Land Trust Alliance
Together, conserving the places you love

Absolutely Taxing

Three Trending Conservation-Related Tax Issues

2026 Land Conservation & Greenways Conference, April 29 10:45am-12:15pm

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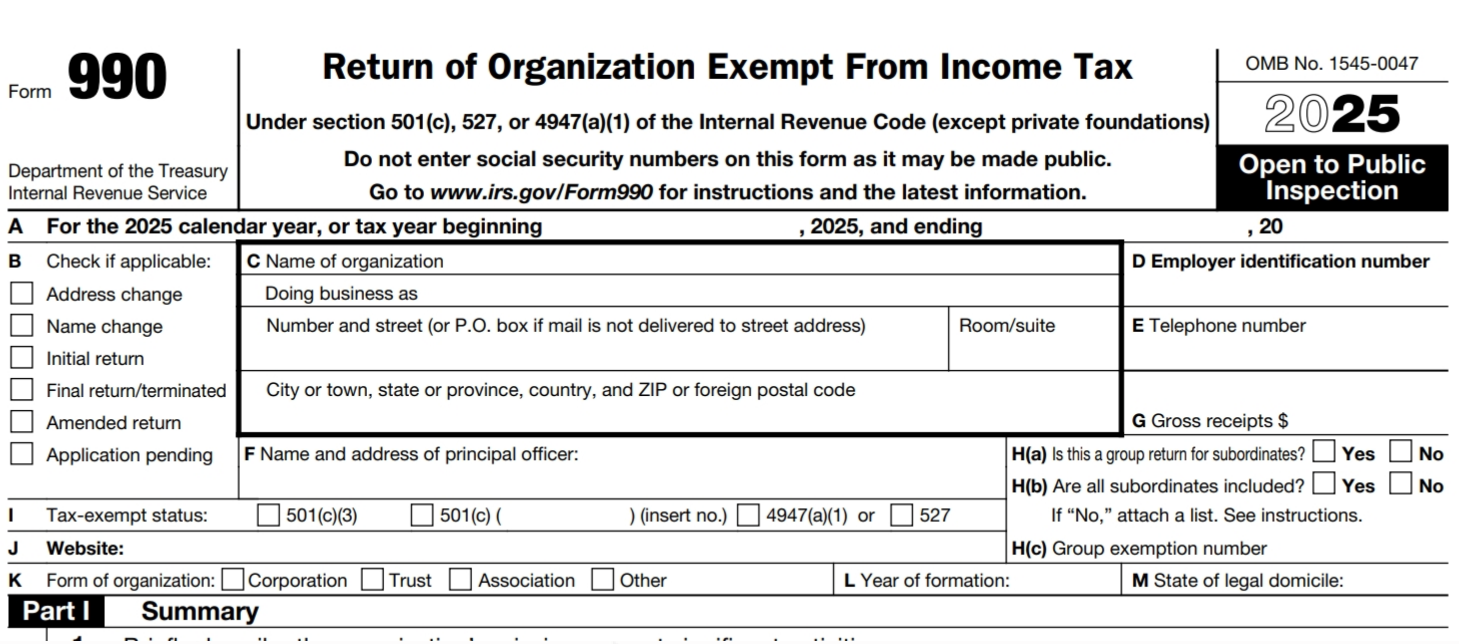
Agenda

- IRC 501(c)(3) Prohibitions
  - Private inurement
  - impermissible private benefit
- Baseline documentation reports
- IRC 170(h) Conservation Purposes
  - Habitat
  - Open space

Private inurement and impermissible private benefit

Form 990

- revise Form 990 with a notice and comment period
- improve transparency
- provide clearer reporting on certain activities of tax-exempt organizations
  - government contracts, government grants, and fiscal sponsorship
- to detect misconduct and hold wrongdoers accountable



Form **990**

Department of the Treasury
Internal Revenue Service

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

Do not enter social security numbers on this form as it may be made public.

Go to *www.irs.gov/Form990* for instructions and the latest information.

OMB No. 1545-0047

2025

Open to Public Inspection

A For the 2025 calendar year, or tax year beginning , 2025, and ending , 20

B Check if applicable:
- Address change
- Name change
- Initial return
- Final return/terminated
- Amended return
- Application pending

C Name of organization

Doing business as

Number and street (or P.O. box if mail is not delivered to street address)

Room/suite

City or town, state or province, country, and ZIP or foreign postal code

D Employer identification number

E Telephone number

G Gross receipts $

F Name and address of principal officer:

H(a) Is this a group return for subordinates? **Yes** **No**

H(b) Are all subordinates included? **Yes** **No**

If “No,” attach a list. See instructions.

I Tax-exempt status: 501(c)(3) 501(c) ( ) (insert no.) 4947(a)(1) or 527

J Website:

H(c) Group exemption number

K Form of organization: Corporation Trust Association Other

L Year of formation:

M State of legal domicile:

Part I Summary

Prohibitions against impermissible private benefit and private inurement

- General Internal Revenue Code rules that apply to all nonprofit organizations
- Must avoid engaging in impermissible conduct
- Organization will be disqualified as a 501(c)(3) if it benefits private interests or monetary penalties
- Designed to ensure that charitable assets are used to further public purposes, not for private ends

There are many forms of prohibited conduct!

- Be conscious of possible impermissible private benefit and private inurement in both conservation easement and fee land donation contexts
- And other contexts that involve a land trust's assets

The doctrine of private inurement

- Generally prohibits use of a tax-exempt organization’s net earnings to benefit an insider
- Generally prohibits a tax-exempt organization from using its assets to benefit any **individual or entity that has a close relationship** to the organization.

Who (or what) is an insider

Includes:

- organization's founders
- trustees
- directors
- officers
- members of their families
- entities controlled by these individuals
- any other persons having a personal and private interest in the activities of the organization

When does private inurement happen?

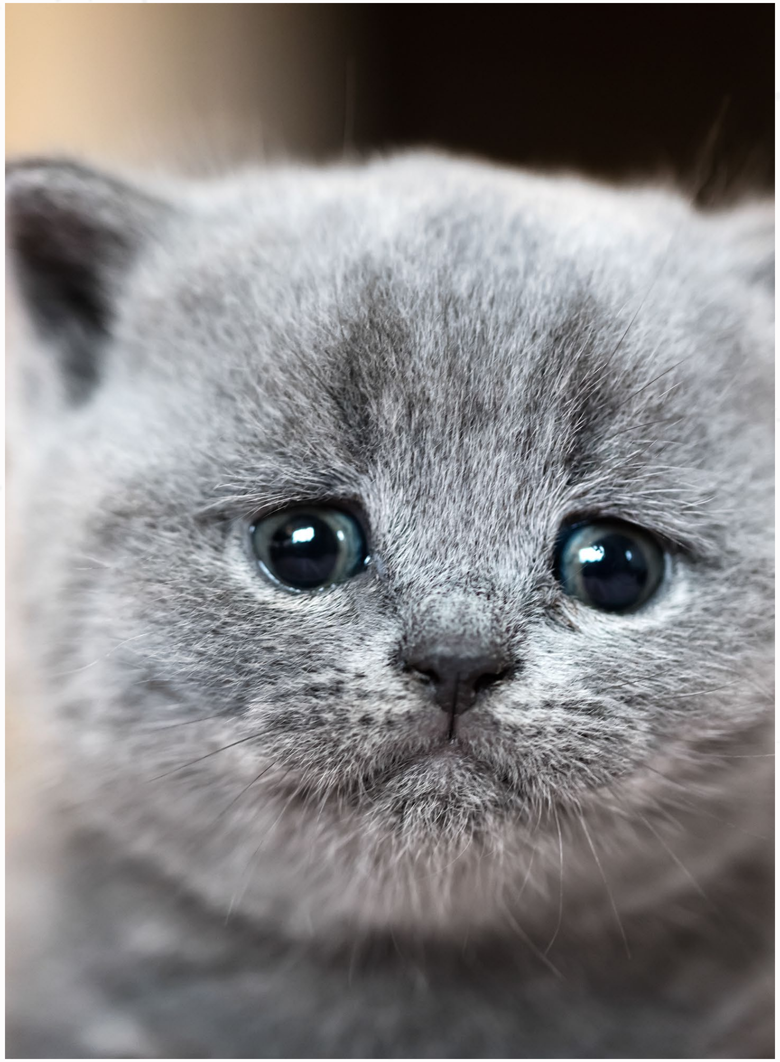
- Often arises when a tax-exempt organization pays unreasonable compensation to an insider
- Could happen in **any transaction** through which an insider is unduly benefited
- Occurs when an exempt organization engages in a transaction with an insider, and there is a purpose to benefit the insider rather than the organization

Sanctions

- the revocation (or denial) of the tax-exempt status
- no de minimis exception

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)
- Doctrine of private benefit is broader than (and subsumes) the private inurement prohibition
- Unlike the absolute prohibition against private inurement, **incidental private benefit** is permissible



What is incidental?

- Facts and circumstances test
- Qualitatively incidental - private benefit must be a **necessary by-product** of the activity that benefits the public at large and accomplishes exempt purposes
- Quantitatively incidental - facts and circumstances test that requires the public benefit from the organization's activities to **outweigh** any individual benefit

“”

“in reality it is difficult to apply the private benefit analysis”

“relevant facts in each individual case must be strained through those [established] principles to arrive at a decision on the particular case”

2001 EO CPE

Pulpit Resource v. Commissioner, 70 T.C. 612 (1978)

You decide: Which one is *impermissible* private benefit?

Lake Preservation Org

- Organization preserved a lake as a public recreational facility and to improve condition of the water to enhance its recreational features
- Recreational facility open to everyone
- Lake preservation benefited certain private property owners
- financed by contributions from lake front property owners, from members of the community adjacent to the lake, and from municipalities bordering the lake

City Block Org

- City block residents formed an organization to preserve and beautify, improve public facilities, prevent physical deterioration of the block
- Paid city government to plant trees on public property; organized litter pickups in public areas; encouraged residents to actively beautify block
- Membership restricted to residents, property owners, operating business on block
- Financial support from block parties and member contributions

City block org is impermissible private benefit!

- Organization only served private interests by enhancing members' property rights
- Evidenced by its restricted membership and area served

Serving private interests

IRS Private Letter Ruling 201405018 (January 31, 2014)

- CPA as Pres of land trust
- Only Pres conducted business
- No meetings or financial records
- Accepted 2 CEs and 1 fee property from clients
- 1 page BDRs and monitoring reports

IRS Private Letter Ruling 201110020 (December 17, 2010)

- Failure to account for 26 of 35 CEs
- Pres (and founder) served as a paid consultant to donors and donors' appraisers, and paid the appraisers for their work
- No designated easement enforcement fund, no program for enforcing conservation easements, no monitoring records

Land trust scenarios

These require a private inurement or impermissible private benefit analysis

- Land trust pays more than appraised value for a property.
- Landowner violates the easement restrictions minimally and land trust allows the violation but requires a specific remedy i.e. construction of a shed violated the easement, land trust allowed it to remain for 5 years and required removal thereafter.
- Neighbor encroaches by installing a fence on land trust's fee land and land trust allows or ignores the encroachment.
- Landowner proposes an amendment of the easement to allow a new commercial use.

More land trust scenarios

These require a private inurement or impermissible private benefit analysis

- 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 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 or HQ/office space for private events.
- Land trust hires a contractor who is the relative of its biggest donor.
- Land trust allows its board members to use conserved, restricted–access property for private purposes such as hikes, fishing, parties, etc.

Triage

Manage and minimize

Comply with organizational policies and protocols

Obtain legal opinion or appraisal

Document issues, analysis and how the organization addressed or resolved

Consider legal issues, optics and reputational risks before acting

Discussion

Baseline documentation reports (BDR)

Good baseline documentation serves the following purposes:

- Records both the important conservation values and the current conditions of the property.
- Provides foundation for monitoring and enforcement (potential evidence in future litigation)
- Supports qualification for tax benefits and substantiating public benefit by describing why the property is being conserved and documenting current conditions.
- Enables land trust staff to communicate with landowners about stewardship responsibilities.
- Informs conservation easement drafting.

Federal requirements

Treas. Reg. §1.170A-14(g)(5)(i)

documentation sufficient to establish the condition of the property at the time of the gift

for those easements in which “the donor [landowner] reserves rights the exercise of which may impair the conservation interests associated with the property”

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)

- 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

Townley v. U.S.

- BDR required even if CE prohibits exercise of reserved rights that may impair the conservation interests
- restrictions regarding particular natural resource require information on condition of resource @ time of gift such as survey maps, scale maps, aerial photographs
- importance of the acknowledgments - certify that the reports sufficiently described the condition of the property, including quality of particular resource, for purposes of monitoring and enforcing the terms of the CE

Timing and signatures

Substantiation and verification

Importance of acknowledgement

Improper substantiation can undermine the deduction

Strict vs substantial compliance (*Carter*)

Minimal content

Date of **completion**

Documentation of **conservation values** and **public benefits**, including written descriptions along with related maps and photographs

Documentation of **existing conditions** that relate to the easement's restrictions and reserved rights, including written descriptions and related maps and photographs

Information on the **location** of the easement or directions to the property

Property description (an address is not sufficient; must be a full description)

Background information

Dated signatures of landowner and land trust acknowledging that both attest to accuracy of information in the report

Authorship and qualifications of the baseline preparer

Other acknowledgements or information that would make the material admissible as a **business record** in court

Baseline or easement **map**

Standards & Practices: 11B

1. ● For each conservation easement, have a baseline documentation report (■), with written descriptions, maps and photographs, that documents:
   - ● a. The conservation values protected by the easement
   - ● b. The relevant conditions of the property as necessary to monitor and enforce the easement
2. Prepare the report prior to closing and have it signed by the landowner and land trust at or prior to closing
   - ● a. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, the landowner and land trust sign a schedule for finalizing the full report and an acknowledgement of interim data [that for donations and bargain sales meets Treasury Regulation §1.170A-14(g)(5)(i)] at closing
3. ● When there are significant changes to the land or the conservation easement (such as a result of an amendment or the exercise of a permitted right), document those changes in an appropriate manner, such as through monitoring reports, a baseline supplement or current conditions report

[Practice 11B: Baseline Documentation Report - Land Trust Alliance]()

Legal sufficiency

sufficient to establish the condition of the property at the time of the gift

- Compare *Carter:* 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).

Legal sufficiency

sufficient to establish the condition of the property at the time of the gift

- With *Brooks*: appropriate signatures and timing but 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

Legal sufficiency

sufficient to establish the condition of the property at the time of the gift

- With *Jackson Stone South*: a significant error in an otherwise professionally prepared baseline could be enough to eliminate the entire deduction. Misidentification of the habitat on 50% of the acreage of the property was significant enough to cause the baseline to fail to meet the standards of the regulation. Battle of the experts.

Examples of insufficient baselines

Lack of information (*Brooks*)

- 3 pages of text
- General references to roads and vegetation
- No maps, photographs
- No details on the size or location of tree stands, wetlands, or roads

Incorrect information (*Jackson Stone*)

- Disagreement of experts on habitat types specifically mesic hardwood forest vs common pine forest
- Suspiscious of land trust comments
- Misidentification of 50% of the acreage
- Landowner noted inaccuracy with special natural areas but report was not corrected

Baseline deficiencies

- Undermine the protection of the conservation interests
- Difficult or impossible to identify any changes that fell within reserved rights
- Not protected in perpetuity
- Undermine the tax deduction
- **Bottom line: courts looking closely at BDRs**

Discussion

IRC 170(h) conservation purposes

Express Statement of IRC 170(h) Conservation Purposes

Don’t make the IRS search!

- easement’s purpose provision must state the section 170(h)(4)(A) respective purpose
- multiple purposes, then all must be stated
- recitals are not enough
- compare with state enumerated conservation purposes

Relatively natural habitat (170(h)(4)(A)(ii))

does not require the presence of “high-quality” habitats of threatened or rare species

meet “some level of significance” and cannot be “trivial,” even though the statute does not contain an express significance standard

flexible” reading that generally means those species that “reasonably warrant protection.”

BUT fine-grained so double-check accuracy

Compare

Mill Road 36 Henry:

- contained four different habitat types that were deemed high priority in Georgia's State Wildlife Action Plan
- did not require any showing of specific species that were rare, threatened or endangered
- IRS was using the wrong test - habitat must be relatively natural rather than a wilderness area or a "natural area" of "high quality

With

Jackson Stone South:

- habitat types noted in the JSN Baseline were inaccurate
- common pine forest and pine plantation that made up 78% of the property provided minimal habitat value and were not “relatively natural habitats.”
- 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. .

Open Space Conservation Purpose (170(h)(4)(A)(iii))

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.

AND yield a significant public benefit

Scenic enjoyment

8 factors

- Compatible land use
- Contrast and variety
- Openness
- Relief from urban closeness
- Harmonious shapes and textures
- Scale and character
- Consistency with state scenic ID program
- Consistency with regional or local landscape inventory (with rigorous review

Scenic enjoyment

Mill Road 36 Henry:

- Does not require unique nor significant nor a substantial size
- size of the property did not de facto cause the easement to fail the scenic views test

Jackson Stone South:

- 623 feet of undeveloped frontage on a hwy- not significant in the context of the lightly developed surroundings of the property

Context matters!

Clearly delineated governmental policy

Jackson Stone South:

Recitals referenced:

- State wildlife action plan
- County comprehensive plan
- National wildlife refuge goals
- State tax credit program and conservation tax assessment program **BUT** property was not enrolled

Court skeptical but declined to rule

Public benefit

11 factors

- Uniqueness
- Intensity of development
- Consistency with public program
- Consistency with private conservation programs
- Likelihood of degradation
- Opportunity of public to use or enjoy
- Preservation of landscape or resource
- Donee acquiring valuable property (rights)
- Cost of donee to enforce
- Population density
- Consistency with legislatively mandated program for specific protections

Show public benefit!

Jackson Stone South:

- Marginal value and “common” nature of habitats
- Modest development pressure
- No public access
- Lack of participation in two state tax programs

NO significant public benefit

Form 8283

- Revised Form and Instructions – Dec 2025
- No substantive changes for land conservation contributions
- **IMPORTANT** – use most current version

Form **8283**
(Rev. December 2025)
Department of the Treasury
Internal Revenue Service

Noncash Charitable Contributions

Attach one or more Forms 8283 to your tax return if you claimed a total deduction of over $500 for all contributed property.

Go to *www.irs.gov/Form8283* for instructions and the latest information.

OMB No. 1545-0074
Attachment Sequence No. **36**

Name(s) shown on your income tax return | **Identifying number**

Enter the entity name and identifying number from the tax return where the noncash charitable contribution was originally reported, if different from above.

Name: ______________________ Identifying number: ______________

Check this box if a family pass-through entity made the non-cash charitable contribution. See instructions . . . . ☐

Note: Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

Section A. Donated Property of $5,000 or Less and Publicly Traded Securities— List in this section **only** an item (or a group of similar items) for which you claimed a deduction of $5,000 or less. Also list publicly traded securities and certain other property even if the deduction is more than $5,000. If you need more space, attach a statement. See instructions.

1	**(a)** Name and address of the donee organization	**(b)** If donated property is a vehicle (see instructions), check the box. Also enter the vehicle identification number (unless Form 1098-C is attached).	**(c)** Description and condition of donated property (For a vehicle, enter the year, make, model, and mileage. For securities and other property, see instructions.)
A		☐	
B		☐	
C		☐	
D		☐	

Note: If the amount you claimed as a deduction for an item is $500 or less, you do not have to complete columns (e), (f), and (g).

	(d) Date of the contribution	**(e)** Date acquired by donor (mo., yr.)	**(f)** How acquired by donor	**(g)** Donor's cost or adjusted basis	**(h)** Fair market value (see instructions)	**(i)** Method used to determine the fair market value
A						
B						
C						
D						

Section B. Donated Property Over $5,000 (Except Publicly Traded Securities, Vehicles, Intellectual Property or Inventory Reportable in Section A)— Complete this section for one item (or a group of similar items) for which you claimed a deduction of more than $5,000 per item or group (except contributions reportable in Section A). Provide a separate form for each item donated unless it is part of a group of similar items. A qualified appraisal is required for items reportable in Section B and in certain cases must be attached. See instructions.

Part I **Information on Donated Property**

2 Check the box that describes the type of property donated. See instructions for definitions.

- **a** ☐ Art (contribution of $20,000 or more)
- **b** ☐ Qualified conservation contribution
- **b(1)** ☐ Certified historic structure
  NPS # ______________
- **c** ☐ Art (contribution of less than $20,000)
- **d** ☐ Other real estate
- **e** ☐ Equipment
- **f** ☐ Securities
- **g** ☐ Collectibles
- **h** ☐ Intellectual property
- **i** ☐ Vehicles
- **j** ☐ Clothing and household items
- **k** ☐ Digital assets
- **l** ☐ Other

Discussion

Thank you.

Keep Exploring

Landtrustalliance.org