

IRS Announces Settlement Program for Certain Syndicated Conservation Easement Cases Docketed in the Tax Court



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In [News Release 2020-130](#) issued yesterday, the IRS Office of Chief Counsel announced a time-limited settlement offer for certain taxpayers with pending docketed Tax Court cases involving syndicated conservation easement transactions. Taxpayers eligible for this settlement offer will be notified directly by letter. The IRS's settlement offer will require:

- the full disallowance of the contributed easement deduction,
- all partners must agree to settle,
- the partnership must pay the full amount of tax, penalties and interest prior to settlement,
- investor partners can deduct their cost of acquiring their partnership interests, and will pay a reduced penalty of 10-20% depending upon the ratio of the deduction claimed to the partnership investment, and
- partners who provided services in connection with any syndicated conservation easement transaction must pay the maximum penalty (ordinarily 40%) with no deduction for costs.

The IRS notes that taxpayers should not later expect a better result than what is provided in this settlement offer.

As discussed in [News Release 2020-130](#), the listed syndicated conservation easement structure involves promoters who syndicate ownership interests in real property through partnerships via promotional materials that suggest prospective investors may receive a share of a conservation easement contribution deduction that equals or exceeds two and one-half times their invested amount. To support that, the promoters obtain an appraisal of the real property that inflates the value of the conservation easement by using an unrealistic highest and best use of the property before it was encumbered by the easement. After the investors invest in the partnership, the partnership donates a conservation easement to a land trust. Investors in the partnership then claim a deduction based on that inflated value, typically claiming charitable contribution deductions in multiples of their actual investment in the transaction.

Syndicated conservation easements have come under close scrutiny in recent years as part of the IRS's efforts to curb abusive tax transactions. In [Notice 2017-10](#), the IRS identified the above form of conservation easement and those substantially similar as listed transactions which trigger disclosure requirements under Sections 6011, 6111 and 6112 of the Internal Revenue Code. In 2019, the IRS added syndicated conservation easement transactions to its "Dirty Dozen" list, and reports that it has been

working closely with the U.S. Department of Justice on shutting down promoters of this type of transaction.

Settlement of these cases should not be mistaken for material weakness in the IRS's position. The IRS states that it will continue to disallow such claimed tax benefits and will assert civil penalties to the fullest extent. The IRS notes that it has won several recent Tax Court cases in this area and will continue to pursue litigation of the cases that are not otherwise resolved administratively. In addition, the IRS reports that it will consider criminal sanctions against participants and material advisors in appropriate cases.