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The IRS's "New" Syndicated Conservation Easement Settlement Offer: Deja Vu All Over Again?

The IRS recently announced a new settlement initiative for Syndicated Conservation Easements (SCEs) (IR02026-65). This settlement initiative is for certain eligible partnerships as determined by IRS. For a period of 90 days following the issuance of a settlement letter by the IRS, an investor in an eligible partnership will, in essence, only be able to deduct the fund's out-of-pocket expenses – vs. the claimed charitable deductions – and will have to pay a 10% penalty.

According to the IRS, this settlement initiative is a great deal, and taxpayers should jump on it. But is it deja vu all over again? The terms are eerily similar to the existing settlement initiative for cases "docketed" in tax court. The difference is that this "new" initiative applies to SCEs in tax court (docketed) and those that are under exam, but not in tax court (non-docketed).

For investors in funds that previously received a "non-docketed" settlement offer, the May 2026 settlement initiative does not appear as favorable as the previous "non-docketed" settlement offer. However, the fine print of the non-docketed settlement offer made it impossible for most SCEs to accept because the IRS required each fund to pay the entire settlement amount at the time of the settlement. This created a significant free-rider barrier – meaning an investor could refuse to pay in the hopes that the other investors would make up the difference. The new 2026 initiative attempts to cure the barriers (funds do not have to pay the IRS at the time of settlement), but on worse terms for most taxpayers.

Although the 2026 settlement initiative is in line with previous settlement initiatives, the IRS really wants taxpayers to believe this is the last best offer. According to the IRS, funds have 90 days to accept the IRS's offer and, according to the IRS, if

taxpayers do not accept *this* offer, future settlement terms will be much worse.

Is this just IRS bluster? Perhaps. The 2026 terms are similar to previous settlement initiatives. The IRS's ability to deter taxpayers from participating in SCE-like investments is at a low watermark, and the pipeline of investments with SCE-like strategies (buy low, appraise high) is robust with promoters offering tax-advantaged investments with an opportunity to donate fee-simple property, digital assets, and a wide variety of other assets. Thus, the IRS is likely to face more logistical pressure – with fewer enforcement resources – in the future, even if a substantial majority of the 1,100 funds the IRS has currently identified settle.

On the other hand, it is unlikely that the IRS will offer better terms. Many industry insiders predicted that this administration would provide better settlement terms. That didn't happen. If terms are not better now, can anyone really expect better treatment in a new administration?

So, should taxpayers vote to accept the IRS's offer? In general, SCE funds that rolled the dice in tax court have significantly worse outcomes than those who settle. This is both a testament to the skill of the IRS counsel as well as the tax court's hostility to SCEs. The IRS's website provides an overview of some of the IRS successes, but the Fourth Circuit, in *Brooks v. Commission*, sums up the prevailing view of every court that has opined on valuation:

> The Brookses saw a good thing both in the tax benefit to them and in the conservation easement for the public, but they acted with an evident greed that substantially outweighed their concern for the public benefit. Their documentation was sloppy and inadequate. But more remarkable was their attempt to claim a $5.1 million deduction for a limited easement estate on property that they had purchased in fee simple for $652,000 only a year earlier. Such a claim simply does not pass any reasonable smell test, much less the tax law's requirements.

The only silver lining at this stage is that the tax court is *only* sticking taxpayers with a 40% gross valuation misstatement penalty instead of a 75% fraud penalty. But note, the 40% penalty is significantly higher than the 10% offered in the settlement.

Furthermore, many funds that elected to fight did not set aside enough funds to fully litigate the case through the appeal. When SCE funds start to run short of cash, SCE investors are the ones who have to add money to keep the fight going.

Despite the headwinds, the SCE investors have won big in a very small subset of cases. This is largely due to IRS errors uncovered by skilled lawyering. In one case, the IRS backdated a document. In two other cases, the IRS missed deadlines. The courts have generally treated these as isolated incidents, not systematic mistakes that broadly benefit most investors. In other words, these cases are unlikely to convince the IRS that it should improve its global settlement offer.

Most SCE investors will be faced with an unpleasant dilemma: write a big check to the IRS now and get closure, or fight it out in the hopes that skilled counsel can find a foot fault or that the IRS comes out with better terms in the future. Neither option is appealing, but hope is not a strategy.

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