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- 2019/2020 Private Resolution Initiative
  - Eligible taxpayers notified by letter
  - Initiative follows three recent U.S. Tax Court decisions
  - IRS Exam issued private resolution offers to certain taxpayers under audit (w/o docketed years)
    - Nearly 80% of taxpayers accepted
  - IRS Counsel issued private resolution offers to certain taxpayers w. docketed years

## Micro-Captive Insurance Increased Enforcement Activity

- New Examination Teams
- New Promoter Investigations Coordinator
- Letter 6336
- Notice 2016-66 still in effect – disclosure requirement



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# Syndicated Conservation Easements

## What is a Conservation Easement?

- A legal agreement between a landowner and an IRC § 501(c)(3) charitable qualified land trust that places permanent restrictions on the use of land to prevent future development in perpetuity.
- A voluntary legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its conservation values.
- In perpetuity – All future landowners are bound by the terms of the conservation easement deed.
- May also involve an historical building (façade) or historical site.

# Tax and Conservation Easement

- IRC § 170(h) allows a charitable contribution of a qualified real property interest (i.e., a restriction granted in perpetuity on the use of the real property) to a qualified organization exclusively for conservation purposes.
- Deduction is the fair market value of the property.
- Several legal requirements that must be met.



# Overview of Conservation Purposes IRC §170(h)(4)(A)

- Preservation of land for outdoor recreation by, or for the education of, the general public. IRC §170(h)(4)(A)(i)
- Protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem. IRC §170(h)(4)(A)(ii)
- Preservation of open space for the scenic enjoyment of the general public or pursuant to a clearly delineated governmental conservation policy. Needs significant public benefit. IRC §170(h)(4)(A)(iii)
- Preservation of historically important land or a certified historic structure. IRC §170(h)(4)(iv)



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# What is a Syndicated Conservation Easement?

- Sponsors sell an ownership interest in a parcel of land, generally through a partnership or other flow-through entity, to a group of investors.
- Investors are typically presented options to hold the property, develop the property, or place a conservation easement on the property.

## Notice 2017-10 released 12/23/2016

- Designated specific syndicated conservation easement transactions as listed transactions and required disclosure statements by both investors and material advisors.
- Form 8886 (investors) and Form 8918 (material advisors) must be filed with Office of Tax Shelter Analysis (OTSA).
- Form 8886 attached to both the 1065 Partnership return and the 1040 investor return in the year of tax deduction.
- Disclosure filing requirement applies to transactions entered into on or after 1/1/2010 and statute of limitations has not expired as of 12/23/2016.
- Includes “substantially similar” transactions.

# IRS Response

- 2019 IRS Dirty Dozen list designation.
- Analysis of disclosures under Notice 2017-10 - Disclosure filing requirements are still in effect.
- LB&I campaign/SBSE Coordinated Issue Project
- November 12, 2019 – IRS increases enforcement action on syndicated conservation easement transactions.
- Income tax examinations, promoter investigations, appraiser penalties, disclosure non-filer penalty, and DOJ injunctions are being considered.

# Syndicated Conservation Easement Court Cases

- Hoffman Props. II, LP v. Comm'r, 2020 U.S. App. LEXIS 11730, 2020 FED App. 0113P (6th Cir. Apr. 14, 2020), affg. Tax Ct. Dkt. No. 14130-15.
- Coal Property Holdings, LLC v. Commissioner, 153 T.C. No. 7 (October 28, 2019)
- Oakhill Woods, LLC v. Comm'r, T.C. Memo. 2020-24, 2020 Tax Ct. Memo LEXIS 23.
- R.R. Holdings, L.L.C. v. Comm'r, T.C. Memo 2020-22, 2020 Tax Ct. Memo LEXIS 21.
- Carter v. Comm'r, T.C. Memo 2020-21, 2020 U.S. Tax Ct. LEXIS 7.
- Rock Creek Property Holdings, LLC v. Comm'r, Tax Ct. Dkt. No. 5599-17 (Feb. 10, 2020).
- TOT Property Holdings LLC v. Comm'r, Tax Ct. Dkt. No. 5600-17 (Dec. 13, 2019).

## IRS Commissioner

“We will not stop in our pursuit of everyone involved in the creation, marketing, promotion, and wrongful acquisition of artificial, highly inflated deductions based on these aggressive transactions. Every available enforcement option will be considered, including civil penalties and, where appropriate, criminal investigations that could lead to a criminal prosecution,” said IRS Commissioner Chuck Rettig.

# Objectives

- Can you?
  - Describe key Exam priorities
  - List new tax law legislation impacting Exam compliance activities
  - Define Virtual Currency
  - Discuss IRS enforcement activities with respect to micro-captive transactions
  - Describe a Syndicated Conservation Easement

# IRS Resources

- [www.irs.gov](http://www.irs.gov)
  - Small Business Self Employed Tax Center
  - Coronavirus Tax Relief and Economic Impact Payments
  - Gig Economy Tax Center
  - Syndicated Conservation Easements
  - Abusive Tax Shelters and Transactions
  - Virtual Currencies



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