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A brief on Fee Simple Conservation Easements Donations

Introduction

Under certain circumstances, taxpayers are permitted to claim deductions equal to the fair market value of personal property donated to charity, particularly for assets such as land, art and antiques. One of those IRS rules involves syndicated conservation easements, where sponsors sell investors stakes in LLCs that acquire land with a restriction on development that can be donated to charity at a "fair market" appraised value, yielding a tax deduction.

In 2024, the IRS issued final regulations designating syndicated conservation easements and “substantially similar transactions” as “listed transactions”—a specific category of tax reduction strategies that impose special reporting duties on participating taxpayers. The regulations include rules pertaining to 3rd party fair market value (FMV) appraisals, and if the conservation land was to be sold for commercial use. Recent rulings have successfully been challenged that initially disallowed charitable deductions by partnerships and S corporations that exceeded 2.5 times the sum of each partner’s basis, or initial investment in the donated property.

1 How the IRS Turned Conservation Easements into a Court Crisis

MAR. 23, 2026 JOSEPH BISHOP-HENCHMAN , PETE SEPP

Joseph Bishop-Henchman is the executive vice president of the National Taxpayers Union Foundation, and Pete Sepp is the president of the National Taxpayers Union.

In this article, Bishop-Henchman and Sepp examine how the IRS’s zero-valuation strategy in conservation easement cases has clogged the Tax Court’s docket and how that affects taxpayers seeking to resolve their cases in the court.

A misguided IRS litigation strategy has clogged the docket of the Tax Court, delaying justice for ordinary taxpayers who must wait in line.

A National Taxpayers Union Foundation (NTUF) review of 798 resolved and pending Tax Court cases involving partnership conservation easement deductions finds that the IRS has taken an extreme zero-valuation position 93 percent of the time and imposed hefty misstatement penalties 99 percent of the time. Most of these cases remain unresolved; the Treasury Department recently estimated[1] that there are 700 pending conservation easement cases at the Tax Court and 400 more on their way from audits. While the Tax Court’s 19 judges accept about 20,000 cases per year, all but a few hundred of these are resolved without a full trial, so adding several hundred trials to the docket is significant.

Although Congress has approved of conservation easement deductions, these data points show an IRS strategy to deny nearly 100 percent of all conservation easement deductions claimed by partnerships and to take legal positions that all but guarantee most of them will be resolved only with litigation.

Thousands of other taxpayers must therefore wait longer for their turn at justice. The backlog is significant enough that the Tax Court noted in its 2024 annual congressional budget justification report[4] that "the Court experienced an increase in the duration of special sessions, primarily related to cases involving conservation easement donations."

We find that the IRS has taken an average of four years and six months to complete audits in these cases, at which point taxpayers can then file in Tax Court to wait years more for their day in court. The situation is untenable, and IRS leadership should reconsider this problematic 100 percent litigation strategy.

History of Conservation Easements

Through its creation of the deduction in 1976 and bipartisan expansion of it in 2006, Congress has authorized charitable deductions for conservation easement donations to achieve conservation benefits at a lower cost to taxpayers. Today, over 37 million acres of wildlife habitat, open spaces, wetlands, rangelands, historically important property, and areas for public enjoyment have been voluntarily set aside for conservation through more than 220,000 conservation easements. The deduction, which reduces federal revenue by $1 billion to $5 billion per year, contrasts with the over $30 billion per year spent managing publicly owned lands, often with poor oversight and substantial maintenance backlogs. The National Park Service administers 85 million acres (two-thirds of which are in Alaska) with 20,000 employees and 315,000 volunteers; private land trusts administer 55 million acres with 8,000 staff and 208,000 volunteers.

Despite this congressional authorization of conservation easement deductions, the IRS has evidently decided to deny and contest all such deductions claimed by partnerships. Those actions have taken the form of audits that participants describe as excessively adversarial, invalidating deeds or appraisals for minor procedural or technical errors (foot faults), contesting the conservation purpose, sweeping generalizations that easements by partnerships or syndicates are all unlawful shams that lack economic substance, and appraisal disputes. Starting in 2016, the IRS began characterizing syndicated conservation easement deductions as listed transactions, requiring additional (and in some cases, retroactive) filings of Form 8886, "Reportable Transaction Disclosure Statement," by the partnership and Form 8918, "Material Advisor Disclosure Statement," by the advisers. As the data in this report shows, the IRS's all-enforcement strategy apparently includes claiming zero valuation in essentially every case, imposing maximum penalties in essentially every case, and insisting on full litigation in essentially every case.

The unsustainability of this strategy has spurred commentary. In 2019 IRS Chief Counsel Michael Desmond acknowledged the need for a solution beyond "litigating to trial and win 500 cases and then we start settling." That same year, legal expert Jenny Johnson Ware reported that 80 percent of deduction values reported by taxpayers were upheld in Tax Court cases, and she urged the IRS to focus on policing excessive valuations rather than "a game of gotcha . . ." with supposed prerequisites that it has never articulated outside litigation." (Litigants have scored their own gotchas, such as one case in which the IRS was caught backdating penalty approvals, earning a rare reprimand from the Tax Court.) In several reports, the U.S. national taxpayer advocate recommended that the IRS "avoid litigation by providing model language taxpayers could use in deeds," which the agency resisted doing for years.

Those years have included a court loss and congressional action. The IRS's 2017 "notice" on conservation easements was invalidated in 2022 after the Tax Court held[17] that it was actually a regulation that must go through notice and comment procedures. Only two Tax Court judges out of 17 agreed with the IRS's argument that notice and comment shouldn't apply. In late 2022, Congress passed the Charitable Contribution Easement Program Integrity Act as part of the SECURE 2.0 Act, which denies partnership conservation easement deductions when the valuation exceeds 2½ times the basis unless the easement was held for at least three years, is a donated building certified as historic for preservation purposes, or the partnership is owned by members of a family. But even easements that meet this test are not treated as being in a safe harbor, and the IRS has continued litigation against them.

Settlement offers have tried to resolve the issue, with little success. In 2020[18] the IRS sent offers to those with pending conservation easement litigation, demanding that the deduction be disallowed in full, that partnerships agree to pay full penalties and interest, and that investors be allowed to deduct costs but that service partners be prohibited from deducting any. Given the unfair terms, it was no surprise that few taxpayers accepted the offer. The IRS offered revised terms to docketed cases in early 2024, limiting the deduction to the basis value and requiring full interest and a 10 percent penalty (as opposed to 40 percent). A third settlement offer later in 2024[19] targeted those who had not yet appealed to the Tax Court, offering a deduction for out-of-pocket costs, a 21 percent tax rate (down from 35 percent), and a 5 percent penalty (down from 40 percent). Acceptance rates for these offers have fallen short of expectations with the IRS privately reporting a take-up of 40 percent, far short of what is required to clear the docket. IRS leadership reportedly plans to propose a new settlement offer for 2026.

Data

The NTUF identified and analyzed 798 partnership conservation easement cases filed in the Tax Court between 2011 and 2025. For each case, our analysts reviewed the complaint, answer, and the attached IRS-issued final partnership adjustment (FPA) or final partnership audit adjustment (FPAA) to determine the date of donation, date of FPA or FPAA, taxpayer appraised value, IRS claimed value, and whether the IRS asserted penalties of 40 percent.

In 93 percent of the cases (744 of 798), the IRS asserted a valuation of zero. In many of these cases, the IRS offered secondary and tertiary valuations of greater than zero as fallback positions, but far lower than the taxpayer's asserted valuation. For the few cases in which the IRS asserted a nonzero valuation, the average was 2 percent of the taxpayer's claimed valuation. IRS assertion of zero valuation became almost universal for FPAs and FPAAs issued since 2022, after which point 97 percent of cases (448 out of 462) involved the IRS claiming zero valuation.

Despite the dubious correctness of a zero valuation, the IRS apparently felt confident enough to assert a 40 percent penalty for gross valuation misstatement or other accuracy-related understatement in 99 percent of the cases (792 of 798). Because the waiver of this penalty is a key element of the IRS's settlement offers, it is likely included to enhance IRS negotiating leverage.

The delays caused by the enormous caseload are evident in the data. An average of 4.52 years, or four years and six months, elapses between the donation date and the date the IRS issues an FPA or FPAA. While we did not closely analyze how long it takes for cases to be resolved by the Tax Court, periods of four to six years are not unusual. Many of the cases we analyzed filed in 2022 or after remain pending. Conservation easement cases are taking about a decade from the donation date to reaching a Tax Court decision, involving enormous costs for litigants and the government alike.

Conclusion

Congress created and expanded the conservation easement deduction to encourage voluntary land preservation in a cost-effective manner. The evidence in this report shows that the IRS has instead chosen to treat nearly every partnership easement as presumptively abusive, regardless of facts, circumstances, or statutory compliance. By asserting zero valuations and maximum penalties in virtually all cases, the IRS has substituted blanket enforcement for sound tax administration.

This approach has predictable consequences. It overwhelms the Tax Court, delays resolution for thousands of unrelated taxpayers, and imposes years of uncertainty and expense on individuals and businesses attempting to comply with the law. A strategy that requires nearly every disputed case to be litigated to the end is not a sign of toughness; it is a sign of systemic failure. When audits last more than four years and cases routinely take a decade to resolve, taxpayers are denied timely justice and the integrity of the system is weakened.

IRS leadership should abandon the current 100 percent litigation posture and return to principled, case-specific enforcement. That means providing clear rules, recognizing legitimate conservation efforts, and resolving disputes earlier through fair and realistic settlements. Any future settlement offer should aim to clear out nearly all docketed cases, which means it should at least match the terms of the prior nondocketed offer (deduction for expenses, a 21 percent tax rate, and a 5 percent penalty). Doing so would conserve resources, reduce court backlogs, and restore confidence among taxpayers who seek to follow the law.

FOOTNOTES

Melissa Wiley, "It's Time for Treasury to End the Backlog of Micro captive Cases," Bloomberg Tax, Feb. 11, 2026.

In 2025, for instance, the Tax Court received 18,549 appeals, closed 20,961 cases, and issued 187 opinions in tried cases. U.S. Tax Court, "Congressional Budget Justification" (2026).

National Conservation Easement Database, "Total Acres Conserved" (last updated Jan. 2025).

Sepp, "NTU Comments to IRS: Agency Needs Better Rulemaking on Conservation Easements," National Taxpayers Union (Feb. 6, 2023).

"IRS Settlement Offers for Syndicated Conservation Easements," Bomar Law Firm (Feb. 21, 2025).

Erin Schilling, "IRS Conservation Easement Offer Success Hinges on Key Details," Bloomberg Tax, Jan. 28, 2026

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A Changed IRS May Finally End Conservation Easement Legal Mess

(Crowell attorneys examine the surge of syndicated conservation easement lawsuits against the IRS and offer tips for determining whether to pursue such litigation.)

Executive Educational Brief for CPAs

Introduction

Syndicated Conservation Easement Transactions (SCETs) have been among the most aggressively challenged tax strategies of the past decade. The IRS has devoted significant enforcement resources toward disallowing related charitable deductions.

This brief summarizes Bloomberg Law's article examining the recent surge in US Tax Court litigation, potential shifts in IRS enforcement priorities under new leadership, and practical considerations for partnerships evaluating whether to pursue litigation or settlement.

Overview of the Current Landscape

The US Tax Court is experiencing a surge in lawsuits filed by partnerships challenging IRS disallowance of SCET-related charitable deductions.

Many new cases argue that the IRS reduced appraised values—often to $0—without sufficient explanation. Historically, outcomes have been unfavorable to taxpayers, but enforcement posture may shift given administrative changes and resource constraints.

Quick Takeaways for CPAs

- SCETs were historically an IRS enforcement priority.
- The 2025 "Dirty Dozen" list does not include syndicated conservation easements.
- IRS resource constraints may impact litigation intensity.
- Several key appellate cases are pending and may influence valuation standards.
- Litigation is expensive and time-consuming.
- Settlement strategies require valuation compromise.
- Risk tolerance and capital commitment are critical considerations.

Changing IRS Enforcement Environment

New IRS leadership and limited agency resources may alter enforcement focus. Staff reductions and competing priorities—such as implementation of new tax legislation—may reduce emphasis on prolonged SCET litigation.

Backlog pressures in the Tax Court further increase incentives for negotiated resolution.

Litigation vs. Settlement Considerations

Partnerships and investors must weigh:

1. Cost – Tax Court litigation can require substantial additional capital.
2. Time – Cases may take years to resolve.
3. Risk Appetite – Appeals may produce favorable precedent, but uncertainty remains.
4. Penalty Exposure – Even partial taxpayer wins may result in valuation reductions and penalties.

Valuation & Negotiation Strategy

The IRS has frequently rejected partnership appraisals and reduced valuations significantly.

To increase settlement viability, partnerships should:

- Move away from defending original aggressive valuations.
- Present reasonable compromise valuation frameworks.
- Set realistic expectations among partners regarding potential outcomes.

Strategic Negotiation Recommendations

- Demonstrate willingness to litigate if necessary, highlighting the resource burden.
- Present unique case facts to distinguish from broader abusive patterns.
- Recognize that settlement proposals must withstand review at senior IRS levels.

Implications for CPAs

CPAs advising clients involved in SCETs should:

- Assess client liquidity and litigation tolerance.
- Model potential settlement scenarios.
- Consider interest accrual mitigation strategies (e.g., deposits).
- Monitor appellate developments closely.
- Prepare clients for extended timelines and regulatory uncertainty.

Conclusion

Administrative leadership changes, resource constraints, pending appellate decisions, and Tax Court backlog pressures may create renewed opportunities for negotiated resolution in SCET disputes. While enforcement intensity may shift, uncertainty remains. CPAs should guide clients through a disciplined evaluation of litigation cost, valuation defensibility, settlement posture, and overall risk tolerance. Pragmatic settlement discussions may increasingly become the most viable path toward finality.

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IRS Easement Appraiser Tripped Up by Artificial Intelligence

APR. 10, 2026.

Katherine Jordan discussed the risks posed by artificial intelligence (AI)-generated errors in Tax Court litigation following the Internal Revenue Service's (IRS) withdrawal of its appraisal expert's rebuttal reports in *Riddle Aggregates LLC v. Commissioner*. After opposing counsel identified AI-related errors, including fabricated citations, and the court expressed "grave concerns," the government concluded withdrawal was the "best path forward." Jordan emphasized that the issue lies not with AI itself but with the failure to vet AI-assisted work, noting that AI "can be an efficiency tool, but that's all it is." She also highlighted the lack of clear Tax Court rules addressing AI misuse and warned that, given the high number of unrepresented litigants, incidents like Riddle Aggregates "may be the tip of the iceberg."

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IRS Concedes Easement Deduction After Backdating Allegation

MAR. 25, 2026 KRISTEN A. PARILLO

The IRS has agreed that a partnership is entitled to a $48.4 million conservation easement deduction after the partnership accused the agency of asserting a fraud penalty to fix a statute of limitations problem caused by a backdated form.

According to a stipulated decision entered March 23 by Tax Court Judge Kathleen Kerrigan in *Agate Holdings LLC v. Commissioner*, the partnership has no imputed underpayment and no penalty liability.

The decision document doesn’t mention the backdating allegations that arose in litigation, stating only that the IRS’s concessions are “solely based” on the fact that the notice of final partnership adjustment was untimely under section 6235.

Agate Holdings LLC’s attorney, Gregory Rhodes of Dentons, declined to comment. An IRS spokesperson said the agency doesn’t comment on pending litigation.

William A. Stone III of Stone Tax Counsel LLC, who wasn’t involved in the case, told *Tax Notes* it seems clear that the IRS settled the case because of evidence indicating that it asserted a fraud penalty in its answer solely to keep the statute of limitations open.

As laid out in Agate’s January 5 summary judgment motion, the timeline of the IRS’s fraud assertion suggests that it realized after the Tax Court petition was filed that a revenue agent had backdated a key form and that the FPA was thus untimely, said Stone, who wrote about the case in a March 2 *Tax Notes* article.

Bryan C. Skarlatos of Kostelanetz LLP pointed out that backdating allegations have surfaced in other conservation easement cases, most notably *LakePoint Land II LLC v. Commissioner*.

In that case, the Tax Court sanctioned the IRS after it acknowledged that an IRS supervisor backdated her signature on a penalty approval form. The IRS settled that case without penalties.

“These instances of backdating illustrate how a campaign by the IRS can become too aggressive and create an atmosphere in which agents end up doing things that they otherwise would not do,” Skarlatos said.

Backdating Allegations

Agate filed a Tax Court petition in January 2024 contesting the IRS’s disallowance of a $48.4 million charitable contribution deduction the partnership claimed in 2018 for donating a conservation easement over property in Louisiana.

The dispute was subject to the rules governing the centralized partnership audit regime enacted by the Bipartisan Budget Act of 2015.

According to Agate's summary judgment motion, the IRS didn't allege fraud or assert a fraud penalty in the FPA, instead asserting the penalty for the first time in its answer to Agate's petition.

The motion alleged that the IRS discovered after the petition was filed that an agent had backdated a Form 8984, "Extension of the Taxpayer Modification Submission Period Under Section 6225(c)(7)." For the extension of the statute of limitations to have been timely, the form would have had to be counter-executed by the IRS on or before June 14, 2023, according to Agate.

The agent who signed the form initially wrote the date as June 15, but then wrote a "4" over the "5" so that it said June 14, the motion said. The Letter 5940, "BBA Approved/Unapproved Document Transmittal," which transmitted the executed Form 8984 to Agate, was generated on and dated June 23.

That the letter's date didn't align with the purported execution date of the Form 8984 suggested that the agent originally attempted to backdate the form on June 23 to reflect a June 15 signature date, Agate said. But "it appears that [the agent] made a mistake in the initial backdating effort and wrote over the June 15 date to reflect instead a June 14 date, thus backdating Form 8984 a second time," the motion says.

Because the countersigned Form 8984 wasn't timely signed, the modification period was never extended and the FPA was untimely, Agate said. But instead of conceding the case, the IRS asserted the fraud exception to the statute of limitations under section 6235(c)(1) to "cure" the backdating and to resurrect the limitations period for assessment, the partnership argued.

The timeline of the IRS's fraud assertion was suspicious, Agate said, noting that the agency asked for an extension to file its answer and failed to identify any new facts that would point to fraudulent intent by Agate in filing its 2018 tax return.

Agate further noted that the IRS admitted in its discovery responses that the FPA "would be untimely but for section 6235(c)(1) and was not timely under section 6235(a)." Kerrigan had ordered the IRS to respond to the summary judgment motion by February 23. No response was filed because the parties soon entered into settlement talks.

Troubling

According to Stone, the backdating allegations in Agate are particularly troubling because the backdated Form 8984 resulted in an untimely, and thus invalid, FPA. By contrast, the backdating of penalty approval forms in cases like LakePoint — while still troubling — meant that while the IRS couldn't assert penalties, the case could still proceed on other issues, he said.

That the IRS apparently asserted a fraud claim solely to keep the statute of limitations open against Agate is egregious because it forced the partnership to incur legal fees to litigate the case, Stone said.

"On top of that, the IRS knew from previous Tax Court opinions issued in easement cases that if the transaction is fully disclosed and the IRS doesn't argue traditional badges of fraud, there's almost no chance the Tax Court is going to uphold a fraud penalty," Stone said.

"At the end of the day, the IRS is getting off with not even a slap on the wrist," Stone added. "They're just conceding something that they should have conceded much earlier. This case should have never gotten this far."

The case is *Agate Holdings LLC v. Commissioner*, Dkt. No. 1464-24 (Tax Court 2026).

Reach out to Kristen A. Parillo at kristen.parillo@taxanalysts.org or via encrypted message on Signal at TaxNotesNews.08.