ARIZONA JOURNAL OF ENVIRONMENTAL LAW & POLICY

VOLUME 14 SUMMER 2024 ISSUE 3

LANDOWNERS CAN RECEIVE TAX BENEFITS FOR DONATING TO THE FUTURE MANAGEMENT OF CONSERVATION EASEMENTS

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Abstract

Conservation easements are supposed to place protections on land forever. But that requires a responsible party to forever monitor and enforce the easement's terms. Monitoring and enforcement require resources, and someone has to provide those resources. Today, landowners who are donating or selling conservation easements to land trusts are often required to contribute funds for the future management of the easement, including a land trust's general operating costs. If the conservation easement itself is donated, its value can be deducted as a charitable contribution for income tax purposes. But it is less clear whether other required payments for monitoring and enforcement of the easement can also be deducted as charitable contributions. Charitable deductibility is determined in a holistic, case-by-case analysis by the IRS and courts. Existing guidance is therefore vague, and experts are reluctant to make anything resembling substantial predictions. This note serves to fill in some of the gaps resulting from that vagueness. The short answer is: yes, so long as a conservation easement transaction is not considered quid pro quo, landowners can deduct their required contributions to land trusts for the future monitoring and enforcement of conservation easements.

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INTRODUCTION

A conservation easement is a legal interest in property that perpetually restricts certain uses of the land it encumbers.[1] In a conservation easement transaction, a landowner conveys their property interest to an easement holder; the easement holder is in turn responsible for monitoring and enforcing the easement's terms in perpetuity.[2]

For example, a conservation easement could explicitly prohibit any "industrial, quarrying, or surface mining activities" on the encumbered land, and the easement could require that the encumbered property may only be used for "low impact outdoor recreation" or conservation activities.[3] The easement holder would monitor the encumbered property in perpetuity.[4] If the easement holder observed any violation of the easement's terms—for example, if they observed someone doing industrial manufacturing on the land—the

[1] WeConservePA, *The Nature of the Conservation Easement and the Document Granting It*, https://library.weconservepa.org/guides/138 [https://perma.cc/R3VC-3W76] (last visited Aug. 22, 2024) [hereinafter *The Nature of the Conservation Easement*]; Deepti Bansal Gage, *Offering a Mulligan on Conservation Easement Tax Law: Ensuring Public Access on Conserved Land*, 10 ARIZ. J. ENV'T L. & POL'Y 342, 344 (2020). *See also* Land Trust Alliance, *What You Can Do*, https://www.landtrustalliance.org/what-you-can-do/conserve-your-land/questions [https://perma.cc/ZCE5-XW6N] (last visited Aug. 22, 2024).
[2] Gage, *supra* note 1, at 344.
[3] *See* Me. Coast Heritage Trust, *MCHT Conservation Easement Template 2024-03-11* 4, https://www.mltn.org/wp-content/uploads/2024/03/MCHT-CE-DraftingTemplate-updated03112024Cultural-Use-for-MLTN.doc [https://perma.cc/K968-5SN2] (last visited Aug. 22, 2024).
[4] *See* 26 U.S.C. § 170(h)(5)(A) ("A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity").

easement holder would be responsible and empowered to enforce the easement's terms on the violator. They would seek legal remedies to deter future violations, mitigate any damage, and restore the land to its prior condition.

Not all people can be easement holders. The Internal Revenue Service (IRS) and U.S. Department of the Treasury have rules and regulations that specify who can and cannot hold a conservation easement.[5] Besides government organizations, the easement holder is generally a qualifying nonprofit organization, such as a land trust.[6]

Land trusts face the challenge of funding the perpetual monitoring, maintenance, and enforcement of conservation easements.[7] Some land trusts thus ask or require that the contributing landowner pay money to a fund, dedicated to facilitating the conservation easement into the future.[8] These are typically called stewardship funds[9] because, in the land trust community, the act of maintaining a conservation easement's terms is referred to as stewardship of the land.[10]

Landowners have many incentives to transfer their property rights to a land trust in a conservation easement. Some land trusts and conservation organizations source money from grants, government programs, and donors to pay landowners cash for at least some of the value of their conservation easements.[11] If cash is not preferred or available, landowners can donate either part or the full value of their conservation easement to the easement holder and claim the donation as a deduction on their federal income taxes.[12]

Because landowners are often required to make cash contributions to fund the future monitoring and enforcement of the easement, such as payments into stewardship

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[5] *See* 26 U.S.C. § 170(h)(3) (requires that an easement holder must be a qualified organization for a contribution to be a "qualified conservation contribution," which are eligible for the tax benefits of a conservation easement).

[6] *See* Legal Info. Inst., *definition: Qualified Organization*, https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-1202410953 2003642045&term_occur=999&term_src=title:26:subtitle:A:chapter:1:subchapter:B:part:VI:section:170 [https://perma.cc/3FNQ-4ML5] (last visited Aug. 22, 2024) (stating that the IRS defines a qualified organization as only government and non-profit organizations that meet specific requirements).

[7] WeConservePA, *Stewardship Funding Arrangements*, https://library.weconservepa.org/guides/108-stewardship-funding-arrangements [https://perma.cc/EUZ4-ZNYM] (last visited Aug. 22, 2024) [hereinafter *Stewardship Funding Arrangements*].

[8] *Id.*

[9] *Id.*

[10] *See* Cazenovia Pres. Found., *Land Trust 101: A Spotlight on Stewardship*, https://www.cazpreservation.org/news/land-trust-101-a-spotlight-on-stewardship [https://perma.cc/T8D7-H8NY] (last visited Aug. 22, 2024).

[11] *E.g.*, COLO. CATTLEMEN'S AGRIC. TRUST, THE COSTS AND BENEFITS OF CONSERVATION EASEMENTS, COLO. 2 (2020), https://ccalt.org/wp-content/uploads/2020/01/Costs-Benefits-of-Conservation-2020_Clean.pdf [https://perma.cc/LKD4-CPLP].

[12] *See generally* 26 U.S.C. § 170(a)(1), (b)(1)(E), (h). Section (a)(1) clarifies that charitable contributions can be deductible, and b(1)(E) establishes that among these are qualified conservation contributions. Section (h) outlines conservation easements as qualified conservation contributions.

funds, the landowners will ask whether these payments can *also* be claimed as deductible charitable contributions for income tax benefits.[13] Generally available guidance does not substantially answer this question,[14] and this Note is intended to fill some of those gaps.

The short answer is: yes, landowners can claim these payments as deductible charitable contributions, even if they were required of the landowner during the transaction—so long as the contribution is a full donation and not an exchange of substantial economic benefits (quid pro quo) between the landowner and the land trust.

The IRS determines whether a transaction was quid pro quo on a case-by-case basis; they investigate whether the transaction conferred a substantial economic benefit to the landowner.[15] Predictions about what the IRS will decide cannot be conclusive. Nonetheless, this note evaluates the question of quid pro quo in the context of conservation easements to provide additional guidance to landowners and land trusts and provides novel legal insight into the broader tax law question of charitable intent. That evaluation yields the following conclusions:

- Full sales are the least likely to have deductible required fees, because the landowner is being fully compensated in cash, which is a substantial economic benefit. Landowners will likely have to pay any fees required by a land trust without the ability to deduct them as charitable contributions. One exception would be for landowners who use the encumbered property in their business, because the fees could potentially be deducted as a business expense.
- Bargain sales, where the landowner sells part of their easement's value and donates the rest, are uncertain when it comes to deductions. The landowner is receiving a cash benefit in the transaction, but not for the easement's full

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[13] WeConservePA, *Legal Considerations for Stewardship Funding Arrangements*, https://library.weconservepa.org/guides/45 [https://perma.cc/P3L4-SH94] (last visited Aug. 22, 2024); WeConservePA, *Donation Agreements*, https://library.weconservepa.org/guides/28-donation-agreements [https://perma.cc/2NDJ-8ALE] (last visited Aug. 22, 2024) ("Some potential easement donors do not desire to, or cannot afford to, fund easement stewardship or permanently reduce their property value without the availability of a federal income tax deduction. The donation agreement furnishes them the opportunity to negotiate rights to withdraw if they are not satisfied with the prospective tax benefit estimated by their tax advisors and appraisers. The donation agreement provides the conservation organization the opportunity to clarify that it takes no responsibility whatsoever to agree to easement provisions that do not further its objectives or are otherwise inconsistent with [ ] its policies and procedures").

[14] *See, e.g.*, C. TIMOTHY LINDSTROM, A TAX GUIDE TO CONSERVATION EASEMENTS, 145 (2008) ("there is no formal IRS guidance or case law covering these matters"). On this same page, Lindstrom disagrees with my conclusion, that required fees would be deductible. Lindstrom uses the rationale that required fees would not be considered "voluntary." The U.S. Tax Court and Second Circuit cases detailed *infra* § E.2. will show that Lindstrom was incorrect in his prediction. This is an example of the incomplete guidance for landowners on the issue.

[15] INTERNAL REVENUE SERV., U.S. DEP'T OF THE TREASURY, PUB. NO. 5464, CONSERVATION EASEMENT AUDIT TECHNIQUE GUIDE 58, 98 (Jan. 21, 2021), https://www.irs.gov/pub/irs-pdf/p5464.pdf [https://perma.cc/7TUP-Z7H5] [hereinafter TECHNIQUE GUIDE].

value. A risk-averse landowner would not expect fees required in a bargain sale to be deductible, unless the cash benefit is relatively minimal. However, some land trusts assume as a principle that all required fees pursuant to a bargain sale are deductible. There is no definitive answer to this question, so landowners are left to speculate.

- If the landowner donates the full value of the easement, then the fees required by the land trust are deductible, so long as they are not connected to any specific goods and services provided by the land trust. This is a surprising discovery in light of the current available guidance, and the most concrete prediction that this note provides.

ANALYSIS

A. Key Terms[16]

Economic Benefit (Direct & Indirect): A benefit that can be measured in terms of revenue generated or money saved. Direct benefits are immediately obtained (e.g., a cash payment), while indirect benefits are obtained through a chain of events (e.g., getting the county to change zoning laws in a favorable way to the landowner).

Substantial Economic Benefit: A direct or indirect benefit that the IRS examiner considers significant or meaningful for their audit. Cash, indirect benefits, goods, and services all fall into this category.

Charitable Intent: The donor's intent to make an "unrequited payment," or a payment not made in exchange for a substantial economic benefit.

Quid Pro Quo: An exchange of advantages or benefits between parties. Quid pro quo transactions are the opposite of unrequited payments and do not have charitable intent.

Voluntary: Done without the expectation of a reciprocal benefit.

Properly Substantiated: Has been shown to be true or has been supported with facts, according to the expected standard (in this case, according to IRS code and U.S. Treasury regulations).

Inure: To give a fixed, immediate right of current or future enjoyment.

[16] These are not official definitions. They are definitions that I synthesized from the collective research for this note. I am providing them here as a supplement. The specific uses of these terms, as they appear in official documents, will be cited below as they are encountered.

B. Charitable Intent

Under the U.S. Treasury Regulations, taxpayers may deduct the value of a donation when computing their taxable income.[17] They may only claim a deduction if the payment was made with charitable intent.[18]

Taxpayers often want to know in advance if their contributions will be deductible. Unfortunately, the IRS code and U.S. Treasury regulations do not provide a definitive answer for fees connected to conservation easement transactions.[19]

The IRS does, however, provide some insight in its Publication 526[20] and the Conservation Easement Audit Technique Guide (Technique Guide).[21] The publications are not legally binding[22] but are often the most useful guidance available on the issue. The Technique Guide defines charitable intent as follows:

> Charitable intent generally exists if the transfer was made without the receipt of, or the expectation of receiving, a quid pro quo or substantial benefit for the transfer. 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 [Internal Revenue Code] § 170.[23]

Note that *charitable intent* and *voluntariness* are both defined in terms of the benefit received by the donor and do not address whether the landowner is required to pay their contribution by the receiving party. As this Note will reveal, *voluntary* does not necessarily mean free of any requirement at all. Rather, in this context, a donor makes a voluntary contribution when they are not required to make it *in order to receive a substantial economic benefit in return*—also known as quid pro quo.

A substantial economic benefit can either be direct, in the form of cash, or indirect. The Technique Guide gives this example of an indirect benefit:

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[17] 26 U.S.C. § 170(a)(1); Treas. Reg. § 1.170A-1(a).
[18] 26 U.S.C. § 170(c) ("For purposes of this section, the term "charitable contribution" means a contribution or gift"); Mortellaro v. Mortellaro, 458 N.Y.S.2d 390, 390 (N.Y. App. Div. 1982) ("Donative intent and delivery are the key elements to finding a gift").
[19] *E.g.*, LINDSTROM, *supra* note 14, at 145 ("there is no formal IRS guidance or case law covering these matters").
[20] INTERNAL REVENUE SERV., U.S. DEP'T OF THE TREASURY, PUB. NO. 526: CHARITABLE CONTRIBUTIONS, 9–10 (Feb. 29, 2024), https://www.irs.gov/pub/irs-pdf/p526.pdf [https://perma.cc/X9NH-225B].
[21] TECHNIQUE GUIDE, *supra* note 15, at 29.
[22] *E.g.*, Graev v. Comm'r, 147 T.C. 460, 481 (2016) (citing Vallone v. Comm'r, 88 T.C. 794, 807 (1987)) ("IRM provisions do not have 'the force or effect of law.'"), *superseded by* 149 T.C. 485 (2017).
[23] TECHNIQUE GUIDE, *supra* note 15, at § VIII(E) (citing Hernandez v. Comm'r, 490 U.S. 691 (1989); United States v. Am. B. Endowment, 477 U.S. 105, 118 (1986); Singer Co. v. United States, 449 F.2d 413, 422–423 (1971)).

> Steven is a real estate developer. He contributes a conservation easement with the expectation that it will result in his receiving preferential zoning treatment from the city zoning board. Steven is not allowed a charitable contribution deduction.[24]

In short, the question of donative/charitable intent[25] is whether the donation was an unrequited payment: whether the donor made their contribution in order to receive cash, indirect benefits, goods, or services.[26]

C. Conservation Easements

A *conservation easement* is a property interest that limits land use "to protect the land for its conservation value."[27] The landowner conveys this property interest to an organization that is qualified to be an easement holder.[28] Government entities and special nonprofit organizations, such as land trusts, can serve as qualified organizations to hold an easement.[29] This Note deals specifically with payments that land trusts require of landowners in easement transactions, so the term "land trust" will refer to the qualified easement holder in these scenarios.

The value of a conservation easement is usually the difference between the fair market value of the property before and after the easement's effects (e.g., if a parcel of land is worth $500 without a conservation easement and is worth $225 when a conservation easement restricts development on it, then the conservation easement is worth $275).[30]

A landowner can seek compensation for the value of a conservation easement in three ways: (1) they can sell the conservation easement for cash, (2) they can donate the conservation easement and claim its value as a deductible charitable contribution for income tax benefits, or (3) they can do a combination of these two in a bargain sale.[31] In a bargain sale, the landowner can receive cash for a portion of the conservation easement and donate the rest.[32]

This analysis assumes that the landowner is donating the full value of a conservation easement. A landowner may only claim a deduction if it was done with

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[24] *Id.*
[25] "Donative intent" and "charitable intent" are sometimes conflated.
[26] *See* Kaufman v. Comm'r, 136 T.C. 294, 318 (2011) (citing Hernandez v. Comm'r, 490 U.S. 680, 690 (1989)), *vacated in part by* Kaufman v. Shulman, 687 F.3d 21 (1st Cir. 2012) [hereinafter *Kaufman II*].
[27] Gage, *supra* note 1, at 344. *See also The Nature of the Conservation Easement*, *supra* note 1.
[28] Gage, *supra* note 1, at 344. Besides restrictions, the grant of conservation deed can place affirmative obligations on the landowner and easement holder.
[29] 26 U.S.C. § 170(h)(3); *see also*, ARIZ. REV. STAT. ANN. § 33-271(3) (2024).
[30] Ctr. for Agric. & Food Sys., *Conservation Easements*, https://farmlandaccess.org/conservation-easements [https://perma.cc/XMZ9-82BP] (last visited Aug. 22, 2024).
[31] *Id*.
[32] *Id.*

charitable intent,[33] which means they received no substantial economic benefit as consideration for their donation (no quid pro quo).[34]

The IRS does not consider tax benefits from deductions a quid pro quo benefit.[35] In full sales, the landowner receives a cash benefit, so it is a quid pro quo transaction.[36] Fees connected to bargain sales also may be deductible, but this is less certain because a cash benefit is involved.

Some land trusts presume that fees connected to bargain sales are all deductible. However, as discussed, the cash that a landowner receives from a bargain sale introduces a substantial economic benefit that makes prediction difficult and context-dependent. The conclusion of this Note will address bargain sales without making any concrete predictions.

D. Stewardship Endowments and Conservation Assignment Fees

Land trusts are 501(c)(3) nonprofit organizations, and donor contributions are often their most important source of funding.[37] Land trusts have unique costs because they are obligated to monitor and enforce an easement's terms in perpetuity.[38] Both the IRS and the Land Trust Alliance require that land trusts can prove they are able to fund stewardship.[39]

Land trusts therefore will use donor contributions for: (1) monitoring and enforcement of conservation easements into the future, and (2) funding the trust's general operations (often colloquially called "keeping the lights on").

Land trusts often request or require cash contributions from easement donors as part of the donation process.[40] Two of the most common examples are: (1) stewardship fees and (2) assignment fees.[41] Stewardship fees fund the ongoing monitoring,

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[33] *See* 26 U.S.C. § 170(c); Treas. Reg. § 1.170A-1(h).
[34] *See* discussion *infra* § E.1.b. on quid pro quo. The definition has not been stated officially, and this Note serves to synthesize the definition from existing law.
[35] Scheidelman v. Comm'r, 682 F.3d 189, 200 (2d Cir. 2012) ("If the motivation to receive a tax benefit deprived a gift of its charitable nature under Section 170, virtually no charitable gifts would be deductible") (citing Mount Mercy Assocs. v. Comm'r, 67 T.C.M. (CCH) 2267 at *4 (1994)); *see also* Dunlap v. Comm'r, 2012 T.C.M. (RIA) 2012-126, 2012 WL 1524660, at *24 (2012).
[36] *See Scheidelman*, 682 F.3d at 200; 26 U.S.C. § 170(a).
[37] *See Scheidelman*, 682 F.3d at 200; Kristine Ensor, *501c3 Donation Rules | Know All Requirements and Best Practices*, DONORBOXBLOG (May 23, 2024), https://donorbox.org/nonprofit-blog/501c3-donation-rules [https://perma.cc/39UH-RDW3].
[38] *See The Nature of the Conservation Easement*, *supra* note 1.
[39] 26 U.S.C. § 170(h)(4)(B)(ii)(II) (requiring a qualified organization be able to demonstrate "has the resources to manage and enforce the restriction and a commitment to" serve its conservation purpose); Land Trust Alliance, *Land Trust Standards and Practices*, https://landtrustalliance.org/resources/learn/topics/land-trust-standards-and-practices [https://perma.cc/YT5S-TF73] (last visited Aug. 22, 2024).
[40] *Stewardship Funding Arrangements*, *supra* note 7; *Kaufman II*, 136 T.C. at 318.
[41] *See Kaufman II*, 136 T.C. at 297 (NAT's donor endowment combines the two fees into a single donor endowment).

maintenance, and enforcement of the conservation easement, and assignment fees pay the land trust's general operating costs.[42]

The research for this Note focused on whether any features of these required fees could undermine their potential charitable intent. The research investigated (1) if the fact that fees are *required* of donors undermines the voluntariness of the contributions,[43] and (2) if the IRS could label the contribution as an exchange of goods and services.[44]

The findings from this research are that these fees may be deductible, even if they are required of the easement donor, and even if the donor is receiving substantial tax benefits in the process. The key factor is whether the landowner is receiving cash, indirect benefits, goods, or services in exchange. If they are, then the fees are probably not deductible. The following section explains why.

E. Legal Analysis

1. Government Rules and Guidelines

The Internal Revenue Code (IRC) and U.S. Treasury regulations do not provide a definitive answer to whether stewardship fees or assignment fees may be claimed as deductible.[45] The IRS may avoid being definitive to handle claims on a case-by-case basis[46] and to prevent people from gaming a hardline system of rules.

The Technique Guide provides some of the best available guidance, even though it is not legally binding.[47] The Technique Guide notes that "[a] properly substantiated stewardship fee may be deductible if it meets the requirements of IRC § 170," but does not provide any further guidance on what makes a stewardship fee properly substantiated or how it can meet the requirements of § 170.[48] Instead, the Technique Guide provides general guidance on what constitutes a charitable contribution and charitable intent.

The Guide defines a *charitable contribution* as follows:

> A charitable contribution is a donation or gift to, or for the use of, a qualified organization. It is *voluntary* and *made without receipt, or the expectation of receipt, of anything of economic value*.[49]

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[42] *Id.* at 297.
[43] *See id.* at 317.
[44] *See* Scheidelman v. Comm'r, 682 F.3d 189, 199 (2d Cir. 2012).
[45] *E.g.*, LINDSTROM, *supra* note 14, at 145 ("there is no formal IRS guidance or case law covering these matters").
[46] TECHNIQUE GUIDE, *supra* note 15, at 98.
[47] *E.g.*, Graev v. Comm'r, 147 T.C. 460, 481 (2016) (citing *Vallone*, 88 T.C. at 807) ("IRM provisions do not have 'the force or effect of law'"), *superseded by* 149 T.C. 485 (2017).
[48] TECHNIQUE GUIDE, *supra* note 15, at 98.
[49] *Id.* at 18, § II(B.2)(1) (emphasis added).

This definition has two elements: (1) the donor must voluntarily contribute, and (2) the donor should not receive or expect to receive anything of economic value.

a) Voluntariness

The Technique Guide next defines *voluntary* negatively, by discussing what would not be considered voluntary:

> A transfer of money or property is not voluntary if it is required or is made with the expectation of a direct or indirect benefit. A benefit received or expected to be received in connection with a payment or transfer by the taxpayer is called a quid pro quo.[50]

Some analysts have interpreted the above definition to mean that a charitable contribution cannot be required of a donor, because such a payment would be involuntary.[51] However, the Technique Guide's definition of *charitable intent* does not mention such a limitation:

> Charitable intent generally exists if the transfer was made without the receipt of, or the expectation of receiving, a quid pro quo or substantial benefit for the transfer. 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.[52]

This definition, which frames charitable intent purely in terms of economic benefit, is supported by other secondary source definitions of charitable intent.[53] The research conducted for this Note ultimately reveals that fees can be considered voluntary even if required by a land trust, because courts have ruled that landowners may deduct such fees.[54]

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[50] *Id.* at 18, § II(B.2)(2); *see also Kaufman II*, 136 T.C. at 319) (quoting Graham v. Comm'r, 822 F.2d 844, 849 (9th Cir. 1987)) ("If a transaction is structured in the form of a quid pro quo, where it is understood that the taxpayer's money will not pass to the charitable organization unless the taxpayer receives a specific benefit in return, and where the taxpayer cannot receive the benefit unless he pays the required price, then the transaction does not qualify for the deduction under section 170").
[51] *E.g.*, LINDSTROM, *supra* note 14, at 145 (". . . while *voluntary* contributions made to a land trust to assist it in monitoring and enforcing its easements are deductible under Code Section 170, a payment *required* by the land trust as a condition of accepting the easement probably does not qualify as a charitable contribution because there is no donative intent") (emphasis in original).
[52] TECHNIQUE GUIDE, *supra* note 15, at § VIII(E)(1).
[53] *See* WeConservePA, *Donative Intent*, https://library.weconservepa.org/glossary/243 [https://perma.cc/NL22-Y2TD] (last visited Aug. 22, 2024) ("Donative Intent. n. The intent to make a charitable contribution. The test for donative intent is whether the value of the goods and services received (if any) is less than the value of the funds or other property transferred to the charitable organization").
[54] *See* § E.2., Court Rulings.

In short, stewardship fees and assignment fees that are required of landowners by land trusts may be deductible, so long as the easement itself is not granted in exchange for cash, indirect benefits, goods or services.

Consider this example. Imagine that I am running a charitable, non-profit lemonade stand. You offer to donate 1,000 pounds of lemons to my organization. I am more than glad to accept your donation, except for one thing: I don't have the means to transport and deliver the lemons. I thus tell you that I will only accept your donation of lemons if you pay for the transport and delivery of the lemons to my stand. If you do this, the cost of delivery and transport may also be considered a deductible charitable contribution, even though I am requiring them of you, because they are an additional donation to make your original charitable contribution possible.

Section E.2. of this note, "Court Rulings," will demonstrate how courts have confirmed that such required contributions can be claimed as deductible.

b) Quid Pro Quo; Substantial Economic Benefit

The question of whether these required fees are deductible ultimately centers on the concept of quid pro quo, or whether a contribution was made in exchange for something of substantial economic value.

If land trusts wish to take a relaxed approach that assumes the broadest range of contributions deductible, the question becomes whether any benefits conferred to the landowner in an easement transaction are greater than "those that inure to the general public."[55] For example, a landowner might obtain *some* cash or indirect benefit from an easement transaction. But it is possible that the landowner could claim that the transaction was primarily a charitable contribution, if the amount that they donate to the land trust (a charitable organization) far outweighs their own personal benefit, or if the conservation value that the easement confers to the general public is far greater than the benefit that they personally derive from the transaction. Arguably, any fees required in the process were also chiefly in service of that charitable cause, and thus deductible.

A stricter interpretation of charitable intent assumes that *almost any* substantial economic benefit to the landowner would mean that the required fees are not deductible. This stricter approach minimizes the risk of error, although it may incorrectly assume that fees are not deductible when the IRS may have approved them. Speculating about whether the fees will be deductible becomes particularly difficult in bargain sales, because it is sometimes unclear whether the IRS will regard the landowner's cash benefit as a substantial economic benefit.

Land trusts should follow the stricter interpretation described above and should thus assume that all but relatively minimal economic benefits to the landowner remove the possibility for deductible fees. This is the best approach for at least three reasons:

[55] *See* TECHNIQUE GUIDE, *supra* note 15, at 58.

(1) Regulatory guidance is not definitive. Landowners therefore must take a chance when they claim some expenditures as deductible contributions. Because it is ultimately the landowner's decision to claim an expenditure as deductible, land trusts do not risk anything by taking a more conservative position.

(2) Landowners who want to anticipate whether their economic benefits will be considered substantial or quid pro quo will be faced with a complex problem that requires risk and educated guessing. Land trusts cannot even give legal or accounting advice on issues that are definitive and settled.

(3) Courts have used the above-described strict interpretation when applying the law, so land trusts would be orienting themselves with existing case law by taking a risk-averse stance.[56]

The section below addresses the major court decisions that have dealt with these issues.

2. Court Rulings

When the IRS denies a taxpayer's deduction of a charitable contribution, the taxpayer can appeal to a court. Often, the U.S. Tax Court is the venue that hears such cases, no matter where in the country they originate from. The Tax Court can either uphold or overrule the IRS decision, and in doing so may issue a detailed explanation of why. Because IRS regulations and guidance are often not definitive, these court decisions are often the best evidence of how to understand and predict tax law issues.

Several landmark cases between 2011 and 2012 dealt with conservation easements and fees required by trusts. In all of these cases, the U.S. Tax Court overruled IRS denials of those fees and held that the fees may be claimed as deductible charitable contributions. The Tax Court has since upheld and relied upon these decisions, as recently as 2024.[57]

The following sections summarize the courts' decisions and explain why stewardship fees and assignment fees required by land trusts may be claimed as deductible.

In these cases, the fee in question is called an "endowment fee,"[58] which functions as both a stewardship fee and an assignment fee.[59] Part of the fee is used to fund an

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[56] *See* United States v. Am. B. Endowment, 477 U.S. 105, 116 (1986) ("A payment of money generally cannot constitute a charitable contribution if the contributor expects a substantial benefit in return") (internal citations omitted).

[57] *Kaufman II* has been upheld by the following: Oconee Landing Prop., LLC v. Comm'r, T.C.M. (RIA) 2024-025, 2024 WL 700510, at 26 (2024); Kissling v. Comm'r, 120 T.C.M. (CCH) 314, 2020 WL 6623497, at 10 (2020).

[58] *E.g.*, *Kaufman II*, 136 T.C. at 317.

[59] *Id.* at 318 (quoting NAT'L PARK SERV., EASEMENTS TO PROTECT HISTORIC PROPERTIES: A USEFUL HISTORIC PRESERVATION TOOL WITH POTENTIAL TAX BENEFITS 8 (2010) https://www.nps.gov/orgs/1739/upload/brochure-easements-historic-properties.pdf [https://perma.cc/684Q-AML4]) ("Many easement holding organizations require the easement donor to make an additional donation of funds to help administer the easement. These funds are often held in an endowment that

endowment for stewardship of the easement, and the other for the trust's general operating costs.[60] These cases provide relevant guidance for land trusts that separate the fees, because the courts separately address each element of the fees. The courts also explicitly acknowledge that donor contributions provide the majority of a land trust's operating funds.[61] Such contributions were required for both the trust's general operation and the maintenance and enforcement of the easements it holds.[62]

a) *Kaufman v. Commissioner*

In this central case, which courts have since relied upon as precedent, the IRS denied a donor's contributions to the easement holder because the contribution was *required* of them as part of the agreement.[63] The court disagreed, holding that they "shall not deny [the] deduction" on the grounds that the contribution was required of the donor by the trust.[64]

i) Case Facts

The petitioner, Lorna Kaufman, owned a property lot in the South End historic district of Boston, Massachusetts.[65] In 2003, Kaufman reached out to the National Architectural Trust (NAT),[66] a nonprofit organization dedicated to the creation and facilitation of conservation easements to protect historic architecture.[67] Kaufman inquired with NAT about their "historic preservation tax incentive program," which advertised the

generates an annual income to pay for easement administration costs such as staff time and travel expenses, or needed legal services").

[60] *Id.* at 317–18 ("[NAT] solicits cash donations to enable it to pay its operating expenses, and to build its stewardship fund so that it can monitor eased properties and enforce its rights under facade conservation easements in perpetuity.").

[61] *Id.* at 318 (quoting petitioners, who argued that "[a]part from donors' cash contributions, . . . [NAT] had no meaningful source of [operating] funds"). They deny that NAT's acceptance of the facade easement and its issuance to petitioners of a Form 8283 were conditioned on its receipt of a cash contribution. They claim that many donee organizations benefiting from preservation restrictions require accompanying cash contributions").

[62] *Id.* at 318.

[63] *Id.* at 317 ("[The Commissioner of Internal Revenue] continues to argue that petitioners are entitled to no deduction for the cash payments because Lorna Kaufman was 'required' to make them") (emphasis in original).

[64] *Id.* at 319.

[65] *Id.* at 296.

[66] Now called the "Trust for Architectural Easements." *See* GuideStar, *Trust for Architectural Easements - GuideStar Profile*, https://www.guidestar.org/profile/31-1758303 [https://perma.cc/VJ38-AUCP] (last visited Aug. 22, 2024).

[67] *See* Trust for Architectural Easements, *Trust for Architectural Easements*, https://architecturaltrust.org/ [https://perma.cc/E6SC-C6CE] (last visited Aug. 22, 2024).

income tax benefits that landowners could derive from a conservation easement agreement as an incentive to donate to NAT.[68]

In October of 2003, an area manager with NAT responded to Kaufman, and proposed that Kaufman could deduct 10–15% of her building's value on her federal income taxes—for minimal effort, because NAT would "be handling all the red tape and paperwork."[69] Less than a month later, Kaufman applied to NAT to begin the donation process, estimating that her property was worth $1.8 million, which meant a potential tax benefit of at least $180,000.[70]

NAT's application form included the following language about a "Donor Endowment":

> **Donor Endowment**
>
> When the Trust accepts a donation it pledges to monitor and administer the donation in perpetuity. Since the Trust receives no government funding and has no other source of income, it requires that donors create an endowment that covers current operating costs and funds the Trust's long term Stewardship Endowment which is reserved for future monitoring and administration purposes.
>
> The cash endowment contribution is set at 10% of the value of the donation tax deduction . . . If the donation can not [sic] be processed in the timeframe required to qualify for a 2003 deduction, a 10% reduction in the cash contribution will be provided to the donor once the process is completed in 2004.[71]

As part of the conservation easement agreement process, NAT agreed to arrange for the deed of conservation easement to be recorded, send Kaufman an acknowledgment of her 2003 charitable contributions, and include an IRS form to submit with her tax return.[72] Because Kaufman's property was mortgaged to a bank, NAT helped Kaufman secure a subordination agreement from the bank to make the easement possible.[73] NAT also acted as a point of contact and reference during the entire transaction process: they

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[68] *Kaufman II*, 136 T.C. at 296.
[69] *Id.*
[70] *Id.* at 297.
[71] *Id.*
[72] *Id.* at 298.
[73] *Id.* at 300. For more about mortgage subordination for conservation easements, see Micah G. Fogarty, *Navigating IRS Challenges to Conservation Easements*, FLA. B.J. (July/Aug. 2016), https://www.floridabar.org/the-florida-bar-journal/navigating-irs-challenges-to-conservation-easements/ [https://perma.cc/P5PV-42GQ].

facilitated Kaufman's connection with an appraiser, as well as negotiations with the Massachusetts Historical Commission, the City of Boston, and the National Park Service.[74]

The appraiser estimated that Kaufman's property was worth $1,840,000, and that the restrictions of an architectural conservation easement would reduce the property's value by 12%; the value of the conservation easement was about $220,800.[75] This meant that Kaufman could claim a donation of $220,800 as a deductible charitable contribution on her income tax return. Per the agreement, NAT requested that Kaufman contribute $22,080—10% of the easement's value to the trust—to help pay the trust's general operating expenses and fund the future maintenance, monitoring, and enforcement of the conservation easement's terms.[76]

In total, Kaufman claimed the easement donation as a deductible charitable contribution of $220,800, plus the $19,872 contribution for the donor endowment.[77] The IRS denied Kaufman's deductions: both for the contribution of the facade easement and for the required donor endowment contribution to NAT.[78] Kaufman petitioned the U.S. Tax Court for a redetermination of her income tax deficiencies.[79]

The Commissioner of Internal Revenue moved for summary judgment, which was granted in part and denied in part—one reason being that there was an issue of material fact about whether Kaufman could claim her donor endowment contribution to NAT as a deductible charitable contribution.[80] That issue was decided on appeal the following year;[81] the Tax Court's holding in the appeal provides the precedent for the deductibility of donor endowments,[82] which are the very types of contributions that concern this Note.

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[74] *Kaufman II* at 300.
[75] *Id.*
[76] *Id.* (Per the trust's requirements, Kaufman had already sent NAT a check for $15,840, which was 8% of the estimated value of the easement. Also, because the easement process was causing a delay in the Kaufmans' ability to timely file their tax return, NAT gave them a 10% discount on the required contribution: $2,208. Thus, the total contribution that Kaufman ended up making to NAT was $19,872. *See Kaufman II* at 298–300).
[77] *Id.* at 301. The Kaufmans actually claimed more than this—$300 for a bank fee in the process of donation, and an extra $30 due to an error in calculating how much they had donated. They had to split the claim between their 2003 and 2004 income tax returns because the I.R.S. places a limit on taxpayer claims to 30% of their total contribution base for each year. 26 U.S.C. § 170(b)(1)(C)(i). Taxpayers can thus carry over the remainder of donations to subsequent years. § 170(b)(1)(C)(ii).
[78] *Kaufman II* at 295.
[79] *See* Kaufman v. Comm'r, 134 T.C. 182, 183 (2010), *adh'd to on denial of reconsideration*, 136 T.C. 294, *and vac'd in part sub nom, Shulman*, 687 F.3d 21.
[80] *Id.* at 188.
[81] *Kaufman II*, 136 T.C. at 295–96.
[82] Scheidelman v. Comm'r, 682 F.3d 189, 200–01 (2d Cir. 2012).

ii) The Issue of Voluntariness

One reason why the IRS denied Kaufman's claim was that NAT *required* the contribution as part of the conservation easement process. The Commissioner thus claimed that Kaufman's contribution was not voluntary and therefore lacked donative intent.[83]

The Tax Court recognized that the requirement of additional donations was a common practice among easement holding organizations, and that if the easement could qualify as a deductible charitable contribution, such additional donations would only serve to secure the original donative purposes.[84] The fees therefore could be considered voluntary, even if they were required of the landowner by an easement holder.

iii) Quid Pro Quo: Goods and Services

The Commissioner further argued that Kaufman received a large tax benefit from her donation, and that NAT provided many services to her in the process of the agreement process.[85] Therefore, Kaufman was receiving a substantial economic benefit from the agreement, making it a quid pro quo transaction, ineligible to be claimed as a deductible charitable contribution.[86]

The Commissioner later adjusted his argument, conceding that tax benefits are not the kind of substantial economic benefit that turns a donation into a quid pro quo, but he maintained that NAT provided goods and services to Kaufman in exchange for her donation.[87] By the Commissioner's reasoning, Kaufman only made the contribution to NAT because it was required to receive the substantial goods and services they provided in exchange.[88]

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[83] *Kaufman II*, 136 T.C. at 317 ("[The Commissioner] continues to argue that petitioners are entitled to no deduction for the cash payments because Lorna Kaufman was '<u>required</u>' to make them.") (emphasis in original).
[84] *Id.* at 318–19 ("'Many easement holding organizations require the easement donor to make an additional donation of funds to help administer the easement' . . . The practice may be common, and no doubt provides funds to serve the charitable purposes of the donee") (quoting NAT'L PARK SERV., *supra* note 59, at 8).
[85] *See* discussion *supra* § E.2.a.i. ("As part of the conservation easement agreement process . . . ").
[86] *See Kaufman II*, 136 T.C. at 317 ("NAT provided substantial services to petitioners in exchange for these cash payments. NAT accepted and processed the preservation restriction agreement application, provided a form preservation restriction agreement that it had developed and negotiated with Massachusetts Historical Commission, dealt with the local and federal authorities in obtaining the necessary approvals, and dealt with Lorna Kaufman's mortgage holder, Washington Mutual, procuring Washington Mutual's execution of the 'Lender Agreement.' . . . [NAT's representative] even gave . . . [Gordon] Kaufman tax advice. Most importantly, NAT gave . . . [Gordon] Kaufman the names of NAT-approved appraisers . . . ."). The court's evaluation demonstrates the rationale that they will use when addressing the question. They will identify the specific services performed by the easement holder and ask whether these services could be connected to any specific economic benefit.
[87] *Id.* ("In his reply brief, respondent mitigates his first argument: 'Respondent . . . agrees with the general proposition that the expected receipt of a tax deduction is not a benefit that invalidates the deduction").
[88] *Id.*

The court held to the contrary:

> Seeing no benefit to Lorna Kaufman other than facilitation of her contribution of the facade easement . . . and an increased charitable contribution deduction, we shall not deny petitioners' deduction of the cash payments on the ground that the application required a "donor endowment" to accompany the contribution of facade easement.[89]

The court went on to evaluate NAT's efforts throughout the easement agreement process, concluding that NAT had already completed many of the tasks before receiving any contributions from Kaufman, let alone before it could be determined that the easement process would succeed—if the easement process failed, NAT promised to refund Kaufman all of her contributions.[90] Furthermore, NAT's actions could be considered in their own interest, independent of Kaufman's, and the Commissioner had failed to posit or prove the specific value of any of NAT's efforts.[91]

In the end, the court held that Kaufman was entitled to the charitable contribution deduction for her payment to NAT's donor endowment.[92]

b) Other Court Rulings on Stewardship Fees

According to the courts, conservation purposes achieved by a stewardship fund do not constitute goods, services, or an economic benefit to the donor,[93] so paying a

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[89] *Id.* at 319.

[90] *Id*. at 320 ("NAT had undertaken and completed many of the tasks of concern to respondent although it had received only a $1,000 deposit from [Kaufman]. Moreover, Mr. Kearns [NAT's president] also states in that letter that, if, by February 28, 2004, the bank did not subordinate, she failed to receive historic certification of the property, or an appraisal could not be obtained, NAT would join with her in voiding the agreement, reimburse her costs, and refund her cash contribution. Certainly, NAT was accommodating to Lorna Kaufman, but it was in its interest as much as hers to complete the contribution of the facade easement. We assume moreover that NAT undertook the delineated tasks in anticipation of a cash contribution if a facade contribution were made but cognizant of the risk that a facade contribution might not be made (or might be unwound if the delineated conditions were not satisfied).").

[91] *Id.* at 320–21 ("The evidence does not convince us that Lorna Kaufman's payments reciprocated NAT's undertakings. Finally, we assume that respondent's position is that NAT's undertakings were of monetary value to Lorna Kaufman (saving her time and expense), yet the record is devoid of evidence of the value (much less the *substantial* value) of those undertakings. Respondent has failed to make the necessary showing of a quid pro quo. We shall not disallow petitioners a deduction for the cash payments as a fee-for-services quid pro quo, as argued by respondent.").

[92] *Id.* at 322 ("Petitioners are entitled to a charitable contribution deduction for 2004 of $19,872 for cash payments Lorna Kaufman made to NAT in 2003 and 2004.").

[93] *Id.* at 297, 318–19 ("When the Trust accepts a donation it pledges to monitor and administer the donation in perpetuity. Since the Trust receives no government funding and has no other source of income, it requires that donors create an endowment that covers current operating costs and funds the Trust's long term Stewardship Endowment which is reserved for future monitoring and administration purposes"). *See also Scheidelman*, 682 F.3d at 200–01; Dunlap v. Comm'r, 2012 TC Memo T.C.M. (RIA) 2012-126, 2012 WL 1524660, at 24 (2012).

stewardship endowment fee is not a quid pro quo transaction.[94] The U.S. Second Circuit Court of Appeals made the clearest statement in *Scheidelman v. Kaufman*:

> Without some way of monitoring compliance, an easement of this kind is easily violated, withdrawn, or forgotten. When a cash contribution (even mandatory in nature) serves to fund the administration of another charitable donation, it is likewise an "unrequited gift." . . . It is true the taxpayer hoped to obtain a charitable deduction for her gifts, but this would not come from the recipient of the gift. It would not be a quid pro quo.[95]

This rationale most clearly sums up the way courts tend to handle the issue. Contributions that serve to fund the monitoring, maintenance, and enforcement of conservation easements serve a clear conservation purpose as required by § 170.[96] The contributions do not convey any quid pro quo economic benefit to the easement donor—rather, they serve to make the original contribution possible.

Thus, stewardship endowments, even when mandatory, are an "unrequited gift" rather than quid pro quo, because they serve to fund the administration of the donated conservation easement.

c) Other Court Rulings on Assignment Fees

Courts also decided that fees for a land trust's general operating costs may be deductible, so long as the landowner is not receiving any economic benefit in return.[97] Courts have historically denied donations, even small donations under $100, if the benefit that contributors receive in return is considered substantial.[98]

The IRS considers goods and services as substantial economic benefits and argued to the court that fees that pay for a land trust's goods and services thus should not be deductible. The IRS reasoned that in assignment fees, landowners are paying for the trust's

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[94] *Kaufman II*, 136 T.C. at 318 (" . . . it is difficult to see how the cash donation benefits the donor other than in making possible the contribution of the associated property and giving rise to an added charitable contribution deduction (an acceptable benefit").
[95] 682 F.3d at 200.
[96] *See* 26 U.S.C. § 170(h)(4).
[97] *See Kaufman II*, 136 T.C. at 318–19.
[98] *See id.* at 318 n.12, (citing McMillan v. Comm'r, 31 T.C. 1143, 1959 WL 1155 (1959) ("[W]e disallowed a charitable contribution deduction for $75 paid by adoptive parents to a charitable organization operating an adoption program as a prerequisite to placing a child in their home preliminary to an adoption. The payment was regarded by the organization as a fee for service to cover part of the cost of operating an adoption program. We concluded that whatever charitable aspects there may have been to the payment lose significance when compared to the personal benefits that would result to the taxpayers from the completed adoption. *McMillan* is distinguishable because, as discussed in the text, the personal benefits Lorna Kaufman received were the accomplishment of the contribution and entitlement to charitable contribution deductions on account of both the facade easement and cash contributions.").

services in administering and effectuating the conservation easement, and in return, the landowners receive income tax benefits.[99] This is arguably an exchange of goods and services.[100]

Courts have explicitly considered this argument but ruled that the fees may still be deductible.[101] The practice is common among land trusts and other nonprofit organizations,[102] and a contribution is not quid pro quo if it funds the general operations of an organization that is fulfilling a charitable purpose.[103] In order for such a contribution to be considered a "fee for goods or services," the payment must be connected to a particular good or service that was specifically conveyed to the contributor.[104]

The courts evaluated whether any particular fees or services had been rendered by examining the services performed by the trust and whether funds that the landowners contributed could be connected to the specific services rendered to them.[105]

CONCLUSION

A. Implications for Land Trusts

The IRS and courts evaluate these questions on a case-by-case basis, so legal guidance cannot be entirely certain in its predictions. The highest standard of certainty in these cases is to take a position that is consistent with the most prominent trends in existing rules, regulations, official guides, and case law.

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[99] The court considered this argument in *Scheidelman*, 682 F.3d at 200 ("If the motivation to receive a tax benefit deprived a gift of its charitable nature under Section 170, virtually no charitable gifts would be deductible.").

[100] *E.g.*, *Scheidelman*, 682 F.3d at 199 ("The consideration need not be financial; medical, educational, scientific, religious, or other benefits can be consideration that vitiates charitable intent"). Because benefits can be indirect and abstract, it was not obvious whether massive tax benefits could be deemed consideration that would be relevant for the question of charitable intent.

[101] *E.g., id.*

[102] *Kaufman II*, 136 T.C. at 318 ("The practice may be common, and no doubt provides funds to serve the charitable purposes of the donee").

[103] *Id.*

[104] *Scheidelman*, 682 F.3d at 200 ("While Scheidelman's $9,275 donation might be described as a *prerequisite* of the Trust's acceptance of the easement donation, the Trust gave the taxpayer no 'goods or services,' or 'benefit,' or anything of value in return for her making the money gift. The only transfer of benefit was what the taxpayer gave to the Trust in the two gifts. Earlier cases applying the quid pro quo principle concerned bargained-for exchanges for services desired by the taxpayer, such as religious or adoption services. But Scheidelman received no such benefit from the Trust in exchange for her cash donation. A donee's agreement to accept a gift does not transfer anything of value to the donor, even though the donor may desire to have his gift accepted and may expect to derive benefit elsewhere (such as by deductibility of the gift on her income taxes.") (internal citations omitted).

[105] *Id.* at 200 n.8 ("The Commissioner suggests that Scheidelman received as consideration help in obtaining the necessary government and lender approval to convey the easement. However, the logistical help was completed well before Scheidelman was obligated to pay the Trust at the time of the donation. Furthermore, the value in obtaining the necessary approvals was primarily a benefit to the Trust, without which the Trust would have been unable to secure its objectives.").

According to this approach, landowners may claim both mandatory stewardship fees and assignment fees as deductible charitable contributions, so long as the transaction does not result in a substantial economic benefit for the landowner.

Again, this analysis is restricted to scenarios where a landowner is donating the full value of a conservation easement to the land trust. While the above analysis suggests that full sales of conservation easements will not allow for a deductible stewardship fee or assignment fee, bargain sales pose a difficult question based on available evidence.

B. Bargain Sales

Bargain sales create a complex problem for this question, because the landowner is receiving the economic benefit of cash in exchange for part of the easement's value. Some land trusts operate under the presumption that stewardship endowment fees and assignment fees connected to a bargain sale are deductible charitable contributions. While they may have first-hand experience that leads them to such conclusions, the existing rules, guidance, and case law do not indicate that this is the correct approach. Landowners must base their approach on speculation and inference, rather than certainty. While landowners stand to benefit from correct speculation, land trusts must adopt a position based on their own costs and benefits.

A strict approach—for the reasons listed in Section E.1.b. of this note—assumes that almost any substantial economic benefit conferred to the landowner renders the grant of conservation easement a non-deductible quid pro quo transaction. Therefore, the stewardship fee and assignment fee in a bargain sale would also be considered quid pro quo and non-deductible, because they would serve to facilitate the economic benefit received by the landowner.

It is nonetheless possible that some bargain sales would allow for deductible stewardship fees and assignment fees; the strict approach simply assumes that this is not the case in order to avoid risk. As mentioned above, in the Technique Guide, the general rule used by the IRS is that charitable intent requires that the benefits to the general public (the charitable purposes of the donation) are not outweighed by the benefit conferred to the landowner.[106]

The question then becomes when a bargain sale crosses the line of benefits inured to the general public and confers enough cash to a landowner to be quid pro quo, thus undermining the deductibility of the stewardship fee and assignment fee.

The court cases described above in Section E.2. suggest that the strict interpretation is the correct one, but there may be cases where the donated value of a conservation easement significantly outweighs whatever relatively smaller cash benefits are conveyed to the landowner. It is unclear, but possible, whether such a situation could arise in a bargain sale. It is worth considering whether a conservation easement transaction would be

[106] TECHNIQUE GUIDE, *supra* note 15, at 58, § VIII(E)(1).

made practical if the landowner's fees were deductible. Land trusts must decide whether they are ideally suited to address this question, or whether they should let landowners resolve the issues on their own.

C. Key Takeaways

1. Stewardship fees and assignment fees may be claimed as deductible charitable contributions. Landowners may claim stewardship fees and assignment fees as deductible charitable contributions, so long as they do not receive a substantial economic benefit in return, even if the fees are required by the land trust. This is always the case when landowners donate the full value of the easement. It is probably not the case in full sales and is unclear in bargain sales.
2. Requiring the fees of landowners does not invalidate voluntariness or charitable intent. Land trusts can require fees of the landowner without undermining charitable intent. The element of "voluntariness" in charitable intent refers to the exchange of economic benefits, not whether the landowner is required to pay the fee. Tax benefits are not considered economic benefits for this analysis; otherwise, all charitable donations would be *per se* non-deductible. In addition, land trusts can still include language in their written acknowledgement to support the landowner's overall claim of charitable intent.[107]
3. Income tax benefits from claiming the deduction are not a substantial economic benefit. The tax benefits that a donor gets from claiming a deduction on their taxes are not considered a substantial economic benefit.
4. Assignment fees will not be deductible if they can be connected to specific goods and services rendered to the landowner. The IRS may deny the claim that an assignment fee was a deductible charitable contribution, even in the case of a full value donation, if the payment

[107] *See Kaufman II*, 136 T.C. at 321 ("Section 170(f)(8)(A) [of Title 26 of the United States Code] provides that a taxpayer may not deduct any contribution of $250 or more unless she substantiates the contribution with a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of section 170(f)(8)(B). The donee's written acknowledgment must state the amount of cash and describe other property contributed, indicate whether the donee organization provided any goods or services in consideration for the contribution, and provide a description and good faith estimate of the value of any goods or services provided by the donee organization. Sec. 170(f)(8)(B). In Addis v. Commissioner, 118 T.C. 528, 537 (2002) [], we stated:

> Section 170(f)(8) disallows a charitable contribution deduction in circumstances such as these, where the donee organization's contemporaneous written acknowledgment is erroneous and is not a good faith estimate of the value of goods or services it provided, and where the taxpayer unquestioningly and self-servingly uses that erroneous statement to claim a charitable contribution larger than the one to which he or she would be entitled under section 170.")

(some internal citations omitted).

can be directly connected to the specific services rendered to the landowner. This is because the IRS will consider the assignment fee a "fee for goods and services," rather than a donation to a non-profit for its general operations.

5. In some cases, fees connected to bargain sales may be deductible. It remains to be seen whether landowners may claim stewardship fees or assignment fees required during bargain sales as deductible charitable contributions. Some land trusts operate under the presumption that such fees are deductible, while others do not. Current case law, examined with caution, suggests that the fees would not be deductible in most, if not all, bargain sales. But existing guidance suggests that a landowner may be able to claim such fees as deductions if the cash value received in the bargain sale is significantly outweighed by the value donated.