

Charitable Conservation Easements

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RP Golf, LLC, lost its appeal and its claim of a \$16.4 million charitable tax deduction for its donation of a conservation easement on its two golf courses. On June 26, 2017, the Eighth Circuit affirmed the U.S. Tax Court's opinion, holding that not all of the detailed requirements for charitable conservation easements had been complied with in a timely manner. *RP Golf, LLC v. Commissioner*, ___ F.3d ___ (8th Cir. 2017), aff'g T.C. Memo. 2016-80.

The IRS and reviewing courts have been taking an increasingly detailed look at charitable conservation easements, and have seized upon any defect in the structure of the easement to deny the rather sizable deductions. The Internal Revenue Code, in §170(h), as amplified by Treasury Regulations §1.170A-14, set forth very precise requirements for the structure of conservation easements that taxpayers must meet, in order for said easements to qualify for a charitable deduction.

RP Golf, LLC, which owns two golf courses in Missouri, obtained mortgages to finance the original purchase of the property and thus had outstanding bank liens in 2003, when it donated the easements to a local charity. A qualified conservation easement must be donated exclusively for a conservation purpose and protected in perpetuity. The Treasury Regulations specify that any property subject to a mortgage is subject to additional requirements. The mortgagee must subordinate its rights in the property to the rights of the charitable organization, so that the charity can enforce the conservation purposes of the gift in perpetuity. RP Golf met the subordination requirement, but only shortly *after* it conveyed the property to the charity. It appears to have been an after-thought. The Court held that even though the subordination did occur subsequently and no harm was done by the late subordination, that did not satisfy the strict requirements of the Treasury Regulations. Thus the \$16.4 million charitable deduction was denied.

Given the very specific and numerous requirements for charitable conservation easements set forth in the Treasury Regulations, it is recommended that charitable donors obtain legal advice to ensure that all requirements are adequately and timely fulfilled. Please contact [Nancy Ortmeyer Kuhn](#), head of Jackson & Campbell's Tax Practice Group, with any questions on this topic.