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Eighth Circuit: Charitable deduction for conservation easement denied; mortgages not subordinated before conveyance

The U.S. Court of Appeals for the Eighth Circuit today affirmed a decision of the U.S. Tax Court, that a private golf club was not entitled to a charitable deduction for a conservation easement because under the regulations, no deduction is allowed for an interest in property that is subject to a mortgage unless the mortgage is subordinated before the easement is conveyed.

The case is: *RP Golf, LLC v. Commissioner*, No. 16-3277 (8th Cir. June 26, 2017). Read the Eighth Circuit's [decision](#) [PDF 94 KB]

Summary

A timeline of the events in this case reveals the following:

- **December 2003:** The golf club granted a conservation easement to a Missouri not-for-profit corporation. The stated purpose of the easement was to foster the preservation of open space and for the conservation of natural and scenic resources (among other goals). The land was subject to loans that were secured by deeds of trust in the property.
- **April 2004:** The two banks holding the deeds of trusts signed subordinations of their mortgages to the not-for-profit corporation's right to enforce the easement (both subordinations had an effective date of December 31, 2003).
- **April 2004:** The golf club partnership filed its 2003 partnership tax return, claiming a \$16.4 million tax deduction for the easement.

The IRS denied the deduction for the charitable contribution, and the Tax Court agreed, finding that the easement was not "protected in perpetuity" and thus was not a

qualified conservation contribution because the banks had not subordinated their rights in the mortgaged property to the right of the not-for-profit to enforce the conservation purposes of the gift in perpetuity (as required by Reg. section 1.170A-14(g)(2)). Read [TaxNewsFlash-United States](#)

The Eighth Circuit today affirmed, finding that because the banks' mortgages were not subordinated before the charitable conveyance occurred in December 2003, the golf course was not entitled to a deduction on its 2003 tax return for a qualified conservation easement.

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