

Contemporaneous Written Acknowledgement

While donors are legally responsible for substantiating donations of conservation easements, land trusts may assist donors with the necessary paperwork. Recent court decisions highlight the importance of land trusts helping donors understand the law, without giving legal advice. Below are some guidelines on the drafting and delivery of the contemporaneous written acknowledgement required by IRC §170(f)(8).

1. **Contemporaneous written acknowledgement.** In order for a donor taxpayer to claim an income tax deduction for a charitable donation, the donor must obtain a “contemporaneous written acknowledgement” letter of the gift from the land trust. These rules apply to gifts of land and all gifts valued at \$250 or more, including a conservation easement donation or bargain sale, and also include out-of-pocket expenses by volunteers. The IRS denies any deduction without a letter, which must be signed by all donees if more than one. A power of attorney might be sufficient if properly worded.
2. The two key elements of the letter are: (a) its timing and (b) its contents.
 - a. **Timing of the letter.** In order to claim the deduction, the donor must obtain the acknowledgement by the earlier of (i) the filing of the tax return for the year in which the charitable contribution was made or (ii) the due date of the return (including extensions). The land trust should mail this letter as soon as possible after the conservation easement is signed or at the closing. In recent cases, the courts have refused to allow deductions where charitable organizations provided substantiation letters after the donors filed their tax returns for the applicable year.
 - b. **Contents of the letter.** The letter, which may take the form of a thank-you letter sent to the donor, should contain the following information:
 - i. The name and address of the land trust
 - ii. A description of the non-cash donation (but not an estimate of the value) sufficient to identify the nature of the gift, including the property location
 - iii. To the extent applicable, (a) a statement that no goods or services were provided by the land trust in return for the donation or (b) a description and good faith estimate of the value of the goods and services provided by the land trust in return for the donation
3. **Additional best practices.** It may also be good practice to remind donors as follow:
 - a. **Written records.** The donor must keep the written acknowledgement on file. The land trust would be prudent to also keep the written acknowledgement on file.
 - b. **Qualified appraisal.** IRS regulations require a qualified appraisal of the value of the conservation easement in order for the donor to claim the deduction. See also [Practice 10C, Land Trust Standards and Practices](#).
 - c. **Appropriate tax advice.** In order to be sure that the appraisal is qualified for the purposes of federal tax laws, the donor should consult a tax professional. In 2009, IRS attorneys recommended attaching the substantiation letter, the conservation easement and the baseline to Form 8283.
4. **When it’s already too late.** In the case where the land trust has failed to send the written acknowledgement prior to the donor’s tax filing deadline, the land trust may consider taking the following steps. Please remember that these strategies only work occasionally; nonetheless, a land trust may choose to take these measures.

- a. **Form 8283.** A donor may be able to argue that Form 8283 provides the IRS with the same information as a contemporaneous letter and that the doctrine of “substantial compliance” applies. A land trust might consider adding the no goods and services language to the form or checking the box to indicate no bargain sale.
- b. **Transaction documentation.** To the extent that any of the information required in the written acknowledgement is included in transaction documents, the donor may argue that contemporaneous substantiation is satisfied. This should never be the primary acknowledgement method but can assist for a past transaction without the separate letter. See, *Irby, Simmons, Averyt and RP Golf*.
- c. **Non-contemporaneous letters.** While some courts have expressly rejected a deduction where the donor obtained a written acknowledgement *after* the filing of the tax return, it may be helpful evidence for the donor to have this letter from the land trust well in advance of any threat of audit. Having a non-contemporaneous letter (rather than no letter at all) could potentially support a donor’s argument that the transaction documents as a whole substantially comply with the substantiation requirements.
- d. **Amending Form 990.** The IRS has not implemented §170(f)(8)(D) as an alternative to obtaining a contemporaneous written acknowledgment, and so taxpayers cannot satisfy those requirements with a Form 990 or any other Form filed by the donee under subparagraph (D). The IRS view is that the law is well-settled that no deduction is allowed unless the taxpayer substantiates according to §170(f)(8).

Related resources:

- [Practice 5B2](#), *Land Trust Standards and Practices*
- *Schrimsher v. Commissioner*, TC Memo. 2011-71
- *Bruzewicz v. U.S.*, 604 F.Supp.2d 1197 (N.D.Ill. 2009)
- *Consolidated Investors Group v. Commissioner*, T.C. Memo 2009-290
- *Simmons v. Commissioner*, 646 F.3d 6 (D.C. Cir. 2011), affirming T.C. Memo 2009-208
- *Van Dusen v. Commissioner*, 136 T.C. No. 25 (June 2, 2011)
- Internal Revenue Code §170(f)(8) and Income Tax Regulation 1.170A-13
- [Internal Revenue Bulletin](#): 2004-28, July 12, 2004, Notice 2004-41
- IRS Publication 1771, [Charitable Contributions: Substantiation and Disclosure Requirements](#)
- Chief Counsel Advisory Number 201120022, Release Date: 5/20/2011

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