

# Settlement Opportunity for Conservation Easement Disputes

## Cross References

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The Internal Revenue Service is announcing the terms of a time-limited settlement opportunity for eligible taxpayers involved in conservation easement or historic preservation easement disputes with the IRS.

Since 2020, the IRS has offered settlement initiatives in these cases that were significantly more favorable than the outcomes taxpayers have generally achieved in the Tax Court. Under each of those prior initiatives, taxpayers were required to pay penalties on their underpayments and were not permitted to claim a charitable contribution deduction for the claimed donation, being limited solely to a deduction for estimated out-of-pocket costs. Nonetheless, the prior settlement initiatives resolved 405 cases, with 32% of all offers accepted.

This new time-limited settlement opportunity is intended to advance the goals of the prior initiatives while addressing barriers that may have discouraged acceptance. Today, there are over 1,100 conservation easement cases (around 740 docketed cases in Tax Court and 400 cases in Exam). Under this new offer initiative, nearly 450 cases will no longer be required to make an upfront payment of the settlement amount, and instead the liability will be subject to post-settlement collection as described below. Separately, as many as 500 cases where prior settlement offers expired or were rejected by the taxpayer will have the renewed ability to settle their cases. The offer will also be extended to as many as 175 cases that did not previously have the opportunity to participate in an IRS settlement initiative.

“Congress created the conservation easement deduction to encourage genuine preservation, not to subsidize tax shelters built on inflated valuations,” said IRS Chief Executive Officer Frank J. Bisignano. “This settlement opportunity gives eligible taxpayers a chance to resolve these cases on terms more favorable than the results taxpayers have generally achieved in court, while allowing the IRS to continue enforcing the law in a fair and efficient way.”

“The courts have repeatedly found abusive activity in this area, regularly sustaining major reductions in claimed deductions and significant penalties and interest, said Acting IRS Chief Counsel Kenneth J. Kies. “Taxpayers and their advisors should carefully review the terms of this initiative and the substantial litigation risks of continuing to contest these cases.”

**Background.** The tax law allows an income tax deduction for property owners who relinquish certain rights in land or buildings to preserve those properties for future

generations. Over time, however, Congress, the IRS, and courts have identified serious abuses, leading to legislative changes, enforcement actions, settlement initiatives, and civil and criminal judgments.

In recent litigation, the government has consistently prevailed. On average, the Tax Court has only allowed 6% of the original claimed deduction and has generally imposed a 40% gross valuation misstatement penalty, plus interest.

**New time-limited settlement opportunity.** Eligible partnerships will receive individualized correspondence, to be issued on a rolling basis, from the IRS setting forth their specific settlement terms.

For a period of 90 days following the issuance of a settlement letter, the following terms will be available to an eligible partnership.

- No charitable contribution deduction will be allowed.
- An “other deduction,” in an amount determined by the IRS, generally equal to the partnership’s approximate out-of-pocket costs (often based on cash-contributed amounts reflected on Schedule M-2), will be allowed.
- A gross valuation misstatement penalty will apply at a rate of 10%.
- Interest will accrue as required by law.
- The partnership will not be required to make payment at the time it elects into the initiative.
- Non-docketed Bipartisan Budget Act cases will be resolved by closing agreement or similar document.
- Docketed cases will be resolved by stipulated decision.
- No extension of the 90-day period will be available.

For a period of 45 days following the close of the initial 90-day period, eligible partnerships may settle on generally the same terms, except that the gross valuation misstatement penalty will apply at a rate of 20%. No extension of the 45-day period will be available.

The applicable time period will begin on the postmark date or date of electronic transmission, and each letter will specify the applicable deadlines.

After the expiration of the two periods, totaling 135 days from the date of issuance of the individualized settlement letter, cases will be resolved before a court decision only on the basis of hazards of litigation. In general, that will reflect a charitable contribution deduction of approximately 5% to 7% of the claimed deduction and a 40% gross valuation misstatement penalty.

This settlement opportunity is not available in every conservation easement or historic preservation easement case. Specifically, this settlement is not available in cases:

- That have been tried and are awaiting an opinion.
- That are on appeal to one of the United States Circuit Courts of Appeal.
- That have already settled (i.e., settled based on hazards of litigation before trial or conceded, including those in which no decision has been entered).
- That have agreed to be bound to another case if the test case has been tried and is awaiting final decision.
- That have a trial that is set to commence within 30 days of the date of this announcement.

- That are designated as test cases, unless all bound cases have settled or agree to settle under this initiative.

The IRS will determine eligibility based on the status of the case and other case-specific considerations relevant to administration of the initiative.

**Additional information.** In cases governed by the Tax Equity and Fiscal Responsibility Act (TEFRA), generally involving tax years 2017 and earlier, taxpayers should expect to receive IRS notices stating the amount owed by each investor. Those notices will be sent following IRS processing after the settlement is reached and the Tax Court decision becomes final.

In cases governed by the Bipartisan Budget Act of 2015 (BBA), generally involving tax years 2018 and later, if the partnership did not elect to push out the liability, the partnership will be responsible for payment. If the partnership is unable to pay, investors will receive notices from the IRS stating the amounts owed as a result of the settlement adjustments. If the partnership elected to push out the liability, the partnership must furnish statements to investors and the IRS describing the adjustments and amounts being pushed out, and investors must take those adjustments into account accordingly.