

Conservation Easements—Using The IRS Audit Manual To Avoid Issues

Tuesday, December 13, 2011

An owner of real property that donates a conservation easement to a qualified organization may be able to deduct the value of the easement for income tax purposes. Such a deductible contribution requires the contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. A qualified real property interest is a restriction granted in perpetuity on the use, modification, and development of property such as parks, wetlands, farmland, forest land, scenic areas, historic land or historic structures.

The IRS has revised its Conservation Easement Audit Techniques Guide as of September 30, 2011. This lengthy guide should be reviewed by those structuring such contributions to assure compliance with all statutory and regulatory requirements.

Exhibit 12-1 is especially beneficial since it provides an all-inclusion list of potential issues. It includes general problems that may arise with charitable contributions, deficiencies in the appraisal process, deficiencies as to the perpetuity requirements, deficiencies as to the recipient organization, and deficiencies as to the requisite conservation purpose. The list is a gift for planners and return preparers – it should be used as a checklist for planning and compliance.

For those with an interest, I have reproduced the Exhibit 12-1 issue list below:

Rubin on Tax

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General Rule Issues	Code/Regs
Lack of charitable intent (including quid pro quo)	170(a); 1.170A-1(h)
Conditional gift	1.170A-1(e); 1.170A-7(a)(3)
Contemporaneous written acknowledgment (CWA)	170(f)(8); 1.170A-13(f)
Qualified Appraisal Issues	Code/Regs
(Note: The Deficit Reduction Act of 1984 (DEFRA) and section 170(f)(11) outline the statutory appraisal requirements.)	170(f)(11) (donations after 6/3/04) DEFRA 155(a)(1)(A),(a)(4) 1.170A-13(c)(3)(i) Notice 2006-96 §3.02(1)
Appraisal not attached to return (FMV >\$500K)	170(f)(11)(D) (donations after 6/3/04)
Appraisal not prepared in accordance with generally accepted appraisal standards	170(f)(11)(E)(i)(II) (returns filed after 8/17/06); Notice 2006-96 §3.02(2)
Appraisal not timely	1.170A-13(c)(3)(i)(A)
Not a qualified appraiser	170(f)(11)(E)(ii) (returns filed after 8/17/06) DEFRA 155(a)(5) 1.170A-13(c)(3)(i)(B); Notice 2006-96, §3.03
Doesn't meet IRC, DEFRA, or Treas. Reg.	170(f)(11)(E)(i)(I) (returns filed after 8/17/06)

Qualified Appraisal Issues	Code/Regs
requirements	DEFRA 155(a)(1) through (6) 1.170A-13(c)(3)(ii) 1.170A-13(c)(3)(i)(C); Notice 2006-96
Appraisal fee based on percentage of value	1.170A-13(c)(3)(i)(B); 1.170A-13(c)(6)
Form 8283 (appraisal summary) missing or incomplete	1.170A-13(c)(4) DEFRA 155(a)(1)(B); DEFRA 155(a)(3)
Qualified Real Property Interest Issues	Code/Regs
Qualified real property interest	170(h)(2); 1.170A-14(a), (b)
Lack of perpetuity	170(h)(2)(C); 170(h)(5)
Lack of perpetuity - Failure to properly subordinate	1.170A-14(g)(2)
Lack of perpetuity - Extinguishment-allocation of proceeds	1.170A-14(g)(6)(ii)
Not a qualified organization or eligible donee	170(h)(3); 1.170A-14(c)(1)
Conservation Purpose Issues	Code/Regs
Conservation purpose	170(h)(4)(A); 1.170A-14(d)(1)
Outdoor recreation or education of public	170(h)(4)(A)(i); 1.170A-14(d)(2)
Outdoor recreation or education of public - Lack of access	1.170A-14(d)(2)(ii)
Protection of environmental system (natural habitat)	170(h)(4)(A)(ii); 1.170A-14(d)(3)
Protection of environmental system - Significant habitat or ecosystem	1.170A-14(d)(3)(ii)
Preservation of open space	170(h)(4)(A)(iii); 1.170A-14(d)(4)
Preservation of open space -Scenic enjoyment	170(h)(4)(A)(iii)(I); 1.170A-14(d)(4)(ii)
Preservation of open space -Scenic enjoyment-Lack of visual access	1.170A-14(d)(4)(ii)(B)
Preservation of open space -Governmental conservation policy	170(h)(4)(A)(iii)(II); 1.170A-14(d)(4)(iii)
Preservation of open space -Governmental conservation policy Physical or visual access	1.170A-14(d)(4)(iii)(C)

Conservation Purpose Issues	Code/Regs
required if conservation purpose is frustrated without access	
Preservation of historic land or certified historic structure	170(h)(4)(A)(iv)
Preservation of historic land or certified historic structure - Historic land	1.170A-14(d)(5)
Preservation of historic land or certified historic structure - Certified historic structure	1.170A-14(d)(5)(ii)
Preservation of historic land or certified historic structure - Certified historic structure (1) Individually listed or (2) in historic district and NPS certifies	170(h)(4)(C) (donations made after 8/17/06); 1.170A-14(d)(5)(iii)
Preservation of historic land or certified historic structure - Lack of visual access	1.170A-14(d)(5)(iv)(A)
Failure to comply w/ PPA for buildings not individually listed. (façade only)	170(h)(4)(B) (donations after 7/25/06)
Failure to comply w/ PPA for buildings not individually listed - No restriction for entire exterior.	170(h)(4)(B)(i) (donations after 7/25/06)
Failure to comply w/ PPA for buildings not individually listed - Lack of written agreement between donor/donee.	170(h)(4)(B)(ii) (donations after 7/25/06)
Failure to comply w/ PPA for buildings not individually listed - Failure to attach appraisal, with photos and description of restrictions.	170(h)(4)(B)(iii) (tax years beg. after 8/17/06)
Failure to comply w/ PPA for buildings not individually listed - Failure to pay \$500 filing fee (façade only)	170(f)(13) (contributions on or after 2/13/07)
Not exclusively for conservation purpose	170(h)(5); 1.170A-14(e)
Not exclusively for conservation purpose - Inconsistent Use	1.170A-14(c)(2) and (3)
Insufficient or lack of documentation for conservation purpose (baseline study)	1.170A-14(g)(5)(i); 1.170A-13(c)(4)(ii)(M)

Valuation Issues	Code/Regs
Overvaluation	170(a); 1.170A-14(h)(3)
Deduction not based on FMV	170(a); 1.170A-1(c); 1.170A-14(h)(3)
Deduction limited to basis	170(c)(1)(A)
Contiguous parcel/noncontiguous parcel	1.170A-14(h)(3)(i)
Miscellaneous Issues	Code/Regs
Percentage limitations not computed properly	170(b)
Rehabilitation credit-reduction of deduction (façade only)	170(f)(14)
Rehabilitation credit-recapture (façade only)	50(a); Rev. Rul. 89-90
Penalty Issues	Code/Regs
Taxpayer penalties	6662(a), (c), (h); 6664(c)(1) - (3)
Appraiser penalty (Returns filed after 7/25/06 if facade easement on a building in a registered historic district; returns filed after 8/17/06 for all other easements.)	6695A

[Conservation Easement Audit Techniques Guide](#)

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