

## **Tax Code Requirements and Appraisals Policy**

Utah Open Lands (UOL) works diligently to see that every charitable gift of land or easements meets federal and state tax law requirements.

It is the legal responsibility of the landowner, not UOL, to comply with specific requirements regarding federal or state tax deductions for the donation of land or easements. Nevertheless, UOL has responsibility to see that those requirements are met and should take reasonable measures to ensure that landowners understand those requirements and consult their own advisors about meeting them. UOL's role is important in that deductions that are overturned by the IRS may make future potential donors wary, could lead to investigations and, ultimately, can reduce public support for deductions as incentives for land conservation. UOL takes care never to guarantee or appear to guarantee that a deduction will be allowed or what its value will be, but the land trust can help guide the landowner and establish policies to protect the land trust.

UOL notifies, through distribution of a Landowner Guide, and in writing via an introductory letter, all potential land or easement donors who may claim a federal or state income tax deduction, that the project must meet the requirements of IRC §170 and the accompanying Treasury Department regulations and/or any other federal or state requirements. UOL, on its own behalf, reviews each transaction for consistency with the following requirements.

UOL informs potential land or easement donors in writing, via an introductory letter and Landowner Guide of the IRC appraisal requirements for a qualified appraisal prepared by a qualified appraiser for gifts of property valued at more than \$5,000. Including information on the timing of the appraisal; that the donor is responsible for any determination of the value of the donation; that the donor should use a qualified appraiser who follows Uniform Standards of Professional Appraisal Practice; that the land trust will request a copy of the completed appraisal; and that the land trust will not knowingly participate in projects where it has significant concerns about the tax deduction.

### **Tax Code and IRS Requirements**

Every individual who represents UOL in dealings with potential easement donors should have a basic understanding of the law and regulations pertaining to the tax deductibility of conservation easements. From the first contact, UOL should be sure it is giving out accurate information.

**Internal Revenue Code §170(h)**: is the federal statute governing the requirements a conservation easement and certain other partial interests in land must meet to qualify for a federal income tax deduction. The legal term for these qualifying partial interests is “qualified conservation contributions”. The statute outlines three basic tests a donation must meet to be considered a qualified conservation contribution. It must be:

1. A qualified real property interest (which includes perpetual conservation easements);
2. Granted to a qualified organization (generally a government agency or public charity, such as Utah Open Lands); and
3. Granted exclusively for conservation purposes, of which there are four categories:
  - a. Provides outdoor recreation or educational use for the general public;

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- b. Protects a relatively natural habitat of fish, wildlife, plants, or similar ecosystem;
- c. Preserves open space (including farmland and forestland) where such preservation:
  - i. Provides for the scenic enjoyment of the general public or is pursuant to a clearly delineated federal, state or local governmental conservation policy, and
  - ii. Yields a significant public benefit;
- d. Preserves an historically important land area or a certified historic structure.
- e. Signed the Form 8283 only when a gift was received.

### Avoiding Fraudulent or Abusive Transactions

1. Review, on Utah Open Lands own behalf, each transaction for consistency with federal and state income tax deduction requirements.
2. UOL shall **evaluate the Form 8283 and any appraisal** provided by the donor to determine whether there are substantial concerns about the appraised value, the appraisal itself, or the claimed deduction.
  - a. Form 8283 includes the following:
    - i. Name of Landowner(s) that matches landowner(s) in title investigation;
    - ii. Detailed gift description (or supplemental statement);
    - iii. Appraised fair market value that is consistent with the appraisal report;
    - iv. Any amount received in bargain sale;
    - v. Donor's cost or adjusted basis; and
    - vi. Date of gift.
  - b. UOL evaluates the Form 8283 and any landowner's qualified appraisal and communicates concerns before signing the Form 8283 for the following:
    - i. Property description for the gift that was donated;
    - ii. Effective date not more than 60 days before the donation;
    - iii. Statement the appraisal was prepared for income tax purposes;
    - iv. Value for the entire contiguous parcel, if clearly applies; and
    - v. Consideration of enhancement, if clearly applies.
3. Discuss any **substantial concerns\*** about the appraisal, the appraised value or other terms of the transaction with the board of directors and take appropriate action to resolve such as:
  - a. Involving legal counsel as appropriate;
  - b. Documenting that UOL has shared those concerns with the donor;
  - c. Seek additional substantiation of value;
  - d. Withdrawing from the transaction prior to closing; or

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- e. Refuse to sign the Form 8283.

*\*Substantial concerns: Prior to closing: i) If the title investigation or other documentation shows the property has been held for a short period; ii) If the landowner appears to have inflated or unrealistic expectations for the value of the donation. After closing: i) If the appraised value does not appear defensible in light of the land trust's knowledge of local land values; ii) If the appraisal appears to contain unjustified extraordinary assumptions; iii) If the appraised value is significantly in excess of the donor's cost or adjusted basis.*

### 4. Engagement with Pass-Through Entities of Unrelated Parties

- a. Early Review: During UOL's standard multi-step transaction approval process, the Board of Directors shall review all proposed transactions involving pass-through entities of unrelated parties prior to forwarding, closing, or signing of IRS Form 8283.
- b. Document Collection: Staff shall request and seek to obtain from the landowner or entity governing documents and, during the standard Board review of the transaction, present findings such as:
  - i. Articles of Organization, Operating Agreement, or partnership agreement as per standard real estate transaction practices;
  - ii. A statement from the landowner that no materials were used to market or promote the transaction as an investment or charitable tax shelter; and
  - iii. If the landowner is unable or unwilling to provide the requested documents, UOL shall decline to participate in the transaction.
- c. Board Determination: The Board shall determine whether the entity appears to be genuinely comprised of unrelated parties and does not exhibit characteristics of a syndicated or promoted transaction.

If the Board finds evidence that the entity was offered or assembled by a third party, marketed as an investment or charitable tax shelter, or otherwise exhibits characteristics of a syndicated conservation easement (including an appraised value exceeding  $2.5 \times$  the entity's basis within 36 months of acquisition and a claimed deduction of \$1 million or more), **UOL shall decline to participate in the transaction and will not sign IRS Form 8283.**

In the unlikely event that such characteristics are identified *after* UOL has engaged in or closed the transaction, UOL shall immediately:

- i. Document the discovery and notify the Board;
- ii. Consult legal and tax counsel regarding reporting and disclosure obligations (including whether UOL is a "material advisor" under 26 CFR § 1.6011-9); and
- iii. Take corrective action, including amending or withdrawing filings and disclosing to the IRS as appropriate.

5. Pass-Through Entity Donations and Reporting Requirements

- a. UOL shall proactively identify whether a donor entity is a pass-through entity (defined to include partnerships, multi-member LLCs treated as partnerships, S-corporations, or non-grantor trusts) making a donation of land or a conservation easement.
- b. If UOL determines that the donor is a pass-through entity and that the donation meets or exceeds indicators of a potentially syndicated or promoted transaction—such as a claimed deduction greater than  $2.5 \times$  the entity's basis within 36 months of acquisition, a claimed deduction of \$1 million or more, or evidence that the transaction was marketed or promoted as an investment or charitable tax shelter—**UOL shall decline to participate in the transaction and shall not sign IRS Form 8283.**
- c. In the event that such characteristics are discovered after UOL's engagement or closing, UOL shall:
  - i. Document the discovery and notify the Board of Directors immediately;
  - ii. Consult legal and tax counsel to determine reporting and disclosure obligations, including whether UOL qualifies as a "material advisor" under 26 CFR § 1.6011-9; and
  - iii. Take appropriate corrective action, including amending or withdrawing filings and making disclosures to the IRS as required.
- d. If UOL's participation meets the IRS definition of a material advisor, the organization shall ensure all required reporting (Form 8918) and disclosure obligations are completed.
- e. UOL shall maintain complete documentation of the due-diligence and decision-making process, including staff and Board review, checklists, legal/tax counsel input, and any determination regarding "listed transaction" or material-advisor status.
- f. UOL shall remain current on applicable IRS regulations, Land Trust Alliance guidance, and other authoritative interpretations, updating its internal procedures and Board policies as necessary.
- g. UOL shall include in its transaction file and Board minutes a record of its risk assessment and determinations for any transaction involving a pass-through entity donor.