



Conservation Easement Investments: Adhere to IRS Regulations or Prepare for Repercussions

A recent [Forbes](#)¹ article sites a Georgia golf course community that was denied a tax deduction of their \$10.4 million conservation easement investment as a result of the community's inability to meet IRS standards. If you have a conservation easement, or are considering entering into one expecting to take advantage of the tax deduction (as some conservation easements are not created for tax incentive purposes), make sure your agreement meets all the IRS criteria.

Background

A [conservation easement](#)² is a irrevocable 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. Landowners retain many of their rights, including the right to own and use the land, sell it and pass it on to their heirs.

Typically, conservation easements are a legitimate vehicle for obtaining a [charitable deduction](#)³. To qualify for a charitable deduction, the property must meet the criteria defined by the IRS as "[qualified conservation contribution](#)." This means it must be "qualified real property," donated to a "qualified conservation organization" for "conservation purposes." Every conservation easement contract is unique and golf course owners need to ensure they seek appropriate legal assistance from someone specializing in executing conservation easements, such as a [certified land trust agency](#).

In this case...

The Georgia golf course community created a conservation easement with a [conservation easement syndicate](#) and found a non-profit group to accept the property. The two parties sign a joint, irrevocable agreement and filed for a tax deduction as part of the annual tax filing. While there are no laws that prevent it, when golf courses enter into business arrangements with outside investors for the sole purpose of selling access to the tax deduction, this approach often causes the IRS to take notice.

The IRS audited the Georgia golf course community, and found it did not meet the criteria. For instance, the rare, endangered or threatened species listed was limited to a small section of the easement area, the agreement permitted the club to cut down any trees within easement that were within 30 feet of the playable area, and the land was not considered a natural area that contributed to the ecological viability (since the chemical used by the course as part of their fertilization program could injure the aquatic environment.) The owner's claim that the easement area was an open space -- providing scenic enjoyment to the general public and yields a significant public benefit -- was also denied by the IRS because the property was private and required gate access. Based on these

findings, the IRS denied the claim, prohibiting the investors from receiving the deduction they expected.

NGCOA's Position

NGCOA supports golf course owners participation in all conservation programs and will continue to fight to ensure equal access to investment vehicles provided to all other business entities. But we caution members to establish these agreements in accordance with state, federal, and IRS regulations.

The Association has written a number of articles addressing the [Conservation Easement](#) program. Along with our industry partners, We Are Golf, NGCOA worked for years to ensure golf was allowed to participate in this program, we also championed federal legislation making this program permanent. Fortunately, with the help of some key legislators, Congress approved this legislation as part of the 2016 Omnibus spending bill.

Comments and questions can be posted here or you can contact me directly at rmiles@ngcoa.org or 843-471-2714.

1. Forbes article by Peter Riley, dtd 18 Sept 2018,
<https://www.forbes.com/sites/peterireilly/2018/09/18/tax-court-rules-not-enough-conservation-on-golf-course-to-justify-10-million-deduction/>
2. FindLaw, Real Estate Law and Conservation Easement
<https://realestate.findlaw.com/land-use-laws/conservation-easements.html>
3. Guidance Regarding Deductions by Individuals for Qualified Conservation Contributions
https://www.irs.gov/irb/2007-25_IRB#NOT-2007-50