GEORGIA CONSERVATION EASEMENT COALITION

How the IRS misrepresented Conservation Easement enforcement to Congress and the public

The law, the data, the 2017 turn, the enforcement campaign, the change in how value is measured, and where taxpayers stand today.

1980
Deduction made permanent in law

SIZE OF THE TAX DEDUCTION, AS A MULTIPLE OF THE INVESTMENT

9 times → **4.7 times**

What the IRS told Congress in 2017, from a sample of 40 forms

What the IRS's full data showed, from 39,619 forms

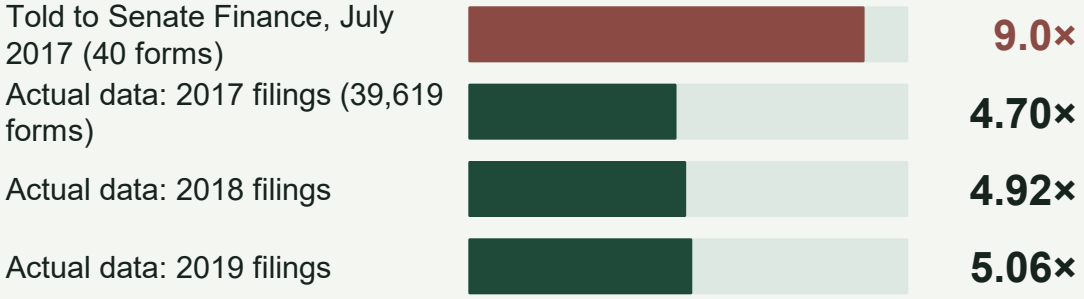
97.65%
Value cut across 138 IRS valuation reports

1,100+
Cases still pending

DECEMBER 2016 TO 2020

The turn: the IRS sways Congress and the public, then changes the rules

Size of the tax deduction, as a multiple of the investment



Bars on a 0 to 10× scale. The disclosure trigger in Notice 2017-10 was 2.5×. It did not cap or bar any deduction.

Nine times was widely reported while Congress debated these cases. The corrected figure was not.

Five steps that stacked the deck

1 Wrong number given to Congress
9 times reported, from 40 forms. 4.7 times in the full data.

2 Rule made by notice, not by law
Notice 2017-10, later held invalid by the courts

3 Reached back seven years
Applied to deals from January 1, 2010

4 No yardstick
No limit on multiples and no data on them

5 Labels that implied fraud
“Syndicated,” “Dirty Dozen,” “abusive tax shelter”: names that swayed opinion before any court ruled

All five took hold before the courts had weighed most of these properties. By the time investors reached a courtroom, the rule, the number and the label were already set against them.

1976 TO 2017

Before 2017: four decades of stable law and no yardstick

No law limited the multiple until December 2022, and that law was not retroactive. The IRS has made no data on multiples available for any year before 2017. In essence, no precedent was set for multiples before 2022.

The law did not change

1976	Congress first allows the deduction
1980	Made permanent as IRC §170(h)
1986	Treasury sets the method: value the land at its highest and best use
2006, 2015	Congress expands the incentives, then makes them permanent
2009–11	Courts apply the test case by case. Taxpayers win and lose.

What the IRS data shows

Year	Deductions	Partnerships	Series
2013	$1.1B	n/a	All easements
2014	$3.2B	n/a	All easements
2016	≈ $6.0B	249	Partnership deals
2017	$6.8B	244	Partnership deals
2010–17	$26.8B	total	Partnership deals

The IRS named partnership deals “syndicated,” a label that carries a negative tone. This record uses the plain term.

1986 TO 2022

Highest and best use was the standard the courts applied

For more than 30 years, Treasury's rule and the courts measured an easement by what the land could reasonably become. Where that use was probable, courts allowed real value.

How the standard was applied

1986	Treasury sets the rule: value before and after, at highest and best use
2009	Kiva Dunes: the Tax Court applies it and accepts most of the appraisal
2014	Palmer Ranch: a higher use is found reasonably probable
2022	Champions Retreat and Glade Creek: courts still apply it
2023 on	The turn: existing use and last sale price

What the courts allowed

Case	Claimed	Allowed
Kiva Dunes (2009)	$30.6M	$28.7M
Palmer Ranch (2014)	$23.9M	$19.9M
Champions Retreat (2022)	$10.4M	$7.8M
Malibu Valley (2026)	$32.1M	$19.7M

Taxpayers also lost under the same test, as in Boltar (2011), Esgar (2012) and Mountanos (2013). The question was always whether the higher use was reasonably probable.

2020 TO 2024

The enforcement campaign: one pool for everyone

84%
of 2015–17 partnerships under exam by February 2020

100%
of these deals examined, in the IRS's words, by June 2022

93%
of Tax Court cases where the IRS asserts zero value

99%
of cases where the IRS asserts the 40% penalty

The extreme deals were a minority. The average multiple in 2018 filings was 4.87×, and only the top 10% averaged 9.45×. The IRS did not go after the outliers. It treated every deal, every promoter and every passive investor the same.

Donated after December 29, 2022: what Congress allows	Donated before that date: what the IRS allows
2.5× A partnership may deduct up to 2.5 times what its partners invested. On $100,000, up to $250,000 if the appraisal supports it.	**0** Zero value asserted, plus a 40% penalty and interest, unless the taxpayer settles on IRS terms or wins in court.

Along the way the courts held Notice 2017-10 invalid (2022 and 2024) and found IRS counsel acted in bad faith over a backdated penalty approval (LakePoint, 2023).

2023 TO 2026 · NO STATUTE OR REGULATION CHANGED

The valuation turn: same rule, different result

	2010 to 2022: assumed by the investor	2023 to today: reality applied by the IRS
THE MEASURE OF VALUE	**Highest and best use** What the land could reasonably become	**Existing use, last sale** The taxpayer must prove any other use
THE RULE	Treasury's 1986 regulation: highest and best use. A deduction Congress had backed for 40 years.	**The same regulation. Nothing was changed.**
METHOD	Income approach accepted where development or extraction was probable	**Income projections rejected as speculative**
THE APPRAISAL	Obtained by the sponsor. Investors did not pick the land, the appraiser or the value.	**Reliance is no defense to the 40% penalty**
THE RESULT	**4.7 times** Average deduction, as a multiple of the investment	**2.35%** Share of claimed value the IRS's own reports keep

Courts later held the last sale price and the "speculative" planned use against the deduction, even where drilling confirmed the stone or the waterfront was plain to see. But an easement exists so that use is never built. Passive investors were not aware this would not be allowed, or that they would face the maximum penalty.

2026

Three reviews of the IRS's own work found the same thing

COURT FILINGS · MARCH 2026

93% zero · 99% penalty

National Taxpayers Union Foundation, 798 Tax Court cases

INSPECTOR GENERAL · MAY 2026

7 cases · $68M+

Penalty approvals backdated by the IRS. More than $68 million in penalties conceded.

INDEPENDENT AUDIT · 2026

97.65% cut

220 IRS documents. $5.323 billion in appraisals became $125 million.

How the IRS cases were built

1. **A predetermined, cookie-cutter result**
   124 of 138 reports cut 90% or more. 72 cut 99% or more.
2. **Desk reviews certified as compliant**
   119 of 197 are desk reviews. 194 claim compliance.
3. **Values set before the evidence existed**
   12 of 23 mining reviews came after, by 53 days on average
4. **Zero asserted where IRS appraisers found value**
   IRS reports keep 2.35%. The IRS asserts zero in 93%.
5. **Qualifications misstated**
   "Geological" contractor registered as a painting firm
6. **The IRS's own cited standard not met**
   3 of 22 name a Registered Member. No site visits.
7. **Recycled, generic sourcing**
   Same 13 sources on two properties. A 1989 booklet.

A fresh look in court does not cure a flawed file. Most cases never reach trial.

2017 TO 2026

The current court record is not one-sided

The IRS has won most valuation trials, including two Eleventh Circuit appeals in 2026, and the 2020 Senate Finance report backed its enforcement. The same record also shows this.

$48.3M
Agate: the IRS conceded the full deduction and every penalty after an extension date was altered

$19.7M
Malibu Valley (2026): value found by the court. The IRS argued zero to $4.65 million.

$7.8M
Champions Retreat (2022): value found by the court. The IRS argued $20,000.

4 cases
Civil fraud penalties failed: Mill Road 36 Henry, Buckelew Farm, North Donald, Agate

What the IRS says the Tax Court allows	What the IRS's own valuation reports keep
6% of claimed value, on average (IR-2026-65)	**2.35%** of claimed value, across 138 IRS Reports of Value

At least 15 cases since 2017 where the IRS lost in court or conceded, about 15% of the roughly 100 resolved so far, by coalition estimate.

WHERE THINGS STAND TODAY

For the investor, the clock keeps running

250,000+
taxpayers in dispute, most of them passive investors

1,100+
cases pending: about 740 in Tax Court, 400 in Exam

32%
of settlement offers accepted since 2020

≈ 15 of 100
resolved cases the IRS lost or conceded, by coalition estimate

Interest
Compounds daily on tax years back to 2016

Penalties
The 40% penalty, with no good-faith defense

Enforcement
Exam, litigation and collection continue. No hold is in place.

What the IRS says	What is happening
A uniform approach was not well suited to these cases. A new office will engage with taxpayers and strengthen valuation integrity.	**No commitments. No hold. The valuations behind every pending case are unchanged.**

Would the courts have ruled the same way if they had known what was in the files and how the IRS conducted its valuations?

IN SUMMARY

The investor’s position, and next steps

Five facts

1. **The law was settled**
   Backed by Congress for 40 years. No limit until 2022, and not retroactive.
2. **The rule was highest and best use**
   Investors did not pick the land, the appraiser or the value.
3. **The IRS stacked the deck against the investor**
   Gave Congress the wrong number: 9 times, not 4.7
   Made the rule by notice, not law; the courts threw it out
   Reached back seven years, to deals from 2010
   Used labels that implied fraud before any court ruled
   Asserted zero value in 93% of cases, the top penalty in 99%
4. **The result changed after they invested**
   No law changed, yet value is now existing use and last sale.
5. **The IRS’s own files do not hold up**
   Flawed files drive penalties and settlements. A court’s fresh look does not fix that.

Next steps

1. **Sit down together**
   Review ways to resolve the pending cases without more years in court.
2. **Start from a working paper**
   We have prepared a separate set of resolution options, ready to review when you are.

The investor acted on the law and the facts as they stood at the time.

WHERE THE FIGURES COME FROM

Sources

Data and oversight

- Coalition review of 197 IRS Reports of Value and 23 supporting mining reviews
- IRS letters to the Senate Finance Committee: July 13, 2017; February 12, 2020; September 2020
- Senate Committee Print 116-44, August 2020
- IRS Statistics of Income, as reported by Looney (Brookings, 2017)
- National Taxpayers Union Foundation, review of 798 Tax Court cases, March 2026
- TIGTA Report 2026-300-021, May 1, 2026
- National Taxpayer Advocate, 2025 Purple Book

Law, IRS releases and cases

- Pub. L. 96-541, §6 (1980); Treas. Reg. §1.170A-14(h)(3); SECURE 2.0 Act §605, Pub. L. 117-328
- IRS Notice 2017-10
- IRS News Releases IR-2019-47, IR-2022-17, IR-2022-125, IR-2026-65, IR-2026-95
- Green Valley (Tax Court, 2022); Green Rock (11th Cir., 2024); Hewitt (11th Cir., 2021)
- Mill Road 36 Henry (2023); Oconee Landing and Excelsior Aggregates (2024)
- Champions Retreat (2022); Malibu Valley (2026); LakePoint Land II (2023); Agate

Volume figures for 2010 to 2017 and case descriptions come from public sources and should be confirmed before external use.