



TaxNewsFlash

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U.S. Tax Court: Conservation easement contribution regulations held invalid under APA because of failure to respond to significant comment

The U.S. Tax Court today held that Treas. Reg. § 1.170A-14(g)(6)(ii), which implements the requirement under section 170(h)(5)(A) that the conservation purpose of an easement be “protected in perpetuity” in order to qualify as a “qualified conservation contribution,” is procedurally invalid under the Administrative Procedure Act because the Treasury department and IRS failed to respond to a “significant comment” when issuing the final regulations in 1986.

In so doing, the Tax Court followed the reasoning of the U.S. Court of Appeals for the Eleventh Circuit in its decision in *Hewitt v. Commissioner*, 21 F.4th 1336, (11th Cir. 2021), and rejected the competing decision of the U.S. Court of Appeals for the Sixth Circuit in *Oakbrook Land Holdings, LLC v. Commissioner*, 28 F.4th 700 (6th Cir. 2022).

The court further held that the easement deed at issue in the case satisfied the “restriction (granted in perpetuity)” requirement under the statute and thus that the taxpayer claim a deduction for the charitable contribution of a conservation easement under section 170(h).

The case is: *Valley Park Ranch, LLC v. Commissioner*, 162 T.C. No. 6 (March 28, 2024). Read text of the Tax Court’s [opinion](#), which includes a dissenting opinion joined by four judges.

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