

Federal Tax Issues Latest and Greatest

Outline

Jessica Jay, Misti Schmidt, Steve Small

■ Intro and Big Picture – Jessica – 3 Minutes

- All is well... and...
- Take cover
- Precedent – Misti 2 min

Part 1 Minerals, Safe Harbor, Termination

■ Mineral Rights – Jessica - 10 Minutes (including Steve background what we thought we were doing at IRS when we wrote the regs, and how confusing the regs are) including surface mining, borrow pits, gravel extraction

- IRS CCA 202236010 – Reviving Great Northern Nekoosa
- JL Minerals
- Cattail Holdings
- North Donald
- Pointers doc summary: What are the rules, what should they be, how to address (including Steve how to deal with this issue)

■ Conservation Easement Integrity Act/Notice/Safe Harbor Provisions – Steve 10 Minutes

- Integrity Act
- Safe Harbor Notice/ Deed Correction,
 - amendment, application including timing of carryforward, successor owners, deceased donors, mortgages, etc.
 - consequences/WHAT TO DO IF AUDITED (whether or not one has amended)
 - Safe Harbor – what about non-compliant government agency language (we have had more agencies accept the “greater of” language. But someone needs to be in charge of kicking agency butt here – like LTA.)
 - WHAT IS NOT A BOUNDARY LINE ADJUSTMENT—very important to understand what IRS is thinking here and how to draft easements going forward (biggest flaw in the Notice, leaving people with no idea about what was a boundary line adjustment and what wasn’t, and easement drafters need to take this into account.)

■ Termination Proceeds – Where Are We Now after Safe Harbor? – Jessica - 5 Minutes

- Challenges to Validity of Regs – Implications beyond proceeds provision (cert. denied)
- Follow the regs!
- Proposed Regulations to replace Notice 2017-10 in wake of Green Valley Investors

- Impact to land trusts in penalty through excise taxes under proposed reg 4965

*****FIRST 5 MINUTE Q&A*****

PART 2: Documentation & Authority

- Valuation, Form 8283, and Gift Letters – Misti - 10 minutes
 - Valuation – Brooks
 - Form 8283 - Brooks
 - Form 8283 - Wendell Murphy T.C. Memo. 2023-72, Murfam Enterprises LLC T.C. Memo. 2023-73
 - Gift Letter - Braen
- Ownership of subject property Steve - 5 minutes
 - Ownership of subject property, in whole or in part, by an irrevocable trust (authority and claim deduction) or a corporation, or an LLC or partnership
 - Authority to act, resolution, CE signing 8283, CE

*****SECOND 5 MINUTE Q&A*****

PART 3: Reserved Rights/CVs, Baseline, Notices/Approvals

- Inconsistent Reserved Rights - IRS Arguments – Jessica - 10 Minutes - buildings, envelopes, forestry, ag, etc. including updates on any of the following:
 - Carter and Pine Mountain Preserve – Tax Court on Remand; reserved rights and building areas
 - Malibu Valley: 5 Equestrian areas, fences, trails, corrals, trail markers
 - Sand Valley: Comm'l forestry, subdiv, structures
 - Rocky Comfort: Comm'l forestry, subdiv, structures
 - Hickory Equestrian: Hunting stands, birdhouses, trails, trail signs, shed, dredge, maint. trails
- Baseline Documentation – Misti – 10 Minutes
 - Brooks
 - Carter
 - Georgia Crushed Stone / Lone Pine- Water quality issue
- Deemed Approval, Monitoring/Inspection Challenges – Misti – 5 Minutes, (+ 5 min comments by Steve)
 - Piedmont Breeze
 - Others?

- Spawn of Hoffman
 - Land trust disclosure letter... up front and at closing (S&P)
- (Steve) Requires significant attention, due diligence, and repetition of self-serving but true statements
- (Steve) “Qualified appraisal,” USPAP, related issues
 - New IRS emphasis/attention
 - Misinformation
- Conclusion: Bring It All Together & Avoiding Problems with Donors (Jessica/ve 5 minutes)
 - Land trust disclosure letter... up front and at closing (S&P)
 - Brief mention of Ball v. VOF – Mutual mistake – as one of the risks!

*****THIRD 5 MINUTE Q&A*****

- Q&A - 15 Minutes (5 minutes x3 throughout)

Attachments:

- Practice Pointers
 - Safe Harbor
 - Inconsistent Reserved Rights
 - Form 8283
 - Baseline Inventory
 - Forestry
 - Surface Mining
- Land trust income tax deduction disclosure letter
- Down the Rabbit Hole [Part I](#) and [Part II](#)