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On Monday, December 21, 2020, the United States Department of Justice (U.S. Department of Justice) announced that two Atlanta tax professionals (accountants) each pleaded guilty to one count of conspiracy to defraud the United States in an abusive syndicated conservation easement (SCE) tax scheme.<sup>1</sup> Significantly, the announcement quotes Internal Revenue Service (IRS) Commissioner Rettig as saying, “[t]wo defendants pleaded guilty today in the first-ever criminal case by IRS-CI involving conservation easements[.] It should be considered the next step in the IRS’ battle against abusive SCEs.”<sup>2</sup>

## Two Atlanta Accountants Plead Guilty In DOJ’s First Criminal Syndicated Conservation Easement Case

By Mary Lundstedt, Esq. & Zoha Sohail.

In this article, we aim to: (1) provide our readers here with a brief but clear understanding of what SCEs are, (2) highlight the increasing IRS scrutiny which has been applied to SCEs—culminating in the case before us, and (3) reiterate the clearly stated IRS intent to continue bringing criminal indictments against abusive SCE tax schemes. If you find yourself potentially impacted by this development, we urge you to reach out to a tax professional today.

### Background

A conservation easement is a voluntary legal agreement between a landowner and a land trust or a government agency that permanently limits the uses of the land to protect its conservation values. In essence, these are created by Congress as a tool to protect environment and historically valuable land.

In furtherance of the public good, the IRS allows a deduction for a “qualified conservation contribution.”<sup>3</sup> The intent behind allowing such deduction is to encourage individuals to donate qualified prop-

erty rights (such as easements) to qualified charitable organizations so that the property’s character is preserved, or “conserved,” in its present-day condition. Indeed, many wildlife and historic treasures have been preserved via legitimate conservation easements.

In recent years, it has become increasingly apparent to the IRS, however, that “some promoters are syndicating conservation easement transactions that purport to give investors the opportunity to claim charitable contribution deductions in amounts that significantly exceed the amount invested.”<sup>4</sup> In other words, SCEs have been manufactured and abused by tax shelter promoters. For that reason, in 2017, the IRS issued Notice 2017-10, identifying certain SCE transactions as listed transactions. Notice 2017-10 carefully describes the listed transaction as follows:

*“An investor receives promotional materials that offer prospective investors in a pass-through entity the possibility of a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the investor’s investment. The promotional materials may be oral or written. For purposes of this notice, promotional materials include, but are not limited to, documents described in §301.6112-1(b)(3)(iii)(B)*

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*of the Regulations. The investor purchases an interest, directly or indirectly (through one or more tiers of pass-through entities), in the pass-through entity that holds real property. The pass-through entity that holds the real property contributes a conservation easement encumbering the property to a tax-exempt entity and allocates, directly or through one or more tiers of pass-through entities, a charitable contribution deduction to the investor. Following that contribution, the investor reports on his or her federal income tax return a charitable contribution deduction with respect to the conservation easement.*<sup>5</sup>

Taxpayers are cautioned to note that Notice 2017-10 goes even further and applies to “transactions that are the same as, or substantially similar to” the [SCE] transaction.<sup>6</sup>

Additionally, as recently as this past November of 2020, the IRS released Publication 5464, Conservation Easement Audit Technique Guide, which “includes examination techniques and an overview of the valuation of conservation easements [and] a discussion of penalties, which may be applicable to taxpayers and others involved in the conservation easement transaction.”<sup>7</sup>

## The DOJ Announces First Criminal SCE Case

According to Principal Deputy Assistant Attorney General Richard E. Zuckerman of the U.S. Department of Justice’s Tax Division:

“The [Atlanta accountants] along with their co-conspirators’ criminal conduct enabled their clients to claim more than \$1.2 billion in fraudulent tax deductions and generated hundreds of millions of dollars of tax loss to the United States. Their convictions signal just the beginning of the department’s prosecutive efforts. Taxpayers engaging in such schemes, and the lawyers, accountants, appraisers and other professionals that enable them, should understand that they will be held fully to account for their fraudulent conduct.”<sup>8</sup>

First, the U.S. Department of Justice explained that the defendants were partners at an Atlanta accounting firm, where they together with their co-conspirators marketed, promoted, and sold, investments in fraudulent SCE tax shelters. The U.S. Department of Justice characterized these partnerships as shams that lacked economic substance with no legitimate business purpose.

The U.S. Department of Justice further explained that the defendants designed these SCE tax shelters to produce tax deductions for taxpayers with high income through partnerships that purported to make “real estate investments.” Thus, the SCE tax shelter enabled the investors to reduce their taxable income by claiming the value of the easement as a tax-deductible charitable donation. The U.S. Department of Justice adds that “the defendants and their co-conspirators marketed the SCE tax shelters by promising

investors that for every \$1 invested in the partnership, the investor would receive more than \$4 in charitable tax deductions.”<sup>9</sup>

The U.S. Department of Justice further confirmed that according to court dockets:

*“The defendants solicited investors after the end of the tax year and advised their investors to backdate payments and documents to make it appear that the “investments” were timely made before the end of the tax year. [Defendants’] also prepared and assisted in the preparation of false tax returns for clients who agreed to invest in the SCE shelters. [B]etween 2013 and 2019, [the defendants] each received more than \$1.7 million, in commissions, in exchange for their promotion of the abusive SCE tax shelters.”<sup>10</sup>*

The announcement concludes with the DOJ noting that each count pleaded carries a maximum penalty of five years in prison. And the accountants also face a period of supervised release, restitution, and monetary penalties.

## Conclusion

Again, we encourage our readers to heed IRS Commissioner Charles Rettig’s warning that the first-ever criminal case by the IRS-CI involving conservation easements, “should be considered the next step in the IRS’ battle against abusive SCEs.”<sup>11</sup> Additionally the United States Attorney R. Andrew Murray for the Western District of North Carolina on December 21, 2020 said in a statement that “[this] guilty plea send[s] a strong message that tax professionals who promote, and benefit from, illegal tax shelters will be investigated and prosecuted accordingly.”<sup>12</sup>

## Footnotes

1. [HTTPS://WWW.JUSTICE.GOV/OPA/PR/ATLANTA-TAX-PROFESSIONALS-PLEAD-GUILTY-PROMOTING-SYNDICATED-CONSERVATION-EASEMENT-TAX-SCHEME](https://www.justice.gov/opa/pr/atlanta-tax-professionals-plead-guilty-promoting-syndicated-conservation-easement-tax-scheme).
2. *Id.*
3. IRC §170(f)(3)(B)(iii).
4. Notice 2017-10, 2017-4 I.R.B. 544 (1/23/17).
5. *Id.*
6. *Id.*
7. [HTTPS://WWW.IRS.GOV/PUB/IRS-PDF/P5464.PDF](https://www.irs.gov/pub/irs-pdf/p5464.pdf).
8. <https://www.justice.gov/opa/pr/atlanta-tax-professionals-plead-guilty-promoting-syndicated-conservation-easement-tax-scheme>.
9. *Id.*
10. *Id.*
11. [HTTPS://WWW.JUSTICE.GOV/OPA/PR/ATLANTA-TAX-PROFESSIONALS-PLEAD-GUILTY-PROMOTING-SYNDICATED-CONSERVATION-EASEMENT-TAX-SCHEME](https://www.justice.gov/opa/pr/atlanta-tax-professionals-plead-guilty-promoting-syndicated-conservation-easement-tax-scheme).
12. *Id.*

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