

Hot Topics on the 8283 Form

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Dec. 2016 New Conservation Easement Audit Guide revisions

Dec 2014 New IRS instructions for and a new [Form 8283](#) (prev. revised Dec. 2012).

As Steve Small has recommended for the Conservation Easement 8283 Package include all required documentation in your filing package:

EVERYONE SHOULD READ THE FORM 8283 INSTRUCTIONS. *Show you have done all requirements*

1. **Complete 8283- See instructions for 8283**
2. ***Supplemental Statement!*-See instructions for 8283**
3. **Qualified Appraisal (for contributions over \$5000)**
4. **Copy of recorded easement – stamped with recording date**
5. **Very nice looking and complete baseline –signed by both donor and donee**
6. **Gift (f)8 acknowledgment letter- describe property, whether done provided any goods or service in consideration in whole or in part, for the gift and a good faith estimate of their value of goods or services provided.**
7. **Correct mortgage subordination**

Tricks on Form 8283 *compiled by Stefan Nagel, Steve Small, Sylvia Bates, Steve Swartz, Leslie Ratley-Beach, Nancy McLaughlin,;*

Areas of the Form where filers make the most errors. These are:

1. Front page: only the full and correct taxpayer names and correct EIN need be completed
2. Back page Part 1 #4: be sure the “qualified conservation contribution” box is checked
3. #5 (this is where the IRS says errors abound); parts a through f must be completed or, according to the form instructions, the deduction will be disallowed. If a bargain sale parts g, h and i must also be completed.
4. Part a: The 8283 instruction for part B, line 5(a) now includes a conservation easement requirement that you either: “...describe the easement terms in detail, or attach a copy of the easement deed.” Experts have been advising that the landowner attach the signed and recorded conservation easement to Form 8283 for a few years. Now the IRS is requiring that *or* a detailed explanation.
Be sure to be specific! For example: conservation easement under IRC 170(h) on 450 acres of land in East Haddam, Connecticut, to protect wildlife habitat. See attached conservation easement and supplemental statement.
Be sure to confine the description to the part a box only.
Part b: While easements are not generally considered tangible property, the landowner advisor might consider a reference to the attached baseline documentation here.
Part c: The appraiser inserts the appraised fair market value of the gift.
Part d: This refers to the landowners’ date of acquisition of the underlying property. If acquired over time or in pieces, ALL acquisition dates must be listed. Attach a supplementary page if necessary. The IRS has disallowed deductions where not fully and accurately completed.
Part e: The 8283 Instructions added a sentence regarding Line 5 of the Form to clarify which “basis” you are reporting. “For a qualified conservation contribution, indicate whether you are providing information about the underlying property or about the easement.” This allows the IRS to compare the basis of asset with the claimed FMV of gift. Presumably if the IRS examiner feels the

spread is too large then the return is flagged for an audit. Please note that tax court cases have had the failure to complete this form as a central reason for denial of the deduction in full. Karin Gross in the Office of Chief Counsel has said that they prefer using the basis of fee even though it is not clear that the basis in the gift was not intended.

5. Part III, Declaration of Appraiser. The Audit Guide now clarifies that “If you use appraisals by more than one appraiser, or if two or more appraisers contribute to a single appraisal, all the appraisers must sign the appraisal and Part III of Form 8283.” The president of the appraisal firm signing is inadequate if the president did not conduct the appraisal. This was a source of pain and confusion in the past few years with some deductions fully disallowed because not all the contributing appraisers signed the 8283. In the Form, the appraiser declaration second paragraph first sentence changed with what appears to be a more pointed emphasis on “perform appraisals on a regular basis”.

6. Part IV: the land trust signs and dates *after* the appraiser date of signature.

NOTE: *all donees*, if more than one, must also sign the form. Add a supplementary page if needed.

7. The Accreditation Commission also notes that they frequently see Form 8283 signed by the land trust without having completed the gift date first.

This is not an exhaustive inventory of instructions or changes, just a few of the highlights, and is not legal, tax or other advice. Please read the Form and the Instructions carefully with your attorney or tax professional.

Other Audit Guide changes:

- *Ability to move the boundary of the easement can defeat deductibility.*
Belk v. Commissioner 140 T.C. 1 (2013)
- *Easement can only allow judicial termination.*
Carpenter v. Commissioner T. C. Memo 2012-1
- *Extinguishment clause should track Treasury Regulation language.*
Carroll v. Commissioner, 146 T.C. 13 (April 27, 2016)
- *Focus on Conservation Purpose Test* *Atkinson v. Commissioner T.C. Memo 2015-236 (golf course pesticide case – not protection of natural habitat)*
- *Focus on Qualified Appraisal requirements – ex. signature and resume*
- *Don't have to record all easement exhibits, dependent on State Law* *Butler v. Commissioner, T.C. Memo 2012-72*