

The IRS's Faulty Approach to Conservation Easement Donation Valuations

To the Editor:

As a former trial attorney with the IRS Office of Chief Counsel, I was concerned — but not particularly surprised — to learn that the IRS is now resorting to section 7402 injunction actions in its attack on purportedly inflated valuations of conservation easement donations (Jeffrey A. Neiman and Derick Vollrath, “The Troubling Rise of Injunction Suits,” *Tax Notes*, May 20, 2019, p. 1147).

Neiman and Vollrath report that the IRS brought an injunction action against Claud Clark III for such allegedly inflated valuations, notwithstanding that the only two opinions addressing Clark’s appraisals, both from the Tax Court, reached no such conclusions. To the contrary, the Tax Court in *Kiva Dunes*¹ made only a minor downward adjustment to Clark’s valuation, and in *Pine Mountain Preserve*² concluded that Clark *undervalued* the property in question.³

My concern is not directly related to the merits of the case against Clark. Perhaps his other appraisals were inflated, perhaps not. Rather, my concern is that this is yet another recent example of the IRS myopically slighting the Tax Court, the forum where nearly all federal tax litigation occurs, without considering how such cases can serve to tarnish the Chief Counsel for the IRS’s hard-earned and historically well-deserved reputation as an objective and impartial officer of the Tax Court.

By following this approach, the IRS may win a case here or there. It may even get its sought-after injunction against Clark. Nevertheless, this

approach comes at a cost: It reduces the IRS to just another litigant, albeit one whose reputation is front and center in every single Tax Court case. By bringing a district court injunction action that is facially inconsistent with the only two Tax Court cases addressing the behavior it seeks to enjoin, the IRS ultimately stands to lose, even if it wins.

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¹*Kiva Dunes Conservation LLC v Commissioner*, T.C. Memo. 2009-145.

²*Pine Mountain Preserve LLLP v. Commissioner*, 151 T.C. No. 14 (2018).

³*Kiva Dunes* and *Pine Mountain Preserve* are hardly outliers: The Tax Court has generally found conservation easement values that are much closer to taxpayers’ appraisals than the IRS’s. Consequently, the IRS typically raises a series of alternative technical arguments that can serve to avoid the Tax Court squarely reaching the valuation issue. In the case of Clark, the IRS went a significant step further, avoiding the Tax Court altogether by bringing a district court injunction action.