for it. This is our stand; we will not compromise (Rogovin, 1967).

Unfortunately this attitude is reflected in the law because of just such semantic misunderstandings. The present Tax Reform Act of 1969 clearly attempted to curb charitable giving as a means of tax payment evasion, whereas previous laws have held an opposite view.

In the years previous to the new tax law, charitable donations were a means by which the wealthy and the legally well-counseled could achieve a zero tax payment with the government compensating for excess generosity through tax reductions. With income and charity on the same basis, it becomes more a matter of both spiritual and financial motivation in giving.

The question of donation depends basically on the intent of the donor which must be charitable in nature, acceptance by a donee who must fall within the categories established by Federal and State law, and the finality of the act (Platt, 1971). To deduct a bequest on any of several taxes, Federal statute authorizes four classes of charitable organizations which can function as

donees.

1. A State, Territory, a possession of the United States, or any political subdivision of any of these, or the United States or the District of Columbia. (These gifts must be made for exclusively public purposes.)

2. A corporation, trust, etc., organized and operated exclusively for religious, charitable, scientific, literary, or educational purpose or for the prevention of cruelty to children or animals. (No part of the net earnings of the organization may inure to the benefit of any private shareholder or individual, and no substantial part of the activities of the organization may consist of carrying on propaganda or attempting to influence legislation. The organization may be a corporation, trust, community chest fund or foundation. It must be organized under the laws of the United States, or any State or Territory, or the District of Columbia, or of a possession of the United States.)

4. A domestic fraternal society, order or association, operating under the lodge system. However, the contribution must be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals (Internal Revenue Code, S 170, 1971).

These criteria apply to all forms of giving to charitable organizations in regard to any Federal taxes.

Having established the legality of the charitable public land agency, it is then up to the donor to decide on how he wishes to impart his gift and the agency to explain the various methods and the most advantageous approach. Essentially, there are three avenues of deduction open to land donations: the estate tax, the

gift tax, and the income tax. Because of their nature, the choice of which tax benefit to utilize is subject to overlap among the other taxes. Although the most advantageous means of using one favorable tax treatment can involve the use of another, each of the three categories will be discussed separately, and their use, as related to each other, will be treated in the sections on "Real Case Applications" and "Hypothetical Case Applications" of this chapter.

Estate Tax

The Federal estate tax is an excise tax (one imposed upon an event or transaction; in this case, death) applied to the property owned by the decedent when he died which passes to others either by his will or by direction of the state, i.e., interstate law, if he has not made a will (Stephens and Maxfield, 1967). However, the tax is applied to the gross estate which includes not only the value of the property owned by the decedent upon his death, but life insurance proceeds or jointly owned property that passes automatically to survivors may also be a part of the gross estate. Some property given away by the decedent during his lifetime may be considered as property still owned by him when he died and therefore part of the gross estate (Stephens and Maxfield, 1967).

Fortunately the gross estate is reduced to the taxable estate, which is the base to which the estate tax rates are

applied, through statutory deductions. It is this use of the deductions granted by law that the taxpayer can plan a substantial decrease in his taxable estate. In general, the law is generous in providing adequate deductions to the taxpayer.

Section 2052 of the Internal Revenue Code (IRC) authorizes an arbitrary $60,000 deduction from the gross estate for any citizen. This would eliminate the tax on an estate of $60,000 or less, and there would be no need for filing a return. In the past there has been some feeling in Congress that the arbitrary deduction be increased to $120,000 (Stephens and Maxfield, 1967). The amount of deduction has been increasing since the inception of the estate tax, but Congress has chosen not to act in this regard in its recent revision of the tax law.

A taxpayer is also allowed to pass to his or her spouse by way of the marital deduction, up to one-half the value of his gross estate. Here again one is able to substantially reduce ones taxable estate especially if it is combined with the charitable deduction. For instance, if a taxpayer creates two trusts for his wife, each for approximately one-half the value of his estate, she will receive, under the trusts, the income from both trusts. If the first trust gives the wife power of appointment over the principal, it can be removed from the gross estate by the marital deduction. However, in community property states, such as Texas, this is true only if the property is the separate property of the deceased. The second trust would then be made payable upon the

widow's death to a named charity. Although the widow would be receiving income from the second trust, most of the principal to be passed to the charity would count as a charitable deduction (Lasser, 1969).

Aside from the marital deduction, bequests for charitable purposes constitute the largest deductible amounts available to the taxpayer. Unlike the income tax charitable deduction, which will be discussed later, the estate tax charitable deduction is unlimited and not subject to the percentage restriction applied to the income tax deduction to charity (Stephens and Maxfield, 1967). However, some states limit to a percentage the amount of a charitable bequest. California, for example, restricts charitable bequests by will to one-third the value of the estate except in the event that the property is part of a living trust, whereupon there is no restriction whatever to the amount (Dunn, 1967). Texas has no such restriction.

The estate tax deduction is applicable even in cases where it would appear that the transfer of property occurred prior to the decedent's death. Section 2035 of the Internal Revenue Code requires as a general rule that there be included in the gross estate the value of any property interest on the decedent which he has transferred in trust or by gift in contemplation of his death. This section in effect prevents anyone who had a premonition of death from saving his survivors the

burden of estate taxes through lifetime transfers. Possibly these transfers would be entirely free of tax because of gift tax exclusions and exemptions or subject to the gift tax rates which are lower than those of the estate tax (Stephens and Maxfield, 1967). A transfer of property is not considered in contemplation of death if it occurs more than three years prior to death (IRC, S 2035 (b), 1971). At the same time, any transfer of property to a public agency immediately prior to death could be included in the gross estate of the decedent, but there would be an offsetting charitable deduction.

This is, in fact, the case if there is a lifetime transfer to charity where the nature of the transfer is in such a form as to leave the value of the property in the decedent's gross estate (Stephens and Maxfield, 1967). For instance, if the decedent transferred property to a trust reserving the right to the income for life and providing for the distribution of the principal to a charity upon his death, the value of the trust property would be included in his gross estate. However, the provisions of Section 2055 allowing charitable bequests would also permit an offsetting deduction (Stephens and Maxfield, 1967). It should be pointed out that the taxpayer can save substantial amounts of estate tax by using transfers during his lifetime, for by including the charitable transfer in trust in his gross estate, the marital deduction can also be increased.

There is a limit to this tax benefit. Subsection (d) of Section 2055 limits the would be unlimited lifetime transfers to an amount not in excess of the value of the transferred property which is included in the gross estate. The effect of this provision is to fix the amount of the deduction as the date of death value of the transferred property. As an example, if the decedent transferred property to his son for use, the property being distributed to charity upon the son's death, and the son died the year following the decedent's death, in all probability the value of the land would have increased during that year. However, the value of the property in regard to present interest of the charity would be set at the date of the decedent's death (Stephens and Maxfield, 1967) for purposes of computing the decedent's estate tax.

The most common application of the estate tax deduction involves bequests that do not vest immediate and outright interest to a qualified charitable recipient. Gifts of land which will ultimately go to a charity do not necessarily defeat the deduction, but several problems need to be resolved. Will the charitable deduction be allowed: (1) when there is a bequest of a future interest to a charity; (2) when a future interest bequeathed to a charity is conditioned upon the occurrence or nonoccurrence of some event; (3) when a future interest bequeathed to a charity is subject to a power to invade so that the amount ultimately to be received by the charity would be reduced (Stephens and Maxfield,

1967). A favorable resolution to these conditions are required before a deduction can be credited to an estate.

Bequests which are held in trust, an income to be paid to a noncharitable beneficiary for life with the remainder interest passing to the charity, constitute a charitable deduction. Under the Tax Reform Act of 1969, Section 2055(e) (2) specifies that no estate tax deduction will generally be allowed for a charitable remainder interest unless such an interest is in the form of an annuity trust, unitrust, or pooled income fund (IRC, 1971). However, this rule does not apply to transfers of remainder interest in a personal residence or farm or an undivided portion of the decedent's entire interest in property. It is clear from this new rule that Congress favors bequests of real property for charitable purposes in its relaxing the restrictions involved in real property transfers with remainder interest.

This procedure has grown in popularity as a means of making a charitable transfer at death and retaining some form of income or interest in the property. There are several advantages with this procedure.

1. The taxpayer can make a gift to a charity of his choice.

2. He would retain the income from or use of the property for the duration of his life.

3. He will enjoy estate tax advantages because, having retained a life interest, the property is part of the gross estate for the purpose of calculating the marital

deduction. At the same time, the bequest would be deducted from the gross estate as a charitable deduction.

4. Also, he would reduce his income tax in the year that the gift is made (Callahan, 1971).

It should also be pointed out that any property not included in a living trust will have to go through probate, with its costs and delays, before disposition (Dunn, 1967). This is particularly true when specific assets of uncertain value are involved. If the assets are to go to charity, any problem of assessment is removed because no tax is involved (Bowe, 1963).

It is particularly desirable to bequeath property during ones lifetime retaining a life interest where the donor is fifty years or older. The older the donor the greater the income tax deduction available for a charitable gift; the age of the donor being proportional to the percentage deductible on the value of the gift as provided by the mortality tables. This method should also be considered when the donor's income tax bracket is relatively high, and the gift tax can be made in property that has appreciated in value since the date of its acquisition (Callahan, 1971).

The only serious problem encountered in dealing with the estate tax is the determination of the value of the charitable interest at the date of death (Stephens and Maxfield, 1967). Thus, the problem is one of attaching a present value on the right to receive something in the future. In those instances

where the donor retains a life income for himself from the trust, the donor is still entitled to a deduction on his estate tax for the present value of the remainder interest. In this latter example, the value of the property is determined at the time the trust is established (Stewart, 1962). The value of the remainder interest in the property going to charity is computed by the actuarial or mortality tables of the Internal Revenue Service (Lasser, 1969) with straight line depreciation also figured into the valuation.

When a bequest is placed under such conditions that the reality of the charity taking possession is in serious question, there is no deduction. The Treasury has taken the position that no deduction will be allowed "unless the possibility that the charitable transfer will not become effective is so remote as to be negligible" (IRC, S 2055-2 (b), 1971). That is to say, if the chances of the property eventually passing to the charitable institution is so hampered by conditional events that are required to occur by the will that such a transfer has only a remote chance of taking place, there can be no charitable deduction of estate tax. These conditions are not to be confused with those placed on the property to insure that the decedent's wishes regarding its use are not violated.

There may not be a charitable deduction when a will permits a power to invade the corpus or principal of a trust for private purposes whose remainder is to pass to charity. If the

power to invade is not sufficiently restricted so as to render "negligible" the chance that the charitable transfer will not take place, there can be no deduction. Under the provision that the corpus may be invaded to insure that a private beneficiary's needs be maintained at a level now enjoyed, there may be a means of determining the amount of a charitable deduction based on the needs and the resources of the private beneficiary (Stephens and Maxfield, 1967).

The granting of this power by the decedent should be carefully considered in creating a trust with the remainder to go to charity especially if the property in trust is real property. Power to invade in this circumstance could mean the drastic alteration of the land to such an extent that the valuation of the charitable interest could not be determined, or the designated charity would be forced to refuse such a gift, resulting in the elimination of the deduction on the estate.

Texas Inheritance Tax

The Texas laws involving transferral of property at death is based on an entirely different concept than the Federal estate tax. The Texas inheritance tax is a tax on the "right to receive or succeed to possession or enjoyment of property" not on the property which is passed (VATS, 1969). Article 14.01 states that:

> . . . such property located within or without this State which shall pass absolutely or in trust by will or by the laws of descent or distribution of this or any other state, or by deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after death of the grantor or donor, shall upon passing to or for the use of any person, corporation, or association, be subject to a tax for the benefit of the State's General Revenue Fund. . . (VATS, 1969; emphasis supplied).

Thus the inheritance tax is charged against each share or interest in the estate and against the recipients of the estate.

Texas law provides for the exemption of out-of-state residents from paying the inheritance tax. Also a nonresident decedent who owns property in the state is exempt from tax if his state does not have an inheritance tax law. However, this does not apply to the same decedent's real property lying within Texas. In addition, Article 14.01 states that any transfer of property, whether by deed, sale, gift, or grant, made within the two years prior to the decedent's death will be considered made in contemplation of death and subject to the inheritance tax laws. The law is further expanded to include any transfer that is made without "adequate valuable consideration," such as a bargain sale.

Like all other states having tax laws, Texas provides for tax benefits if a property transfer is to a charity. Article 14.015, which is concerned with exempt transfers, relieves from the tax imposed by Article 14.01 the following classifications

transferred property by will:

> (2) Religious, Charitable, Educational Organizations. Property passing to or for the use of charitable, educational or religious societies or institutions, incorporated, unincorporated, or in the form of a trust, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual. . . .
>
> (3) Public Use. Property transferred to or for the use of this state or any town therein for public purposes.
>
> (4) The value of an annuity or other payment received by any beneficiary (other than a personal representative of the decedent) which qualifies for exemption from the Federal Estate Tax under Subsection (c) of Section 2039 of the Internal Revenue Code of 1954, as now or hereafter amended, said Subsection (c) being codified as 26 United States Code Annotated S 2039 (c) (VATS, 1969).

Section (3) which exempts transfers for public purposes opens a large range of possibilities as to what form the transfer might take. However, this section only applies to property passing to the state or a municipality in the state. There is a tax imposed on that which is transferred to or for the use of the United States government within the State ranging from 1 percent of the value of the property if that value exceeds $20,000 to 6 percent on the value in excess of $1,000,000 (VATS, Art. 14.03, 1969). Clearly the state is interested in seeing that real property donated for inclusion in a state park or open land system be given priority over land bequeathed to the Federal government.

The State has been less than generous in exempting charitable bequests which do not explicitly state that its use will be within Texas. The Attorney General ruled in 1956 (Number S-222) that a bequest to a charitable corporation located in Texas was subject to the inheritance tax if the corporation was not required to use it within the State (VATS, Art. 14.015, 1969). Another similar case ruled on by the Attorney General found that property passing by will to specified trustees to be given to a charitable corporation or foundation as they saw fit was subject to the inheritance tax because there were no stipulations as to use within Texas expressed by the will (VATS, Art. 14.01, 1969). A later case (1962), however, determined that a bequest to a nonprofit organization operating solely in the State was not subject to the tax because, it would follow, the use of the bequest would be within Texas (VATS, Art. 14.01, 1969). In spite of the recent ruling it would seem that the State is determined to insure that any use of a bequest wishing to pass untaxable for a charitable purpose be strictly limited to use within the State. The slightest hint that a charitable bequest's use would not be within the State will cause it to be subject to the Texas inheritance tax laws.

Texas is equally strict in regard to mixed private and charitable devices, but in general it follows the same guidelines set forth in the Federal estate tax. For example, a decedent willed property in trust to his two elderly sisters with the remainder to go to his nephew. If the nephew was to proceed the

sisters, the remainder would pass to a certain charitable organization. The Attorney General ruled that because the possibilities that the estate would ultimately go to the charity was in serious question the inheritance tax had to be paid on the bequest (VATS, Art. 14.01, 1969).

While no real benefit actually inures to the decedent himself through a charitable bequest, the estate can benefit only through the Federal estate tax. The Texas inheritance tax exemptions come into play if the decedent choses to benefit a charity and is careful to restrict its use to Texas or to pass the property to the state or city for a public purpose. By coordination between the public agency and the donor, steps can be taken to insure both Federal estate tax deductions to the estate and Texas inheritance tax exemptions to the donee.

Gift Tax

In general, and often exactly, the computation of the gift tax closely parallels computation of the estate tax. Although the taxes originated at different times, 1932 and 1924, respectively, they are companion measures. The estate tax falls upon the passage of property at death (although some lifetime transfers enter into the measurement of the tax as discussed above); the gift tax at slightly lower rates falls upon lifetime gratuitous transfers of property which tend to reduce the estate subject to tax at death.

But the two taxes are not equally balanced nor mutually exclusive (Stephens and Maxfield, 1967). That is, a lifetime gift may enter into the determination of the taxable estate, or, if a gift is regarded as incomplete until death for estate tax purposes so that it will form a part of the donor's gross estate, the gift may also be held as complete for gift tax purposes and subject to a gift tax when made. To offset this inequity there are estate tax credits given for gift taxes paid. The Federal gift tax also bears a close relationship with the income tax by forming the basis of charitable deduction of that tax.

The Federal gift tax is imposed on a yearly basis on the taxable gifts made by the particular donor during that year. The gift tax rate is based on the same type of graduated scale as the estate tax, but the tax is determined by the cumulative amount of taxable gifts made since the enactment of the gift tax in 1932. Although it, like the estate tax, is an excise tax on a transfer, it is imposed with respect to the total gifts made during the calendar year, like the income tax. But instead of a tax on "income" it is a tax on "outgo" (Stephens and Maxfield, 1967).

Basically, the gift tax is determined by imposing the tax rate on the difference between all gifts made since 1932, excluding the gifts made during the last tax year, and all gifts made since 1932 including the last year. This in effect causes the gradual increase of the tax rate over the years as the amount of taxable gifts increases. This peculiar aspect of the tax

seems to impose a tax on gifts previously taxed, but actually it makes present year rates depend in part on previous years' gifts.

With such a complicated tax progression the question might be raised, "Is it better to give than to bequeath?" An inspection of the estate and gift tax rates, although the breaking points of increase are identical, reveal the gift tax to be 75 percent of the estate tax rate. Usually, concerning gifts of property to noncharitable groups or individuals, it is cheaper to pay a gift tax rather than the estate tax (Lasser, 1969). However, personal consideration may greatly outweigh the tax benefits of giving property away. In fact in a study of estate tax returns for 1957 and 1959 showing gross estates of $1,000,000 to $1,250,000 revealed that 52 percent of the decedents reported no gifts during their lifetime for some unaccountable reason (Shoup, 1966). If the individuals had chosen not to hold their possessions until death, their taxable estate would have been reduced, thus avoiding payment of the higher rated estate tax.

The Texas inheritance tax tends to muddle the picture because a gift bestowed within two years prior to death is considered in contemplation of death and subject to tax. Thus a gift, usually not taxable under Texas law, is taxable under the inheritance tax. The same consideration is due the Federal taxes in regard to contemplation of death transfers. In the case of the Federal tax laws, a transfer made less than three years prior to death is considered in contemplation of death and subject to both

estate and gift taxes, but again there is credit permitted against the estate tax for gift taxes paid (IRC, S 2012, 1971).

Section 2521 of the Internal Revenue Code allows a lifetime exemption of $30,000 which can be used to neutralize gifts that are taxable (IRC, 1971), but once the reserve is used up it cannot be replinished. This is separate from an annual $3,000 exclusion which is only credited against the taxable gifts for the previous year (IRC, S 2503, 1971). The exemption is exhausted only by claiming deductions based on it to offset gifts that would otherwise be taxable after taking into account the $3,000 annual exclusion.

Aside from the exclusion and exemptions, gifts to charity are most helpful in reducing the taxable estate during one's lifetime. It is especially beneficial when the $30,000 specific exemption has been exhausted. Charitable gifts, as defined in Section 2522, are not limited as to their amounts. Qualified recipients are the same as those listed in Section 2055 of the estate tax.

The only problem that could occur from a charitable gift of real property is one requiring valuation. The gift tax deduction is measured by the market value of the land on the date of the gift. The original cost of the property is immaterial, as far as the gift tax is concerned (Lasser, 1969), but is taken into account in computation of the income tax deduction.

As in the estate tax, gifts of remainder interest where the donor retains a right of use, possession, or income, is not deductible unless the property is in the form of a private residence or farm. This tax benefit greatly increases the flexibility of gift tax deduction and also presents a valuable bargaining tool for the negotiating charitable agency seeking gifts of real property. Essentially mixed private and charitable gifts involve the transfer of property to a charity upon the death of the donor or some other specified private beneficiary. As an illustration, suppose a living trust provided income to be paid to Mr. X's daughter for life with the principal payable at her death to charity. This would result in a gift to the daughter which would be taxed, and a gift to the charity, if the gift is irrevocable, which is tax free (Lasser, 1969). While there is a gift tax on the private gift, it may well be offset by the savings that may result in its not being included in the donor's estate.

One method of making a gift of land during life but deferred until the donor's death is to make a contract with a public agency or other charitable organization which agrees, in consideration of transferring property to them, to pay an income for life to the donor, with the property ultimately being a gift to the charitable organization (Dunn, 1967). This procedure offers the donor the benefits of a permanent income for life, reduction of his taxable estate, the avoidance of the gift tax because the transfer is to a charity, and an income tax deduction

of the market value of the land for the year the gift is made.

Restrictions and limitations concerning similar situations occurring in estate tax procedure discussed earlier also apply as it regards gift tax. For instance, where a gift with charitable interest is likely but not certain to pass to the charity there may be no gift tax deduction allowed (Stephens and Maxfield, 1967).

Income Tax

During the years prior to the enactment of the Tax Reform Bill of 1969, the income tax law made available numerous tax benefits to taxpayers who, by means of several methods, donated land to charitable organizations. The new law did not remove many of the tax incentives, rather it removed or clarified several deduction rules which had become "loopholes" in the past. The Federal income tax still remains the largest incentive for real property transfers to charitable private and public institutions.

As is the estate and gift tax, the income tax is also an excise tax levied on the gross income for the calendar year. Deductions for charitable gifts during the year are applied to the contribution base, which is the adjusted gross income "computed without regard to net operating loss carrybacks" (U.S. Department of the Treasury, 1972). The 1969 tax law increased the general limitation from 30 percent of the adjusted gross income to 50 percent of the contribution base. The deduction percentages varies between donees and donations from 50 percent to 20 percent based on the following categories:

1. The 50 percent limitation applies to donations to all public charities including churches, tax exempt educational organizations, certain tax exempt hospitals, medical research organizations, states, U.S. possessions, the United States or District of Columbia, or any other organization that receives a tax exempt status by virtue of its support received from a representative number of persons within the community, such as a county or municipality. This limitation also applies to all private operating foundations, certain private nonoperating foundations that distribute contributions to public charities, and certain private foundations which pool contributions in a common fund, the income and corpus of which are paid to public charities.

2. The 20 percent limitation applies to private nonoperating foundations that do not qualify for the 50 percent limitation. Donations for the use of any charitable organization is also subject to this limitation.

3. A limit of 30 percent of the taxpayer's adjusted gross income applied to gifts of long term capital gain property which usually is deductible by its fair market value (Smith, 1972).

In the case where a taxpayer may have donated to a combination of the above classifications of charities, in considering whether he has made charitable contributions in excess of the percentage limitation, the contributions to the publicly supported charities are considered first. The nonpublicly supported charitable contributions would be limited to the lesser of the 20 percent contribution base or the difference between 50 percent of the contribution base and the deductible amount that year for gifts to publicly supported charities (Ostarch, 1971). Therefore, charitable

transfers of land for public use would be given priority over a similar contribution to a fraternal organization.

Section 170 of the Internal Revenue Code also allows for a carryover of deductions for five years if a donation to a charity in the 50 percent bracket exceeds the 50 percent limitation of the contribution base for the year of the donation. This rule only applies to 50 percent organizations (Weithorn, 1972). Clearly this privilege can prove very beneficial to those who donate substantial amounts of land for public purposes where the value exceeds his 50 percent of the contribution base limitation for the year of the gift. An actual contribution to a publicly supported charity or agency made during a succeeding year takes precedence over an amount carried over from an earlier year in determining whether an excessive contribution has been made for that tax year. However, carryovers take precedence over a current gift to a charity in the 20 percent category (Ostarch, 1972).

In determining what property is best to give for income tax purposes, the type of gift is one that appreciates in value, rather than one that remains unchanged or depreciates (Callahan, 1971). Fortunately for donative purposes, land has generally continued to increase in value from its original purchase price (the owner's tax basis) in spite of possible surrounding misuse and restrictions. The Internal Revenue Service has ruled that in cases where land, threatened with condemnation, is deeded to the governmental agency as a gift thereby decreasing the value of the

retained land also represents part of the value of the land contributed (Weithorn, 1972). Although appraisal of property values play a large role in donative land transfers, its techniques are complicated and applicable only to individual cases and therefore beyond the scope of this study.

Before the enactment of the 1969 law, a sale of appreciated property to a charity for less than the fair market value, or a bargain sale, resulted in the taxpayer's being able to deduct the difference between the sale price and the fair market value as a charitable donation. In order for the owner to realize a deduction, donative intent had to be shown; in other words, the circumstance of the sale had to demonstrate that the taxpayer was motivated to sell at a reduced price solely because of his desire to make a charitable gift (Weithorn, 1972). This technique often resulted in substantial savings through reduced or no capital gains tax and a sizable charitable deduction. Where the sale price is equal to the owner's tax basis in the property, the donor could realize no taxable gain but fully recover the tax basis of the land, thus no capital gains tax. If the difference between the sale price and the fair market value was $3,000, the seller/donor could deduct the entire $3,000 and the tax basis as a charitable gift.

Congress saw this double tax benefit as an inequity, and the new tax law takes steps to reduce the bargain sale's effect. Presently, the donor must now realize a taxable gain on the property sold to the charity by apportioning the adjusted

basis in the entire property between the sale and the charitable donation. For instance, if land held over a year with the value of $100,000 was sold to a public charity at the taxpayer's cost of $50,000 (also the adjusted basis), one-half of the adjusted basis is apportioned to the sale and the owner consequently recognizes a capital gain of $50,000 in the year of the transaction. The owner still makes a contribution worth $50,000 which is deductible, but for all practical purposes the same tax "bargain" could be realized if the property had been sold on the market, capital gains tax paid, and the money donated to the charity (Ostarch, 1972). Even though the tax advantage has been reduced there may still be other advantages in bargain sales, such as avoidance of commissions and transfer fees (Sanden, 1969).

The new tax law has also limited deductible amounts where ordinary income producing property or short term capital gain transactions (concerning property held for less than six months) are concerned. Property given to a public charity which ordinarily would give rise to regular income if sold on the market is no longer deductible at its fair market value. Instead, only the owner's basis in the property is deductible. For example, a wealthy entreprenuer who has engaged in a number of real estate transactions, contributes vacant land to a city that he has held for two years and which is now worth $100,000 (although it cost him only $40,000). Whereas the taxpayer may claim a $100,000 deduction, the Internal Revenue Service may allow only a $40,000

deduction due to the fact that the land represents a "dealer" asset (Weithorn, 1972). This could give rise to litigation and a sizable decrease of land donations from realtors, especially in the municipal areas.

Donation of land that, if sold, would have received a long term capital gain, is still given favorable tax treatment. As noted earlier, the donation of long term capital assets is limited to 30 percent of the donor's contribution base, but the property value appreciation need not be reduced before making a deduction. Such a contribution is taken into account only after all other contributions, but any excess from the year of the transaction may be carried forward for five years against 30 percent of the contribution base. If, however, the taxpayer elects to have his gift limited by 50 percent of his contribution base, his deduction is restricted to the basis of the property plus one-half of its appreciation.

For example, X, with a contribution base of $100,000, makes a donation of land to a public park agency worth $50,000 which he purchased several years ago for $20,000. If he elects to have his contribution limited to the basis of the capital gain property ($20,000) plus one-half of its appreciation (1/2 x $30,000), his total gift deduction will be $35,000, well under 50 percent of his contribution base. If it had exceeded the limitation, the excess could have been carried over for five years (Weithorn, 1972). When the tax basis of the property is

relatively high or the determination of the property value is difficult, the donor would achieve greater tax benefits by electing to apply the tax basis as the contribution (Sanden, 1969).

The Federal income tax permits another tax benefit in the form of gifts of undivided fractional interest in the property. In some cases when the land value exceeds the allowable deduction, the donor can contribute undivided fractional interests in the property that do not exceed the deduction limitation for several years. This method not only reaps benefits for the donor but also is quite workable to agencies with long range plans who have no need for developing the land at any immediate date (Stewart, 1962).

Contributions of future interest in real property which pose a very appealing arrangement, are deductible at their full market value, whereas generally a taxpayer is not permitted to claim a charitable deduction for a gift of less than his entire interest in the property (Ostarch, 1971). In such a case the donor retains the right to use of the residence for his life or any subsequent lives. However, the real property must take the form of a "personal residence on a farm." Since the law refers only to a "personal residence," rather than "the principal residence" or other equivalent language, it seems clear that any residential property owned by the donor falls under this category, even though he spends very little time occupying it or even offers it for rent when he is not occupying it (Weithorn, 1972). The value

of the remainder interest in the property is reduced at the rate of 6 percent per year, based on the mortality tables, unless the IRS prescribes a different rate, and depreciation and depletion is also taken into account (Klipstein, 1970). The result is that the valuation of this form of remainder interest yields an amount less than any other form of remainder interest, such as the unitrust (Mansfield, 1971).

Although the amount of deduction for transfer of additional future interests in the property is decreased each year by depreciation and depletion, the property has been removed from the donor's taxable estate. The amount of the property value is included in the gross estate due to the retained life interest, but it is offset by a charitable deduction of the same amount (Weithorn, 1972). This also increases the basis for the marital deduction if one is involved. The donor thus leaves open the option of realizing future income tax benefits should he decide to vacate the property and contribute the retained life estate to the charity.

Perhaps an illustration of the tax consequences of contributing a partial interest in real property to a charitable organization would further illustrate its ramifications. Assume that the property to be donated for a county wildlife preserve and nature center has the present value of about $500,000, the taxpayer is forty-five years old, single, and has an annual tax contribution base of about $150,000. The taxpayer wishes to retain the house as his residence for the remainder of his life while giving away

remainder interest at the present time to decrease his current income taxes. The donor arranges for the land to be contributed in several installments consisting of one-fifth the property to the operating public agency, with actual possession of the property reserved by the taxpayer for the duration of his life. Each fractional interest would require separate paperwork, otherwise a single contract would be construed to be a single present made in installments (Weithorn, 1972). The installments would not necessarily be annual ones because the charity is in the 50 percent category, and any excess could be carried forward for up to five years. Although the value of the remainder interest would be decreased at a rate of 6 percent per year of life remaining to the donor according to the actuarial tables, with depletion and depreciation also applied, this form of land philanthropy can hold some tax benefits in addition to the owner retaining full use of the property.

If the residence is rented during the year the tax consequences would be even more favorable. The donor would continue to receive the rental income and pay the operating and maintenance expenses of the property for life. Even though through his gifts of remainder interest he has disposed of a substantial portion of his property, the donor is entitled to all of the depreciation deductions attributable to the property, thus compensating for the same depreciation applied to the value of the remainder interest (Weithorn, 1972). The Internal Revenue Code assures this:

> In the case of property held by one person for life with the remainder to another person, the deduction for depreciation shall be computed as if the life tenant were the absolute owner of the property so that he will be entitled to the deduction during his life, and thereafter the deduction, if any, shall be allowed to the remainderman (IRC, S 1.167 (g) (1) (a), 1971).

It must be pointed out that the depreciation deduction is not allowed on a personal residence, but only to commercial property (Weithorn, 1972). The possibility of litigation is open in such a case where "personal residence" has been stretched to apply to rental property.

In instances where the land is donated to a charitable or public organization and then immediately leased back to the donor, the donor is entitled to a contribution deduction equal to the value of the property. A bona fide transfer of an equity interest in the property must have taken place and the terms of the lease must be fair and reasonable in order for such a deduction to result (Weithorn, 1972). This method may prove most beneficial where use of the property is not in conflict with the public charity's intended use, and the owner agrees to limit that use in keeping with the wishes of the agency. It would appear, too, that more substantial tax deductions could be obtained by this method because there would be no devaluation and depreciation involved. The contribution would only be restricted by the donor's 50 percent contribution base limitation.

Closely related to the leaseback technique, an easement may be granted to a public land agency by a land owner's transferring the development rights of his preservable land. If such a transfer is in the form of a gift, the value of the easement may be treated as a charitable deduction when the public is clearly benefitted (Platt, 1971). At the same time, the grantor's basis for the property is reduced (Weithorn, 1972) thereby lessening the value of the land for property tax purposes.

Another alternative contribution method available to donors is to transfer property to a charitable organization in exchange for an annuity contract. By way of definition, an annuity contract is that by which one party delivers to another a sum of money, and agrees not to reclaim it so long as the receiver pays the rent agreed upon (Black, 1951). In case of real property the annuity paid would not actually result from the interest earned by the property, as is the case of most annuity contracts, but rather the agency would guarantee an annual cash payment to the donor approximate to the amount paid by a commercial annuity contract. To the extent that the value of the property transferred exceeds the value of the annuity contract received, the donor is entitled to a contribution deduction (IRC, S 170-2 (a) (3) i, 1971). Under the annuity plan the taxpayer acquires the right to receive from the charitable organization a fixed annual payment for a specific number of years or for the duration of his life and/or the lives of others that he may appoint. Where beneficiaries other than

the donor are named, the Internal Revenue Service considers that a taxable gift has been made to them equal to the amount of the annuity paid to each beneficiary (IRC, S 2512-5 (b), 1971). One wishing to obtain all available tax benefits should avoid this pitfall.

One restriction strictly governing the operation of an annuity is its relation to the transferred property. The Internal Revenue Service requires that the value of the annuity be less than 90 percent of the value of the property transferred in order that the annuity payments not be subject to unrelated business income taxation (IRS, S 514 (c) (5), 1971). In other words the gift portion or the charitable contribution must constitute more than 10 percent of the value of the property transferred. As in the bargain sale, tax must be paid on the gain realized between the property's tax basis and the amount of the life expected value of the annuity. If, however, the tax basis is equal to actuarial value of the annuity, there is no realization of gain and no capital gain tax is involved.

The preceeding skeletal view merely lays the groundwork for actual application of the several tax deduction avenues available to a potential land philanthropist and a public charity. Because tax laws change with each session of Congress, a public parkland agency must constantly keep abreast of charitable deduction rulings and regulations. While present laws regarding income, gift, and estate tax are relatively restrictive, there may

be a shift in legislative concern to include a more generous tax deduction to taxpayers who donate land for public use. The variables involved are so diverse that it is impossible to list each elixir for land acquisition situations. In each case the decision must be reached by the individual landowner under advice of his attorney who is familiar with the various methods available and cognizant of his client's financial and personal interests.

Real Case Applications

As was indicated earlier, although landowners can usually benefit financially from making charitable bequests of their property, all society is given the rewards of access to their land. However, the monetary aspects of such a transaction are not the chief reason for the gift. It is the landowner's keen feelings of responsibility and affection towards the land in his charge that causes him to act in behalf of its future existence. Little calls this concern "stewardship" (Little and Burnap, 1965) which suggests an "ancient wisdom" that, in the past, saw the necessity of caring for ancestrial lands. The alternative was the barren field. Today, our urban based society has broadened this concept to include not only agricultural lands, but the landscape in toto. The modern steward is aware of how modern technology backed by population pressures can rapidly erase naturalness and is concerned with protecting the quality of the environment. He particularly realizes that open land or land in its natural condition is essential to provide recreational opportunities, to

maintain aesthetic and liveable surroundings, and to preserve the natural processes. Open space and park agencies who realize this attitude not only hasten the realization of publicly accessible lands, but also form the administrative vehicle to materialize the owner's objectives.

The following are several examples of how the landowner's love of the land and public spiritedness combined with favorable tax treatment and park agency expertise have led to the addition of valuable natural lands to the public domain. The cases of philanthropy and wise exploitation are taken from examples found in Texas and other states.

Brinton Brook, New York (Little and Burnap, 1965)

In 1957, Mrs. Willard Cope Brinton, recently widowed, opened the gates of her 150 acre farm to the public as a wildlife study area. She and her husband had explored every square foot of their property, taking an interest in the many variety of trees, the rock formations, and plentiful wildlife. Because of its being located in the midst of the sprawling New York City metropolitan area, they had been approached over the years by developers but had held out. When Mr. Brinton died, she decided that the National Audubon Society would be the best custodian of their property.

In order to enjoy maximum tax benefits from her gift, Mrs. Brinton set up a schedule which called for the donation of

one-tenth undivided interest in the land each year. When the Internal Revenue Code was revised in 1964 allowing for an increase of the donor's contributions from 20 to 30 percent of the adjusted gross income, she conveyed the remaining interest that year. Prior to this the undivided interest donations were necessary because there was no carryover for excess giving which is allowed under present law.

During the period of the annual gifts, Mrs. Brinton safeguarded her intentions by providing through her will that any interest still held by her at her death would be transferred to the National Audubon Society. Because there is no limit on deductible gifts to a charitable organization as regards the estate tax, the land would have passed tax free to the society upon her death. After 1964 when her gift was complete, she was relieved of property taxes on the parcel she donated. She could have requested that her taxes be reduced as her interest in the property was reduced, but she chose to pay full local taxes and take this as an income tax deduction.

"Chelsea"--Nassau County, Long Island, New York (Little and Burnap, 1965)

The preservation of an estate on Long Island and its development into a nature center by the county sprang from a New York law which sanctions the concept that property owners may grant to others the rights that ownership entails, such as rights of way, hunting rights, etc., and still retain possession and enjoyment.

This concept is similar to the one expressed in the Federal tax laws which permit gifts of partial undivided interest in property with the title remaining to the owner during his lifetime. Property taxation is thus reduced, in both instances, where the land is in permanent public use. The New York statute provides for property tax reduction where such land is limited to a particular use.

Mrs. Robert G. McKay, the owner of "Chelsea", wanted her property not only preserved, but put to use. In 1964 she granted the county through an easement the right to use 60 percent of her ninety-five acre estate if it would develop a nature center there and leave undisturbed the mature trees and shrubbery. Mrs. McKay could have donated the land through a testamentary gift, but she wished to enjoy the fruits of her gift during her life. She could have also given the land and retained a right to live on it until her death, but the arrangement worked out under the New York State law provided her with financial advantages unobtainable from the tax laws then in force. In the process, she intended to give the entire acreage to the nature center, but her gift had to be limited to a rate allowing her to take maximum advantage of the income tax deductions without overbalancing her other charitable contributions.

Under the 1969 Act, the original transaction may have realized the same results if it occurred today because of the increased charitable deduction limit and the rule allowing full

market value deduction for gifts of personal residences. The easement arrangement did allow a reduction of the tax assessment by approximately 75 percent and lowered the assessment of the retained residence by 10 percent because of her loss of privacy. The new property value assessments are strictly limited to this specific case, where the city to whom the taxes are paid felt it had made a good bargain. Perhaps similar "good bargains" would reap equally generous property tax reductions in specific Texas examples.

The Ryersons and the Lake County Forest Preserve District (Platt, 1971)

An interesting philanthropic land transaction occurred in 1966 involving both future interest in the property and fixation of surrounding land values. Mr. and Mrs. Edward L. Ryerson sold eighty-seven acres of the Des Plains River bottomland to the Lake County Forest Preserve District of Illinois at its market value. The selling price of that transaction set the value of the subsequent donations of the adjoining land. The Ryerson's made the gifts with retained life interests in portions the size of which depended on the amount of tax deduction they could take for the year of the gift.

Because of the restricted use of the donated property, the adjacent property value may have been reduced if undivided interests in the land had been given resulting in less advantageous tax benefits to the donors. By setting the value of the property in the original sale at a reasonable price, their remaining

gift's value was protected.

The Maryland-National Capital Park and Planning Commission Experience (Kershow, 1971)

A couple, reported as Mr. and Mrs. X, sixty years of age, owned 117 acres of land appraised at $360,000 and wished to sell it to the Maryland-National Capital Park and Planning Commission (MNCPPC). They were afraid of the large capital gains tax bite that would occur if they sold it directly to the commission. Actually their chief desire was to have an income of $1,000 a month for the rest of their lives.

It was determined through the aid of an accountant that if, in exchange for the land, the MNCPPC would deposit $200,000 in an escrow account at 7 percent interest, the X's could be guaranteed a monthly income of $1,000 for the rest of their lives. At their death the $200,000 would revert back to the MNCPPC. Mr. and Mrs. X's tax situation was further improved by using a 30 percent charitable tax deduction over the next five years (the maximum allowable during the time of the transaction), the couple paying $1,250 per year in tax against a $12,000 income. Starting with the sixth year the tax would be $1,580 against their $12,000 income. The entire transaction was approved and the amount of tax to be paid on the monthly income was determined by the Internal Revenue Service prior to the settlement. Thus the X's removed $360,000 worth of land from their taxable estate and received a monthly income needed to enjoy the remainder of their lives. The MNCPPC

received a substantial amount of land at no cost to the agency because the amount in the escrow account would return to them upon the donors' death.

The Dr. W. W. Samuell Bequest, Dallas, Texas
(Houston, 1966)

In 1937 Dr. W. W. Samuell willed to the Dallas, Texas park system 800 acres of farmland in close proximity to the city. In addition he bequeathed a 100 acre tract within the Dallas city limits which had been leased to the city for a number of years as a playfield, several downtown business properties, and a number of residential and business properties in the city. Several of the tracts were retained by the city as parks, and the remainder were sold and the resulting money placed in a foundation for the operation of the Samuell properties. The foundation has now grown to a market value of $3 million with income in excess of $100,000 per year (Wiemer).

Because the will was devised about the same time as the enactment of the first estate tax law, in all probability tax consideration did not play an important role in Dr. Samuell's decision to donate such a handsome gift to the city of Dallas. It did, however, form the basis of an extremely well managed and extensive park system which has proven to be an influential force in attracting philanthropic gifts of land and money to the Dallas park system. Mr. L. B. Houston, past Director of Parks, Dallas, Texas, remarked that most of the 8,000 acre park system was acquired within the

last forty years and over one-third was from gifts (Houston, 1966). Due to the combination of the Samuell gift's prestige and community admiration and the presence of respected civic leaders on the park board, very little solicitation on the part of the park administrators has been necessary (Houston, 1973). In the Dallas situation alturism has seemingly taken presidence over tax benefits.

Hypothetical Case Applications

A public park and open space agency, more likely than not, holds the key which could unlock the private landowner's property for public use. For the purposes of this discussion, assume that such an agency exists--one which is aware of tax benefits available to the donating landowner and is engaged in an active program of acquiring parklands.

This imaginary agency will be called The Upper Trinity Valley Regional Park Authority (UTVRPA) composed of six Texas counties in the northeast portion of the state. The twelve member park board is made up of two representatives from each county appointed by the county judge with the consent of the Commissioners Court. The UTVRPA has authority to levy a tax of five cents per one hundred dollars worth of property and to sell general obligation, limited obligation, and revenue bonds. The park authority can sell up to $5 million worth of general obligation bonds with matching funds available from the Bureau of Outdoor Recreation and/or the Department of Housing and Urban Development. Entrance fees are charged but at a higher rate to visitors living outside the six

county area and those not subject to the tax. Because of the UTVRPA's limited financial posture, much of its land acquisition will be dependent on private donations and bequests. The Upper Trinity Valley Regional Park Authority is designated a charitable organization by the Internal Revenue Service due to its structure and functions, and therefore any gift to the authority is tax deductible.

The UTVRPA has as its objective the procurement of an open space system that would educationally and recreationally benefit the taxpayers. This is to be accomplished by several means. First, the acquisition of large tracts of forests, wildlife habitant lands, and marshes would serve as nature conservancies as well as limited recreation areas. A nature education program is planned for the system. The UTVRPA is also interested in securing a system of open space linkages to connect to various natural areas. These would generally follow the flood plains and stream valleys in the area, thus providing protection to the areas themselves by controlling the basic ecological water systems. Finally, the acquisition of historic sites and buildings of local and/or regional significance would further compliment the park authority's objective.

One area of land in Kaufman County holds particular interest to UTVRPA because of its generally unurbanized character and close proximity to the more populous area of the region. Several large farms and estates belonging to elderly owners form

an ideal situation to which the agency can apply the procedure of presenting favorable tax treatment available to land donating owners in an attempt to acquire land for parks and natural areas (see Figure 1).

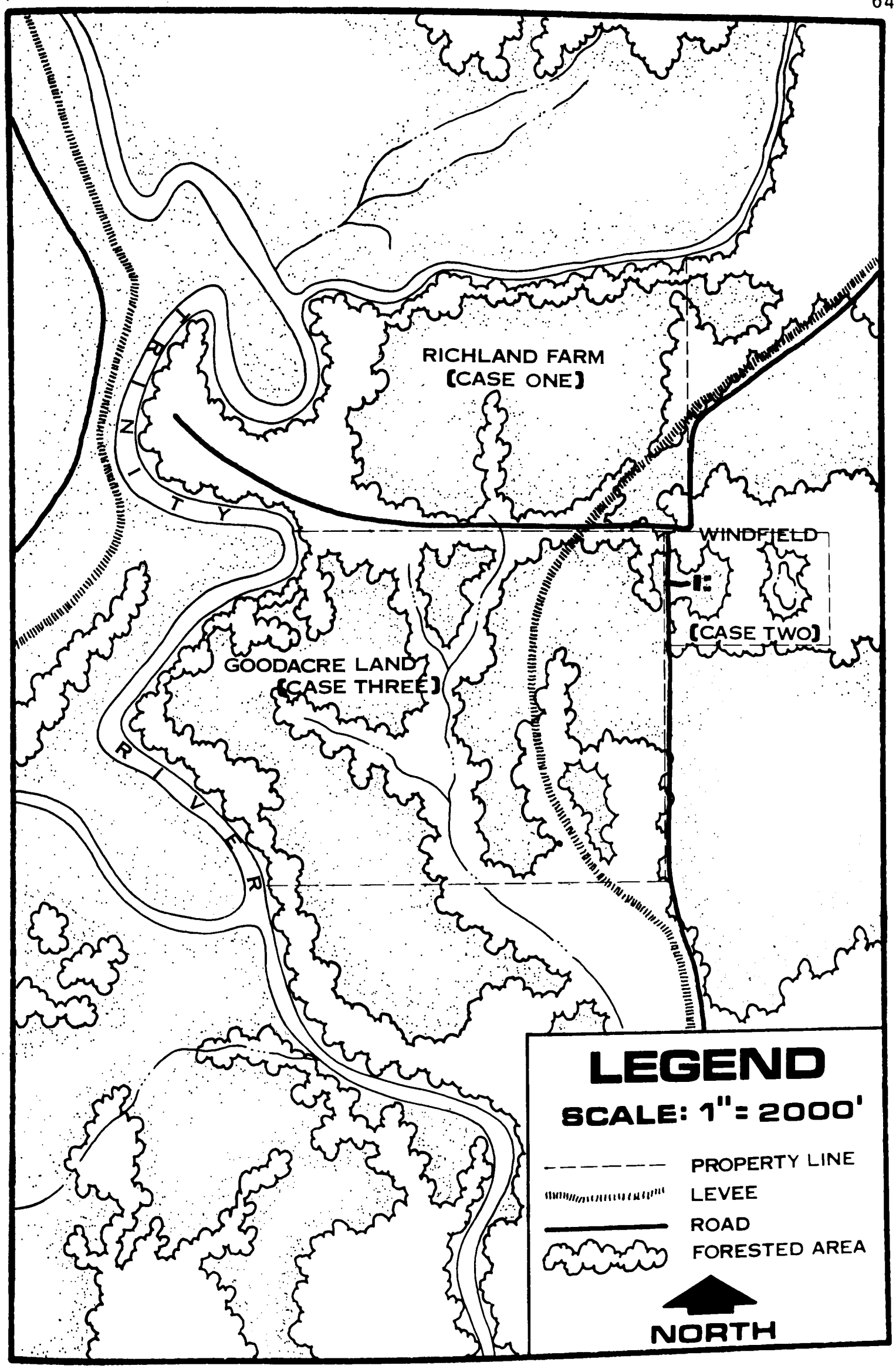
Case One

Mr. and Mrs. Richland own a 500 acre farm with 120 acres of bottomland forest along the Trinity River (see Figure 1). Both are in their mid-sixties, and Mr. Richland does not wish to continue farming because of his age and poor health. Their son, a space engineer living in Florida, has two children--ages three and five. Their daughter is a senior at Southern Methodist University in Dallas. Neither children are interested in their parents' property for personal use and would sell the land if they were to inherit it.

At present the farm is being taxed as agricultural land, although with the prospects of a multipurpose channel being built, the Richland's property could be taxed as industrial property because of the potential for industrial growth in the area. The Richlands have not been approached by developers, but they would seriously consider selling their farm if they were made a reasonable offer.

The Upper Trinity Valley Regional Park Authority considers the Richland farm an ideal area for acquisition especially since the forested area is rather large and adjacent the river.

FIGURE 1 HYPOTHETICAL LAND OWNERSHIP MAP



The park authority, aided by their legal counsel who interacts with the Richlands' attorney, approaches Mr. and Mrs. Richland with the prospect of their either donating the property or transferring it for an amount affordable by the agency. During the discussions, the park authority learns that the Richlands are basically only interested in securing an income through life and keeping the residence in which to live out the rest of their lives. They also want to provide a trust for the two grandchildren in Florida.

To realize these ends the Richlands would transfer the 120 acre forested bottomland to the agency in return for an annuity contract by which the UTVRPA would guarantee an annual income to the couple for the remainder of their lives. The bottomland has an appraised value high enough that the annuity paid over the years would not exceed the value of the property transferred. In addition the Richlands would have to donate undivided fractional interests of the remainder of their farm to the UTVRPA to receive full income tax advantage. Because they are in a low income tax bracket, the amount of the allowable yearly charitable deduction, limited to 50 percent of the contribution base, could not be large enough to encompass the value of the entire property. The five year carryover would also then be applied, further extending the fractional gift. Upon their death, the Richlands would transfer, by will, the remainder interest in the property to the park authority. Although the public would have use of the property while the fractional interests were being donated, the couple would

retain for life the right to reside in their home along with property rights of some surrounding property to insure privacy. The donative transfer of the remainder interest would offset the income realized from the annuity, keeping the couple's income tax at a minimum. The charitable transfer would reduce the taxable estate to below $60,000, thus eliminating the estate tax. The remaining estate, in turn, could then be placed in a trust for the grandchildren upon the death of the Richlands. Also, their property tax would be substantially reduced by the charitable transfers upon each fractional gift, and the possibility of the land being assessed as industrial property would be removed because of the actual and potential possession of the property by the UTVRPA.

Case Two

Adjacent the Richland farm lies a sixty acre tract with a large estate house constructed in 1858. The land is all that remains of a large plantation owned by the Bonchamp family. Most of the property has been sold over the years because it was used less and less for farming by the owners. Presently it is occupied by Mrs. Lora Windfield, a great granddaughter of the original owner. Mrs. Windfield is a widow, seventy years old, with one daughter who is forty, married, and has three teenage children. Due to her husband's wise investment of the family estate, Mrs. Windfield is independently wealthy.

The Windfield mansion has been designated an historic site by the Texas Historical Survey Committee and has long been of interest to the local people, as Mrs. Windfield often held open house on significant occasions. The value of the estate is further increased by a beautiful collection of antique furnishings assembled over the years.

The chief concern of Mrs. Windfield is the preservation of the remains of the family estate, and she is seriously considering the UTVRPA as the beneficiary in a bequest of her property. The park authority is naturally eager to acquire such an estate in order to preserve such a significantly historic home, especially with adequate lands to serve as a buffer against the encroachment of possible harmful surrounding uses. In addition the UTVRPA learns that the owner wishes to provide for perpetual care of the home and its furnishings and to provide income for her daughter after her death.

The park authority and Mrs. Windfield felt that the following arrangement would meet her interest by providing protection and preservation of the estate, and the public's by insuring that the historic site enters into the historic legacy of the region. Mrs. Windfield would transfer the land, the house, and its furnishings to the Upper Trinity Valley Regional Park Authority to serve as a museum and historic interpretative center while retaining a life tenancy to the property. This arrangement serves the park authority who is willing to wait the few years remaining to the

donor. Mrs. Windfield is equally amiable as she wishes to remain in the home until her death and will be able to deduct the value of the property on her income tax return during the year of the gift. Depending on the amount of her contribution base, she could donate the property in several undivided interests with the undonated property passing to the UTVRPA upon her death. To further insure that her home is preserved, Mrs. Windfield stipulates in the agreement with the park authority that if the estate is not used as an historic site or other related function it will revert back to her daughter or her daughter's heirs.

Mrs. Windfield would also establish a trust fund by will which would provide for the upkeep of the historic property, the principal of which would be composed of one-half of her property at death. The other half of her property would be placed in an annuity trust for her daughter, which would guarantee a yearly income from the interest earned from the uninvadable principal. The will would provide for the later trust to pass to the UTVRPA upon her daughter's death. Through this arrangement Mrs. Windfield would eliminate her taxable estate through the gift of property, the establishment of the perpetual care trust, and the creation of the mixed private and charitable remainder trust for her daughter. The daughter is also relieved of any Texas inheritance tax because her trust will ultimately pass to the UTVRPA. Mrs. Windfield, of course, pays no gift tax on either of the bequests.

Case Three

Mr. G. R. Goodacre, fifty years old, owns a 660 acre strip of land along the Trinity River which he inherited from his father ten years ago. When his father died the land was appraised at $500 an acre, but its value has since risen to $1,000 an acre. He lives in Dallas and has no interest in retaining the real estate. He has been approached by a land speculator and an industrial park developer who are interested in purchasing the land. However, Mr. Goodacre is in a relatively high income tax bracket and is more interested in realizing income tax advantages over a long period of time.

The UTVRPA, upon learning of his desire, seriously considers some sort of arrangement whereby the public could use the land. Before, the UTVRPA was not particularly interested in the property because the land had been leased for farming and the native vegetation greatly reduced. The possibilities of developing a recreation area in such close proximity to a fine natural area and historic site appeals to the park authority, however. Thus, the UTVRPA proposes to Mr. Goodacre that a long term land transfer agreement be engaged in since the agency is not pressed for time in acquiring the property.

Mr. Goodacre's contribution base is consistantly around $100,000 each year through salary and investment returns. In order for him to realize income tax deductions on his gifts of land, Mr. Goodacre has two alternatives to choose from. The first choice

open to him involves his limiting the charitable donation to 30 percent of his contribution base which would be $33,000 for the year of the gift. He could then deduct the full market value of the property which is $1,000 per acre. If he donates thirty acres of the property during the year he would have made a deductible gift of $30,000, well under his 30 percent limitation. At this rate he could continue making yearly gifts of land to the UTVRPA for twenty-two years before all of the land was donated. On the other hand, the second alternative would allow him to apply the amount of the donation to 50 percent of his contribution base, or $50,000, for each year of a gift. Under this limitation, however, Mr. Goodacre can only deduct the tax basis of the property, which is $500 per acre, plus one-half of the appreciation, which would be $250 per acre. If he elects this alternative he can donate sixty acres of land to the UTVRPA in a year, a gift of $45,000, leaving $5,000 for other charitable contributions which might fall in the 50 percent category. The amount of donations could continue yearly for eleven years.

Thus, Mr. Goodacre carefully studies the alternatives to decide which one best suits his needs. The first choice of limiting the transfers to 30 percent of his contribution base would double the length of the donative years and yield a total deductible amount of $660,000 compared to $495,000 over the eleven year period. The yearly deductible amount would be greater by the second method ($45,000) than by the first ($30,000). However, Mr. Goodacre

realizes that, because of his age, twenty-two years of deductible gifts may not be necessary, and, in fact, may not be possible considering the frequently changed and recently more strict Congressional laws affecting donations of appreciated property. In lieu of these facts, he elects to donate the land sixty acres at a time, the donation to be limited to 50 percent of his contribution base, resulting in a greater tax deduction in the year of the gift. The park authority is equally satisfied with his decision because it enables them to more quickly acquire the property for park land.

CHAPTER V

SUMMARY AND CONCLUSION

The preservation of open space for recreation, aesthetics, and conservation uses is a vital factor in determining the future environment of our state. Although Texas is blessed with an abundance of undeveloped natural areas, the shortage of these areas in and around the metropolitan areas is being felt. The few lands which are still available for parks and open spaces are also all that is left for garbage dumps, high-rise apartments, and industrial parks.

Fortunately, in the past, and hopefully in the future, a surprising amount of open land has been obtained from gifts. Many landowners bequeath land to park commissions in their wills or give property for park use before their death. These donors realize that there is more to land than the profit margin between purchase and sale. Theirs is a concern for their land which incompasses a love for the beautiful and the natural and a desire to share it with their fellow men. However, some gifts result from cases of self-interest where property taxes have become unbearable or income tax deductions are needed. Still, such donors demonstrate some concern for their land, for they explore the various tax avenues

because they feel they must justify economically what their business sense tells them to do.

Whatever the motive, land philanthropy is a complex affair and involves a great deal of thought and study on the part of the donor, his lawyer, and his accountant. The tax laws affecting the donor's transfer of property are numerous and confusing to the layman. They are equally puzzling to the public agency who cannot devote full-time to exploring their ramifications and applications and are only occasionally called upon to utilize favorable tax treatment as an acquisition technique. Therefore, it would serve the park administrator well to remember the following points during any potentially donative land transaction:

1. Establish immediately what the landowner's objectives are so that all negotiations will ultimately work towards that end.

2. Rely on the advice and knowledge of a lawyer and an accountant who have a first-hand working knowledge of the intricate details of the tax laws. There can be no substitute for professional help in determining what arrangement is most beneficial to the potential donor and the park agency.

3. In order for a donor to realize significant tax benefits, remember that:

   (a) Gifts with life interest in appreciated property must take the form of a personal residence or farm so that depreciation will not be applied to the deductible gift;

   (b) Mixed private and charitable bequests must eventually pass to the charitable organization and in an amount not less than the charitable deduction taken by the donor (in Texas such bequests must also be for public use within the state);

   (c) The 30 or 50 percent of the contribution base deduction options open to donors of appreciated property result in different year-of-the-gift amounts and long-term deductions depending on the donor's tax basis in the property or his need for several yearly deductible gifts.

4. Explain to the donor how his gift of land not only results in income, gift, and property tax savings, but enables park authorities to obtain land for public use at little or no cost, resulting in further eventual tax savings to the donor.

5. Remember that gifts of land are most encouraged by effective and efficient administration of previously donated land and respectful fulfillment of past donor's wishes and dictates.

Tax benefits are available to private landowners who wish to take advantage of them by donating land. In virtually all situations the owner can also realize his other wishes such as a continuous income, a trust for his children, or a residence for life. The park administrator is faced with a situation where funds are simply not available in sufficient amount or in time to preserve the necessary amount of open space for today's or future generations. Perhaps the emphasis should be directed toward the private landowner who is in a position of being able to do something about the loss of open space for parklands. Land philanthropy, although not a panacea, can result in a significant increase of parklands for the public and tax advantages for the donor.

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