

Qualified Conservation Contribution

Cross References

- IRC §170(h)
- T.C. Memo. 2026-36

Charitable donations of a partial interest in property are generally ineligible for a charitable contribution deduction under IRC section 170(f)(3)(A). There is one exception if it is a qualified conservation contribution under IRC section 170(f)(3)(B)(iii). Such a contribution must be:

- 1) Of a qualified real-property interest,
- 2) To a qualified organization, and
- 3) Exclusively for conservation purposes.

Qualified real-property interests can include property with restrictions, like easements, on the use of the property if they are made in perpetuity and otherwise meet the requirements of IRC section 170(h)(3).

A qualified organization is one that is a qualified charitable organization under IRC section 501(c)(3).

Possible conservation purposes can include:

- The preservation of land for outdoor recreation or the education of the general public,
- The preservation of a relatively natural habitat of fish, wildlife, or plants, or of a similar ecosystem,
- The protection of open space that will yield a significant public benefit if it is for the scenic enjoyment of the general public or pursuant to a clearly delineated federal, state, or local governmental conservation policy, or
- The preservation of a historically important land area or a certified historic structure.

The taxpayers in this case donated conservation easements on two pieces of land in the Atlanta area. The Kimberly Road property is 25.4 acres located in southwestern Atlanta, approximately 10 miles west of Atlanta's downtown. It contains mature oak-hickory-pine forest and is zoned for 18 to 24 houses per acre. The South Fulton property is 130 acres in the Atlanta suburb of Union City. It too is covered by oak-hickory-pine forest and is zoned Town Center Mixed Use, which allows for a mix of residential, commercial, and industrial uses.

The taxpayers granted conservation easements on both properties to Southern Conservation Trust, Inc. (SCT), which is a qualified charitable organization under IRC section 501(c)(3). The easements restricted how the taxpayers could use the properties by limiting development on them. The easements did not contain any clauses granting reversionary interests in the properties to the taxpayers. The taxpayers did, however, reserve the right to log up to half the trees on the properties every five years. They also reserved the right

to use the property for agriculture, forestry, and recreational activities such as hunting and horseback riding.

The IRS disallowed the charitable contribution deductions for both conservation easements stating that the reserved rights mean the easements were not granted exclusively for conservation purposes and thus did not meet the granted-in-perpetuity requirement.

The court first considered the conservation purpose of the easements. One conservation purpose is the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystems. The regulations more specifically state that the donation must protect a significant relatively natural habitat in which a fish, wildlife, or plant community, or a similar ecosystem, normally lives.

Courts have defined a habitat in this context to mean an area or environment where an organism or ecological community normally lives or occurs, as well as the place where a person or thing is most likely to be found. A habitat is significant if it is a home for a rare, endangered, or threatened species. The regulations permit some of the property to be altered to some extent by human activity so long as wildlife continues to exist on the property in a relatively natural state.

The plan developed for the Kimberly Road property identified the high-priority habitat of mature oak-hickory-pine forest on the property and concluded it was a relatively natural habitat. It noted a number of migratory bird species on the property but didn't identify any rare species. It also noted that the forest provided habitat for more common species such as racoons, armadillos, squirrels, and box turtles, and that the protection of a mature hardwood forest in a large metropolitan area like Atlanta provides important habitat for migratory birds.

The taxpayers also hired experts who identified four rare and threatened species on the property. These are the downy arrowwood, which is a shrub that Georgia has identified as a critically imperiled species; the brown-headed nuthatch, a small songbird listed by the Atlantic Coast Joint Venture (ACJV) as a high-priority species; the Carolina chickadee, another small bird the ACJV recognized as having moderate priority; and the tricolored bat, which is threatened and has been proposed for listing under the Endangered Species Act. The expert also spotted the pink lady slipper, an orchid that Georgia identifies as an unusual species.

The IRS objected stating that the Kimberly Road property is not a high-quality example of relatively natural habitat because it is too small, the oak-hickory-pine forest takes up less than half the property, and the forest has been degraded.

The court stated the Internal Revenue Code does not require a minimum size for a conservation easement. And it does not require that a species inhabit the entire property. The Kimberly Road property is located in an urban county. It is especially important in an urban area when the alternative is the continued decline and human impact on natural areas in areas surrounding the property.

The plan for the South Fulton property also identified a regrown oak-hickory-pine forest, as well as streams and wetlands already spotted by the U.S. Fish and Wildlife Service

National Wetland Inventory. It noted no manmade features other than some trails on the site.

The experts hired by the taxpayers found it a habitat for the tricolored bat. They also found four bird species that the ACJV numbers among its priorities, including the brown-headed nuthatch and the Carolina chickadee, as well as nesting for the four-toed salamander, a lungless amphibian which the state identifies as vulnerable. The experts also spotted the bay starvine, a shrub that Georgia classifies as threatened.

The taxpayers also argued that another way in which a property can satisfy the significant requirement is by increasing or contributing to the ecological viability of a state, local, or national park, a wildlife refuge, or a similar conservation area. The Kimberly Road property satisfies this requirement because it contributes to an adjoining conservation easement on 48 acres of land that was granted to the Atlantic Coast Conservatory in 2013. That property shares the same oak-hickory-pine forest as the Kimberly Road property.

Another conservation purpose at issue in this case is whether the subject properties preserve open space that will yield a significant public benefit. This purpose is accomplished if open space allows for the scenic enjoyment of the general public or is pursuant to a clearly delineated federal, state, or local governmental conservation policy.

The regulations list eight factors that consider whether the property has scenic value.

- The compatibility of the land use with other land in the vicinity,
- The degree of contrast and variety provided by the visual scene,
- The openness of the land (which would be a more significant factor in an urban or densely populated setting or in a heavily wooded area),
- Relief from urban closeness,
- The harmonious variety of shapes and textures,
- The degree to which the land use maintains the scale and character of the urban landscape to preserve open space, visual enjoyment, and sunlight for the surrounding area,
- The consistency of the proposed scenic view with a methodical state scenic-identification program, such as a state landscape inventory, and
- The consistency of the proposed scenic view with a regional or local landscape inventory made pursuant to a sufficiently rigorous review process, especially if the donation is endorsed by an appropriate state or local governmental agency.

Travelers along adjacent roads can see the properties and their forests. The court stated the easements contribute to scenic enjoyment of their respective areas by providing a degree of contrast and variety to the developing parts of the Atlanta area and providing relief from urban closeness.

The taxpayers also point to the Georgia State Wildlife Action Plan (SWAP), a plan overseen by the Georgia Department of Natural Resources, in arguing that the easements were granted pursuant to a government policy. The IRS argued that the Georgia SWAP does not specifically mention the taxpayer's properties and that the easements therefore were not granted pursuant to a government policy.

The court stated a government policy is not required to mention specific tracts of land to meet this criterion. The exact type of forest protected by the Georgia SWAP is located throughout the taxpayer's properties.

Even if, however, the easement contributions are made for scenic enjoyment or pursuant to a government policy, they must also yield a significant public benefit. Some of the factors listed in the regulations relevant to this case include:

- The uniqueness of the property to the area,
- The intensity of land development in the vicinity of the property (both existing and foreseeable trends in development),
- The consistency of the proposed open-space use with public programs for conservation in the region, and
- The likelihood that development of the property would lead to or contribute to the degradation of the scenic, natural, or historical character of the area.

The court stated both properties will yield a significant public benefit. Both properties' forested habitats can be viewed along significant portions of major roads in the Atlanta region. They are also consistent with the Georgia SWAP's government policy to preserve oak-hickory-pine forests of the type found on both properties.

Next, the court considered the IRS argument that the sheer number of reserved rights by the taxpayers in both property easements undermines any conservation purposes because they might allow such extensive development. These reserved rights include logging on both properties and agricultural, forestry, and hunting and horseback riding.

The court stated the easements restrict use by limiting development on the properties. The deeds do not provide for reversionary interest in the properties to the taxpayers. And their management plans prohibit the use of all-terrain vehicles on the properties to limit the environmental affects of the reserved rights to use the properties for recreation.

The court found credible one expert's testimony that, in her experience, allowing hunting on conserved lands is a useful monitoring mechanism against dumping and other trespassers.

The court also disagreed with the IRS that the reserved rights undermine their conservation purposes. The IRS argued that there are energy-pipeline and utility easements on the Kimberly Road property that, because of their priority, prevent SCT from enforcing its rights and thus that the property is not perpetually protected.

The court stated these easements were granted during World War II. There is no evidence in the record to show that, during the 80-plus years since these easements were granted, a pipeline was actually placed on the property. The court agreed with the taxpayer that the likelihood that this right would be exercised is so remote as to be negligible.

The court concluded that the easements have the conservation purpose of preserving a relatively natural habit as fish, wildlife, or plants, or of a similar ecosystem as well as the preservation of open space that yields a significant public benefit. This makes them qualified conservation contributions under IRC section 170(h).