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IRS Chief Counsel memo: Fraud penalty in TEFRA syndicated conservation easement cases

The IRS today publicly released a Chief Counsel Advice memorandum addressing the determination of the fraud penalty in TEFRA syndicated conservation easement cases.

Read [AM 2020-010](#) [PDF 89 KB] (released October 9, 2020, and dated October 5, 2020)

The IRS Chief Counsel memo addresses the application of the civil fraud penalty under section 6663(a) to partnerships subject to the unified partnership procedures of the “Tax Equity and Fiscal Responsibility Act of 1982” (TEFRA) and that participated in syndicated conservation easement transactions (identified as a “listed transaction”).

In addressing how the IRS determines the applicability of the civil fraud penalty in a TEFRA examination of a partnership that participated in a syndicated conservation easement transaction, the IRS Chief Counsel memo explains:

- The procedures for determining the applicability of the civil fraud penalty against a partnership subject to TEFRA that participated in a syndicated conservation easement transaction are the same as those for establishing civil fraud against a partnership subject to TEFRA generally—that is, through all facts and circumstances that establish the willful intent to evade tax at the partnership level.
- Under TEFRA, the IRS determines the applicability of the civil fraud penalty at the partnership level and then the penalty is directly assessed on the partners of the partnership through a notice of computational adjustment.

The IRS Chief Counsel memo concludes that in order to determine the fraud penalty under section 6663(a) with respect to a TEFRA partnership, the IRS must prove—by clear and convincing evidence—the partnership-level elements of the fraud penalty based on the conduct and intent of the manager(s). According to the IRS Chief Counsel memo, if the IRS proves fraud, the fraud penalty is applicable to all the partners in the partnership on any underpayments of tax resulting from the adjustments to partnership items that are attributable to fraud, and any additional underpayments for the same year. Those partners may then raise any partner-level defenses in a refund action under section 6230(c).

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