Forbes

Robert W. Wood
THE TAX LAWYER

Feb. 22 2012 — 10:19 pm

IRS Still Fighting Conservation Tax Breaks

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Although the so-called tax "extender" for enhanced conservation easement tax deductions expired December 31, 2011, many are still being claimed—and many are being audited. See Rich "Conservation Easement" Tax Break Ends. If you didn't act before the end of 2011, it's too late (unless the enhanced rules are re-enacted). Even if this increased charitable deduction isn't revived, it seems likely there will be tax litigation for years over these deals. See Claim Your Facade Easement Now (Just Not With This Promoter).

That's a shame, since there's nothing inherently wrong with them. They often do good works and give tax benefits too. Unlike many other easements, a conservation easement is not a right of passage over land.

A conservation easement is a legal right to enforce the preservation of the land. Because putting a conservation easement on property restricts its future development, it has qualified for a tax deduction. Easements can include natural habitat as well as the historical façade of a building to preserve its exterior.

There are many technical requirements for tax-exempt recipient organizations and the type of property. Furthermore, there is a list of

permitted purposes, including preserving land for outdoor recreation or the education of the general public, protecting natural habitat, or preserving open space for the scenic enjoyment of the public.

One key is valuation. While fancy appraisals can defeat the IRS, some taxpayers get piggish and end up in tax fisticuffs. Another key is good documentation. Some taxpayers are too aggressive, as where the donor is keeping its fingers in the deal so as not to ***irrevocably*** give something to charity.

That's what the Tax Court found in *Carpenter et al. v. Commissioner*. Several people bought land in Colorado and then gave conservation easements to a non-profit involved in conserving natural resources. The donors took tax deductions claiming the deeds to charity created a charitable trust.

But under Colorado law, conservation easements can be terminated by mutual consent. This wasn't permanent, so the court ruled the deeds created restricted gifts with limits on the rights of the charity. In effect, there was no requirement to ***keep using*** the property for charitable purposes.

Plus, the donors retained "all uses of the property that are not expressly prohibited herein and are not inconsistent with the purpose of the conservation easement." The Tax Court ruled there was no deduction.

For more, see:

Mortgage Kills Facade Easement Tax Deduction

Secure a Conservation Easement Now!

Courts to IRS: Ease up on Conservation Easement Valuations

Conservation Easements Conserve Taxes and More

Conservation Easements, the IRS & Charity

Conservation Easements, Valuation, and Substantiation

Rich "Conservation Easement" Tax Break Ends

Conservation Easements: Quid Pro Quo Revisited

Robert W. Wood practices law with Wood LLP, in San Francisco. The author of more than 30 books, including Taxation of Damage Awards & Settlement Payments (4th Ed. 2009 with 2012 Supplement, Tax Institute), he can be reached at Wood@WoodLLP.com. *This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*