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INSIGHT: Charitable Conservation Easements—IRS and Tax Court Act To Shut Them Down

By Nancy Ortmeyer Kuhn

Based upon a review of cases decided by the U.S. Tax Court since 2012, the Tax Court's record reveals that most of its decisions hand an outright victory to the IRS with no charitable deduction allowed for donations by taxpayers of charitable conservation easements.

The Internal Revenue Service designated syndicated conservation easements as listed tax shelters in Notice 2017-10. The IRS has also made conservation easements an audit priority. It is now apparent that the least little deviation by a taxpayer from the extensive statutory and regulatory requirements for conservation easements dooms the easement to fail completely as a charitable donation for the donor. Moreover, the donor is generally liable for substantial penalties for its environmental philanthropy.

An objective review of relevant cases reveals that, arguably, the primary objection may more accurately be the valuation of the easement. The amounts claimed by the syndicated partnerships and partners are frequently many times that of the investments made by the partners. However, the courts rarely analyze whether there are any conservation benefits to these easements. Instead, the primary focus is on the standard language used in the easement deeds, and the easiest way to disallow the charitable deductions. Appellate court decisions have been mixed, but taxpayers have been more successful at the appellate level.

By disallowing conservation easements in total, along with imposing significant penalties, the IRS and the Tax Court are not carrying out the legislative intent behind Congress' enactment of the legislation that supports conservation easements. While in the earlier years the valuation of the easement was frequently the issue, the IRS now almost always disallows 100% of the charitable deduction attributable to the conservation easement, which the Tax Court almost always upholds. (See case summaries in Appendix) Frequently, the reason for the disallowance is not the lack of a charitable conservation purpose or effect, but a very technical (and fixable) problem with document drafting.

Assuming the presence of a charitable purpose and effect, conservation easements should not be denied in full. Rather, the valuation of the charitable donation of the easement should be the basis for bringing syndicated easements into compliance. The alternate 20% and 40% penalties on valuation overstatements are an effective tool and may be applicable even if the conservation easement is allowed at a reduced value. Tax code Section 6662(h)(2) sets forth the applicable percentages differentiating when the 20% penalty will apply and when the 40% penalty applies. There is no requirement that the revised value be zero, just overstated. If a conservation easement is the result of a syndicated partnership and a promoter selling tax benefits, that arguably should not automatically cancel or disqualify the conservation project as one with no impact. The charitable purpose and the effect of the easements should be analyzed before coming to that conclusion. Improper tax deductions can be dealt with, as appropriate, without destroying the conservation effort. Frequently, the impact of the easement conserving green space and saving threatened plant and animal life is not even considered or mentioned by the IRS or Tax Court.

A charitable conservation easement is defined in Section 170(h) and was added to the Internal Revenue Code in 1980. Extensive Treasury Regulations interpreting Section 170(h) were added in 1986. Depending upon who you talk to, it is either a necessary tax incentive to preserve natural outdoor spaces, or a tax shelter abused by many for inflated charitable deductions. I be-

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lieve it is a little of both. However, the IRS's and Tax Court's current approach that any small deviation from the hyper-technical requirements set forth in the Treasury Regulations cause the conservation easement to completely fail as a charitable donation does not fulfill the Congressional intent of Section 170(h).

Congress enacted a specific carve-out for charitable conservation easements in part to preserve green space. The Senate's description of the new legislation states: ''The committee believes that the preservation of our country's natural resources and cultural heritage is important, and the committee recognizes *that conservation easements now play an important role in preservation efforts*.'' ''Reasons for Change'' S.Rep. 96-1007, *6744 (9-30-1980), P.L. 96-541 (emphasis added). The IRS and the Tax Court are impeding Congress's intent to preserve our country's natural resources and cultural heritage.

For a conservation easement to be deemed charitable, it must be donated to a Section 501(c)(3) charity or governmental entity and include perpetual use restrictions. The easement must be a recorded property interest that is donated to the charity. Several court decisions of note were released recently, which together merit a review of the status of the law.

Oakbrook Land Holdings

The Tax Court recently issued two opinions regarding a single conservation easement that was donated by a limited partnership to a charitable land conservancy. The IRS argued, in part, that the easement did not comply with the Treasury Regulations' requirement that the extinguishment clause in the easement document be proportional to the donee and donor. In this case, as in many, the extinguishment provision allows that any improvements on the property (in compliance with the easement) would benefit the donor more than the donee charity upon extinguishment of the easement.

The taxpayer partnership responded by arguing that the Treasury Regulation sub-section at issue, Treas. Reg. 1.170A-14(g)(6)(ii), is invalid. The regulation requires that improvements to the property benefit donor and donee proportionally based upon the fair market value of the easement as compared to the fair market value of the entire property at the time of the donation, regardless of which party funded any improvements. Thus, if an extinguishment of the easement results in a sale of the property, the donee charity retains funds that are proportional to the value of the easement compared to the total value of the property at the time of the donation. If the value of the easement is $3 million at the time of the donation, and the total value of the property is $4 million, the donee charity will keep three-fourths or 75% of the proceeds from the sale of the land if the extinguishment clause applies years later regardless of any improvements funded by either the donee or donor. The donee would not be able to recoup its expenditures.

Judge Mark Holmes, in *Oakbrook Land Holdings LLC v. Commissioner*, T.C.Memo. 2020-54 held that the easement did not comply with the regulatory requirement, but that the ultimate outcome in the case depended upon whether the Treasury Regulation at issue was valid. In a reviewed opinion issued on the same day: *Oakbrook Land Holdings LLC v. Commissioner*, 154 T.C. No. 10 (May 12, 2020), the court held that the Treasury Regulation at issue, Treas.Reg. 1.170A-14(g)(6), is valid under the standards set forth in the Administrative Procedures Act and Chevron *U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, with Judge Holmes responding in a heated dissent. One can only surmise that his original opinion held that although the taxpayer did not comply with a very limited provision of the Treasury Regulations, the regulation sub-section was invalid and thus the easement did qualify as a charitable conservation easement. Judge Holmes would then have undoubtedly analyzed the case as a valuation dispute, because the property was purchased by the taxpayer for $1,700,000 in 2007 and the easement was valued at $9,545,000 in 2008. However, that is not what happened. The en banc review by the Tax Court upheld the regulatory requirements in Treas.Reg. 1.170A-14(g)(6)(ii). Therefore, the easement did not qualify as charitable and the deduction was denied in full. Judge Holmes questioned whether any conservation easements could survive the intense scrutiny. As he stated in his dissent:

''HOLMES, J., dissenting: Our holding today will likely deny any charitable deduction to hundreds or thousands of taxpayers who donated the conservation easements that protect perhaps millions of acres. See *Oakbrook Land Holdings, LLC v. Comm'r*, T.C. Memo. 2020-54, at *7 n.2. [reason to believe thousands of charitable conservation easements contain the identical extinguishment clause in their easement documents] This is the second time we've taken an ax to entire forests of these deductions. *In Pine Mountain Preserve, LLLP v. Comm'r*, 151 T.C. 247 (2018), appeal filed (11th Cir. May 7,2019), we went ahead and held that reserving a limited right to build on conserved property—unless the site is described with exceptional precision—destroys any deduction for the donation, knowing that we were setting up a conflict with the only circuit court to rule on the issue. See id. at 272-73 (stating that we will not follow *BC Ranch II, L.P. v. Comm'r*, 867 F.3d 547 (5th Cir. 2017), *vacating and remanding Bosque Canyon Ranch, L.P. v. Comm'r*, T.C. Memo. 2015-130).''

There is no indication yet whether the taxpayer will appeal either, or both, of these Tax Court opinions but one can surmise that an appeal is likely. The taxpayer is located in Tennessee and so presumably an appeal will be filed in the U.S. Court of Appeals for the Sixth Circuit. The Sixth Circuit has two relevant decisions: *Hoffman Properties II, LP v. Commissioner*, in which the Tax Court's decision in favor of the IRS was affirmed. The taxpayer failed to satisfy the ''in perpetuity'' clause requirement for the donation of a façade conservation easement, although did not rely upon the Treasury Regulations. Perhaps better news for taxpayers is the Sixth Circuit's opinion in *Glass v. Commissioner*, in which the Tax Court's decision in favor of the taxpayers was affirmed. The taxpayers satisfied both courts that their conservation easement was granted in perpetuity, the habitats within the conservation easement were significant, and the easement protected a ''relatively natural'' habitat of plants and wildlife. It is worth noting that the amounts claimed as charitable deductions in *Glass* were in the thousands, rather than millions. However, *Glass* was decided by the Tax Court in 2005 before the proliferation of syndicated partnerships and before the trend discussed herein.

The Tax Court has already issued multiple decisions relying upon *Oakbrook Land Holdings, LLC v. Commissioner*, 154 T.C. No. 10 (May 12, 2020) and Treas.Reg.

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1.170A-14(g)(6). All of these cases deny the deductions for conservation easements in full, many decided on summary judgment motion, relying upon the easement deed's extinguishment clause. That is, the easement deed fails to provide the grantee charity with the proportional distributions of the entire proceeds to which it should be entitled in the unlikely event the easement is ever extinguished and sold under court order.

The recent Tax Court cases are the following, with additional cases undoubtedly to be released in the coming months.

- *Hewitt v. Commissioner*. Charitable deduction of $2.8 million claimed but it was not a syndicated easement. Charitable easement denied due to defective extinguishment/perpetuity clause but no penalties imposed.

- A deduction of $25.5 million was claimed for a syndicated conservation easement. The deduction was denied in full due to the defective extinguishment/perpetuity clause and the 40% penalty was sustained.

- *Lumpkin One Five Six v. Commissioner*. A deduction of $2.48 million was claimed for a conservation easement. The deduction was denied in full due to the defective extinguishment/perpetuity clause. The case was decided on a partial summary judgment motion.

- *Lumpkin HC, LLC v. Commissioner*. A deduction of $8.42 million was claimed for a syndicated conservation easement. The deduction was denied in full due to the defective extinguishment/perpetuity clause. The case was decided on a partial summary judgment motion.

- *Harris v. Commissioner*, Order issued June 30, 2020 by Judge David Gustafson. The IRS' Motion for Partial Summary Judgment was granted. This was not a syndicated easement. TP claimed a charitable deduction of $1.33 million which was disallowed in full due to defective extinguishment/perpetuity clause. Penalties were not determined due to questions of fact.

- *Habitat Green Investments, LLC et al. v. Commissioner*, Order issued June 30, 2020, by Judge Gustafson. IRS's motion for partial summary judgment was granted. Three syndicated conservation easement partnerships were consolidated for trial. The partnerships claimed deductions for the charitable conservation easements in the amounts of $19.1 million, $19.6 million, and $28.5 million, respectively. All deductions were disallowed due to the extinguishment/perpetuity clauses in the easement deeds. Penalties were not determined due to questions of fact.

Champions Retreat Golf Founders v. *Commissioner*

Another newly issued case is the Eleventh Circuit's opinion in *Champions Retreat Golf Founders, LLC v. Commissioner*. The Eleventh Circuit agrees with Judge Holmes' premise that at least some conservation easements are valid. The Court of Appeals reversed the Tax Court's opinion (T.C. Memo. 2018-146) in which the Tax Court upheld the IRS' position and disallowed the easement. The issue was whether there was a valid conservation purpose, rather than an issue regarding the extinguishment clause. The Eleventh Circuit agreed with the taxpayer that the conservation easement qualified as charitable but remanded the case back to the Tax Court for a review of the valuation of the easement.

Champions Retreat is a private property outside of Augusta, Georgia, which includes a private golf course and an undeveloped area of approximately 57 acres. An adjacent portion of the property that is developed with private homesites was not covered by the easement. The IRS and the Tax Court agreed that the property did not satisfy the Section 170(h) requirement that to be charitable, the easement must exclusively be for conservation purposes. On the other hand, the Eleventh Circuit held: ''The deduction was proper if the donation was made for ''the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,'' or was made for ''the preservation of open space . . . for the scenic enjoyment of the general public. I.R.C. *§ 170(h)(4)(A)(ii) & (iii)(I)*.'' The IRS and the Tax Court disallowed the entire charitable deduction, finding that no part of the easement satisfied the exclusivity requirement of Section 170(h).

The Eleventh Circuit analyzed the various components of the easement and found that at least a portion of the easement was exclusively for conservation purposes. Therefore, the Eleventh Circuit reversed the Tax Court and remanded the case back for a calculation of the correct valuation of the easement. The Court of Appeals also could not understand why the bird count analysis by the Tax Court was dependent upon actual sightings of birds by both expert witnesses. The Eleventh Circuit was mystified by the Tax Court's disregard of a bird that was heard but not seen and found the misclassification of birds to be clearly erroneous. The court held:

''Despite the abundant bird species, including many of conservation concern, the declining southern fox squirrels, and the rare denseflower knotweed, the Tax Court said Champions had not established the required conservation purpose. To reach this result, the court considered, or at least discussed in its opinion, only birds seen by both Champions experts—ignoring any bird seen by only one Champions expert, even if the bird was also seen by the Commissioner's expert. The court did this despite explicitly crediting the testimony of both Champions experts. The court offered no explanation for this approach, and we can conceive of none. ''

''The court also ignored a bird that was heard but not seen. The court did not explain how a bird could be heard if not present on or at least near the property. The Tax Court's implicit finding that the only birds on the property were those seen by both Champions experts is clearly erroneous. More importantly, the Tax Court's conclusion that Champions did not contribute this easement ''for the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem''—a conclusion based in part on the clearly erroneous finding of fact—is wrong as a matter of law.''

The Internal Revenue Code states that a taxpayer may satisfy the conservation purpose requirement if its contribution protects ''a relatively natural habitat of fish, wildlife, or plants, or a similar ecosystem.'' Section 170(h)(4)(A)(ii). However, the Treasury Regulations interpreting this tax code section added the word ''significant'' to the statutory language: The habitat must be a ''significant relatively natural habitat in which a fish, wildlife, or plant community, or similar ecosystem normally lives.'' Treas. Reg. 1.170A-14(d)(3)(i). The validity

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of this provision of the regulation, in which the word ''significant'' is added to the statutory language, has not been challenged, but clearly the Tax Court relied upon that language in its decision. The legislative history uses language of a ''significant natural habitat'', and the statutory language is a ''relatively natural habitat''. While this is a substantial change to the statutory meaning, it appears to be within legislative intent. '' S.Rep. 96-1007, *6745 (9-30-1980), P.L. 96-541. *See also*, *Glass v. Commissioner*, 124 T.C. 258 (2005), *aff'd* 471 F.3d 698 (6th Cir. 2006)Both the Tax Court and the Sixth Circuit found the conservation easement to be a significant relatively natural habitat, and thus held that the taxpayer's charitable deduction is sustained. However, since the IRS and Tax Court are ignoring the more general legislative intent behind conservation easements in general, it is curious that the addition of the word ''significant'' to the statutory requirements through regulatory fiat has been upheld without comment.

IR-2020-130: IRS' Settlement Option

The IRS recently issued IR-2020-130 (June 25, 2020) offering a settlement option for those taxpayers with syndicated charitable conservation easement cases pending in the Tax Court. The settlement requires all partners to agree to concede all deductions, pay 100% of the tax, interest, and penalties, and accept a 40% penalty for any partners who provided services in connection with the easement scheme, with 10% to 20% penalties for investment partners. One concession made by the IRS is that investment partners may deduct the costs of acquiring their partnership interests. This is a ''time-limited'' offer and taxpayers eligible will be notified by the IRS by mail. One unstated concession by taxpayers is that they forfeit their ability to appeal to the more forgiving Courts of Appeal. A settlement cannot be appealed, while the inevitable adverse Tax Court decision is most definitely appealable.

Due to the plethora of cases decided in reliance on *Oakbrook Land Holdings, LLC v. Commissioner*, 154 T.C. No. 10 (May 12, 2020), which is a new case not yet tested by an appellate court, it may be advisable for taxpayers with conservation easement issues to wait to take further actions until the landscape is more settled. Whether the various appellate courts to which these cases could be, and probably will be, appealed will uphold the validity of the Treasury Regulation has yet to be determined. If taxpayers settle their cases in reliance on *Oakbrook Land Holdings*, there may be regrets if any of the above cited cases relying on *Oakbrook Land Holdings* are reversed on appeal, depending upon the taxpayer's applicable Circuit. If these multiple cases are eventually decided on conservation purpose and valuation issues instead of an obscure Treasury Regulation, the outcome could be much different both for taxpayers and for the environment.

It is unknown whether conservation easements that are disallowed as charitable easements remain with the charity, or whether they are clawed back in some manner by the donor. It is possible that due to court opinions declaring easement clauses defective, the donors could declare the entire easement deed defective and seek to render said agreement null and void. If so, as Judge Holmes stated, many forests of trees will be lost and disappearing species will likely disappear, all because of a tax law that is not being enforced by the IRS and Tax Court in a manner consistent with legislative intent.

APPENDIX

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CHARITABLE CONSERVATION EASEMENTS

APPENDIX

Following is a brief review of the more recent cases decided in this area of the law. As evident from this list, it is a litigious area with many more cases still to be decided. These summaries are brief in nature, and not intended to be a complete synopsis of the case.

CASE SUMMARIES: CONSERVATION EASEMENTS

1. *Carpenter v. Comm'r*, T.C. Memo. 2012-1 granting respondent's partial summary judgment motion and T.C. Memo. 2013-172, denying petitioners' motion to reconsider. Charitable deduction was denied because the easement was not granted in perpetuity. The taxpayers' easements could be extinguished by mutual consent of the parties, and thus the court held the easements fail as a matter of law and were not in compliance with the extinguishment requirements under Treas.Reg. 1.170A-14(g). DENIED

2. *Esgar Corp. v. Comm'r*, T.C. Memo. 2012-35, *aff'd* 744 F.3d 648 (10th Cir. 2014) Easement was allowed as a charitable deduction but it was overvalued. The Court weighed the experts' opinions and allowed reasonable charitable deductions based upon the contested "best use" of the property (agricultural or mining). MIXED DECISION

3. *Butler v. Comm'r*, T.C. Memo. 2012-72. IRS held easement deed did not comply with regulatory requirements. Court disagreed. Easement was allowed as a charitable deduction to a married couple (not a syndicate) but court held it was overvalued. The court provided extensive valuation analysis using a before and after valuation methodology, with the following results:

	Easement Value Claimed by TP on tax returns	/Easement Value from IRS expert	Easement Value Allowed by Court
James Butler property	$4,684,000	0/$2,360,000	$2,458,300
Susan Butler property	$191,000	0/$104,000	$139,400
2003 Easement	$2,550,000	0/$1,480,000	$1,637,000
2004 Easement	$2,936,000	0/$1,740,000	$2,312,800

MIXED DECISION

4. *Mitchell v. Comm'r*, 138 T.C. 324 (2012), aff'd 775 F.3d 1243 (10th Cir. 2015) (see also T.C. Memo. 2013-204, denying petitioner's motion to reconsider). The courts held that the charitable easement did not satisfy statutory requirements. Perpetuity requirements and subordination of mortgage holder must be satisfied at the time of the gift. Correcting it two years later does not change the analysis. The charitable deduction was denied. DENIED

5. *Rothman v. Comm'r*, T.C. Memo. 2012-163, vacated in part on reconsideration, T.C.Memo. 2012-218. Taxpayers' conservation easement appraisal was not a qualified appraisal, decided on Summary Judgment motion. Whether the failure was due to reasonable cause and not willful neglect is a factual issue for trial. If reasonable cause, the charitable deduction is allowed under §170(f)(11)(A)(ii)(II). DENIED INITIALLY AND THEN SETTLED

6. *Wall v. Comm'r*, T.C. Memo. 2012-169. Deduction fails because the conservation purpose of the façade was not protected in perpetuity. The IRS had conceded that there were no penalties if the IRS was entitled to judgment as a matter of law. DENIED

7. *Averyt v. Comm'r*, T.C. Memo. 2012-198. The conservation easement deed met the statutory requirements that no goods or services were received in exchange for the contribution (no quid pro quo) and the taxpayer's motion for summary judgment on the issue of substantiation was granted. Other issues of fact were appropriate for trial, but the case settled prior to trial. MIXED

8. *Kaufman v. Comm'r*, 687 F.3d 21 (1st Cir. 2012), vacating and remanding in part 134 T.C. 182 (2010) Denial of Tax Court's grant of IRS' Motion for Summary Judgment that façade easement was invalid due to extinguishment clause, finding genuine issues of fact. On remand: T.C.Memo. 2014-12 denying taxpayers charitable deduction. Easement was valid, but value was zero. 784 F.3d 56 (1st Cir. 2015) affirming Tax Court regarding imposition of penalties. Zero value of easement was not appealed by the taxpayers. The 1st Circuit held in its first opinion: "Equally important... the IRS's reading of its regulation would appear to doom practically all donations of easements, which is surely contrary to the purpose of Congress. We normally defer to an agency's reasonable reading of its own regulations...but cannot find reasonable an impromptu reading that is not compelled and would defeat the purpose of the statute, as we think is the case here." *Kaufman*, 687 F.3d at 27. Although the court ultimately found the easement to be valid, the value of the easement was zero and the taxpayers were liable for gross valuation misstatement penalties. DENIED

9. *Trout Ranch v. Comm'r*, 493 Fed.Appx. 944 (10th Cir. 2012), *aff'g* T.C.Memo. 2010-283. Tax Court properly exercised discretion by incorporating post valuation data into the valuation

calculations. Taxpayer's valuation of $2.2 million for the conservation easement was reduced to $560,000, and thus the amount allowed as a charitable contribution. MIXED

10. *Foster v. Comm'r*, T.C. Summ. Op. 2012-90. The taxpayers did not meet their burden of establishing the value of the easement. The valuation method employed by the taxpayer's appraiser was not persuasive. DENIED

11. *Whitehouse Hotel Limited Partnership v. Comm'r*, 131 T.C. 112 (2008), *vacated by* 615 F.3d 321 (5th Cir. 2010), on remand 139 T.C. 304 (2012) *aff'd in part and vacated in part by* 755 F.3d 236 (5th Cir. 2014). Tax Court originally found that taxpayers had over-valued the façade easement, and thus the charitable deduction. TPs claimed a value of $7.495 million and Tax Court found value to be $1,792,301 and imposed penalties. 5th Circuit vacated the first Tax Court opinion and directed the Tax Court to apply different criteria for valuation. Tax Court (139 TC 321) again held that the façade easement was overvalued but revised its value to $1,857,716 and imposed a 40% gross overstatement penalty. Appellate court (755 F.3d 236) affirmed in part and vacated in part the second Tax Court opinion. The appellate court affirmed the revised valuation and the Tax Court's methodology, but vacated the 40% penalty, holding that the taxpayer acted in good faith. MIXED

12. *Irby v. Comm'r*, 139 T.C. 371 (2012). Tax Court found in favor of the taxpayers. The conservation easement was protected in perpetuity, the extinguishment clause complied with the Treasury Regulations, and the conveyance of ranchland for charitable conservation purposes was supported by a qualified appraisal. GRANTED

13. *Minnick v. Comm'r*, T.C. Memo. 2012-345, aff'd 796 F.3d 1156 (9th Cir. 2015). Conservation easement was not deductible as a charitable donation because the bank's mortgage was not subordinated at the time of the grant. Treas.Reg. 1.170A-14(g)(2). DENIED

14. *Belk v. Comm'r*, 140 T.C. 1 (2013), aff'd 774 F.3d 221 (4th Cir. 2014). The conservation easement on a golf course was not granted in perpetuity and so the charitable deduction of $10.5 million was disallowed. The easement permits the taxpayers to change what property is subject to the conservation easement. Therefore, the use restriction was not granted in perpetuity. DENIED

15. *Pollard v. Comm'r*, T.C. Memo. 2013-38. Taxpayer was not entitled to a charitable contribution deduction for conservation easement because the taxpayer granted the easement in exchange for the grant of a subdivision exemption. DENIED

16. *Mountanos v. Comm'r*, T.C. Memo. 2013-138, affd. Fed. Appx. 592 (9th Cir. 2016). The taxpayer claimed $4.69 million charitable deduction for conservation easement on ranchland donated to charity in 2005. The IRS examined years 2006-2009 and disallowed the carryovers

of the charitable deductions from the 2005 donation. The IRS did not challenge whether the conservation easement was valid, but just challenged the valuation and the carryovers. The Court upheld the IRS' position and held that taxpayer was not entitled to carry over deductions for an easement, because taxpayer failed to show that the easement had any value. Taxpayer claimed a value that was 400% or more of the correct amount. 40% penalty upheld. MIXED W/PENALTY

17. *Graev v. Comm'r*, 140 T.C. 377 (2013). Tax Court ruled that façade conservation easement was a nondeductible conditional gift because side agreement between the donors and donee allowed the easement to be extinguished if deduction is disallowed. DENIED

18. *Gorra v. Comm'r*, T.C. Memo. 2013-254. Façade easement deduction was allowed as qualified real property interest donated in perpetuity exclusively for conservation purposes but was over-valued. Court valuation of easement was $104,000 not $605,000. 40% Gross valuation penalty applied. MIXED W/PENALTY

19. *61 York Acquisition, LLC v. Comm'r*, T.C. Memo. 2013-266. Façade easement charitable deduction disallowed, because the donor did not own the entire exterior of the building. DENIED

20. *Scheidelman v. Comm'r*, 755 F.3d 148 (2d Cir. 2014) affirmed T.C. Memo. 2013-18 which held that taxpayer's donation of a charitable façade easement to a qualified charity did not change the value of her house and so the charitable deduction was disallowed. Prior history of the case: T.C.Memo. 2010-151 disallowed the deduction because there was no qualified appraisal but that opinion was vacated and remanded by 682 F.3d 189 (2d Cir. 2013) with the 2d Circuit holding that the taxpayer substantiated her charitable easement deduction with a qualified appraisal, as defined in the Treasury regulations. However, ultimately it was held that the IRS met its burden of proving that the easement had no value for charitable contribution purposes because the easement had no negative impact on the value of the property. DENIED

21. *Wachter v. Comm'r*, 142 T.C. 140 (2014) (IRS was granted summary judgment on easement issue)(Taxpayer's Motion for Reconsideration denied by June 16, 2014 motion).
Charitable easement donation expired after 99 years by operation of North Dakota state law, and so the easement was not granted in perpetuity and is not deductible under section 170(h). State statute was subject of Supreme Court decision (North Dakota v. United States, 460 U.S. 300 (1983) that found the statute hostile to Federal interests on easements granted to the United States prior to enactment, but the Supreme Court did not find it inapplicable to subsequent easements. DENIED

22. *Palmer Ranch Holdings Ltd. v. Comm'r*, T.C. Memo. 2014-79, rev'd in part 812 F.3d 982 (11th Cir. 2016); on remand TC Memo. 2016-190. IRS and first Tax Court opinion held that taxpayer overstated the fair market value of the conservation easement and so value of charitable contribution was substantially lowered by both the Court and IRS. ($23,942,500 claimed with $16,965,000 disallowed by the IRS.) The 11th Circuit reversed the Tax Court on that issue and remanded the case. The Tax Court's second opinion found in favor of the taxpayer and held that the taxpayer's expert's valuation should be used, and thus the charitable conservation easement deductions was mostly upheld. The property would otherwise have been developed for single-family housing, so the best-use supported the higher valuation. DENIED AT TRIAL COURT/GRANTED BY APPELLATE COURT

23. *Chandler v. Comm'r*, 142 T.C. 279 (2014). Taxpayers failed to prove that their façade conservation easements had any value, and thus the charitable deductions were denied. DENIED

24. *Seventeen Seventy Sherman St. LLC v. Comm'r*, T.C. Memo. 2014-124. The Tax Court held that the charitable deduction was disallowed due to taxpayers' failure to disclose a quid pro quo. They received favorable zoning in exchange for the easement. The negligence penalty was imposed but not the gross valuation misstatement penalties because the IRS' appraisers were not found by the Tax Court to be credible on the value of the easement. DENIED

25. *Schmidt v. Comm'r*, T.C. Memo. 2014-159. The IRS did not challenge the charitable easement per se, rather just challenged the taxpayer's valuation of the charitable donation. The Tax Court did not find either expert report to be complete and convincing. Instead, the Tax Court applied its own reasoning based upon the value of the land before the easement restriction was placed on the property, and the value after the easement. The subject property was purchased in 2000 for $525,000 for development, but ultimately the conservation easement was instead donated. The Tax Court found the value of the donation to be $1,152,445, due to the loss of development rights and thus a relatively low value assigned to the property post-donation. MIXED

26. *Zarlengo v. Comm'r*, T.C. Memo. 2014-161. The IRS argued that the easement was not a qualified real property interest nor was it made exclusively for conservation purposes. The court disagreed and held that the easement did have value but held that taxpayers' valuation was excessive. The court provided its own valuation based upon a combination of the dueling experts' opinions. MIXED

27. *Reisner v. Comm'r*, T.C. Memo. 2014-230. The parties stipulated that the façade easement donated to a charity had a value of zero, and also stipulated that taxpayers had reasonable cause for claiming the charitable easement and thus they were not liable for the gross valuation

overstatement penalty for first two years at issue. However, the Pension Protection Act amended §6664(c) and removed the reasonable cause exception, and so taxpayers were liable for the penalty as to the 2006 year because they claimed a carryover charitable deduction based upon the valuation overstatement in a return filed after the effective date of the PPP. DENIED

28. *Balsam Mountain, LLC v. Comm'r*, T.C. Memo. 2015-43. The charitable deduction for the easement was denied. The court agreed with the IRS that a shift in easement boundaries up to 5% during a 5-year period defeated the perpetuity requirement. Thus, the court held that the easement was not a "qualified real property interest". There must be an "identifiable, specific piece of real property" under section 170(h)(2)(C). DENIED

29. *Costello v. Comm'r*, T.C. Memo. 2015-87. The Court upheld the IRS' disallowance of the charitable contribution for the conservation easement. The taxpayer had failed to disclose that taxpayer was required to convey the easement in order to sell development rights. Also, the taxpayer failed to obtain a qualified appraisal of a conservation easement along with other failures of substantiation. DENIED

30. *Bosque Canyon Ranch, L.P. v. Comm'r*, T.C. Memo. 2015-130, vacated and remanded 867 F3d 547 (5th Cir. 2017). Two related partnerships sold property on a trapezoid piece of ranchland to partners for purposes of development and conservation. The property consisted of two conservation areas of 1,750 acres and 1,732 acres respectively. In addition, the partnership sold 47 5-acre homesites, totaling 235 acres, most contiguous and all located at the top of the trapezoid. The conservation easement on the property was found by the court to permanently protect the habitat of the gold-cheeked warbler, a listed endangered species, among other birds and plant species. However, the IRS disallowed all easements as not compliant with the perpetual requirement, because purchasers of the partnership units were permitted by deed to slightly modify the easement boundaries by mutual agreement with the charity donee land trust. The Tax Court agreed with the IRS and disallowed the charitable deductions. The 5th Circuit disagreed and reversed and remanded the case for valuation purposes. The court stated the modifications would be de minimis at most: "*de minimis non curat lex" ("*the law does not concern itself with trifles.") The appellate court however did task the Tax Court with determining the correct valuation of the easements and determining whether the gross valuation overstatement penalty applied to the partners. DENIED BY TAX COURT/REVERSED AND REMANDED BY APPELLATE COURT FOR VALUATION ANALYSIS

31. *Legg v. Comm'r*, 145 T.C. 344 (2015). The parties agreed and stipulated that the legal requirements for a charitable contribution of a conservation easement were met and stipulated that the value of the easement was $80,000. (Initially the taxpayer valued the donation at $1,418,500.) The issue was whether the 40% gross valuation misstatement penalty applied

even though examination report calculated the penalty at 20%. The court held that the 40% penalty was proper. DENIED

32. *Atkinson v. Comm'r*, T.C. Memo. 2015-236. The taxpayers donated conservation easements on an operating golf course. The IRS challenged the conservation purpose and valuation. The court held that the easements did not protect a relatively natural habitat, and that TPs "failed to establish that the easement area exists for the scenic enjoyment of the general public or yields a significant public benefit". The court did find that the taxpayers had reasonable cause and were not liable for penalties. (Appeal filed with the 4th Circuit, but the case was settled without appellate opinion). DENIED

33. *Gemperle v. Comm'r*, T. C. Memo. 2016-1. The taxpayers contributed a façade easement on a building that was a certified historic structure in a registered historic district, but they failed to attach a qualified appraisal to the return as required by section 170(h)(4)(B)(iii)(I). On that basis alone, the Tax Court disallowed the deduction. The taxpayers "did not exercise reasonable diligence" and were also found liable for the 40% substantial valuation misstatement penalty. The Tax Court found that the maximum value of the easement was $35,000 and the TPs' valuation, $108,000, was more than $200% of the correct value. DENIED

34. *French v. Comm'r*, T.C. Memo. 2016-53. The Tax Court agreed with the IRS that the taxpayers had not complied with the strict substantiation requirements of IRC §170(f)(8)(B), and so the charitable deductions for donation of a conservation easement on Montana ranchland was denied in full. DENIED

35. *Carroll v. Comm'r*, 146 T.C. 196 (2016) Motion for reconsideration denied, by Order, July 29, 2016. The IRS and Tax Court disallowed the charitable conservation donation deduction in full. The easement deed is inconsistent with section 1.170A-14(g)(6)(ii) because it bases the donee's right to proceeds (on extinguishment of the easement) on the taxpayers' deduction amount rather than on the proportionate share as the regulations require. Therefore, the perpetuity requirements were not met and the charitable deduction denied in full. An appeal was filed with the 4th Circuit on December 15, 2016. The case was apparently settled with a voluntary dismissal of the appeal on October 6, 2017. DENIED

36. *R.P. Golf, LLC v. Comm'r*, T.C. Memo. 2016-80, aff'd 860 F.3d 1096 (8th Cir. 2017). No charitable contribution for conservation easement on golf course allowed. IRS claimed no charitable purpose. Courts held that unsubordinated mortgages on date of grant and for 3 ½ months thereafter violated the requirement that the property be protected in perpetuity, even though deed was corrected upon learning of oversight 3 ½ months after transfer. No charitable deduction allowed. DENIED

37. *PBBM-Rose Hill Ltd v. Comm'r*, 900 F.3d 193 (5th Cir. 2018) *affg*. US Tax Court (bench opinion Sept. 9, 2016). TP partnership owned a golf course in a gated community. After filing a bankruptcy petition, TP contributed a conservation easement to a land trust, burdening 234 acres of the golf course and claiming a $15 million charitable contribution deduction for the easement. Fifth Circuit affirmed the Tax Court's decision disallowing the charitable deduction. Although 5th Circuit found that the outdoor recreation conservation purpose was met, both courts found that the perpetuity/extinguishment clauses were not met. Moreover, the court held that the easement was worth $100,000 and the partnership valued it at $15 million, thus the 40% gross valuation misstatement penalty applied. DENIED

38*. 15 West 17th Street LLC v. Comm'r*, 147 T.C. 557 (2016). TP claimed a $64.5 M charitable contribution deduction in 2007. Taxpayer partnership purchased property in 2005 for $10 million. In 2008 the partnership valued the property at $69.2 million prior to donation of a conservation easement, and $4.7 million after the donation. Although the partnership received a Contemporaneous Written Acknowledgement ("CWA"), it did not include language that there was no quid pro quo. Although the CWA was amended later to include the language, the Tax Court held that was insufficient, and disallowed the charitable deductions on summary judgment motion. DENIED

39. *McGrady and Antoniacci v. Comm'r*, T.C. Memo. 2016-233. Individuals contributed a conservation easement on homestead property and transferred in fee simple an adjoining 20 acre parcel of undeveloped land to a §501(c)(3) charity. The IRS disallowed the charitable deductions in full, alleging no charitable purpose and a quid pro quo, plus imposed the 40% penalty. The Tax Court found donative intent but modified the valuation of the properties. The taxpayers valued the easement at $2.35 million. The Tax Court valued the easement at $1.49 million. The taxpayers valued the donated fee simple interest in 20 acres at $2.35 million. The Tax Court valued the donated property at $2.19 million. The Tax Court found in favor of the taxpayers allowing the majority of the charitable deduction. Accordingly, the Tax Court held that the taxpayers were not liable for penalties. MIXED, NO PENALTY

40. *Ten Twenty-Six Investors v. Comm'r*, T.C. Memo. 2017-115. Partnership granted a façade easement on a warehouse to the National Architectural Trust. The deed was executed by the parties in December 2004, but not recorded until December 2006. IRS argued that under NY law, the easement had no legal effect until recorded and, citing section 1.170A-14(g)(1), was therefore not deductible in 2004. Court agreed and held that there was risk that subsequent purchaser could record its purchase prior to recordation of easement, and thus perpetuity rule was not satisfied. DENIED

41. *310 Retail, LLC v. Comm'r*, T.C. Memo. 2017-164. The Tax Court held that the Contemporaneous Written Acknowledgment ("CWA") in the Deed of Easement was properly

recorded and so the substantiation requirement was satisfied. Therefore, the charitable deduction was allowed on summary judgment motion. (Followed RP Golf v. Comm'r, T.C.Memo. 2016-80, aff'd 860 F.3d 1096 (8th Cir. 2017) and Averyt v. Comm'r, T.C. Memo. 2012-198.) Valuation of the easement (TP alleged a value of $26.7 million and IRS countered at $1.6 million) was not decided by the court as it is a question of fact. GRANTED W/O VALUATION ISSUE DECIDED (CASE STILL PENDING IN TAX COURT)

42. *Big River Development v. Comm'r*, T.C. Memo 2017-166. The Tax Court again decided on summary judgment motion that a deed of easement constitutes a valid CWA where it was properly executed by the donee, provided a good faith estimate of the value of services rendered, and stated that it represented the entire agreement of the parties. The charitable deduction for the conservation easement was allowed, although valuation was not addressed in the opinion. (The taxpayer claimed a value of $7.14 million, the IRS zero.) The court followed *310 Retail, supra*, and cases cited therein. MSJ GRANTED W/O VALUATION ISSUE DECIDED/CASE SETTLED WITH STIPULATED DECISION ENTERED ON May 4, 2018: $7,140,000 CLAIMED AS DEDUCTION WITH $2,500,000 ALLOWED AND NO PENALTIES IMPOSED.)

43. *Palmolive Building Investors, LLC v. Comm'r*, 149 T.C. 380 (2017) Partnership claimed $33.41 million charitable contribution deduction for donation of façade easement. The IRS disallowed the contribution and imposed 40% and 20% penalties. On cross-motions for summary judgment, the Tax Court agreed with the IRS that the easement did not satisfy the perpetuity requirement in §170(h)(5)(A). Two mortgages on the property were subordinated, except in the event the property was extinguished through a judicial proceeding. In that situation, the mortgagees had priority over the donee. The Deed did not comply with sections 1.170A-14(g)(6)(ii) or 1.170A-14(g)(2). The Tax Court did not follow the First Circuit Court of Appeals decision in *Kaufman v. Shulman* because the Palmolive case is appealable to the Seventh Circuit, not the First Circuit. DENIED

44. *Salt Point Timber, LLC v. Comm'r*, T.C. Memo. 2017-245. The Court disallowed the partnership's charitable deduction for its donation of a conservation easement. The easement deed included a clause which permitted the holder of a replacement easement to be an entity other than a qualified organization. Although taxpayer argued that the circumstances leading to the need for a replacement easement holder were negligible, the Tax Court did not agree and disallowed the $2.13 million deduction. DENIED

45. *Wendell Falls Development, LLC v. Comm'r*, T.C. Memo. 2018-45. The developer of a "Planned Unit Development" ("PUD") simultaneously donated a conservation easement on a portion of the development property restricting use of 125 acres to development as a park, and selling the 125 acres to the city for a below-market price of $3 million. The valuation of the property was allegedly $4.8 million. The charitable deduction of $1.8 million for the donation of

a conservation easement was disallowed by the IRS and Tax Court. The donor received a substantial benefit (quid pro quo) in that its remaining property would increase in value due to the easement and restricted use of the land for development as a park. The IRS and Tax Court also agreed that the easement had no value. DENIED

46. *Harbor Lofts Associates v. Comm'r*, 151 T.C. No. 3 (2018). A long-term lessee of property cannot contribute a façade conservation easement. Only the owner of real property or holder of a fee interest is able to grant a perpetual conservation façade easement. The $4.45 million charitable deduction for donation of a façade easement on two buildings was not allowed. DENIED

47. *Champions Retreat Golf Founders, LLC. v. Comm'r,* T.C. Memo. 2018-146; vacated and remanded, 959 F.3d 1033 (11th Cir. 2020). The Tax Court affirmed the IRS' position that the 350-acre easement on a golf course did not have the requisite purpose of preserving habitat for "species of conservation concern" and did not offer open space for scenic enjoyment for the general public. The charitable deduction for the easement contribution was not allowed by the Tax Court because the contribution did not meet the requirement that it be "exclusively for conservation purposes" within the meaning of section 170(h)(1)(C) and (h)(4)(A)(ii) and (iii). However, the 11th Circuit disagreed, and vacated the Tax Court's opinion, remanding it for further consideration in line with the 11th Circuit's opinion. (See discussion *supra*) DENIED BY TRIAL COURT/REVERSED BY APPELLATE COURT (REMAND STILL PENDING)

48. *Belair Woods, LLC v. Comm'r*, T.C. Memo. 2018-159; 154 T.C. No. 1 (Jan. 6, 2020). Taxpayer claimed a $4.78 million deduction for the contribution of a conservation easement. The taxpayer did not attach a fully completed appraisal summary and did not disclose its "cost or adjusted basis" and so did not satisfy the substantiation requirement under Treas. Reg. 1.170A-13(c). The deduction was disallowed by the Tax Court in T.C. Memo. 2018-154. The subsequent opinion dealt with penalties. The Tax Court upheld three of the four penalties imposed by the IRS. DENIED

49. *Pine Mountain Preserve v. Comm'r*, 151 T.C. 247 (2018) (appeal filed 11th Cir. May 7, 2019) and T.C. Memo. 2018-214. The taxpayer contributed three conservation easements on three separate parcels of land in three consecutive years to a qualified charity. The Tax Court held in 151 T.C. 247 (2018) that reserving a limited right to build on the property subject to a conservation easement with "moveable homesites" unless the site is described with exceptional precision, destroys the taxpayer's claim of a charitable deduction. If the homesite is moveable, there is no restriction granted in perpetuity and therefore no "qualified real property interest." The deductions in the amounts of $16,550,000 and $12,726,000 for two of the years at issue were disallowed. The deduction for the third year at issue, 2007, was allowed. The issue for the 2007 easement was whether a clause in the agreement between the donor and the donee charity that allowed amendments only if consistent with conservation

purposes destroyed the perpetuity requirement. The Tax Court said no and allowed the deduction for taxable year 2007. The Tax Court chose not to follow BC Ranch II, L.P. v. Comm'r, 867 F.3d 547 (5th Cir. 2017), vacating and remanding Bosque Canyon Ranch L.P. v. Comm'r, T.C. Memo. 2015-130, with regard to the moveable homesites provision, because this case is appealable to the 11th Circuit. The subsequent opinion in T.C. Memo. 2018-214 analyzed the valuation of the properties that were donated to determine the amount of the charitable contribution for 2007. The Taxpayer claimed a donation of $4,100,000. Subsequently, the taxpayer's expert valued the conservation easement at $9,110,000 and the IRS' expert valued it at $449,000. The Tax Court allowed each of the expert's valuations at 50% and ultimately allowed a charitable deduction for 2007 in the amount of $4,779,500. The Court gave equal weight to the donor's appraisal and the IRS's appraisal. MIXED

50. *Coal Property Holdings, LLC v. Comm'r*, 153 T.C. 126 (2019). The Tax Court disallowed the charitable deduction of $155.5 million because the conservation purpose was not protected in perpetuity. The extinguishment clause, i.e., if the easement is extinguished by judicial order, reduced the donee's proceeds in the event there were subsequent improvements made by the donor, and so it did not comply with section 1.170A-14(g)(6)(ii). The savings clause was held to not cure the defect. The charitable deduction was disallowed in full. DENIED

51. *U.S. v. Zak*, 426 F.Supp.3d 1365 (N.D. GA 2019). The District Court upheld the civil fraud and related civil counts against Nancy Zak and Claud Clark. Ms. Zak was a conservation manager, consultant and project manager who assisted in the planning and execution of conservation easements, and Mr. Clark was an appraiser. They were involved in 96 conservation easement syndications involving real property in Alabama, Georgia, Indiana, Kentucky, North Carolina, South Carolina, Tennessee, and Texas. The Court dismissed the second count against Zak and no counts against Clark. The five counts were (1) section 6700, abusive tax shelters; (2) section 6695A(a), penalty on appraisers; (3) section 6694, penalty on tax return preparers for understating tax liability; (4) section 7402, injunctive order preventing Zak and Clark from participation in future conservation easement syndications; and (5) section 7402, disgorgement. The Court dismissed the second count against Zak because section 6695A applies only to appraisers and not to those who assist appraisers. CIVIL FRAUD FOR PROMOTER

52. *TOT Property Holdings, LLC v. Comm'r*, Docket # 5600-17 (Bench Opinion issued December 13, 2019)(Appeal filed March 12, 2020 to the 11th Circuit Court of Appeals.) A 2017 contribution of an easement by an LLC was disallowed by the IRS. TOT claimed a charitable contribution deduction of $6.9 million on its return for donation of an easement on 637 acres of property in rural Tennessee. The Court held that the judicial extinguishment clause violated perpetuity because of the language regarding the allocation of proceeds upon the unlikely event of a judicial extinguishment. The formula used in the agreement was identical to the formula used in *Coal Property Holdings v. Comm'r,* 153 T.C. 126 (2019) (see discussion *supra*). The condition subsequent savings clause did not fix the problem, and the deduction was denied

and penalties imposed based upon the court's determination that the fair market value of the easement was $496,000. DENIED/APPEAL PENDING

53. *Hoffman Properties II, LP v. Comm'r*, 956 F.3d 832 (6th Cir. 2020). Partnership donated façade easement and air rights to American Association of Historic Preservation and claimed a $15 million charitable deduction. IRS' Motions for Summary Judgment was granted by the Tax Court and affirmed by the 6th Circuit Court of Appeals. The unrecorded easement allowed the donor partnership to make changes to the property if the donee AAHP failed to object within 45 days. This provision in the easement violated the perpetuity requirement under §170(h)(5)(A). The 6th Circuit also upheld the 40% gross valuation misstatement penalty. DENIED

53. *Carter et al. v. Comm'r*, T.C. Memo. 2020-21 (February 3, 2020)(appeal to 11th Circuit Court of Appeals, June 16, 2020). TP conveyed to North American Land Trust (NALT) a conservation easement on 500 acres of a 5,245-acre tract of land.TP retained the right to build a single-family dwelling on each of 11 building areas the locations of which were to be determined, subject to NALT's approval. The Tax Court sustained the IRS' disallowance of the charitable deductions for the donations of the conservation easements. The Tax Court denied the claimed charitable deductions because the 11 building areas had not been selected as of the date of the contribution. This violated the perpetuity requirement of section 170(h)(2)(C). The court followed the reasoning of *Pine Mountain v. Comm'r,* 151 T.C. 247 (2018)(Appeal pending: filed June 5, 2019) Some penalties were overturned by the Court due to the Revenue Agent's failure to properly obtain his supervisor's approval in a timely manner. DENIED/APPEAL PENDING

54. *Railroad Holdings LLC v. Comm'r*, T.C. Memo. 2020-22 (February 5, 2020). Railroad Holdings claimed a charitable deduction of $16 million for the donation of a conservation easement to a qualified charitable organization. The Court granted the IRS' motion for summary judgment that Railroad Holdings was not entitled to the deduction because the easement failed to satisfy the requirement that the conservation purpose of the contribution be protected in perpetuity. Section 170(h)(5)(A). The easement deed determined a proportionate value to both donee and donor in the event of a future judicial extinguishment. The statute requires that the donee charity be given the benefit of all of the increase in the fair market value in the subject property/easement, assuming the property has appreciated in value on the date of a hypothetical (and unlikely) judicial extinguishment. Thus, the perpetuity requirement was not met. DENIED

55. *Rock Creek Property Holdings, LLC v. Comm'r*, TL-5599-17 (Tax Court Order dated February 10, 2020). The Tax Court found that the extinguishment clause in this case was similar to the one in *Railroad Holdings LLC v. Comm'r*, *supra,* and denied the charitable contribution

deduction. The Tax Court stated "Exactly like the deed in Railroad Holdings, the deed at issue here establishes only a floor for the amount of proceeds--one that is not required to rise with the value of the property. Fixing a minimum amount that does not provide the donee with the proportionate share of potential appreciation to which the donee is entitled does not satisfy the requirements of section 1.170A-14(g)(6)(ii)." DENIED

56. *Oakhill Woods, LLC v. Comm'r*, T.C. Memo. 2020-24 (February 13, 2020). The Tax Court granted in part IRS's motion for summary judgment, finding that TP failed to attach a fully completed Form 8283 appraisal summary to its return. The IRS had disallowed the TP's charitable deduction of $7.95 million for the donation of a conservation easement to a qualified charity. The Tax Court found, however, that disputes of material fact exist as to whether TP had reasonable cause for its failure. TP stated that it relied upon the charitable donee and a CPA. The case is still pending with the Tax Court. DENIED/REMANDED FOR REASONABLE CAUSE ISSUE (PENDING)

57. *Oakbrook v. Comm'r*, T.C.Memo. 2020-54 and *Oakbrook Land Holdings, LLC v. Comm'r*, 154 T.C. No. 10 (May 12, 2020). The Tax Court held that the charitable conservation easement was not in compliance with Treas.Reg. 170A-14(g)(6) in T.C.Memo. 2020-54 and so disallowed unless the Treasury Regulation was decided to be invalid. The Tax Court, en banc, decided that the Treasury Regulation is valid, and thus the conservation easement deduction was denied in full. (See discussion *supra)* DENIED.

58. *Johnson v. Comm'r,* T.C.Memo. 2020-79 (June 8, 2020). The IRS challenged the charitable conservation easement only on the issue of valuation. The language in the easement deed was not at issue. The taxpayer was an individual and donated 116.14 acres of ranchland in Colorado to a charitable entity to create a private wildlife reserve. The taxpayer claimed $610,000 as a charitable deduction. After extensive analysis of the experts, the Tax Court allowed a charitable deduction of $372,919 for the conservation easement. The IRS stipulated to no penalties. MIXED

59. Hewitt v. Comm'r, T.C.Memo. 2020-89 (June 17, 2020) Charitable deduction of $2.8 million claimed but it was not a syndicated easement. Charitable easement was denied due to defective extinguishment/perpetuity clause in reliance on *Oakbrook Land Holdings, supra,* but no penalties imposed.

60. Plateau Holdings, LLC et al. v. Comm'r, T.C.Memo. 2020-93 (June 23, 2020). A deduction of $25.5 million was claimed for a syndicated conservation easement. The deduction was denied in full due to the defective extinguishment/perpetuity clause in reliance on *Oakbrook Land Holdings, supra,* and the 40% penalty was sustained.

61. *Lumpkin One Five Six v. Comm'r*, T.C.Memo. 2020-94 (June 23, 2020). A deduction of $2,483,000 was claimed for a conservation easement. The deduction was denied in full due to the defective extinguishment/perpetuity clause in reliance on *Oakbrook Land Holdings, supra*. The case was decided on a partial summary judgment motion.

62. *Lumpkins HC, LLC v. Comm'r*, T.C.Memo. 2020-95 (June 23, 2020) A deduction of $8,242,000 was claimed for a syndicated conservation easement. The deduction was denied in full due to the defective extinguishment/perpetuity clause in reliance on *Oakbrook Land Holdings, supra*. The case was decided on a partial summary judgment motion.

63. *Harris v. Comm'r*, Order issued June 30, 2020 by J. Gustafson. The IRS' Motion for Partial Summary Judgment was granted. This was not a syndicated easement. TP claimed a charitable deduction of $1,327,000 which was disallowed in full due to defective extinguishment/perpetuity clause in reliance on *Oakbrook Land Holdings, supra*. Penalties were not determined due to questions of fact.

64. *Habitat Green Investments, LLC et al. v. Comm'r*, Order issued June 30, 2020 by J Gustafson. IRS' Motion for Partial Summary Judgment was granted. Three syndicated conservation easement partnerships were consolidated for trial. The partnerships claimed deductions for the charitable conservation easements in the amounts of $19,100,000, $19,637,000, and $28,500,000, respectively. All deductions were disallowed due to the extinguishment/perpetuity clauses in the easement deeds in reliance on *Oakbrook Land Holdings, supra*. Penalties were not determined due to questions of fact.