

# The Year in Review: An Estate Planner's Perspective on Recent Tax Developments

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**What is that old life insurance policy really worth?**  
*Dematteo*  
*(PENDING)*

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**How do you value a long-held life insurance policy? Its interpolated terminal reserve (plus unexpired premium), or an independent appraisal based on the policy's value in the secondary market?**

**What is the interpolated terminal reserve, anyway?**

2

**Reverse split dollar  
life insurance  
*Cinader (PENDING)***

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The Tax Court may decide whether the IRS can value pure life insurance protection (Table 2001) differently depending for reverse split-dollar than for regular split-dollar.

If the taxpayer wins, this creates a useful technique for lifetime transfers of wealth with reduced or no gift taxes.

3

**New statutory  
rule on syndicated  
conservation  
easements**

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The Consolidated Appropriations Act, 2023 sets new limits on the income tax charitable deduction for gifts of syndicated conservation easements.

The deduction is denied if:

- The contribution exceeds 2.5 times the partner's basis in the partnership assets;
- The contribution is made less than 3 years after the last date the partnership last acquired any part of the property or any partner acquired any partnership interest.

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**Circuits split over validity of regs on division of proceeds from an involuntary termination of easement.**

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The 6<sup>th</sup> and 11<sup>th</sup> Circuits split over the validity of Regs. that require, if a conservation easement is terminated involuntarily (usually because of fire or eminent domain), the proceeds be divided between the donor and the donee solely in proportion to their respective shares (based on the original gift) of the value of the property on the date of termination. The donor cannot receive full repayment of the value of the donor's post-gift improvements to the property.

*Oakbrook Land Holdings* (6<sup>th</sup> Circuit) and the Tax Court held that the regs complied with the Administrative Procedure Act.

*Hewitt* (11<sup>th</sup> Circuit) held that the regs were invalid under the Administrative Procedure Act.

The Tax Court follows *Hewitt* in cases appealable to the 11<sup>th</sup> Circuit, but not if the impermissible adjustment in the proceeds relates to something other than post-contribution improvements.

Certiorari was denied in *Oakbrook Land Holdings*.

5

**Tax Court invalidates Notice 2017-10, which made some syndicated conservation easements "listed transactions." *Green Valley Investors, LLC*.**

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The Tax Court, following the analysis of the Sixth Circuit in *Mann Construction Inc. v. U.S.*, held that the IRS notice classifying certain syndicated conservation easements as "listed transactions" under Section 6707 and 6011 was invalid under the Administrative Procedure Act.

- This should apply to all notices classifying arrangements as "listed transactions."
- Treasury has started making these determinations by regulations with full notice and comment procedures.

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