

DESCRIPTION OF S. 1675  
(PUBLIC LANDS ACQUISITION ALTERNATIVES ACT OF 1983)

Scheduled for a Hearing

Before the

SUBCOMMITTEE ON ENERGY AND AGRICULTURAL TAXATION

of the

SENATE COMMITTEE ON FINANCE

On February 6, 1984

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of the

JOINT COMMITTEE ON TAXATION

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## INTRODUCTION

The Subcommittee on Energy and Agricultural Taxation of the Senate Committee on Finance has scheduled a public hearing, to be held on February 6, 1984, on S. 1675, the "Public Lands Acquisition Alternatives Act of 1983" (Senators Wallop, Durenberger, and Chafee).

The first part of this document is a summary of S. 1675. The second part is a more detailed description of the bill, including present law, explanation of the bill's provisions, and effective dates.

## I. SUMMARY

The value of property donated to charitable organizations generally is deductible for income, gift, and estate tax purposes. Percentage limitations are imposed on the aggregate amount that may be claimed as an income tax deduction in any year. Transfers of less than a donor's entire interest in property are not deductible except in certain specified circumstances; an income tax deduction is permitted for a contribution of a qualified conservation interest. Present law does not include special rules for the tax treatment of gain on a sale of property to a charitable organization for conservation purposes.

S. 1675 would liberalize the income tax rules governing deductions for contributions of partial interests in property and the definition of a qualified conservation contribution; would permit nonrecognition of gain realized on the sale of certain conservation interests to charitable organizations if the seller reinvests the proceeds in other real property; would reduce the portion of long-term capital gains includible in gross income on the sale of certain conservation interests to charitable organizations; would provide an estate tax credit for bequests of certain conservation interests to the United States; and would provide an estate tax deduction for income tax deductions arising from donations of conservation interests which remain unclaimed at the donor's death.

The income tax provisions of the bill generally would apply to transfers occurring after the date of the bill's enactment. The two provisions relating to the tax treatment of gain on certain sales of conservation interests generally would expire ten years after the bill's enactment. The estate tax provisions of the bill would apply to estates of individuals dying after the date of enactment.

## II. DESCRIPTION OF S. 1675

### Present Law

#### Deductions for contributions to charitable organizations

##### General rule

Subject to certain limitations, present law provides a deduction for contributions of property to charitable organizations, to the United States, or to a State or local government. The deduction generally is equal to the fair market value of the property on the date of the contribution. Charitable deductions are provided for income, estate, and gift tax purposes (Code secs. 170, 2055, and 2522).

##### Percentage limitations on aggregate gifts

For income tax purposes, contributions of cash and ordinary-income property by an individual to public charities or to private operating foundations are deductible up to 50 percent of the donor's adjusted gross income. (The 50-percent limitation applies to such contributions made to a private nonoperating foundation only if the donee either redistributes all contributions within a specified period after receipt or qualifies as a "pooled fund" foundation.) For contributions of certain capital-gain property to organizations otherwise qualifying for the 50-percent limitation, the limitation generally is 30 percent. In the case of contributions to private nonoperating foundations (other than the two categories eligible for the 50-percent/30-percent limitations), the limitation is 20 percent.

Contributions by individuals which exceed the 50-percent/30 percent limitations may be carried forward and deducted over the following five years, subject to applicable percentage limitations in those years. Under present law, there is no carryover of excess deduction amounts if the 20-percent limitation applies.

Contributions by corporations are deductible up to 10 percent of the donor's taxable income (determined with certain modifications) for the taxable year, with a five-year carryforward of any excess contributions.

There are no percentage limitations on the amount of charitable deduction for gift or estate tax purposes.

##### Special rules for donations of property

Gifts of certain types of property interests are subject to special restrictions, either as to the amount deductible or as

to types of property interests for which a deduction is permitted.

Under present law, a contribution of a capital asset held by the donor for more than one year prior to the donation (capital-gain property) made to public charities or to private operating foundations is deductible at the asset's full fair market value at the time of the contribution, subject to the 30-percent limitation for all such contributions of capital-gain property. However, in the case of an otherwise qualifying gift of tangible personal property the use of which by the donee is unrelated to its exempt functions, the amount deductible by an individual donor equals the property's fair market value less 40 percent of the amount by which that value exceeds the donor's basis in the property. Also, in the case of donations by individuals of any capital-gain property to private nonoperating foundations (as to which the 20-percent limitation applies), the amount deductible equals the asset's fair market value reduced by 40 percent of the amount by which the value exceeds the donor's basis in the property. The deduction for gifts of ordinary-income property (such as inventory) generally is limited to the donor's basis in the property.

A contribution of less than the donor's entire interest in property generally does not give rise to a charitable deduction (for income, estate, or gift tax purposes) unless the gift takes the form of an interest in a unitrust, annuity trust, or a pooled income fund. Exceptions to the partial interest rule are provided for gifts of remainder interests in farms or personal residences, gifts of undivided portions of the donor's entire interest in the property, and, for income tax purposes, gifts of qualified conservation interests.

#### Qualified conservation interests

Under present law, qualified conservation interests are real property interests donated in perpetuity for any of the following conservation purposes--

a. The preservation of land areas for outdoor recreation by, or for the education of, the general public;

b. The protection of a natural habitat of fish, wildlife, plants, or a similar ecosystem;

c. The preservation of open space (including farmland and forest land) but only if such preservation (1) either is for the scenic enjoyment of the general public, or is pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and (2) will yield a significant public benefit; or

d. The preservation of an historically important land area or a certified historic structure (sec. 170(h)).

Deductible conservation interests may take any of three forms. First, the value of a remainder interest is deductible. Second, the value of a restriction (e.g., an easement) granted in perpetuity on the use of the property is deductible. Finally, the contribution of the donee's entire interest is deductible, except that the donor may retain his or her interest in subsurface oil, gas, or other minerals and the right of access to such minerals. If a donor retains mineral interests, surface mining must be precluded on the property.

### Nonrecognition of gain in certain transactions

Present law permits nonrecognition of gain realized on certain dispositions of property. Taxpayers are not required to recognize gain on a "like-kind" exchange of business or investment property (sec. 1031). This nonrecognition treatment applies only to the extent that the property is disposed of for other like-kind property for use in a trade or business or for investment; gain is recognized to the extent that other property or money is received in the exchange. Additionally, a carryover basis applies to the property acquired in a like-kind exchange.

Gain is not recognized in the case of involuntarily converted property if property similar or related in use is received (sec. 1033). This nonrecognition treatment also is available if money or another type of property is received and the taxpayer acquires property similar in use to the involuntarily converted property within two years after the taxable year in which the conversion occurred.

### Taxation of long-term capital gains

Gains or losses on certain assets held more than 12 months are considered long-term capital gains or losses (secs. 1221-23).

For noncorporate taxpayers, 40 percent of net long-term capital gains are included in gross income, while 100 percent of net short-term gains are included. Also, for noncorporate taxpayers, 100 percent of net short-term losses, and 50 percent of net long-term losses, are deductible, up to a maximum of \$3,000 in a year (with a carryover of any excess net capital losses).

For corporate taxpayers, net long-term gains are subject to an alternate tax rate of 28 percent, while net short-term gains are taxed at ordinary corporate rates. A corporation can use capital losses for a taxable year only to offset capital gains, with a carryover for unused capital losses.

## Explanation of Provisions

### Overview

S. 1675 would liberalize the income tax rules governing deductions for contributions of partial interests in property and the definition of a qualified conservation contribution; would permit nonrecognition of gain realized on the sale of certain conservation interests to charitable organizations if the seller reinvests the proceeds in other real property; would reduce the portion of long-term capital gains includible in gross income on the sale of certain conservation interests to charitable organizations; would provide an estate tax credit for bequests of certain conservation interests to the United States; and would provide an estate tax deduction for income tax deductions arising from donations of conservation interests which remain unclaimed at the donor's death.

### Income tax provisions

#### Increase in percentage limitations on aggregate gifts

In the case of a qualified conservation contribution of long-term capital gain property which under present law is subject to the 30-percent limitation, the bill would allow a charitable deduction in the year of the gift of up to 50 percent of the individual donor's contribution base, reduced by the percentage represented by any other gifts of capital-gain property during the year qualifying for the existing 30-percent limitation. For example, if an individual whose contribution base is \$400,000 contributes during the year \$120,000 in appreciated stock to a university and \$100,000 in appreciated land to a qualified organization for conservation purposes, the bill would allow an additional deduction (as compared to present law) for the year of 20 percent, or \$80,000.

Also, the bill would provide an unlimited carryover of excess deductions for qualified conservation contributions (\$20,000 in the example), in place of the general five-year carryover under present law.

#### Modification of restrictions on types of deductible conservation interests

Under the bill, any contribution of a qualified property interest to the United States, or to a State or political subdivision of a State, for preservation of open space would be treated as meeting the requirements that the contribution must either be made for the scenic enjoyment of the general public or must be made pursuant to a clearly delineated public policy, and must yield a significant public benefit.

Additionally, the bill would repeal, as a condition for a

deduction, the present prohibition of surface mining on donated property where the donor retains mineral interests in the land.

Expansion of types of partial interests in property  
with respect to which a deduction may be claimed

The types of partial interests in property with respect to which a charitable deduction may be claimed would be expanded to include contributions of a donor's entire interest other than mineral interests, i.e., to include contributions of the surface interest in land where another person (such as the Federal Government) owns the mineral rights. Under the bill, such contributions of the surface interest in land would be deductible under the same rules applicable to other gifts of capital-gain property, without regard to the rules governing conservation contributions or the nature or ownership of any mineral interests in the land. However, in order for the increased tax incentives under the bill to apply (such as the 50-percent limitation), the transfer would have to satisfy the requirements applicable under section 170(h) to qualified conservation contributions.

Nonrecognition of gain on certain sales

A new provision would be added to the Code permitting nonrecognition of long-term capital gain on the sale of any qualified real property interest to a qualified organization for use exclusively for conservation purposes if, within three years after the close of the taxable year of the sale, the seller purchased any real property to be held for investment.

Qualified real property interests would include outdoor recreational areas and areas sold for the preservation of natural habitats or open space which would qualify for an income tax deduction if contributed to a charitable organization. Gain from sales of certified historic structures or historically important land areas (other than areas described above) would not qualify for nonrecognition. Unlike the existing rules for like-kind exchanges and involuntary conversions, the replacement property acquired under the nonrecognition provision of the bill would not be limited to property of a like kind or property similar in use to the transferred property.

This nonrecognition provision of the bill generally would expire ten years after the date of the bill's enactment. The sunset provision would not apply, however, to sales of the taxpayer's entire interest in property remaining after a qualified conservation contribution.

Increase in capital gains deduction on certain sales

The portion of long-term capital gain includible in gross income would be reduced from 40 percent (present law) to 30 percent on a sale or exchange by a noncorporate taxpayer of any

qualified real property interest to a qualified organization exclusively for conservation purposes. Accordingly, the maximum effective tax rate on the gains from such dispositions would be reduced from 20 percent (present law) to 15 percent. The term qualified real property interests would have the same meaning as in the nonrecognition provision (discussed above).

This provision of the bill generally would expire ten years after the date of the bill's enactment. The sunset provision would not apply, however, to sales of the taxpayer's entire interest in property remaining after a qualified conservation contribution.

## Estate tax provisions

### Credit for certain conservation contributions

The bill would provide a new credit against the estate tax for bequests of certain qualified conservation interests to the United States.

The credit would apply to transfer of any interest that would have given rise to an income tax deduction under section 170(h) had the decedent transferred the interest immediately before his or her death. Unlike the income tax deduction, however, no limits would be imposed on the amount of estate tax that could be offset by the credit. Additionally, with the credit, tax would be reduced dollar-for-dollar by the value of the contribution, rather than only by the transferor's marginal tax rates (as is the case with a deduction).

### Deduction for certain unused income tax deductions

A new estate tax deduction would be provided for any carryovers of allowable income tax deductions arising from contributions of conservation interests which remain unused at the time of the donor's death. These unused income tax deductions would be treated as if they were devised to charitable organizations. Therefore, like other estate tax charitable deductions, no percentage limitations would be imposed on the amount of the deduction that could be claimed.

### Effective Dates

The income tax provisions of the bill generally would apply to transfers occurring after the date of the bill's enactment. The two provisions relating to the tax treatment of gain on certain sales of conservation interests would expire ten years after the bill's enactment (except for a sale of interests remaining in property with respect to which a conservation contribution previously been made by the seller).

The bill's estate tax provisions would apply to estates of individuals dying after the date of enactment.

