Absolutely Taxing: Three Trending Conservation-Related Tax Issues

2026 Virginia Land Conservation & Greenways Conference
Wednesday, April 29th 11:00am-12:30pm ET
Presenter: Diana Norris, Conservation Defense Associate Director, Land Trust Alliance

The session will cover three tax-related topics that impact legal practitioners in land conservation. First, the session will discuss the timely topic of the prohibition against impermissible private benefit and private inurement to assist attorneys in safeguarding the tax-exempt status of land trusts. The session will then shift to focus on land conservation law diving into the requirements for legally "sufficient" baseline documentation reports and for the satisfaction of an enumerated conservation purpose in a conservation easement deed found in the Internal Revenue Code, Treasury regulations and recent U.S. Tax Court case law.[1]

A Prohibitions against impermissible private benefit and private inurement

The current federal administration has signaled an increased focus on compliance and enforcement of the Internal Revenue Code within the nonprofit community.[2] This increased scrutiny is a timely prompt for nonprofit organizations to review governance practices, reporting obligations and compliance measures.[3]

One area of particular attention is the prohibition against impermissible private benefit and private inurement as general rules that apply to all charitable organizations including land trusts. Organizations exempt under section 501(c)(3) of the Internal Revenue Code must avoid engaging in impermissible conduct. An organization will be disqualified as a 501(c)(3) if it benefits private interests, either through inurement of its net earnings to certain "insiders," or by primarily benefiting the interests of private persons who are not "insiders." The prohibitions are designed to ensure that charitable assets are used to further public (or charitable) purposes, not for private ends. The prohibited conduct can or may occur in many different forms.

1. Private inurement

The doctrine of private inurement, found in the Internal Revenue Code, applies to charitable organizations requiring that each such entity be organized and operated so that "no part

---

[1] Many thanks to attorney Rob Levin for his synopses of Tax Court opinions in Land Conservation Case Law Summaries at Land Conservation Case Law Summaries Nov. 2025 - Land Trust Alliance.

[2] Richard H. Levey, "Threats And Bluster: The IRS's Black Cloud Over The Nonprofit Sector," The NonProfit Times, Feb. 2026, https://www.tenenbaumlegal.com/wp-content/uploads/2026/02/The-NonProfit-Times-%E2%80%A2-February-2026.pdf

[3] Steven Miller and Eric Hylton, "Tax-Exempt Companies Ignoring Current Climate Do So at Own Peril," Bloomberg Tax, Aug. 15, 2025, https://news.bloombergtax.com/tax-insights-and-commentary/tax-exempt-companies-ignoring-current-climate-do-so-at-own-peri

of…[its] net earnings…inures to the benefit of any private shareholder or individual.[4] The doctrine only applies when an "insider" is involved in the transaction and is usually limited to measurable financial benefit.

The inurement prohibition is designed to reach any transaction through which an insider is unduly benefited by an organization, either directly or indirectly. It is a general prohibition for a tax-exempt organization from using its assets to benefit any individual or entity that has a close relationship with the organization. When an exempt organization engages in a transaction with an insider, and there is a purpose to benefit the insider rather than the organization, inurement occurs. This is regardless of whether the transaction ultimately proves profitable for the exempt organization. The test is not whether there is profit or loss, but whether, at every stage of the transaction, those controlling the organization guarded its interests and dealt with related parties at arms-length.

a. Insider: Insider is defined fairly broadly to include the organization's founders, trustees, directors, officers, members of their families, entities controlled by these individuals, or any other persons having a personal and private interest in the activities of the organization.[5] Consider those who have an ability to influence decisions of the organization, and those with access to information not available to the general public.

b. Measurable financial benefit: The conduct is focused on the charity's net earnings. Private inurement often arises when an organization pays unreasonable compensation (i.e., more than the value of the services) to an insider. Examples could include transactions with insiders involving unreasonable compensation, loans, payment of excessive rent, receipt of less than fair market values in sales or exchange property.

c. Sanctions: The sanctions imposed for private inurement is the revocation (or denial) of the tax-exempt status. There is no de minimis exception.

d. Excess benefit: when a public charity confers an excess benefit on an insider (technically called a "disqualified person"), an excess benefit transaction occurs under the intermediate sanction rules. An "excess benefit transaction" is any transaction in which an economic benefit is provided by a tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration received for providing such benefit.[6]

   It is a series of penalty excise taxes that may be imposed on those persons who improperly benefited from the transaction with the exempt organization and on certain managers of the organization who participated in the transaction knowing that it was improper. These taxes are applied to the amount of excess benefit derived from the

[4] Section 501(c)(3)
[5] Treas. Reg. §§ 1.501(a)-1(c), 1.501(c)(3)-1(c)(2)
[6] Section 4958(c)(1)(A)

transaction.

A "disqualified person" is defined as (a) any person who was, at any time during the five-year period ending on the date of an excess benefit transaction, in a position to exercise substantial influence over the affairs of the organization, (b) a member of the family of an individual described in (a), and (c) a 35% controlled entity. The term "35% controlled entity" means (a) a corporation in which persons described in (a) or (b) of the preceding sentence own more than 35% of the total combined voting power, (b) a partnership in which such persons own more than 35% of the profits interests, and (c) a trust or estate in which such person owns more than 35% of the beneficial interest.[7]

2. Impermissible private benefit

The doctrine of impermissible private benefit generally prohibits a tax-exempt organization from using its assets improperly to benefit any individual or entity, not just an insider. Accordingly, the doctrine of private benefit is broader than (and subsumes) the private inurement prohibition. However, unlike the absolute prohibition against private inurement, incidental private benefit is permissible.

The prohibition against impermissible private benefit is not found in the Internal Revenue Code; rather it is stated in the Treasury regulations which provide that an organization will be regarded as operating exclusively for exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes.[8] If more than an insubstantial part of its activities is in the furtherance of a non-exempt purpose then it will not comply with the "operated exclusively" test. The organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest.[9]

In *American Campaign Academy v. Commissioner*, 92 T.C. 1053 (1989), the U.S. Tax Court defined private benefit as "nonincidental benefits conferred on disinterested persons that serve private interests." And, in *Better Business Bureau of Washington, D.C., Inc. v. United States,* 326 U.S. 279 (1945), the U.S. Supreme Court held that private benefit, if substantial in nature, will destroy the organization's exemption regardless of an organization's other charitable purposes or activities.

(Also note that, as a general rule, if the benefits received or expected to be received are greater than those that inure to the general public, the transfer does not satisfy the charitable intent requirement under IRC § 170. *Hernandez v. Commissioner*, 490 U.S. 691 (1989); *United States v. American Bar Endowment*, 477 U.S. 105, 118 (1986); *Singer Co. v. U.S.*, 196 Ct. Cl. 90, 449 F.2d 413, 422-423 (1971).)

The foundational IRS document, General Counsel Memorandum 37789, defined private benefit

[7] Section 4958(f)
[8] Treas. Reg. §1.501(c)(3)-1(c)(1)
[9] Treas. Reg. §1.501(c)(3)-1(d)(1)(ii)

as incidental through an analysis of whether the benefit is both qualitatively and quantitatively incidental. In the 2001 EO CPE, the IRS admitted that "[i]n reality it is difficult to apply the private benefit analysis."[10] It further quotes *Pulpit Resource v. Commissioner*, 70 T.C. 612 (1978) stating that "decided cases provide only broad bench-marks, with the result that the 'relevant facts in each individual case must be strained through those [established] principles to arrive at a decision on the particular case.' " Ultimately, we must take the "facts and circumstances" of each individual case and apply the law discussed above to determine the presence of private benefit. For example, benefits that are nonincidental in one factual situation may be incidental in another given the totality of the circumstances." Each case must be determined based on the facts and circumstances and an application of the law to determine the presence of private benefit.[11]

a. Qualitatively incidental means that the private benefit is a necessary byproduct of the public benefit and accomplishes exempt purposes. In other words, the benefit to the public cannot be achieved without necessarily benefiting certain private individuals.
b. Quantitatively incidental means that it must be insubstantial in amount. The private benefit must be compared to the public benefit of the specific activity in question, not the public benefit provided by all of the organization's activities. This is a facts and circumstances test that requires the public benefit from the organization's activities to outweigh any individual benefit.
c. Penalty: tax exemption can be denied or lost on the basis of the private benefit doctrine.
d. Compare:
    i. Rev. Rul. 70-186, 1970-1 C.B. 128: organization's preservation of a lake as a public recreational facility was impossible to accomplish without providing a benefit to certain private property owners. The organization was financed by contributions from lake front property owners, from members of the community adjacent to the lake, and from municipalities bordering the lake. The IRS determined that the organization was exempt from federal income tax under section 501(c)(3) of the Code and that the benefits derived from the organization's activities flowed principally to the general public.
    ii. Rev. Rul. 75-286, 1975-2 C.B. 210: organization was formed by the residents of a city block to preserve and beautify that block, to improve all public facilities within the block, and to prevent physical deterioration of the block. Its activities consisted of paying the city government to plant trees on public property within the block, organizing residents to pick up litter in the public streets and sidewalks within the block, and encouraging residents to take an active part in beautifying the block. Membership in the organization was restricted to residents of the block and those owning property or operating businesses there. The organization's support was derived from receipts from block parties and

[10] Andrew Megosh, Lary Scollick, Mary Jo Salins and Cheryl Chasin. "H. Private Benefit Under 501(c)(3)," 2001 EO CPE

[11] Exempt Organizations Determinations CPE – 2012, "Lesson 14 Inurement & Impermissible Private Benefit under IRC 501(c)(3)" at 14-14 ("2012 CPE").

voluntary contributions from members. The IRS determined that the organization only served private interests by enhancing members' property rights as evidenced by its restricted membership and area served.

3. Triage and scenarios

Land trusts and their counsel should attempt to manage and minimize any private benefit in a reasonable manner and comply with organizational policies and protocols. Where the degree of private benefit is difficult to determine, a land trust could obtain a legal opinion letter and/or an appraisal to determine the financial extent of any possible benefit. The issues, analysis and how the organization addressed or resolved the issues should be contemporaneously documented.

Consider the following scenarios where the requests require a private inurement or impermissible private benefit analysis in the land conservation context. The result of the analysis will depend on practitioners applying an all facts and circumstances analysis which should be then documented. Remember that a land trust can confer some private benefits, it just may not confer "more than incidental" private benefits.

a. Land trust pays more than appraised value for a property.
b. Landowner violates the easement restrictions minimally and land trust allows the violation but requires a specific remedy i.e. where construction of a child's playhouse was in violation of an easement, land trust allowed it to remain for 5 years and required removal thereafter.
c. Neighbor encroaches by installing a fence, playground, shed and firepit and chairs on land trust's fee land (or easement) and land trust allows or ignores the encroachment.
d. Landowner requests relocation of a house site.
e. Landowner and land trust agree to a neighbor's request for a right-of-way across the easement property or land trust agrees to a right of way across land it owns.
f. Land trust transfers assets for less than fair market value or receives less than fair market value on the sale or exchange of property.
g. Land trust conducts restoration on privately-owned land, such as a prescribed fire or riparian buffer management.
h. Land trust rents its fee-owned preserve for private events.
i. Land trust promotes a landscape company that's been a supporter of the land trust and allows the landscape company to host a plant sale on conserved land without a permitted right.
j. Land trust allows its board members to use conserved property for private purposes where the donor restrictions include no access to the property except for specific days.

4. IRS Private Letter Rulings

Private letter rulings involving findings of private inurement or impermissible private benefit in a land conservation context:

a. IRS Private Letter Ruling 201405018 (January 31, 2014) A certified public accountant incorporated and served as the president of a land trust. The president was one of four board directors but was the only individual to conduct any activity on behalf of the organization. The organization failed to hold meetings or keep financial records. It accepted two conservation easements and one fee land donation, all from clients of the president. The president prepared one-page cursory baseline documentation and monitoring reports on behalf of the organization. The president had no experience or knowledge in land conservation. The IRS initially granted the organization 501(c)(3) public charity status during the Advance Ruling Period. Five years after receiving its 501(c)(3) determination letter, the organization submitted an incorrect Form 8734 showing an inflated level of public support.

   The IRS revoked the organization's 501(c)(3) status, finding that its primary purpose was to serve the private interests of the president's clients, and not the public interest of land conservation. The PLR also indicated that the organization was not a "qualified organization" under § 170(h)(1)(B) and the accompanying regulations because it did not demonstrate a commitment to protect the conservation purposes of its conservation easements.

b. IRS Private Letter Ruling 201110020 (December 17, 2010) A land conservation and education organization received its 501(c)(3) determination letter from the IRS at some point prior to 2000. Upon IRS examination, a number of record-keeping and programmatic deficiencies were found. Among the more prominent problems were: (a) the organization's failure to account for 26 of the claimed 35 conservation easements it held; (b) the president (and founder) of the organization served as a paid consultant to donors and donors' appraisers, and the president paid the appraisers for their work; (c) the organization accepted a cash payment for the amendment of a conservation easement that allowed the number of houses to increase from one to two. Moreover, the president was paid a consulting fee by the organization for administering the amendment transaction; (d) the organization failed to produce its articles of incorporation, bylaws, or Form 1023 application; (e) the organization had no designated easement enforcement fund and no apparent program for enforcing conservation easements other than sending copies to the local planning office. In addition, the president claimed to be the sole monitor for all of the easements, and no monitoring records were kept; (f) the organization shared the same contact information as a limited liability company of which the president was the sole member; (h) the organization had no conservation easement application process, written acceptance standards, and decisions to accept easements were left to the sole discretion of the president; (i) Although the organization claimed that it conducted a baseline documentation for each easement, it could not produce any such records; and (j) the organization made campaign contributions to political candidates on several occasions. The IRS revoked the organization’s 501(c)(3) status.

Resource: Private Inurement and Impermissible Private Benefit Prohibitions (Attached)

B Baseline Documentation Reports

Well-prepared baselines can serve a valuable role in ensuring the perpetuity of conservation easements.[12] The baseline report achieves multiple practical purposes such as providing a foundation for future monitoring and enforcement of the permitted rights, restrictions and reserved rights contained in the conservation easement document; detailing conservation values and specific conditions; orienting the land trust and landowner in case of disputes (evidence in future litigation[13]); helping prevent litigation; and informing conservation easement drafting.

Generally, charitable contributions require substantiation and verification. For those donors seeking to qualify the easement donation for federal tax benefits, the Treasury regulations require baselines in some instances. The Treasury regulations define a baseline documentation report as "documentation sufficient to establish the condition of the property at the time of the gift" [Treas. Reg. §1.170A-14(g)(5)(i)]. The easements for which the regulations require a baseline are those in which "the donor [landowner] reserves rights the exercise of which may impair the conservation interests associated with the property" [Treas. Reg. §1.170A-14(g)(5)(i)]. Further, the regulations require that, for any natural resource protected by the easement's restrictions, the condition of that resource at or near the time of the gift must be established [Treas. Reg. §1.170A-14(g)(5)(i)(D)].

1. Timing and signatures

To substantiate the document, it must be accompanied by a statement signed by the donor and a representative of the donee clearly referencing the documentation and stating in substance that it is an accurate representation of the protected property at the time of the transfer. (See Treas. Reg. § 1.170A-14(g)(5)(i)(D) "The documentation, including the maps and photographs, must be accompanied by a statement signed by the donor and a representative of the donee clearly referencing the documentation and in substance saying "This natural resources inventory is an accurate representation of [the protected property] at the time of the transfer.".) Improper substantiation can undermine the deduction.

a. Strict and substantial compliance: *Carter v. Commissioner*, No. 23621-15, T.C. Memo 2020-21 (U.S.T.C. Feb. 3, 2020)(Carter I), rev'd and remanded, No. 20-12200, 2022 WL 4232170 (11th Cir. Sept. 14, 2022)(Carter II); T.C. Memo 2023-133 (U.S.T.C. Nov. 6, 2023)(Carter III) In 2005, Dover Hall Plantation, LLC purchased a 5,245-acre tract in Glynn County. In 2011, the LLC conveyed a conservation easement to North American Land Trust over 500 acres at the western edge of the parcel. The easement's purposes were to protect wildlife habitat and open space (both scenic views and pursuant to a clearly delineated governmental policy). NALT prepared a baseline documentation report, a well-developed draft which was presented to its board in December 2011,

[12] See *Land Trust Standards and Practices* 11B1-3.

[13] Baselines, if properly documented, can be admissible as a business record. State law determines if a baseline may be incorporated by reference in a conservation easement. (See *Butler v. Commissioner*, T.C. Memo. 2012-72))

immediately prior to the board's vote to accept the conservation easement. The easement included references to the baseline, but the final draft of the baseline was not completed, and the acknowledgment page not executed until April 2012, upon the compiling of additional springtime data by NALT. The IRS challenged the deduction on a variety of grounds, including lack of a timely executed baseline.

In *Carter III*, the Tax Court (Judge Halpern) held that the baseline did not *strictly* comply with the signed written statement requirement in Reg. § 1.170A-14(g)(5)(i)(D) because the baseline acknowledgment was not executed prior to the donation. Although the conservation easement itself expressly included the donor's statement that the baseline was an accurate representation of the property's condition, there was no accompanying representation by NALT. Because the regulation requires a joint certification by the donor and donee, these provisions of the easement did not strictly comply.

However, the taxpayer did *substantially* comply with the baseline regulations. A combination of factors, such as the fact that most of the baseline was completed before the NALT board approved the easement, and the relatively short delay in signing the final draft, led to the court's conclusion that NALT had sufficient documentation as of the date of the easement to enable it to fulfill its stewardship responsibilities.

2. Legal Sufficiency[14]

To satisfy the baseline documentation requirement of Treas. Reg. § 1.170A-14(g)(5)(i)(D), a written statement attesting to the accuracy of the documentation provided to the donee must be signed by the donor and donee before the date of the gift. For minimal completion, it should include:

a. Date of completion
b. Documentation of the conservation values and public benefits, including written descriptions along with related maps and photographs
c. Documentation of existing conditions that relate to the easement's restrictions and reserved rights, including written descriptions and related maps and photographs
d. Information on the location of the easement or directions to the property
e. Property description (an address is not sufficient; must be a full description)
f. Background information
g. Dated signatures of the landowner and land trust acknowledging that both attest to the accuracy of the information contained in the report
h. The authorship and qualifications of the baseline preparer
i. Other acknowledgements or information that would make the material admissible as a business record in court
j. Baseline or easement map

The IRS has challenged what constitutes deductions based on the criteria "sufficient to establish

[14] Note that the PLRs discussed above in Section A touch on baseline sufficiency issues.

the condition of the property at the time of the gift."[15]

i. In *Carter III*, the Tax Court emphasized that acknowledgement of the baseline must be signed by both parties prior to the date of the gift. The absence of guidance on the sufficiency of documentation—and the practical reality that the Internal Revenue Service and the courts are not particularly competent to assess it—highlight the importance of the signed written statement requirement provided in Treasury Regulation § 1.170A-14(g)(5)(i)(D). The Tax Court recognized that neither it nor the IRS has the competency to determine the sufficiency of baselines. Instead, the signatures of the donor and donee jointly agreeing that the baseline made available to the donee before the gift accurately represents the property's condition at that time can be taken as validation that the documentation is sufficient to enable the donee to effectively monitor the donor's exercise of its reserved rights and to evaluate whether changes fall within the limits of the reserved rights.[16]

ii. *Brooks v. Commissioner,* No. 28206-15, T.C. Memo 2022-122 (U.S.T.C. Dec. 19, 2022), aff'd 109 F.4th 205 (4th Cir. July 15, 2024). In December 2006, an LLC formed by Kenneth Brooks purchased an 85-acre parcel for $1,350,000. The LLC divided the parcel into a 44-acre parcel and a 41-acre parcel and granted a conservation easement over the 41-acre parcel to Liberty County in December 2007. The easement included a baseline documentation report as an exhibit. The baseline contained three pages of substantive text, which included cursory descriptions of the protected property's features, such as a general reference to existing vegetation and roads. The baseline did not have any maps, photographs (despite a reference to a photographs section), or details on the size or location of tree stands, wetlands, or roads.

   The Fourth Circuit Court of Appeals affirmed the Tax Court in all respects, including holding that the baseline was "woefully inadequate" to meet the requirements of Reg. § 1.170A-14(g)(5). The absence of any specifics on the location of timber, open fields, special plant life, and habitats was fatal, especially in light of the extensive reserved rights. The court found that the baseline was insufficient for the holder to evaluate whether future changes to the protected property fall within the limits of the reserved rights.

iii. *Jackson Stone South, LLC v. Commissioner*, No. 12271-20, T.C. Memo 2025-96 (U.S.T.C. September 23, 2025). This opinion is the first to hold that a significant error in an otherwise professionally prepared baseline could be enough to eliminate the entire deduction. The JSS Conservation Easement protected 288 acres south of Highway 18, while the JSN Conservation Easement covered 253

[15] Note that the Tax Court allows some flexibility in complying with the "sufficiency" requirement, but Land Trust Alliance member land trusts must meet the higher standards of *Land Trust Standards & Practices* 11B and 12B.

[16] *Carter III* at 24.

acres north of the highway. The easements were donated to the Oconee River Land Trust. The baseline was prepared by a contractor with extensive experience in land conservation. The report identified five distinct habitat types, including 25 acres of mesic hardwood forest, 101 acres of oak-hickory-pine forest, and 37 acres of bottomland hardwood forest, each considered relatively valuable for supporting rare, threatened, and endangered species. Notably, the initial draft of the baseline did not identify any mesic hardwood forest. However, after comments from an ORLT employee, the contractor revised the report to include this habitat type. Furthermore, Jackson informed ORLT that the designation of oak-hickory-pine forest was inaccurate, and that these areas were, in fact, common pine forest. ORLT raised this discrepancy with the contractor, who acknowledged the error, but the baseline was never corrected in this regard.

The JSN property was adjacent to the Piedmont National Wildlife Refuge, a 35,000-acre tract owned and managed by the U.S. Fish and Wildlife Service. A central issue was whether the JSN property contained mesic hardwood forest or oak-hickory-pine forest. The IRS' expert witness, a wildlife professor at the University of Georgia, determined that the habitat types noted in the JSN baseline were inaccurate, and that no mesic hardwood or oak-hickory-pine forest existed on the property. In contrast with the JSN baseline, the IRS' expert found that 79% of the JSN property was pine plantation and pine forest -- common habitats that did not support any rare, threatened, or endangered species. Meanwhile, the 15% of the JSN property that was bottomland hardwood forest along a creek was not deemed significant habitat due to its isolation within the ordinary pine landscape. Finally, he concluded that protecting the common pine habitat on the JSN property did not contribute to the ecological viability of the Piedmont Refuge. In contrast, the LLCs' expert witness claimed to have identified 8 acres of mesic hardwood forest and 20 acres of oak-hickory-pine forest on the JSN property, far less extensive than as described in the JSN baseline but did not specify their locations in his report.

Numerous errors in the baseline and in the easement statements about conservation purposes combined with the overvaluation resulted in a deduction denial. The court held that the JSN baseline's inaccuracies rendered it noncompliant with Treas. Reg. § 1.170A-14(g)(5)(i). The court sided with the IRS expert witness in concluding that there was no mesic hardwood or oak-hickory-pine forest on the JSN property, and that the JSN baseline was erroneous in this respect. The court viewed as suspicious the exchanges between the ORLT employee and the baseline contractor, which led to the inclusion of mesic hardwood as a habitat type. The court also noted the absence of mesic hardwood as a forest type in the 2010 forest management plan for the property. Together, the mesic hardwood and oak-pine-hickory errors led to the misidentification of 50% of the acreage of the JSN property, significant enough to cause the baseline to fail to meet the standards of the regulation. The court found the facts here comparable to *Brooks*. (Distinguished from *Bosque Canyon Ranch, L.P. v. Commissioner*, T.C. Memo 2015-130 (U.S.T.C. 2015), *rev'd* No. 16-60068, 774 F.3d 221 (5th Cir. Aug. 11, 2017)

iv. *Townley v. United States*, No. 3:22-cv-107 (M.D. Ga. March 27, 2024) The Townleys granted a series of conservation easements to Oconee River Land Trust in 2018. Townley claimed deductions of $43 million based on appraisals showing the highest and best use as a granite mine. When the IRS challenges the deduction, the Townleys argued that because the terms of the deed state that they cannot exercise their reserved rights in a manner that would impair the conservation purposes of the deed, the baseline documentation requirement does not apply to them. The court disagreed stating that because the Townleys reserved certain rights and those rights "may" impair the conservation interests associated with each property, the Townleys were required to provide baseline documentation when they donated the easements.

In addition, when a deed contains restrictions regarding a particular natural resource to be protected, the Treasury regulations require baseline documentation establishing "the condition of the resource at or near the time of the gift."[17] The purpose of this requirement is "to protect the conservation interests associated with the property, which although protected in perpetuity by the easement, could be adversely affected by the exercise of the reserved rights."[18] The court listed the way donors may satisfy this requirement, including through (1) survey maps showing the property line and other contiguous or nearby protected areas; (2) scaled maps showing all man-made improvements, vegetation, flora, fauna, land use history, and distinct natural features; (3) aerial photographs taken as close as possible to the date the donation was made; and (4) on-site photographs taken at appropriate locations on the property.[19]

According to the IRS,[20] without knowledge of the baseline water quality, the land trust could not monitor water quality to determine whether the Townleys were complying with the requirements of the deed given that they reserved rights, like planting non-invasive native species, conducting logging operations, and applying herbicides—all of which could affect the quality of streams and wetlands.

---

[17] Treas. Reg. § 1.170A-14(g)(5)(i)(D)
[18] Id. § 1.170A-14(g)(5)(i)
[19] Id.§ 1.170A-14(g)(5)(i)(A)–(D)
[20] The IRS has made this same argument in other Tax Court cases. See *Georgia Crushed Stone, LLC v. Commissioner*, No. 12192-20 (U.S.T.C. March 1, 2022) (Order denying Respondent's and Petitioners Cross Motions for Summary Judgment) and *Long Branch Investments, LLC v. Commissioner*, No. 12249-20 (U.S.T.C., June 7 2022) (Order denying cross motions for summary judgment).

The court rejected the IRS' central argument that the baselines violated the regulation because they did not contain information on the water quality of the streams and wetlands located on the protected properties. The court emphasized the importance of the acknowledgments being signed by the donee, Oconee River Land Trust, that each report accurately represents the property at the time of the conveyance of the conservation easement. By signing this acknowledgment, the land trust certified that the reports sufficiently described the condition of the property, *including water quality*, for purposes of monitoring and enforcing the terms of each easement.

Resource: Baseline Documentation Reports (Attached)

C IRC 170(h) Conservation Purposes

1. Express Statement of IRC 170(h) Conservation Purposes

To qualify under any of the four established conservation purposes in section 170(h)(4)(A) (preservation of land areas for outdoor recreation, protection of habitat, preservation of open space, or preservation of historically important land area or buildings), the easement's purpose provision must state that respective purpose. Additional purposes will not and cannot be inferred from other easement sections. If the easement protects multiple purposes, then each and all conservation purposes must be stated.

The Tax Court will not force the IRS to infer from the conservation values an unstated purpose. Nor will it force the IRS to search for statutory conservation purposes within the recitals. The Tax Court in *Murphy v. Commissioner* stated "No deduction is allowed to a taxpayer who simply shares laudable purposes and goals with a conservancy; a deduction is allowed only when a deed confers a right to restrict the use of the property."[21] The court rejected the petitioners' contention that additional purposes could be inferred from other sections of the easement. Thus, because the easement deed stated a singular purpose of protecting relatively natural habitat, and did not state an open space purpose, that easement's deductibility must be/was evaluated solely on the stated habitat prong. (Followed by *Jackson Stone South, LLC v. Commissioner* where the Tax Court rejected the possibility that any non-referenced governmental policies could be considered ex post facto to meet that prong of the open space conservation purposes test.)

2. Satisfaction of IRC 170(h) Habitat and Open Space Conservation Purposes

The IRS continues to challenge easement deeds as not satisfying one or more of the stated IRC 170(h) conservation purposes with recent and (some) successful challenges of the habitat and open space conservation purposes. The IRS argues that easement deeds do not satisfy the stated conservation purpose due to lack of conservation value. Generally, the courts defer to legitimate conservation purposes, but recent case law provides a mixed analysis of the habitat and open space conservation purposes.

a. The "relatively natural habitat" conservation purpose (section 170(h)(4)(A)(ii))

This prong does not require the presence of "high-quality" habitats of threatened or rare species.[22] But habitat analyses are fine-grained so double-check accuracy and make no assumptions about qualifying on the habitat prong, especially if there are no documented rare,

---

[21] See *Murphy v. Commissioner*, No. 14536-16, T.C. Memo 2023-72 (U.S.T.C. June 15, 2023) at 42.

[22] See IRS Letter - MASP157371-06 - Letter Defining Natural Habitat: IRS writes that endangered species are not requisite for a qualified conservation purpose. Also, In *Champions Retreat Golf Founders, LLC v. Commissioner*, 959 F.3d 1033 (11th Cir. 2020), the Eleventh Circuit Court of Appeals analyzed the habitat purposes as follows: (1) To qualify under § 170(h)(4)(A)(ii), habitat must meet "some level of significance" and cannot be "trivial," even though the statute does not contain an express significance standard. (2) As used in Reg. § 1.170A-14(d)(3)(ii), "rare," "threatened," and "endangered" species are not precise technical terms. Instead, the Regulation calls for a "flexible" reading that generally means those species that "reasonably warrant protection."

threatened, or endangered species, or an uncommon ecological community.

In *Mill Road 36 Henry*, the IRS claimed that "[d]eductions for conservation easements should be directed at the preservation of unique or otherwise significant land areas, high-quality habitats of threatened or rare species." The court in *Mill Road* was satisfied that the protected property contained four different habitat types that were deemed high priority in Georgia's State Wildlife Action Plan and did not require any showing of specific species that were rare, threatened or endangered. It said the IRS was using the wrong test—an elevated standard above what the code requires. The court said the habitat must be relatively natural rather than a wilderness area or a "natural area" of "high quality."[23]

(Also see *JL Minerals, LLC v. Commissioner*, No. 17076-21, T.C. Memo 2024-93 (U.S.T.C. Oct. 8, 2024) where the Tax Court disagreed with easement protected significant relatively natural habitat within the meaning of § 170(h)(4)(A)(ii) and the accompanying regulations. Mesic hardwood forest and bottomwood hardwood forest, both designated as high priority habitats under the State Wildlife Action Plan, comprised 69% of the protected property. Based on *Champions Retreat* and *Mill Road 36 Henry*, the extent of this forest habitat was enough to reach the significance threshold.)

But the *Jackson Stone South* opinion marks the first time that the IRS has prevailed on the habitat conservation purposes test in several years. The last IRS wins on this issue were *PBBM-Rose Hill, Ltd. v. Commissioner,* No. 26096-14 (U.S.T.C. 2016)(Sept. 9, 2016 Bench Opinion) (Unpublished), affirmed 900 F.3d 193 (5th Cir. 2018) and *Atkinson v. Commissioner,* T.C. Memo 2015-236 (U.S.T.C. 2015) over ten years ago, both of which were golf course properties.

In *Jackson Stone*, the IRS asserted that the JSN Conservation Easement failed to satisfy the significant wildlife habitat conservation purposes test. The JSN property was adjacent to the Piedmont National Wildlife Refuge, a 35,000-acre tract owned and managed by the U.S. Fish and Wildlife Service. A central issue, as discussed in more detail in the Baseline section above, was whether the JSN property contained mesic hardwood forest or oak-hickory-pine forest. The IRS' expert witness, a wildlife professor at the University of Georgia, determined that the habitat types noted in the JSN Baseline were inaccurate, and that no mesic hardwood or oak-hickory-pine forest existed on the property. In contrast with the JSN Baseline, the IRS' expert found that 79% of the JSN property was pine plantation and pine forest -- common habitats that did not support any rare, threatened, or endangered species. Meanwhile, the 15% of the JSN property that was bottomland hardwood forest along a creek was not deemed significant habitat due to its isolation within the ordinary pine landscape. Finally, he concluded that protecting the common pine habitat on the JSN property did not contribute to the ecological viability of the Piedmont Refuge.

In contrast, the LLC's expert witness claimed to have identified 8 acres of mesic hardwood forest

[23] *Mill Road 36 Henry, LLC v. Commissioner*, No. 11676-20, T.C. Memo 2023-129 (U.S.T.C. October 26, 2023)
.

and 20 acres of oak-hickory-pine forest on the JSN property, far less extensive than as described in the JSN baseline but did not specify their locations in his report.

The court found the property provided minimal habitat value since it was persuaded by the IRS expert's conclusion that there was no mesic hardwood or oak-hickory-pine forest on the property, and that the common pine forest and pine plantation that made up 78% of the property provided minimal habitat value and were not "relatively natural habitats." The size and quality of the remaining 15% of bottomland hardwood forest failed to meet the significance threshold of the code and the regulations, especially in light of the absence of any observed rare, threatened or endangered species. It concluded that the JSN Easement property did not contain significant wildlife habitat and thus failed the conservation purposes test of I.R.C. § 170(h)(4)(A)(ii). The petitioners never argued that the 7% of open fields provided habitat value. The court also cast doubt on the petitioner expert's trial testimony that he observed one particular rare plant species on the property, because it was not mentioned in the written report.

The JSN Conservation Easement did not contribute to the ecological viability of the adjacent Piedmont Refuge or nearby Oconee National Forest and other conserved lands because the property's habitat value was marginal, as discussed above.

b. The preservation of open space conservation purpose section 170(h)(4)(A)(iii)

Open space conservation purpose test has various prongs. The preservation of open space (including farmland and forest land) can be met if it is (i) for the scenic enjoyment of the general public, or (ii) pursuant to a clearly delineated federal, state, or local governmental conservation policy. Both prongs must also yield a significant public benefit. The case law for this conservation purpose raises the possibility that the same conservation easement could qualify in a developed or rapidly developed area but not in an undeveloped, rural area. This means that context matters greatly and the analysis is heavily weighted toward how the public is benefiting.

For the "scenic enjoyment" prong, the purpose can be met even when the "scenic" view is neither unique nor significant nor a substantial size. In *Mill Road 36 Henry*, the Tax Court disagreed with the IRS and determined that a scenic view along a road (even a quarter of a mile) can constitute a significant public benefit by ensuring that the forested view will exist in perpetuity, and the significance of the public benefit will only increase as the area becomes more developed and the road becomes more heavily traveled. The IRS claimed that it failed the scenic view purpose test seeing how views of a pine forest were commonplace in the area, it was neither a unique nor significant scenic view. The court stated that the size of the property did not de facto cause the easement to fail the scenic views test noting that "in a suburban setting, an easement covering 33 acres is hardly negligible."

But compare *Jackson Stone South*, where the court found that transaction did not meet any of the prongs. At trial, the LLCs pointed to the significant public benefit resulting from the 623 feet of undeveloped frontage on Highway 18 to meet the scenic prong. They claimed that they met the "clearly delineated governmental policy" prong since the JSN Conservation Easement included recitals referencing the Georgia Conservation Tax Credit Program and the Georgia Conservation Tax Assessment program, but the property was never enrolled in either program. The LLCs argued that the JSN Conservation Easement protected open space pursuant to the George State Wildlife Action Plan, a program of the Georgia Department of Natural Resources under a federal directive and supported by federal and state grants. The LLCs also cited other governmental policies such as the county's comprehensive plan, the National Wildlife Refuge goals, and Best Manage Practices for Forestry published by the Georgia Environmental Protection Division.

The court opined that the JSN Conservation Easement did not yield a significant public benefit. The Tax Court returned to the IRS expert's opinion that the property hosted habitat types that were of marginal value and that were quite common throughout the region. Furthermore, the modest developmental pressure lessened the likelihood that the easement yielded public benefit. The 623 feet of undeveloped road frontage was not significant in the context of the lightly developed surroundings of the property, unlike in *Mill Road 36 Henry*. The Tax Court also pointed to the lack of any public access on the property to buttress the conclusion that there was no significant public benefit.

The modest developmental pressure; the insignificant amount of undeveloped road frontage in the context of the surroundings; the lack of any public access on the property; and the lack of participation in either of the two state tax programs mentioned in the easement proper contributed to the court's decision. The Tax Court was skeptical of the notion that the JSN Conservation Easement was pursuant to a clearly delineated governmental policy but ultimately declined to rule either way on this issue. Meanwhile, as mentioned above, following *Murphy*, the court held that an easement can meet only those conservation purposes that are expressly stated in the easement deed, rejecting the possibility that any non-referenced governmental policies could be considered ex post facto to meet this prong of the conservation purposes test. Ultimately, the Tax Court avoided the decision as to whether there was a clearly delineated governmental policy and instead turned to the other part of this conjunctive test, the significant public benefit requirement.

Resources:

- What you need to know from tax cases shorn of nuance 1-21-26.pdf (Attached) – see list of cases discussing IRC 170(h) conservation purposes
- Bradford W. Wyche, The Meaning and Application of the "Relatively Natural Habitat" Conservation Purpose of the Internal Revenue Code, 6 J. L. PROP. & SOC'Y 144 (2021), www.bit.ly/JLPS-Wyche

Land Trust Alliance
Together, conserving the places you love

Practical Pointer

Private Inurement and Impermissible Private Benefit Prohibitions

Land trusts, at times, are requested by private parties to act or enter transactions which could potentially benefit those parties or other third parties. The question then arises — can a charitable organization benefit a private party? To answer, one must look at the rules for private inurement and impermissible private benefit.

Private inurement and impermissible private benefit are creations of federal tax law for charitable organizations. Prohibitions on private inurement and impermissible private benefit are designed to ensure that charitable assets are used to further public (or charitable) purposes, not private ends. Violation of private inurement and private benefit rules may result in monetary penalties and, in extreme cases, the loss of the charity's tax-exempt status. Federal tax law prohibits tax-exempt nonprofit organizations from disposing of their assets in ways that create impermissible private benefit or private inurement. Private inurement and impermissible private benefit may occur in many different forms.

Private Inurement

The doctrine of private inurement generally prohibits a tax-exempt organization from using its assets to benefit any individual or entity that has a close relationship to the organization, defined fairly broadly to include board and staff members, substantial contributors, parties related to the above, those who have an ability to influence decisions of the organization, and those with access to information not available to the general public. Private inurement often arises when an organization pays unreasonable compensation (i.e., more than the value of the services) to an insider, but the inurement prohibition is designed to reach any transaction through which an insider is unduly benefited by an organization, either directly or indirectly.

The private inurement prohibition does not bar all transactions between a publicly supported charitable organization and those who have a close relationship to it. Instead, such transactions are tested against a standard of reasonableness, that calls for a roughly equal exchange of benefits among the parties and looks to how comparable charitable organizations, acting prudently, conduct their affairs. Historically, the only sanction for a private inurement violation was the revocation of the nonprofit's tax-exempt status. However, the intermediate sanctions rules empower the IRS to impose an excise tax (a financial sanction) on the excess benefit to insiders who improperly benefit from transactions with a nonprofit.

Most transactions that implicate the private inurement prohibition are also conflict of interest transactions under state law. (See *Amending Conservation Easements: Evolving Practices and Legal Principles*, Second Edition, 2017 for more information on conflicts of interest.)

The IRS has not published guidance as to whether conservation easement donors could be treated as insiders. Insiders are considered those people with special relationships (family), special influence (money or connections) or other control (staff and board) that can deflect the organization from pursuit of the public interest. To cause a private inurement analysis, the person receiving the benefit must be a land trust insider. Most conservation easement donors do not exercise such control or have such influence or potential for influence that rises to the level of an insider.

Without the addition of some of those attributes, conservation easement donors as a class don't merit that scrutiny. If, however, a particular donor gave a conservation easement on a very large tract of land for example 85,000 acres in addition to a substantial stewardship endowment for example $100,000, those facts and circumstances may cause that donor to meet the land trust's definition of a "substantial contributor" and to be considered an insider for almost any land trust. Gifts of that magnitude are rare and the people that give them can wield substantial influence in a land trust. In those cases, a land trust would be wise to treat donors of very large (a relative term) acreage conservation easements as insiders. Exercise caution.

Impermissible private benefit

The doctrine of impermissible private benefit generally prohibits a tax-exempt organization from using its assets improperly to benefit any individual or entity, not just an insider. Land trusts must consider the public benefit in all land and easement transactions. Accordingly, the doctrine of private benefit is broader than (and subsumes) the private inurement prohibition.

However, unlike the absolute prohibition against private inurement, incidental private benefit is permissible. An incidental private benefit must be "incidental" to the public benefit in both a qualitative and quantitative sense. A qualitatively incidental private benefit occurs because the benefit to the public cannot be achieved without necessarily benefiting private individuals. A quantitatively incidental private benefit is insubstantial when viewed in relation to the public benefit conferred by the activity. Conveyance of incidental private benefit is often unavoidable but knowing what the IRS would consider "incidental" is difficult. Land trusts should consult with experienced legal and other advisers (such as an appraiser) to make the determination and document their due diligence. A charitable organization that violates the impermissible private benefit prohibition risks the loss of its tax-exempt status.

Scenarios to apply private inurement or impermissible private benefit analysis

In the latest IRS technical guide addressing inurement and private benefit, the IRS provides examples, case law, revenue rulings as well as tips for its reviewers in how to identify the conduct. The guide can assist any donee organization with its analysis and determinations.

Consider the following scenarios where the requests require a private inurement or impermissible private benefit analysis. Remember that legal issues are not the only considerations; land trusts should also consider the reputational risk of engaging with insiders or conveying more than incidental private benefit to others:

- Landowner violates the easement restrictions minimally and land trust allows the violation but requires a specific remedy i.e. where construction of a child's playhouse was in violation of an easement, land trust allowed it to remain for 5 years and required removal thereafter.
- Landowner requests removing restrictions via an easement amendment.
- Neighbor encroaches by installing a fence, playground, shed and firepit and chairs on land trust's fee land (or easement) and land trust allows or ignores the encroachment.
- Landowner proposes amending the easement to allow a commercial use on the eased property.

- Land trust and landowner want to amend the natural heritage easement to allow for community gardens and a farm stand on the portion of the land that was recently a farm field.
- Landowner requests relocation of a house site.
- Landowner and land trust agree to a neighbor's request for a right-of-way across the easement property or land trust agrees to a right of way across land it owns.
- Land trust pays excessive compensation to a consultant.
- Land trust makes an inadequately secured loan to a local community group.
- Land trust transfers assets for less than fair market value or receives less than fair market value on the sale or exchange of property.
- Land trust conducts restoration on privately-owned land, such as a prescribed fire or riparian buffer management.
- Land trust rents its fee-owned preserve for private events.
- Land trust promotes a landscape company that's been a supporter of the land trust and allows the landscape company to host a plant sale on conserved land without a permitted right.
- Land trust allows its board members to use conserved property for private purposes where the donor restrictions include no access to the property except for specific days.

Again, this is a list of scenarios where analysis of private inurement or impermissible private benefit is required. The result of the analysis will depend on all facts and circumstances which a land trust should document thoroughly. To assist land trusts with a practical analysis, here are two scenarios:

Example 1: Paying more than the appraised fair market value.

Land Trust Standards and Practices 9H2 acknowledges there may be limited circumstances when a land trust's purchase above the appraised value for a real property interest is warranted. The guidance to 9H2 walks through the factors a land trust should consider before deciding to pay the higher price and the ways to justify the decision to do so.

In such instance, the land trust should document its analysis of private inurement or impermissible private benefit. The amount and type of contemporaneous documentation a land trust needs should be scaled to the attending risk of private inurement or impermissible private benefit. Documentation for purchases above the appraised market value might include trend data for market appreciation, a range of values for similar purchases or market factors not covered in the appraisal. For example, a land trust could obtain a third-party evaluation of some extraordinary conservation value that is difficult to value in economic terms and not reflected in the appraisal.

Example 2: Addressing conservation easement violations.

This analysis is very context specific, but an underlying framework can assist. Each land trust needs to:

- Identify the violation. See Practice 11E.
- Apply the land trust's stewardship violation and/or enforcement policy and/or board guidance to the specific violation—what is the land trust board's level of risk? Refer to the Risk Balancing Methodology and Risk Matrix Template.
- Consult legal counsel and identify any litigation risks.

- Document the land trust's processes and analysis. Avoid making conclusionary statements without showing the work.
- Be especially careful if the landowner is considered an insider or if the landowner offers to pay cash to fully offset a violation. See below for the analysis of cash payments.

Practical application and checklist (adapted from checklist provided by Andrew Dana, Esq.)

The following can help determine if there is impermissible private benefit or private inurement:

- Who is asking the land trust to do something? A donor, a board member, the spouse of a staff member? If yes, be especially careful.
- If the land trust does this, will the public benefit? If yes, how much?
- If the land trust does this, will the private person gain? If yes, how much compared to the public benefit? If the private person gains, is that gain significant?
- Can the private person achieve their goals without land trust involvement?
- If the land trust benefits from this transaction, are the benefits that the private person gains insignificant?
- If the land trust can't answer these questions, who can? An appraiser?
- Remember to trust your instincts. If you feel that the private person is somehow using the land trust, be careful. If you can't be sure of the relative public and private benefits gained from the action, be very careful. If whoever asks is a land trust friend or insider, be very, very careful.
- Remember that a land trust can confer some private benefits, it just may not confer "more than incidental" private benefits. Where the degree of private benefit is difficult to determine, a land trust could obtain an appraisal to determine the financial extent of any possible benefit.

Do not:

- Confer impermissible private benefit but you can possibly balance private benefit with trade-offs that enhance conservation benefits.
- Allow private inurement.
- Act contrary to the land trust mission.
- Diminish the conservation easement or the owned land purposes.
- Extinguish a conservation easement without court approval.
- Violate local, state or federal law.
- Have a net adverse effect on conservation easement resources, values or purposes.
- Act contrary to documented original grantor intent.
- Fail to complete all due diligence.
- Fail to fully document all analysis and decision making.

Amendments and impermissible private benefit

Questions about impermissible private benefit (less often with private inurement) can arise when landowners request amendments to their easements. (See, Practice 11H: Amendments) Land trust board members, staff and legal counsel often have little or no expertise in determining the financial ramifications of proposed amendments. Accordingly, if there is any concern as to impermissible private benefit or private inurement, the land trust should consult an experienced tax or conservation attorney and other advisers, perform a risk analysis process and obtain or create appropriate documentation to document the risk analysis and to help establish that no private inurement or impermissible private benefit resulted from the amendment. Documentation might include appraisals or other contemporaneous evidence (such as a letter of opinion from a qualified real estate professional, correspondence with an attorney, board materials, memos to the file and so forth) appropriate to the scope of the activity and the scale of the amendment.

For a full discussion of private inurement and impermissible private benefit in the context of easement amendments, see *Amending Conservation Easements: Evolving Practices and Legal Principles*, but the following are practical considerations as an initial triage:

- Could the proposed amendment result in private inurement or impermissible private benefit? Does the proposed amendment involve a board member, staff or other "insider" to the organization? The transfer of financial gain to those parties would be private inurement and is absolutely prohibited by applicable statutes for tax-exempt organizations. Every land trust must have a written insider policy that defines who is an insider and what the process is when dealing with insiders.
- Does the proposed amendment involve potential private benefit to any private parties, such as the easement landowner or their family members, or any other landowners involved in the transaction?
- The land trust must evaluate whether the amendment may create any financial gain and, if so, it must determine whether the gain would be impermissible private benefit or incidental private benefit. Land trusts should consult with experienced legal advisors to make the determination.
- If the potential for private inurement or impermissible private benefit exists, the land trust must either deny the amendment request or negotiate to eliminate the potential financial gain. For example, the parties to an amendment might agree to offset potential financial gain to the easement landowner by placing additional restrictions in the easement that remove financial value from the easement property, or by placing additional land under easement. However, any such negotiated solution should always result in clear protection of the public's interest in land conservation and be thoroughly documented.
- When a landowner requests an amendment, in certain circumstances, a land trust can accept cash to *partially* offset the landowner's private benefit but only when additional conservation benefits are obtained via additional restrictions or placing additional land under easement or reserved rights are extinguished or some combination of significant additional conservation. The additional conservation benefits must be the primary offset. Cash is only permitted to close a modest value gap. And remember, when analyzing these factors, the amendment must have a net neutral or net beneficial effect on the conservation values.
- In rare circumstances, when the land trust determines it has no alternative but to accept cash as a complete or full offset, the land trust should consider seeking court approval to overcome concerns relating to negative public perception of a landowner buying amendments. Documentation is especially important when cash is involved.
- The land trust's documentation may depend on the degree of potential financial gain. If an amendment request only increases restrictions on the conserved land and unequivocally reduces the value of the land, it may be sufficient simply to document the reasons that there is no impermissible private benefit or private inurement in the project file. On the other hand, if there is

any potential of private inurement or impermissible private benefit, it is strongly recommended that the land trust obtain a professional appraisal to evaluate the financial impact of the proposed amendment on the property or other property of the landowner.

- If there is no gain, then the appraisal documents that fact for the permanent file and may be used to defend against any later claims that the amendment conferred impermissible private benefit. If there is gain, the appraisal provides a basis on which to negotiate terms that offset any financial gain to the landowner or to deny the amendment request. Corrections to easements are an exception to the rule that an appraisal is needed, but ONLY IF the initial appraisal contemplated the correct terms or interpretation, and not the error. An attorney or appraiser can assist in determining what level of documentation is appropriate.
- If conservation easements provide for the land trust to approve certain activities proposed by the landowner, even if those activities might provide a financial benefit to the landowner, they do not create private inurement or impermissible private benefit because those approvals were contemplated in the original conservation easement. Amendments and discretionary approvals not explicitly provided in the original conservation easement however must be scrutinized for private inurement or impermissible private benefit.

Related resources:

- Amending Conservation Easements: Evolving Practices and Legal Principles, Second Edition, 2017
- Practice 2C: Federal Tax Exemption, Practices 4A3 and 4C1b: Conflicts of Interest, Practice 9H2: Purchasing Land or Conservation Easements, Practice 11H: Amendments
- "What Does Private Benefit Really Mean Day to Day?" by Jonathan Blum, Esq., "Questions to Assist in Conducting a Private Benefit Analysis" by The Nature Conservancy
- Exempt Organizations Technical Guide TG 3-8: Disqualifying and Non-Exempt Activities, Inurement and Private Benefit – IRC Section 501(c)(3)
- PLR 201110020, PLR 201405018, 1990 EO CPE Text, "Overview of Inurement/Private Benefit Issues in IRC 501(c)(3)" Rev. Rul. 70-186, 1970-1 C.B. 128

Contact us:

- Leslie Ratley-Beach (802) 262-6051 | lrbeach@lta.org
- Diana Norris (202) 800-2219 | dnorris@lta.org
- Ailla Wasstrom-Evans (202) 800-2249 | awasstrom-evans@lta.org

Date last revised: 9/29/2025

Baseline Documentation Reports

Well-prepared baselines can serve a valuable role in ensuring the perpetuity of the conservation easement. Baseline documentation provides detailed information on the condition of the property—relevant to the terms of the easement—at the time the grantor conveyed the easement. Land trusts may wish to add supplements to baselines over time when landowners exercise reserved rights or when there is a significant natural change to the property.

Purposes of Baselines

1. Records both the important conservation values and the current conditions of the property.
2. Serves to support qualification for tax benefits and substantiating overall public benefit by describing why the property is being conserved and documenting current conditions.
3. Operates as evidence in future litigation, if it meets court-specific rules for admissibility, and provides a foundation for future monitoring and enforcement activities. If consistently and professionally prepared in the ordinary course of business, baseline documentation can help defend the easement by creating an exception to hearsay rules, allowing the baseline to be introduced as evidence in court even though the preparer(s) of the baseline is no longer available to testify to its accuracy.
4. Enables land trust staff to identify worthwhile projects, to retain institutional knowledge and to communicate with landowners about stewardship responsibilities.
5. Informs conservation easement drafting.

Minimally complete and adequate

A minimally complete baseline supports monitoring of the conservation easement and complies with IRS requirements. It has these minimum elements consistent with the accreditation requirements and Practice 11B of *Land Trust Standards and Practices*:

1. Date of completion
2. Documentation of the conservation values and public benefits, including written descriptions along with related maps and photographs
3. Documentation of existing conditions that relate to the easement's restrictions and reserved rights, including written descriptions and related maps and photographs
4. Information on the location of the easement or directions to the property
5. Property description (an address is not sufficient; must be a full description)
6. Background information
7. Dated signatures of the landowner and land trust acknowledging that both attest to the accuracy of the information contained in the report
8. The authorship and qualifications of the baseline preparer
9. Other acknowledgements or information that would make the material admissible as a

business record in court
10. Baseline or easement map
11. The land trust must have the baseline by the time of closing of the conservation transaction

Another essential component is having current landowner contact information. Having that information in the baseline or the perpetual conservation easement is less useful because the documents do not change but the landowners and their contact information will change. So, find a supplemental way to track this information and update it annually.

Details and dealing with the less than ideal

1. While complete signatures are ideal, some older baselines are not signed, and if after diligent attempts the land trust finds it impossible to obtain the landowner's signature, then documentation of those efforts and conclusion is sufficient.
2. Baseline documentation reports are complete and signed by the land trust and landowner at or before closing.
3. A minimally adequate baseline may be a compilation of supplements and the original baseline or a current conditions report that allows your land trust to monitor the property.
4. Baseline supplements or current conditions reports are in addition to an existing baseline and do not replace the original.
5. Baseline documentation does not need to include a complete biological inventory unless the conservation easement protects specific biological resources.
6. Baseline content should be limited to information that supports the conservation easement's purposes, restrictions and reserved rights in order to prevent ambiguity.
7. Individuals with the level and type of qualifications necessary to collect and evaluate information documenting the conservation values that relate to the reasons the property is being conserved should prepare the baseline. What constitutes adequate qualifications may be easement specific and may be challenged in certain circumstances, such as in court.
8. If your land trust holds easements for which it has no baselines, or if existing baselines are lacking important materials, adopt and implement a plan to create or supplement these materials. These materials would have the current date and signature of the current landowner, if possible, and the current preparer of the baseline or the supplement.

Certification ofBaselines

Certification of baselines supports a landowner's tax deduction purposes and for proving authenticity as evidence admissible in court. The requirements for certification may vary by context. The IRS commonly asks for such documentation during audits and recommends that the taxpayer attaches the full baseline to Form 8283 when filing a tax return. Discuss the following with an experiencedlawyer:

1. What statements need to be included in baselines to satisfy IRS requirements
2. What constitutes authentication under relevant federal and state rules of evidence
3. Who should sign on behalf of the land trust for example, the BDR preparer, a records manager or an authorized representative of the land trust
4. What process for signatures for example, whether the signatures need to be notarized, witnessed, completed at the same time or any other relevant legal formality

Recording of Baselines

There is no requirement to record baselines. Recording baselines may make supplementing it difficult or impossible. Recording the baseline may invade the privacy of grantors and should not be undertaken without consent and thought. Nonetheless, some easement holders record the baseline as an exhibit when they record the easement itself, but this can be expensive because recording fees are based on the number of pages recorded. Some states do not allow the recordation of photographs and other nonstandard materials that typically comprise baseline documentation. In either case, the easement should make reference to the baseline and note who holds the original baseline.

Storage of Baselines

Store baselines to preserve content and credibility. Follow a recordkeeping policy that ensures an original copy of each baseline is secure from damage or loss including any supplements.

Baselines and Fee Lands

Land trusts often wonder if baselines for fee-owned land are required. The Internal Revenue Code and the Treasury Regulations do not require baselines for fee land; Practice 11B only applies to conservation easements. But a written management plan is essential for each land trust property, no matter how small. A management plan identifies the resources and processes on the land that are to be protected and promoted, determines what actions to take or avoid and designates who shall accomplish those objectives. Look to Practice Element 12B1 for more information and requirements.

How the Courts Approach Baselines

It is important to note that courts are paying attention to baselines in writing case decisions as are the IRS, the U.S. Tax Court and the Circuit Courts of Appeal. Courts consider baselines to be a starting point against which future easement compliance will be monitored and are important enforcement tools, assuming they are admissible as business records. Some decisions to highlight:

- Pinal Cnty. v. United States: baseline played a leading role in favor of a landowner's interpretation of an issue, and against the holder's position
- King v. Newman: baseline established existence of sole existing road in dispute over proposed new driveway
- Little Traverse Conservancy Conservation Trust v. Glass: baseline played role in dispute over easement boundary encompassing a guest house
- Vermont Land Trust v. Kurt: landowner signature on the amendment and baseline, both of which stated that no structures existed, overrode any claim that these structures were grandfathered

Baselines also have tax purposes such as qualifying under Section 170(h)(5)(A) of the Internal Revenue Code. For tax deduction purposes, 26 CFR §170A-14(g)(5) requires that when the donor reserves rights where the exercise of which may impair the conservation interests, the donor must make available to the donee, prior to the conveyance of the easement, documentation sufficient to establish the condition of the property at the time of the gift—the date the easement goes to record. This documentation is accumulated and commonly referred to as the baseline. What constitutes "sufficient" has been litigated.

A few notable tax-related decisions include:

- Bosque Canyon Ranch, L.P. v. Commissioner: an inadequate baseline documentation can defeat a tax deduction
- Carter v. Commissioner*:* donor can substantially comply with the baseline regulations
- Brooks v. Commissioner: deficiencies in baseline can undermine the protection of the conservation interests
- Murphy v. Commissioner: conservation purposes must be stated in easement deed and match those supported in baseline
- Butler v. Commissioner*:* layout of reserved building sites in baseline was sufficient to bind donor
- Jackson Stone South, LLC v. Commissioner: misidentification of 50% of the acreage of the eased property was significant enough to cause the baseline to fail to comply with the regulations

Search Case Law Summaries for a full listing of cases discussing baselines.

Additional resources

- Search the Land Trust Alliance Resource Center for sample baselines
- The Conservation Easement Handbook, 2nd edition, Chapter 7 (E. Byers and K. Marchetti, 2014)
- *Land Trust Standards and Practices* 11B and 12B Practice Guidance
- Land Trust Accreditation Commission, 2023 Requirements Manual, Section IV (2023).
- A Tax Guide to Conservation Easements, 3rd edition (T. Lindstrom, 2023)
- IRS Private Letter Rulings 201405018, 201110020 and 201048045

Contact us:

- Leslie Ratley-Beach (802) 262-6051 | lrbeach@lta.org
- Diana Norris (202) 800-2219 | dnorris@lta.org
- Ailla Wasstrom-Evans (202) 800-2249 | awasstrom-evans@lta.org

Last revised: 02/09/2026

Land Trust Alliance
Together, conserving the places you love

Practical Pointer

What You Need to Know from Tax Cases (Shorn of Nuance)

Conservation tax law continues to evolve. We prepared this summary of the basic results of conservation tax cases to aid land trusts, but not to give tax, legal or other advice. To aid digestion, we distilled the cases to only their essential points and removed nuance. Obtain legal counsel to apply these general observations to specific cases. Land trusts should urge donors and professionals to follow §170(h) and the accompanying Treasury Regulations and to be realistic in valuation. Not all the Circuit Courts have spoken nor have they addressed all the issues. The IRS views the cases favoring taxpayers narrowly.

These cases are nuance-laden and fact-specific. Read the full cases to understand the implications. Without clear legal precedent, a case can have multiple interpretations. Land trusts and landowners must have competent expert legal advice and understand their individual tolerance and capacity for balancing the risk associated with the uncertainties in tax laws, cases and regulations.

Contemporaneous Written Acknowledgement or Gift Letter

1. Substantial compliance does not excuse following §170(f)(8)(B)'s substantiation requirements. It's safest to strictly comply with the contemporaneous written acknowledgement (gift letters) (*Davis, Schrimsher, Bruzewicz*) but *Crimi, Irby*, *Simmons, Averyt*, *RP Golf, French, 310 Retail* and *Big River Development* are exceptions where the transaction documentation as a whole could qualify as contemporaneous written acknowledgment. The easement itself does not constitute a contemporary written acknowledgment for the purposes of section 170(f)(8). (*See Brooks for varying analysis by Tax Court and Fourth Circuit*)
2. An amended IRS Form 990 by the easement holder does not qualify as a contemporaneous written acknowledgment. (*15 West*)
3. "Contemporaneous" for gift letters means on or before the filing date of the tax return (including extensions) for the year in which the contribution occurred. (*DiDonato)*
4. The contemporaneous written acknowledgement must accurately state all value the land trust transfers to the donor in the entire transaction (quid pro quo). (*Braen*, *Cohan—a complex case*). In the absence of an explicit statement describing whether the donee provided goods or services in exchange for the charitable contribution, the deed taken as a whole must prove compliance with section 170(f)(8)(B)(ii). (*Brooks*)
5. Insignificant services without reciprocal value are not quid pro quo as no value transfer. (*Dunlap*)
6. A cash contribution for easement stewardship is not a quid pro quo payment even when the payment may be a "prerequisite" to the acceptance of an easement, provided no reciprocal benefit in the form of significant services or goods is received by the donor; thus, the cash payment is a donation. (*Scheidelman after Second Circuit opinion, Dunlap*)

Substantial Compliance, Form 8283 and Other Technicalities

1. The substantial compliance doctrine applies for minor omissions in the Form 8283 (such as the omission of property acquisition information). (*Scheidelman II; Savannah Shoals* but see *Rothman II*)
2. Substantial compliance may be insufficient to correct material flaws and omissions in the Form 8283 (*Hewitt* and *Chiarelli*; omission of cost basis and date of acquisition, citing *Scheidelman I*, *Herman, Costello*; *Belair Woods* and *Gemperle* for failure to attach appraisal report). Note evolving interpretations by the courts but see *Brannan Sand*, *Coal Property Holdings* and *Oakhill Woods* for recent reinforcement.
3. Grantor's deduction will be limited to its adjusted basis when the eased property is held as and characterized as inventory and not investment property per I.R.C. § 170(e). (*Glade Creek III*—see opinion for definition and tax treatment of inventory, *Mill Road, Oconee Landing, Jackson Crossroads, Glade Creek IV)*
4. Attaching the full appraisal report substantially complied with the regulations despite the manner and date of acquisition and the cost basis omissions on the Form 8283. (*Friedberg*)
5. Failure to include quid pro quo and also some technical failures may lead to overvaluation penalties or complete disallowance or both. (*Palmer Ranch I,* but see *Palmer Ranch II, Costello, Gemperle, Wendell Falls, Triumph Mixed Use Investments, Brannan Sand, Braen*)
6. Failure to record before the end of the year will invalidate a deduction for that year. (*Mecox, Ten Twenty Six Investors*)
7. Real estate proceeds from the year of donation can disqualify a "qualified farmer." (*Rutkoske)*
8. Penalties cannot be imposed without supervisory approval. *(Oxbow Bend, Excelsior Aggregates, Belair Woods, Sand Investment, Pickens Decorative Stone*, *Graev III*, but see *Roth* holding that the Commissioner may assert additional penalties in his answer)
9. Special rules apply to donations of conservation easements by grantor trusts to qualify for donor deduction. (*Goldsby*)

Mortgage Subordination, Proceeds Priority and Lender Agreements

1. Record a mortgage subordination (lender agreement) prior to or at the time of (contemporaneously with means immediately before or after) recording the easement (*Mitchell, Satullo, Minnick, Golf, Palmolive, 901 South Broadway*). Substantial compliance does not apply to failure to properly subordinate. (*Mitchell*)
2. In *Kaufman II*, the First Circuit said that a mortgage subordination granting a priority interest in insurance and condemnation proceeds to the lender did not violate the "proceeds" requirement. (For opposing analysis see *Wall*)
3. In *Irby*, repayment of bargain sale purchase funds from government lenders did not violate the proceeds or perpetuity requirements.
4. Despite *Kaufman*, a lender's subordination to the entire easement, including the right of the holder to its share of any proceeds, is prudent because (i) *Kaufman* footnote 5 notes that the "mortgage subordination" requirement could require it; (ii) Circuit Court opinions are the law only in the circuits in which they apply (and the 10th Circuit later deferred to the IRS interpretation in *Mitchell*); and (iii) full subordination agreements allow the holder some proceeds on extinguishment to replace lost conservation values. Also, see Palmolive where

language in the easement gave condemnation proceeds to mortgagees, disqualifying the taxpayers' deduction.

5. In *Carroll*, the court found that proceeds clause must say the proportionate value of the easement and not the value of the deduction. See also, *Railroad Holdings* where the easement value was fixed at the time of closing and omitted the word proportionate and *Woodland Property Holdings*. (See also *Rock Creek Property Holdings, Oakbrook, Corning Place* but see #8 and #9 below)
6. In *PBBM-Rose Hill*, the Tax Court and the Fifth Circuit agreed that an easement with a proceeds clause that allocates proceeds based on the value of post-appraisal and post-deduction improvements paid for by the landowner to the landowner in the case of extinguishment violated the perpetuity requirement. (See also *Coal Property Holdings, TOT Property Holdings, Oakbrook, Smith Lake* but see #8 and #9 below)
7. The proceeds clause cannot subtract any amount from the calculation in the proceeds clause (See *Coal Property, Oakbrook, Englewood Place, Lumpkin One Five Six, Lumpkin HC, Maple Landing, Plateau Holdings, Riverside Place, Smith Lake, Village at Effingham, Belair Woods, Cottonwood Place, Red Oak Estates, Sells, 901 South Broadway*). (See #8 and #9 below)
8. In previous Tax Court cases, proceeds clauses deviating from the exact language of the regulation had been found to violate Treas. Reg. § 1.170A-14(g)(6)(ii). In *Oakbrook I*, the Tax Court upheld the substantive and procedural validity of § 1.170A-14(g)(6)(ii). But there was a split between two different Circuit Courts of Appeals, with the Eleventh Circuit first reversing the Tax Court in *Hewit*t, finding that § 1.170A-14(g)(6)(ii) did violate the Administrative Procedure Act, while the Sixth Circuit subsequently affirmed *Oakbrook I* in *Oakbrook II*. Subsequently, in *Valley Park Ranch*, the Tax Court reconsidered, reversed its position following the reasoning in *Hewitt II*, and found the proceeds regulation procedurally invalid. The regulation remains valid in the Sixth Circuit under *Oakbrook II*. (*Oakbrook I, Oakbrook II, Hewitt, Valley Park Ranch*)
9. Though the regulation was invalidated by the Tax Court, the perpetuity requirements of the Internal Revenue Code remain. The easement deed must meet both the "granted in perpetuity" requirement of § 170(h)(2)(C) and the "protected in perpetuity" requirement of § 170(h)(5)(A). (*Valley Park Ranch*)
10. State law determines the nature of the real property interests and whether a holder is entitled to compensation in the event of a termination implicating the exception in Reg. § 1.170A-14(g)(ii) that the holder's share of any termination proceeds is required "unless state law provides that the donor is entitled to the full proceeds from the conversion without regard to the terms of the [conservation easement]." (*Montgomery-Alabama River, Sells, Smith Lake, Hewitt*)

Perpetuity

1. Although subsections (h)(2)(C) and (h)(5) both require perpetuity, they are separate and distinct requirements. (*Gorra*) The Eleventh Circuit has suggested that the granted-in-perpetuity requirement of (h)(5) might be a higher standard than protected in perpetuity requirement in (h)(2)(C). (*Pine Mountain*)
2. The *Carpenter I* court held that termination by mutual agreement is not permitted and also found that conservation easements are restricted gifts ("charitable gifts for a specific

purpose") and that after reviewing the conservation easement purposes held that "the cy pres doctrine is inapplicable."

3. The *Carpenter II* court clarified that "extinguishment by judicial proceedings is mandatory" and rejected the "argument that [the extinguishment regulation] contemplates any alternative to judicial extinguishment." Exercise caution in drafting.
4. Tax-exempt organizations fail to enforce easements "at their peril." (*Simmons, Kaufman, Graev)*
5. *Simmons* and *Kaufman* also held that a clause in a façade easement granting the holder the right to consent to changes can be exercised only consistently with the purpose of the easement allowing the holder the "flexibility to deal with remote contingencies." (Also see *Gorra*)
6. A reservation allowing the landowner to make any adjustment to any boundary including building envelopes, as well as later siting of building rights fails to create an "identifiable, specific piece of real property." (*Belk, Balsam Mountain Investments, Bosque I, Partita Partners, Carter I, Pine Mountain Preserve I, Sapp).* A deed donating a conservation easement over open space and natural habitat and allowing the donee to, in limited circumstances, consent to minor alterations to the boundary of the conservation area did not satisfy section 170(h)(2)(C). *(Balsam Mountain*, *Belk)* But movable homesites do not violate the granted in perpetuity, IRC §170(h)(2)(C) requirement so long as they don't alter the actual boundaries of the easement. *(Bosque II and Pine Mountain Preserve II, Carter II*, and see *Carter III* in #14 below)
7. Inclusion of an amendment clause in an easement does not violate IRC §170(h)(2)(C) granted in perpetuity and § 170(h)(5)(A)'s protected-in-perpetuity requirements. (*Pine Mountain Preserve II*, *Rajagopalan, Sapp*)
8. An easement is not deductible under §170(h) if the easement is conditional on obtaining a tax deduction. (*Graev)*
9. An easement is not deductible if it does not expressly state that the holder and any subsequent holder must be a "qualified organization" as defined by the tax code. (*Salt Point Timber*)
10. A provision granting automatic approval if the easement holder does not reply within a certain time violates requirement that the nonprofit oversee charitable interests and is inconsistent with the easement being enforceable in perpetuity under IRC § 170(h)(5)(A). (*Hoffman* but see *Glade Creek I* which has nuanced factual distinguishing features and *Pickens Decorative Stone* whereby "deemed consent" cannot be determined as a matter of law)
11. A long-term lessee cannot contribute a perpetual interest that satisfies the perpetuity requirements section of section 170(h), even when conveyed with the underlying fee owner. (*Harbor Lofts*)
12. The court found a savings clause directing officials to interpret easement language in a manner that satisfies perpetuity requirements to be a "condition subsequent" that it will not enforce. *(Belk*, *TOT Property Holdings*, see *Coal Property Holdings and Woodland Property Holdings* where proceeds clause is unambiguous).

Conservation Purposes

1. Generally the courts defer to legitimate conservation purposes and sound land trust practices, such as annual monitoring and adequate documentation, (*Butler, Kiva, Glass*) and what constitutes public access (*PBBM-Rose Hill* – Fifth Circuit, *Murphy*) but see *Atkinson,* holding that noncontiguous portions of land on and adjacent to golf courses located in a gated residential community did not satisfy either the habitat or open space protection conservation purposes tests, and no deference for non-conservation organizations (*Marineland Gardens*). See also *Champions I*, where the tax court initially held that the conservation purposes were insufficient and the 11th Circuit vacated the tax court decision, defining habitat and scenic view for the conservation purposes test. (*Champions II).* See also *Murphy,* where the golf course portion of a protected property did not qualify by itself, but when considered in the context of the intact forested area and its proximity to a nearby game land, the court determined that the easement did protect relatively natural habitat.
2. The "relatively natural habitat" conservation purpose (section 170(h)(4)(A)(ii)) does not require the presence of "high-quality" habitats of threatened or rare species. (*Mill Road, JL Minerals*) But see *Jackson Stone South* where court found the property provided minimal habitat value since only common pine forest and pine plantation made up 78% of the property. The size and quality of the remaining forest failed to meet the significance threshold, especially in light of the absence of any rare, threatened or endangered species. Note: Habitat analyses can be fine-grained so double-check accuracy (see below about errors in the baseline) and make no assumptions about qualifying on the habitat prong, especially if there are no documented rare, threatened, or endangered species, or an uncommon ecological community.
3. The reserved rights to engage in commercial forest management and agricultural were not inconsistent with the protection of the forest habitat. Tax Court applied the general limitation that the reserved rights could not materially impair the conservation values and the specific limitation that commercial forest management was prohibited in the special natural areas comprising about two-thirds of the protected property. (*JL Minerals*)
4. State law determines the nature of the property rights and charitable trust rules. Federal law determines the appropriate tax treatment of those rights. (*Carpenter*). State law determines if a baseline may be incorporated by reference in a conservation easement. (*Butler*)
5. In order to qualify under any of the four established conservation purposes in section 170(h)(4)(A), the easement's purpose provision must state that respective purpose. Additional purposes cannot be inferred from other sections in the easement or considered *ex post facto*. (*Murphy, Jackson Stone South*)
6. Existing land-use and zoning regulations may cause an easement donation to not be a "qualified conservation contribution" *(Asser)* or to be of no value but see *Gorra* for a contrary holding on different facts. *(Turner, Herman, Dunlap)*
7. An exchange of value such as a zoning permit or other transaction value is a quid pro quo eliminating the charitable deduction. (*Pesky, Pollard, Seventeen Seventy Sherman Street, Triumph Mixed Use Investments*), but see *McGrady* holding that subsequent benefits not in the control of the taxpayer do not create a quid pro quo.

8. A conservation easement that merely limits the number of lots that the acreage is divided into does not necessarily satisfy the open space requirement of IRC § 170(h). (*Turner)*
9. The preservation of open space conservation purpose can be met even when the "scenic" view is neither unique nor significant nor a substantial size. A scenic view along a road (even a quarter of a mile) can constitute a significant public benefit by ensuring that the forested view will exist in perpetuity, and the significance of the public benefit will only increase as the area becomes more developed and the road becomes more heavily traveled. (*Mill Road*) But see *Jackson Stone South*, where the transaction did not participate in the two state tax programs mentioned in the easement to meet the "clearly delineated governmental policy" prong. And it did not yield a public benefit as the habitat types were regionally common and of marginal value; only modest developmental pressure; the insignificant amount of undeveloped road frontage in the context of the surroundings; and the lack of any public access on the property. (Note: this opinion raises the possibility that the same conservation easement could qualify in a developed or rapidly developed area but not in an undeveloped, rural area).
10. Quality of the habitat and the actual effect of the reserved rights are more important in determining conservation purposes than the size of the protected property. (See also, *Mill Road*--Insistence of a requisite size for a conservation easement lacks any basis in the statutory text.) The potential for habitat can be sufficient as a conservation purpose. (*Glass, Kiva, RP Golf, Rose Hill*)
11. The right to establish up to one acre of borrow pits for mineral extraction for fill material used solely on the protected property did not violate the "protected in perpetuity" requirement of § 170(h)(5)(B). The opinion cited to the limited and localized exception in Reg. § 1.170A-14(g)(4). In a footnote, the Court observed that it did not consider digging material from a borrow pit to be "mining." (*JL Minerals*)
12. Annual monitoring is sufficient to uphold perpetuity and to ensure that exercised reserved rights are not inconsistent with the protected conservation purposes. (*Butler, Friedberg, Murphy, Mill Road*)
13. Treasury Regulation § 1.170A-14(d), (e), and (g) taken as a whole provides that a donor (1) may reserve in the easement deed rights to make continued use of the easement property, provided that there are enforceable restrictions to prevent uses inconsistent with conservation purposes, (2) may continue pre-existing use of the easement property that does not conflict with the conservation purposes of the gift, and (3) cannot use the property in a way that would destroy other significant conservation interests (unless pursuant to protecting the conservation purpose of the easement). (*Murphy, Mill Road*)
14. Where (1) the exercise of reserved rights are subject to holder approval, and (2) the easement deed prohibits the holder from approving the exercise of reserved rights that would have a material adverse effect on the easement's conservation purposes, then the reserved rights do not violate the I.R.C. § 170(h)(5)(A)'s protected in perpetuity requirement. The exercise of reserved rights with an immaterial effect on conservation purposes would not be inconsistent with those purposes pursuant to Treas. Reg. § 1.170A-14(g)(1). The Tax Court in applying this analysis found the reserved right to build up to 11 homes, 9 docks, and associated roads and driveways at locations to be chosen by mutual agreement of the donor and donee did not have a material adverse effect. (*Carter III*)

15. Reserved rights that do not require prior holder approval are not considered inconsistent if such rights allowed for the continuation of "pre-existing use of the property that does not conflict with the conservation purposes," in accordance with Reg. section 1.170A-14(e)(3), especially in light of the easement's overarching environmental best practices requirement. (*Murphy*)
16. Reserved rights do not interfere with the protection of the conservation purposes in perpetuity due to the Inclusion of an overarching condition whereby all reserved rights are required to be exercised in a manner that is not inconsistent with the conservation purposes. If a conservation purpose were to be threatened by the exercise of a reserved right, the easement deed gives the holder the right to monitor and prevent the exercise of that reserved right. (*Mill Road 36 Henry*)
17. Pursuant to Treas. Reg. §1.170A-14(g)(5)(i), the baseline documentation report must be sufficient to establish the condition of the property at the time of the gift to protect the conservation interests. A five-page report without attachments, surveys or pictures was insufficient to evaluate whether changes fall within the limits of the reserved rights. (*Brooks*) Errors in the baseline led to the misidentification of 50% of the acreage of the property, significant enough to cause the baseline to fail to meet the standards of the regulation. (*Jackson Stone South*)
18. To satisfy the baseline documentation requirement of Treas. Reg. § 1.170A-14(g)(5)(i)(D), a written statement attesting to the accuracy of the documentation provided to the donee must be signed by the donor and donee before the date of the gift. A donor's unilateral representation in an easement deed does not satisfy the requirement. But the baseline documentation rules are directory, not mandatory, therefore substantial compliance with those rules would be sufficient, and a donor's partial compliance can be accepted as substantial compliance depending on the information provided. (*Carter III*)
19. The entire façade must be protected (*61 York Acquisition LLC),* and avoid all reserved right to alter the façade. (*Partita Partners LLC*)

Appraisals, Appraisers and Valuation

Though valuation is a donor issue, the following are takeaways from cases providing guidance to land trusts in their review of appraisals and avoidance of abusive transactions.

1. An individual is not a "qualified appraiser" if the donor and the appraiser have an express or implied agreement to inflate the value of the property. (*Jackson Crossroads, JL Minerals, Mill Road, Kaufman IV, Buckelew, Seabrook Property, Beaverdam, Ranch Springs, Jackson Stone South* and distinguished from *Oconee Landing* and *Rock Cliff Reserve*)
2. The comparable sales approach is the most reliable method for determining the fair market value of properties with exploratory stage mineral properties, as opposed to active mining operations (*Ranch Springs*). Use of the income approach and discounted cash flow analysis are inappropriate appraisal methods for undeveloped land without an active mining operation. (*Jackson Stone South, Paul Adams Quarry, Beaverdam*). The taxpayer's appraiser's use of the income approach, discounted cash flow analysis, and the royalty method were fundamentally flawed because they equated the value of the property with the net present value of the hypothetical business conducted on the land. (*Ranch Springs, Veribest Vesta*)

3. Timing matters regarding the appraisal date. (*Asser, Schultz, Lord, Ney*, but see *Trout Ranch*)
4. Strict compliance with the requirements is not necessary to obtain a deduction. (*Cave Buttes, Seabrook Property*)
5. Substantial compliance can apply to appraisal requirements but material errors in methodology cannot be overlooked (*Friedberg*), and overvaluation prevents taxpayers from benefiting from substantial compliance. (*RERI Holdings*) The substantial compliance doctrine should only be used to forgive "minor discrepancies in the taxpayer's reporting." (*Kaufman III*) Compliance is not substantial if an appraisal fails to meet the essential requirements of the statute. (*Cave Buttes*). Appraisal substantially complied with the qualified appraisal regulations even though it failed to state the date or anticipated date of the donation. (*Veribest Vesta*)
6. The substantial compliance doctrine will not apply where the taxpayer's appraisal valued the wrong asset (fee simple) because the appraisal prevents a proper understanding and calculating of the claimed deduction. (*Costello*)
7. Appraisal methodology need not be perfect to be "qualified." (*Simmons, Scheidelman*, but see *Rothman* reconsideration, *Irby*)
8. The appraiser's analysis in conjunction with other factors constituted "reasoned analysis" and therefore met the regulatory threshold requirements of a "qualified appraisal." (*Scheidelman II*)
9. But see *Rothman II* where the appraisal failed to satisfy 8 of 15 regulations and deprived the IRS of "sufficient information to evaluate the deductions claimed."
10. Court determined the appraisal was not credible and drastically reduced the easement value, and assessed penalties. (*Esgar, Scheidelman III*)
11. Tax Court considers all the facts and circumstances in valuations (*Whitehouse, Crimi, Palmer Ranch, Palmer Ranch II*) and must present a basis for any adjustments for market decline in their appraisal or abandon their adjustments. (*Palmer Ranch II*). Tax Court is not bound by the values computed by either expert and can remove outlier values from each expert's analysis. (*Johnson*) But Tax Court is constrained by the facts in the record to support its findings, especially when weighing competing expert testimony. (*Champions Retreat III*)
12. Adherence to the Uniform Standards of Professional Appraisal Practice is evidence that the appraiser is applying generally accepted methods and, at a minimum, indicates that the appraiser's valuation report is reliable. But USPAP is not the sole measure of reliability. (*Buckelew, JL Minerals, Whitehouse, Seabrook Property, Jackson Crossroads, Ranch Springs, Beaverdam Creek, Veribest Vesta, Jackson Stone South*)
13. Appraisers must correctly consider legal issues, such as access rights, as well as correctly assessing retained rights, such as minerals. (*Esgar, Hughes, Mountanos, Coal Property Holdings, Seabrook Property)*
14. Use a local experienced appraiser with extensive knowledge of the local market. Local is relative to the area in question. (*Kiva Dunes, Schmidt*)
15. Restrictions in other conservation easements too dissimilar from the subject easement are not "a substantial record of sales of easements comparable to the donated easement." (*Trout Ranch*)

16. Post-contribution comparables allowed as some weighted evidence of value despite the Treasury Regulations. (*Trout Ranch, Crimi*)
17. The IRS may not use a general comparable matrix to fix value (Hughes) and taxpayer has access to the IRS documentation for the matrix. (*RCL Properties*)
18. An appraisal must include market data and cannot be based on a generally applicable mechanical formula. (*Nicoladis*)
19. An appraiser must be independent of the land trust. (*Kaufman I*)
20. State and local or other applicable law can affect federal tax *deductions (Logan, Wachter, Zarlengo*, but see Gibbs where the court ruled state law treating easements as contracts was not relevant). Similarity between easement restrictions and historic preservation standards in local preservation code reduces façade easement valuation. (*Kissling*)
21. Taxpayers cannot claim lost value in adjacent property when claiming a deduction for voluntary donation of fee property. (*Drey*)
22. When a landowner contemporaneously donated both conservation easements and fee simple interests, which amounted to 100% of the interest in each parcel, the Tax Court used each parcel's before-conservation-easement value to determine the proper deduction amount, and did not have to consider both the before and after value. (*Excelsior Aggregates*)
23. Taxpayers who place restrictions on land before donating can only claim a charitable deduction equal to the fair market value of the property in light of the restriction. (Revenue Ruling 85-99). Appraisal must take into account restrictions placed on a donated fee property's use at the request of the donee. (*O'Connor)*
24. Taxpayers can claim a deduction for value lost due to an amendment. (*Strasburg*)
25. The highest-and-best-use valuation of the property is based on the reasonable probability of land use law changes allowing more development and "includes within it an analysis of whether the proposed use is 'needed or likely to be needed in the reasonably near future.'" (*Palmer Ranch* on appeal). Contemporaneous sales and transactions have been approved by the courts to support a determination of value. (*Plateau Holdings, TOT Property Holdings*) Past sales of the property have limited usefulness in determining valuation unless recent and reliable. (*Rajagopalan*)
26. An irrevocable trust is limited to claiming the trust's adjusted basis in donated property rather than the fair market value. (*Mart D. Green, Trustee*)

Evidence

1. Tax Court gives probative value to the donee's determination of whether the easement qualifies under section 170(h). (*Mill Road* footnote 19)
2. Taxpayer's appraisal was so deficient that it was not admissible. (*Boltar*)
3. Taxpayer has the burden of proving the IRS incorrect by introducing credible evidence. (*Butler*)
4. The taxpayer failed to meet the burden of proof by not calling the original appraiser as a witness. (*Evans*) But this is not an absolute requirement. (*Hughes)*
5. IRS's expert witness testimony amounted to substantial evidence of zero valuation. (*Scheidelman*)
6. Attorney-client privilege did not apply to the appraiser's work file because it was prepared

primarily for easement valuation purposes, not to provide legal advice. (*Richey, Pesky*)

7. An email to the taxpayer on market value was admissible as evidence as to whether the taxpayer acted in "good faith." The Circuit Court returned the case to the Tax Court. (*Kaufman*)
8. Three reconsideration cases argued that *Kaufman III* was an intervening change in the law that required the Tax Court to reconsider its opinion but which declined to do so distinguishing *Kaufman III* and *Simmons* in *Mitchell II, Belk II* and *Carpenter II*. The court said, "we will give effect to our own views in cases appealable to courts that have not yet decided the issue."
9. The IRS has the right to issue an agency summons for accounting records even if it has no evidence of tax liability at the time of the summons. (*Greenberger*)
10. The IRS can issue summons for appraisal records even when the appraisals were not prepared for tax purposes. (*Clower*)
11. IRS must satisfy four-part test to enforce summons for production of taxpayer records, including records related to appraisals and repayment of loans. (*Gretsch Stone*)

Tax Credits

1. The holding period for tax credits began at the time of receipt of the credits, not when the taxpayer acquired the land. The credits are capital assets and the tax credit proceeds are treated as ordinary income. (*Tempel, McNeil, SWF Real Estate*)

Good Faith and Reasonable Cause

1. The Pension Protection Act of 2006 modified the reasonable cause exception for appraisals in Section 6664(c)(3) and affected all returns filed after July 25, 2006. (*Reisner*, *Chandler*, *Zarlengo, Legg*)
2. The fact that the taxpayer commissioned a second appraisal indicated good faith. (*Whitehouse IV*)
3. The court stated that the taxpayer might be able to show reasonable cause for failing to provide documentation. (*Belair Woods*). If the IRS bears the burden of proof, the court may allow the exception to apply if there is a lack of explicit evidence on whether the omission such as blank basis boxes on the Form 8283s were the result of accountants' advice or petitioners' willful neglect. (*Murphy, Murfam*)
4. The reasonable cause exception does not apply to appraisals that do not include the terms of any agreement or understanding entered into that relates to the use, sale, or other disposition of the property contributed, in accordance with Treas. Reg. § 1.170A-13(c)(3)(ii)(D). (*Braen*)
5. Honest misunderstanding of fact or law that is reasonable in the light of all of the facts and circumstances, including taxpayer's reliance on attorney's experience and use of model language prior to IRS legal challenge of language, may indicate reasonable cause and taxpayer acted in good faith with respect to the claimed charitable contribution deduction corresponding to the correct value of the easements. (*Plateau Holdings*)

Business Purpose, Economic Substance, Sham Transactions, Disguised Sales and Syndication

1. A partner without a tangible business purpose beyond tax benefits should not be recognized as a partnership for federal income tax purposes because the partner was created for the express purpose of improperly transferring tax benefits. It had no meaningful stake in the success or failure of the venture, so it should be treated as a sham transaction or a disguised sale. See the safe harbor in Revenue Procedure 2014-12. *(Historic Boardwalk; Route 231 LLC, RERI Holdings, Bosque Canyon)*
2. When a pass-through entity 'sells' the income tax benefits resulting from contribution of a conservation easement it is a 'syndication.' (*Historic Boardwalk, Virginia Historic, Route 231 LLC*)
3. If there is no economic substance for the allocation of income and deductions other than pro-rata then federal tax law will disregard the allocation and re-allocate income and deductions strictly pro-rata. (*Route 231 LLC*, *RERI Holdings, Virginia Historic Tax Credit Fund 2001 LP*)
4. That federal income tax benefits are a consideration for the donor in determining whether to make a contribution does not undermine donative intent or the validity of the contribution. (*Mill Road, Oconee Landing, Buckelew, JL Minerals, Seabrook Property, Jackson Stone South)*
5. Creating a partnership for the purpose of avoiding taxation of tax credits is a disguised sale pursuant to section 707(a)(2)(B) of the Internal Revenue Code. (*SWF Real Estate*)
6. Judicial determination that the transaction structure was a disguised sale and moveable excluded house sites disqualified deduction while "inadequate baseline documentation" yielded an additional 40 percent misstatement penalty. (*Bosque Canyon, Balsam Mountain, Belk*)
7. Each penalty determined in an examination must be properly approved, unless specifically excepted under IRC § 6751(b)(2). (*Palmolive*)
8. The examiner must secure written supervisory approval for each penalty. (*Belair Woods, Sand Investment Co.*)
9. A penalty may be approved by signing the cover letter to a summary report, if the subject penalty is included in that summary report. (*Rose Hill*)
10. A penalty may be determined by an examiner, an Appeals Officer, or Counsel. (*Roth*)
11. Reasonable cause (a subjective standard) and acting in good faith can defeat the application of accuracy-related penalty. (*Plateau Holdings*)

Case Citations

1. Asser (1982 East, LLC) v. Commissioner, T.C. Memo. 2011-84
2. Atkinson v. Commissioner, T.C. Memo. 2015-236
3. Averyt v. Commissioner, T.C. Memo. 2012-198
4. Balsam Mountain Investments v. Commissioner, T.C. Memo. 2015-43
5. Beaverdam Creek Holdings, LLC v. Commissioner, No. 12362-21, T.C. Memo 2025-53 (U.S.T.C. June 2, 2025)
6. Belair Woods v. Commissioner, T.C. Memo. 2018-159, penalties upheld 154 T.C. 1, T.C. Memo

2020-112

7. Belk v. Commissioner, 774 F.3d 221 (4th Cir. 2014), affirming 140 T.C. 1 (2013); T.C. Memo. 2013-154
8. Big River Development v. Commissioner, T.C. Memo 2017-166
9. Boltar, LLC v. Commissioner, 136 T.C. 14 (2011)
10. Bosque Canyon Ranch v. Commissioner, No. 16-60069 (5th Cir. 2017), reversing T.C. Memo. 2015-130
11. Braen v. Commissioner, T.C. Memo 2023-85 (U.S.T.C. July 11, 2023)
12. Brank Cove Capital, LLC v. Commissioner, No. 12074-20 (U.S.T.C. June 16, 2025)
13. Brannan Sand & Gravel Co. LLC v. Commissioner, T.C. Memo 2020-76 (not a conservation easement)
14. Brooks v. Commissioner, T.C. Memo. 2022-122; aff'd 109 F.4th 205 (4th Cir. July 15, 2024)
15. Bruzewicz v. United States, 604 F. Supp. 2d 1197 (N.D. Ill. 2009)
16. Buckelew Farm, LLC v. Commissioner, No. 14273-17, T.C. Memo 2024-52 (U.S.T.C. April 25, 2024), aff'd No. 24-13268 (11th Cir. Sept. 2, 2025)
17. Butler v. Commissioner, T.C. Memo. 2012-72
18. Carpenter v. Commissioner, T.C. Memo. 2012-1; T.C. Memo 2013-172
19. Carroll v. Commissioner, 146 T.C. 13 (2016)
20. Carter v. Commissioner, T.C. Memo. 2023-133 (U.S.T.C. Nov. 6, 2023) supplementing Carter I (Carter III); No. 20-12200, 11th Cir. 2022 (Unpublished) (Carter II) reversing and remanding T.C. Memo. 2020-21 (Carter I)
21. Cave Buttes, LLC v. Commissioner, 147 T.C. 10 (2016)
22. Champions Retreat Golf Founders, LLC v. Commissioner, T.C. Memo 2018-146 (U.S.T.C. September 10, 2018)(Champions I), vacated No. 18-14817, 959 F.3d 1033 (11th Cir. 2020)(Champions II); T.C. Memo 2022-106 (U.S.T.C. Oct. 17, 2022)(Champions III)
23. Chandler v. Commissioner, 142 T.C. 16 (2014)
24. Chiarelli v. Commissioner, T.C. Memo. 2021-27 (not a conservation case)
25. Coal Property Holdings, LLC v. Commissioner, 153 T.C. 7 (2019)
26. Cohan v. Commissioner, T.C. Memo. 2012-8
27. Corning Place Ohio, LLC v. Commissioner, T.C. Memo 2022-12 (historic preservation easement), T.C. Memo 2024-72 (U.S.T.C. July 17, 2024)
28. Costello v. Commissioner, T.C. Memo. 2015-87
29. Cottonwood Place, LLC v. Commissioner, T.C. Memo. 2020-115
30. Crimi v. Commissioner, T.C. Memo. 2013-51
31. Davis v. Commissioner, T.C. Memo 2015-88
32. DiDonato v. Commissioner, T.C. Memo. 2011-153
33. Drey v. United States, 705 F.2d 965 (8th Cir. 1983), affirming 535 F. Supp. 287 (E.D. Missouri 1982)
34. Dunlap v. Commissioner, T.C. Memo. 2012-126
35. Englewood Place v. Commissioner, T.C. Memo 2020-105
36. Esgar Corp. v. Commissioner, T.C. Memo. 2012-35
37. Estate of Gibbs v. United States, 161 F.3d 242 (3rd Cir. 1998)
38. Evans v. Commissioner, T.C. Memo. 2010-207
39. Excelsior Aggregates LLC v. Commissioner, T.C. Memo. 2021-125, T.C. Memo. 2024-60

40. 15 West 17th St. LLC v. Commissioner, 147 T.C. No. 19
41. French v. Commissioner, T.C. Memo. 2016-53
42. Friedberg and Moss v. Commissioner, T.C. Memo. 2011-238; T.C. Memo. 2013-224
43. Gemperle v. Commissioner, T.C. Memo. 2016-1
44. Glade Creek Partners, LLC v. Commissioner, No. 22272-17, T.C. Memo 2020-148 (U.S.T.C. Nov. 2, 2020)(Glad Creek I); vacated and remanded in part, affirmed in part, No. 21-11251, 2022 WL 3582113 (11th Cir. Aug. 22, 2022)(Glade Creek II); T.C. Memo 2023-82 (U.S.T.C. June 29, 2023)(Glade Creek III); aff'd No. 23-14039, --- F.4th --- (11th Cir. June 6, 2025)(Glade Creek IV)
45. Glass v. Commissioner, 471 F.3d 698 (6th Cir. 2006), affirming 124 T.C. 16 (2005)
46. Goldsby v. Commissioner, T.C. Memo. 2006-274
47. Gorra v. Commissioner, T.C. Memo. 2013-254
48. Graev v. Commissioner, 140 T.C. 17 (2013); 147 T.C. 16 (2016); 149 T.C. 23 (2017)
49. Great Northern, 544 F.Supp. 511 (1982) Holding considered unreliable: ascertainment of value is based on a reasonable likelihood that the parcel would have been developed into a specific use within a reasonable period of time after the date of the gift.
50. Gretsch Stone, LLC v. United States, No. 3:20-MC-2 (CDL), 2020 WL 6470177 (M.D. Ga. Nov. 3, 2020)
51. Harbor Lofts Associates v. Commissioner, 151 T.C. 3 (2018)
52. Herman v. Commissioner, T.C. Memo 2009-205
53. Hewitt v. Commissioner, T.C. Memo 2020-89 (U.S.T.C. June 17, 2020), (Hewitt II) rev'd and remanded, 21 F.4th 1336 (11th Cir. 2021)
54. Historic Boardwalk Hall, LLC. v. Commissioner, 694 F.3d 425 (3d Cir. 2012)
55. Hoffman Properties II, L.P. v. Commissioner, 956 F.3d 832 (6th Cir. 2020), affirming T.C. Docket No. 14130-15, March 14, 2018
56. Hughes v. Commissioner, T.C. Memo. 2009-94
57. IRS Revenue Ruling 85-99, 1985-2 C.B. 83
58. Irby v. Commissioner, 139 T.C. 14 (2012)
59. Jackson Crossroads, LLC v. Commissioner, T.C. Memo 2024-111
60. Jackson Stone South, LLC v. Commissioner, No. 12271-20, T.C. Memo 2025-96 (U.S.T.C. September 23, 2025)
61. JL Minerals, LLC v. Commissioner, T.C. Memo 2024-93
62. Johnson v. Commissioner, T.C. Memo. 2020-79
63. Kaufman v. Commissioner, US Court of Appeals 1st Circuit, Nos. 11-2017, 11-2022, July 19, 2012 reversing 134 T.C. 9 (U.S.T.C. 2010)(Kaufman I), reconsideration denied, 136 T.C. 13 (2011) (Kaufman II); 687 F.3d 21 (1st Cir. 2012) (Kaufman III)
64. Kissling v. Commissioner, T.C. Memo. 2020-153
65. Kiva Dunes Conservation, LLC v. Commissioner, T.C. Memo. 2009-145
66. Legg v. Commissioner, 145 T.C. 13 (2015)
67. Logan M. Chandler et ux. v. Commissioner; 142 T.C. 16 (2014)
68. Lord v. Commissioner, T.C. Memo. 2010-196
69. Lumpkin HC, LLC v. Commissioner, T.C. Memo. 2020-95
70. Lumpkin One Five Six, LLC v. Commissioner, T.C. Memo. 2020-94
71. Maple Landing, LLC v. Commissioner, T.C. Memo. 2020-104
72. Mart D. Green v. United States, US Court of Appeals 10th Circuit, No. 16-6371 (Jan. 12, 2018)

73. McGrady v. Commissioner, T.C. Memo. 2016-233
74. McNeil v. Commissioner, T.C. Memo. 2011-109
75. Mecox Partners LP ex rel. Goldman v. US, 117 A.F.T.R.2d 2016-593 (S.D.N.Y. 2016)
76. Mill Road 36 Henry, LLC, T.C. Memo. 2023-129 (U.S.T.C. Oct. 26, 2023)
77. Minnick v. Commissioner, 775 F.3d 1243 (9th Cir. 2015)(Minnick II), aff'g T.C. Memo. 2012-345 (Minnick I)
78. Mitchell v. Commissioner, 138 T.C. 16 (2012); T.C. Memo. 2013-204
79. Montgomery-Alabama River LLC v. Commissioner, T.C. Memo 2021-62
80. Mountanos v. Commissioner, T.C. Memo. 2013-138; T.C. Memo. 2014-38 (Mountanos II); No. 14-71580 (Ninth Cir., June 1, 2016)(Mountanos III)
81. Murfam Enterprises, LLC v. Commissioner, T.C. Memo 2023-73 (U.S.T.C. June 15, 2023)
82. Murphy v. Commissioner, T.C. Memo 2023-72 (U.S.T.C. June 15, 2023)
83. Ney, Bruce K. et ux. v. Commissioner, T.C. Summ. Op. 2006-154
84. Nicoladis v. Commissioner, T.C. Memo. 1988-163
85. 901 South Broadway Limited Partnership v. Commissioner, T.C. Memo 2021-132
86. Oakbrook Land Holdings LLC v. Commissioner, 154 T.C. No. 180 (U.S.T.C 2020 May 12, 2020); T.C. Memo 2020-54 (U.S.T.C. May 12, 2020), aff'd --- F.3d --- (6th Cir. 2022)
87. Oakhill Woods LLC v. Commissioner, T.C. Memo. 2020-24
88. Oconee Landing Property, LLC v. Commissioner, T.C. Memo. 2024-25
89. O'Connor v. Commissioner, T.C. Docket No. 2472-11
90. Oxbow Bend, LLC v. Commissioner, T.C. Memo. 2022-23
91. Palmer Ranch Holdings Ltd., et al v. Commissioner, US Court of Appeals 11th Circuit, No. 14-14167 (February 5, 2016)(Palmer Ranch II), T.C. Memo. 2014-79 (Palmer Ranch I).
92. Palmolive Building Investors v. Commissioner, 149 T.C. 18 (2017)
93. Partita Partners, LLC v. United States, No. 15-cv-2561(PKC), July 10, 2017; 216 F. Supp. 3d 337 (S.D.N.Y. 2016)
94. Paul-Adams Quarry Trust, LLC v. Commissioner, No. 10145-21, T.C. Memo 2025-112 (U.S.T.C. November 3, 2025)
95. PBBM-Rose Hill, Ltd. v. Commissioner, T.C. Docket No. 26096-14, (Oct. 7, 2016), U.S. Circuit Court of Appeals for the Fifth Circuit No. 17-6027 (August 14, 2018)
96. Pesky v. United States Dist. Court, D. Idaho, CIV. 1:10-186 WBS, August 29, 2011; 2013 WL 97752 (D. Idaho, Jan. 7, 2013); Dist. Court, D. Idaho, No. CIV. 1:10-186 WBS, July 8, 2013
97. Pickens Decorative Stone, LLC v. Commissioner, T.C. Memo. 2022-22
98. Pine Mountain Preserve, LLLP v. Commissioner, US Court of Appeals 11th Circuit, No. 19-11795 (October 22, 2020) (Pine Mountain Preserve II), T.C. Memo 2018-214 (Pine Mountain Preserve I)
99. Plateau Holdings, LLC v. Commissioner, T.C. Memo. 2020-93, T.C. Memo 2021-133
100. Pollard v. Commissioner, T.C. Memo. 2013-38
101. Railroad Holdings, LLC v. Commissioner, T.C. Memo. 2020-22
102. Rajagopalan v. Commissioner joint case with Sapp v. Commissioner, No. 21575-11, T.C. Memo 2020-159 (U.S.T.C. Nov. 19, 2020); Sapp v. Commissioner, No. 21575-11 (U.S.T.C. Aug. 14, 2025)(Order and Decision)
103. Ranch Springs, LLC v. Commissioner, No. 11794-21, 164 T.C. No. 6 (U.S.T.C. March 31, 2025)
104. RCL Properties, Inc. et al. v. United States, 102 A.F.T.R.2d (RIA) 7302 (D. Colorado 2009)

105. Red Oak Estates, LLC, T.C. Memo. 2020-116
106. Reisner v. Commissioner, T.C. Memo. 2014-230
107. RERI Holdings I, LLC v. Commissioner, T.C. Memo. 2014-99, 149 T.C. 1 (2017)
108. Riverside Place, LLC v. Commissioner, T.C. Memo. 2020-103
109. Rock Cliff Reserve, LLC v. Commissioner, No. 12472-20; T.C. Memo 2025-73 (U.S.T.C. July 14, 2025)
110. Roth v. Commissioner, T.C. Memo. 2017-248
111. Rothman v. Commissioner, T.C. Memo. 2012-218
112. Route 231 LLC, John D. Carr, Tax Matters Partner v. Commissioner of Internal Revenue, T.C. Memo. 2014-30
113. RP Golf, et al v. Commissioner, T.C. Memo. 2012-282; T.C. Memo. 2016-80; No. 16-3277 (8th Cir. 2017) Rutkoske v. Commissioner, 149 T.C. 6 (2017)
114. Salt Point Timber v. Commissioner, T.C. Memo. 2017-245
115. Sand Investment Co., LLC v. Commissioner, 157 T.C. No. 11
116. Sapp v. Commissioner, Order and Decision dated Aug. 14, 2025
117. Satullo v. Commissioner, T.C. Memo. 1993-614
118. Savannah Shoals LLC v. Commissioner, T.C. Memo. 2024-35
119. Scheidelman v. Commissioner, 682 F.3d 189 (2nd Cir. 2014), affirming T.C. Memo. 2013-18 (Order on remand from 2nd Circuit); 682 F.3d 189 (2d Cir. 2012), reversing 100 TCM (2010); T.C. Memo. 2013-18
120. Schmidt v. Commissioner, T.C. Memo. 2014-159
121. Schrimsher v. Commissioner, T.C. Memo. 2011-71
122. Seabrook Property, LLC v. Commissioner, T.C. Memo 2025-6
123. Sells v. Commissioner, T.C. Memo. 2021-12
124. Seventeen Seventy Sherman Street, LLC v. Commissioner, T.C. Memo. 2014-124
125. Simmons v. Commissioner, 646 F.3d 6 (D.C. Cir. 2011), affirming T.C. Memo. 2009-208
126. 61 York Acquisition, LLC et al. v. Commissioner, T.C. Memo. 2013-266
127. Smith Lake, LLC v. Commissioner, T.C. Memo. 2020-107
128. Strasburg v. Commissioner, 79 T.C.M 1697, T.C. Memo. 2000-94
129. SWF Real Estate LLC, T.C. Memo. 2015-63
130. Tempel v. Commissioner, 136 T.C. 15 (2012)
131. Ten Twenty Six Investors v. Commissioner, T.C. Memo. 2017-115
132. 310 Retail, LLC v. Commissioner, T.C. Memo. 2017-164
133. TOT Property Holdings, LLC v. Commissioner, No. 5600-17 (U.S.T.C. Dec. 13, 2019)(Bench opinion and order)¸ aff'd --- F.3d ---, 2021 WL 2559088 (11th Cir. Jun. 23, 2021)
134. Triumph Mixed Use Investments v. Commissioner, T.C. Memo. 2018-65
135. Trout Ranch, LLC v. Commissioner, No. 11-9006, United States Court of Appeals, Tenth Circuit, August 16, 2012, affirming T.C. Memo. 2010-283
136. Turner v. Commissioner, 126 T.C. 16 (2006)
137. United States v. Clower, 2016 U.S. Dist. LEXIS 77493 (N.D. Ga. March 21, 2016); 2016 U.S. Dist. LEXIS 77795 (N.D. Ga. April 29, 2016)
138. United States v. Greenberger, U.S. District Court, ND Georgia, No. 1:15-CV-03532-AT-JFK (January 11, 2016)
139. United States v. Richey, 632 F.3d 559, 107 A.F.T.R.2d (RIA) 573 (9th Cir. 2011), reversing 2009

U.S. Dist. 103 A.F.T.R.2d (RIA) 1228 (D. Idaho 2009)

140. Valley Park Ranch, LLC v. Commissioner, 162 T.C. No. 6 (2024)
141. Veribest Vesta, LLC v. Commissioner, No. 9158-23 (U.S.T.C. July 15, 2025)
142. Village at Effingham, LLC v. Commissioner, T.C. Memo. 2020-102
143. Virginia Historic Tax Credit Fund 2001 LP v. Commissioner, 639 F.3d 129 (4th Cir. 2011)
144. Wachter v. Commissioner, 142 T.C. 7 (2014)
145. Wall v. Commissioner, T.C. Memo. 2012-169
146. Wendell Falls Development v. Commissioner, T.C. Memo. 2018-45.
147. Whitehouse Hotel Limited Partnership v. Commissioner, No. 13-60131 (5th Cir. 2014), affirming in part and vacating in part 139 T.C. 13 (2012)(Order on remand from 5th Circuit); 615 F.3d 321 (5th Cir. 2010), vacating and remanding 131 T.C. 10 (2008); upheld on reconsideration 139 T.C. 13 (2012)
148. Woodland Property Holdings, LLC v. Commissioner, T.C. Memo. 2020-55
149. Zarlengo v. Commissioner, T.C. Memo. 2014-161
150. Pre-2000 valuation cases include: Browning v. Commissioner, 109 T.C. No. 16 (1997), Clemens v. Commissioner, T.C. Memo. 1992-436, Dorsey v. Commissioner, T.C. Memo. 1990-242, Griffin v. Commissioner, 911 F.2d1124 (1990), Higgins v. Commissioner, T.C. Memo. 1990-103, Johnston v. Commissioner, T.C. Memo. 1997-475, Losch v. Commissioner, T.C. Memo.1988-230, Richmond v. U.S., 699 F. Supp. 578 (1988), Schapiro v. Commissioner, T.C. Memo. 1991-128, Schwab v. Commissioner, T.C. Memo. 1994-232
151. For small tax case (defined as a U.S. Tax Court case resolving dispute with IRS for less than $50,000), see Foster v. Commissioner, T.C. Summary Opinion 2012-90

The Tax Court has different types of opinions. Only full opinions and memo opinions set official precedent.

A. **Bench Opinion** — the Judge orally opines in court during the trial session; the opinion cannot be relied on as precedent.
B. **Summary Opinion** — cannot be relied on as precedent, and the decision cannot be appealed.
C. **Tax Court Opinion or Memorandum Opinion** — the Chief Judge decides whether an opinion in a regular case will be issued as a Memorandum Opinion or as a Tax Court Opinion. Generally, a Memorandum Opinion is issued in a regular case that does **not** involve a novel legal issue and that addresses cases where the law is settled or factually driven. A Memorandum Opinion can be cited as legal authority, and the decision can be appealed. Generally, a Tax Court Opinion is issued in a regular case when the Tax Court believes it involves a sufficiently important legal issue or principle. A Tax Court Opinion can be cited as legal authority, and the decision can be appealed. The Tax Court is bound by an appellate court's opinions in cases appealable to that appellate court's circuit. (*Golsen v. Commissioner*, 54 T.C. 742, 756-57, aff'd, 445 F.2d 985 (10th Cir. 1971))

Contact us:

- Leslie Ratley-Beach (802) 262-6051 | lrbeach@lta.org
- Diana Norris (202) 800-2219 | dnorris@lta.org

Date last revised: **1/21/2026**