

Larry E. Stein

It was only a matter of time before computer technology would be utilized in the protection of our natural resource lands. A sophisticated, programmable, hand-held computer is now available to help persuade farmer Jones that a full or partial donation of his land for park purposes might be as good an alternative as selling it to a developer for construction of tract homes.

Historically, the creation of many of our local, state, and national parks has depended on total or partial donations of land or cash from the private sector. Nearly 50 percent of the land in our National Park System was a result of private or corporate philanthropy. And now, with the recent and dramatic reductions in public funding for resource protection, the ability to encourage full or partial donations of land for open space and recreational purposes becomes increasingly important.

Donations of land to qualified charitable organizations and governmental agencies are encouraged through federal income tax laws which allow for deductions against ordinary income equal (with certain exceptions) to the value of the donation. The donative value is determined by subtracting the bargain price (unless it is an outright donation, in which case the sale price is zero) from the appraised fair market value of the property and then adjusting it according to whatever basis (defined as the original cost plus improvements) that the landowner may have in the property. While it is rare that a landowner will have a greater after-tax return by making a full or partial donation of his property than by selling it on the open market, when other factors such as a broker's commission, time involved to make an open market sale, present use of the cash, etc., are included in the comparison, the donation may prove to be an attractive alternative.

To understand how an outright donation or bargain sale may compare with a "fair market value," one must analyze the impact of the sale on a particular landowner's tax situation. Many public land buyers refuse to advise a landowner on the tax consequences of a donation because of unfamiliarity with tax law as well as concern that their advice on donations may violate those public acquisition laws which require that a public agency, intending to purchase private land, to offer the landowner the fair market value of the land as determined by a qualified appraisal. However, while a written offer of fair market value must be communicated to the landowner, the public acquisition laws do not preclude the public buyer from encouraging the landowner to make a full or partial donation based on a tax analysis utilizing that appraised fair market value.

Some land buyers prefer to do only a general, ball-park description of the tax consequences of donation compared to a fair market value sale, advising landowners to consult their personal

tax advisors as to the specific tax consequences of donations in relation to their tax situations.

But some quasi-public land buyers, such as Trust for Public Land, a national non-profit land acquisition organization, realize that a sophisticated and detailed tax analysis can be a critical, indeed essential, tool in negotiations for an outright or partial donation of land. To avoid liability as a tax advisor, the Trust for Public Land presents a written tax analysis which includes a disclaimer from any such liability, noting that the information is for discussion purposes only, and advising the landowner to consult his or her personal tax advisor before reaching a final decision. It should be noted that non-profit land acquisition organizations generally are not subject to the public acquisition laws.

Those organizations and agencies that have utilized a detailed tax analysis to encourage a landowner to donate all or part of his property have traditionally manually prepared the analysis in-house or have subcontracted the analysis to an accounting firm. Both methods are problematic.

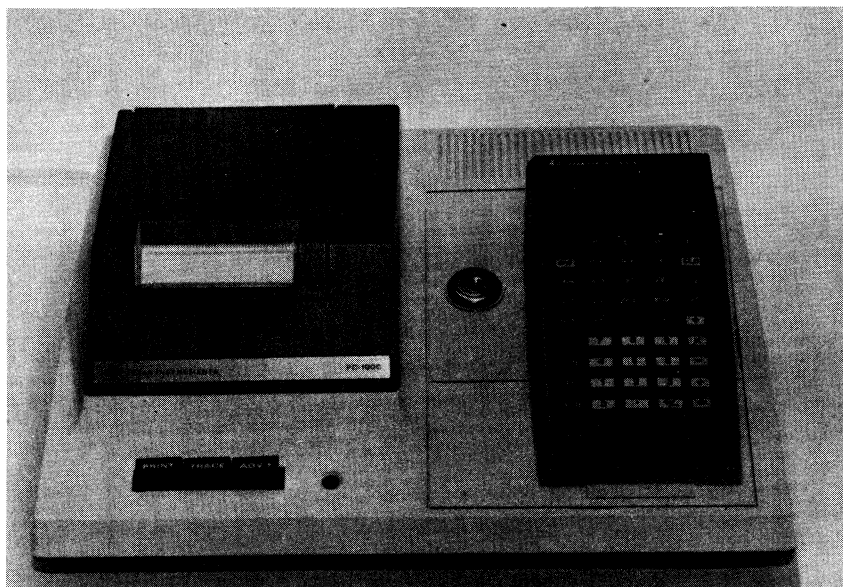
An in-house tax analysis required detailed tax information from the prospective donor, which is then combined with several arbitrary charitable donation amounts in order to develop a variety of after-tax scenarios. With the hit-and-miss selection of optimum donation scenarios necessary for negotiation purposes, the process usually proves to be exceedingly tedious and time consuming, and the analysis naturally requires a staff person well-trained in tax preparation.

Farming out the analysis to an accounting firm often takes just as long and usually is considerably more expensive. Also, with a subcontracted analysis there isn't the flexibility of quickly experimenting with different donation scenarios if the initial attempts fail to meet negotiation realities.

In either case, it might be two to three weeks before the land buyer could again sit down with the landowner to explain the probably tax consequences of various bargain sales or an outright donation, only to find that the seller's donative intent had been drowned in a few cocktails with his friend, Joe Pessimist.

Computer technology has provided public land buyers with additional alternatives in preparing a tax analysis. The Trust for Public Land, for example, has purchased a computer for preparation of tax analyses as well as for other purposes. This alternative is expensive, requires a trained staff person, and has to be done at the home office. The investment may be justified only if the tax analysis is a critical tool in the normal course of business as it is with the Trust for Public Land. For small non-profits or public agencies with only a small number of prospective donations a year, a new programmable calculator may be the answer.

Two companies, Tax Preparation, Inc., of Washington, DC, and Warren Gorham Lamont of Boston, are marketing a tax preparation package utilizing a small programmable calculator/computer about the size of a small paperback novel. While there are some differences in the method of preparation and the price, the equipment and process is essentially the same. Both companies utilize a Texas Instrument 59 calculator and optional Texas Instruments PC-100c printer. The calculator/computer is programmable and per-



forms a tremendous variety of functions in and of itself. The capacity to perform the tax preparation functions is provided by a separate module designed by the respective companies. The cost of the programmable calculator/computer, the printer, the federal income tax module, and the estate tax module is under \$1,000.

Both companies designed their products for the professional tax attorney or accountant. They provide a small, relatively inexpensive, flexible tool for quick preparation of a client's tax return and can furnish informed tax advice on the spot. Probably neither company imagined the creative dimension this product might add to stimulating donations of open space and recreational lands for public use.

How exactly would this tax analysis tool assist the public land buyer? Let's suppose the representative of a county park and recreation department is meeting with a prospective land donor. In the land buyer's briefcase is the small calculator/com-

puter. If the meeting has progressed to the point where the landowner has expressed interest in the donation alternative but wants to know specifically how it will affect his financial status, the land buyer can then assess whether, in light of the progress of the negotiation, it might be appropriate to do an immediate tax analysis.

If indeed the time is ripe, the land buyer would then fill out an information sheet with the best data available on the landowner's tax situation (e.g., last year's tax return, any prospective capital gains this year, etc.). The calculator does not require complete data; if not all the tax information is available it simply means the resulting bottomline figure is a rough estimate.

The data obtained can be held in the machine as a constant. The land buyer can then vary the possible scenarios—outright donation, 50 percent donation, etc., and compare them with the fair market value sale in order to demonstrate to the landowner how much after-tax or out-of-pocket difference exists between the various scenarios. The land buyer can fully investigate, in a matter of seconds, which donation might be the optimum gift in relation to the landowner's donative intent and personal tax status. The actual computing time to run through a variety of options would take only minutes.

While not included in the present programming, with little difficulty the TI-59 calculator/computer has the capacity to be programmed to select the optimum gift when given the necessary parameters. For example, if programmed to do so, the operator can "instruct" the calculator/computer to search for the maximum possible gift, given a particular tax situation and where the donor does not want to give up more than \$10,000 as an after-tax amount.

To be an effective negotiating tool, it is clear that the operator should be properly trained in the operation of the TI-59 as well as in the basics of tax law. To learn to operate the TI-59 requires only the ability to transfer the tax data from an origin of source (e.g., tax return) to the information sheet, and then simply to enter it into the calculator/computer. This can be learned in three to four hours. To understand the broader implications of tax law and the effective application of this tool from a negotiating standpoint would, of course, require more time.

There are several potential problems with this method of tax analysis. The first is that without a written submission, the landowner may contend that the land buyer was acting as a tax advisor, with resultant liability. This problem could be avoided if the land buyer verbally points out that the information is for discussion purposes only and then leaves a copy of the information sheet with the landowner which details the assumptions made in the calculations along with a written disclaimer.

The more serious danger is that an inexperienced operator, using incomplete information, might inadvertently create expectations in the prospective donor pertaining to the ultimate cost of his gift. With an in-house computer, a negotiator has the ability to review and massage the data to ensure that it is accurate, that it will not create false expectations, and that it presents his case in the best possible format.

This danger can be avoided by adequate training in the basic concepts of tax law as well as adequate preparation for the meeting by running through possible scenarios. What will then appear to be a split-second tax analysis would be, in reality, a carefully executed negotiation strategy.

The hand-held programmable calculator provides the public or quasi-public land buyer with an innovative new tool for effectively demonstrating to a landowner the financial consequences of a full or partial donation of land. In these belt-tightening times it may increase our ability to save those natural and cultural resources still in need of protection.

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HOW TO READ THE LABEL

The FORUM is sent to members and others on a non-profit organization permit basis. As such, the mailings must be arranged and packaged according to strict Postal Service regulations. To make this simple (at least simpler), mailing labels are produced from computer memory in a long ribbon—the exact sequence having been "computerized" for easy changing, adding, deleting, etc. The samples below explain the coding on the top line of each label:

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Membership Status code
Name (PO abbreviation) of State
"State" package
Package number (usually 10 or more per PO package). (Currently, packages run from "0" to "30".)

The second and third figures ("S" and "VA") change according to package makeup (and State, of course), as follows:

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