How we calculated the revenue cost of syndicated conservation easements

In 2014, taxpayers deducted $3.2 billion in charitable deduction of conservation easements according to the IRS, which reduced their federal and state taxes by roughly $1.3 billion. Total deductions tripled between 2013 and 2014, and anecdotes and IRS statements suggest the surge is the result of abusive tax-sheltering transactions.

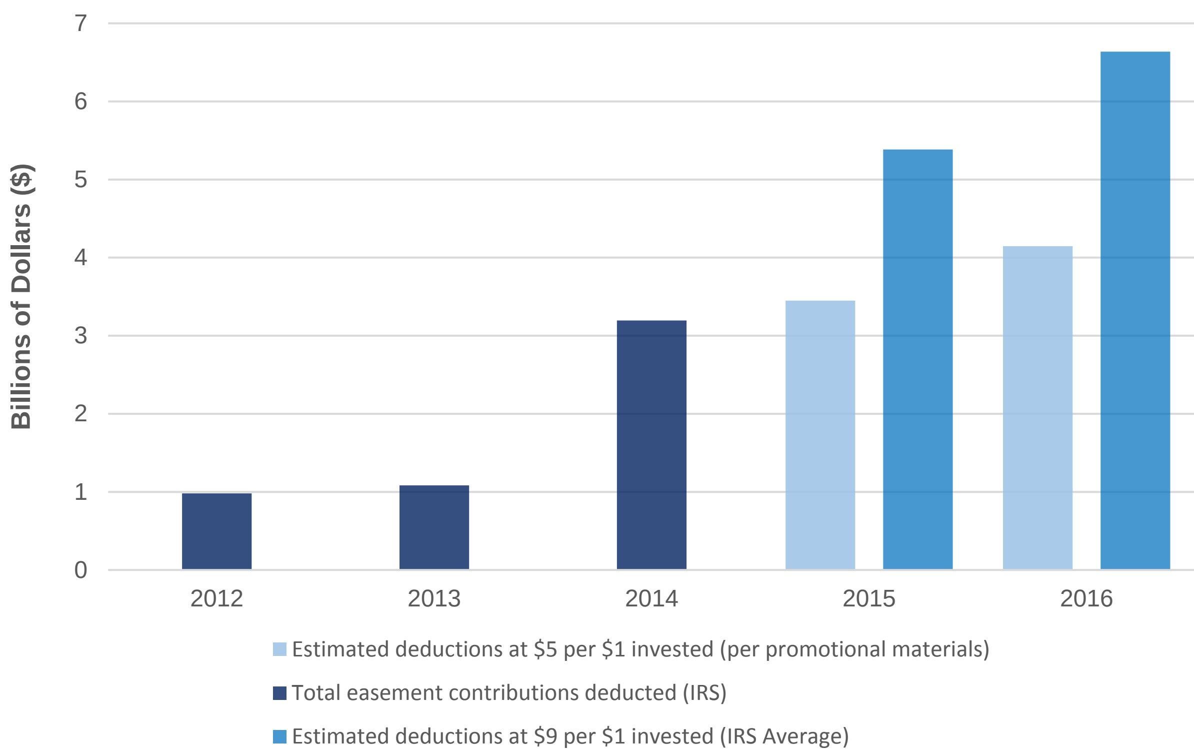
Using data and methods described below, we estimate that the total revenue cost of easements to federal and state governments continued to rise to between $1.5 to $2.3 billion in 2015 and to between $1.8 and $2.9 billion in 2016.

We arrived at this estimate by examining public filings with the Securities Exchange Commission that provide data on the volume of one type of shelter: syndicated conservation easements. In these deals, a promotor solicits investors to invest in a partnership that "pays off" a financial return in the form of charitable deductions. For instance, one promotor offers that "Each $1 invested can . . . allow someone to save between $2.38 and $3.17 in taxes." Using SEC data, IRS reports, promotional materials from syndicated deals, we form an estimate of the total amount of deductions claimed in 2015 and 2016, and translate that into revenue costs using estimates of the tax rate that is likely to apply to high-income taxpayers.

- According to SEC filings, securities offerings by partnerships formed to invest in conservation easement tax shelters raised at least $484 million in 2015 and $623 million in 2016.
    - Because our SEC record search is limited to participants identified in promotional materials and public documents, the total amounts raised by all syndicated partnerships is probably larger. For instance, while our SEC search identified about 40 individual promotors, an IRS notice requiring participants in such deals to register drew responses from 5,500 individuals.
- An IRS analysis of syndicated transactions found that each $1 invested in such partnerships resulted in charitable tax deductions of $9 on average.[1] Promotional materials generally offer more conservative estimates of roughly $4-$6 of tax deductions per dollar invested.
- At a rate of $5 of deductions for each $1 invested, the registered offerings suggest that syndicated easements resulted in deductions of at least $2.4 billion in 2015 and $3.1 billion in 2016. (At the $9 to $1 ratio estimated by the IRS, the deductions are $4.4 and $5.6 billion, respectively.)
- The chart below illustrates total deductions for conservation easement contributions reported by the IRS between 2012 and 2014 and our estimates of total contributions in 2015 and 2016 under the assumption that non-syndicated donations are constant at $1 billion per year and using our estimates of syndicated contributions.

[1] John Koskinen to Senator Ron Wyden, Letter dated July 13th, 2017, Internal Revenue Service.

Surge in total conservation easement contributions between 2012 and 2016



Sources: 2015-2016 figures estimated using author's own calculations of syndicated deals based on SEC Form D data (see methodology); 2012 – 2014 figures from IRS publications of Individual Noncash contributions, Tax Years 2012 – 2014.

How much do easement donations reduce tax revenues?

- According to IRS statistics, in 2014 54.4% of all donations of real estate, land, and easements were made by taxpayers with AGI in excess of $1 million and 92.1% were deducted by taxpayers with AGI over $200,000.[2] These taxpayers generally face the highest statutory tax rates. Because investments in syndicated easements are calibrated to maximize tax benefits, we expect investors to claim all deductions within the carryforward period (and likely within the year).
- Using NBER's TAXSIM tax calculator, we estimate that the effective marginal tax rate on charitable contributions of high-income taxpayers, including federal- and state-level taxes (and their interaction), is about 43.2 percent.[3]

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[2] Liddell, Pearson and Janette Wilson, "Individual Noncash Contributions, Tax Year 2014," Internal Revenue Service, Statistics of Income Bulletin, Summer 2017.

[3] For instance, using the average dollar-weighted AGI of individuals donating real estate, land, and easements of $3.7 million in 2015, joint filer, with 2 dependents, $50,000 in property taxes paid, and

- Based on the data and these assumptions, we estimate the revenue cost of syndicated conservation easement transactions (excluding non-syndicated deals) was $1.0 billion in 2015 and $1.3 billion in 2016. (If taxpayers take $9 of deductions for each $1 invested, the respective revenue losses were $1.9 billion in 2015 and $2.4 billion in 2016.)
    - If non-syndicated easements were $1 billion per year, the total revenue cost of easements would be $1.5 billion in 2015 and $1.8 billion in 2016 under the $5 per $1 ratio (and $2.3 billion and $2.9 billion at the $9-to-$1 ratio).
- Under the baseline estimate, each $1 invested by a taxpayer in a syndicated easement results in $2.16 in revenue costs ($3.89 at the $9-to-$1 ratio). In other words, syndicated transactions purchase land rights for $1 and sell them to the federal government for somewhere between $2.16 and $3.89.
    - This estimate is close to that offered in promotional materials. One document suggests taxpayers will save "between $2.38 and $3.17 in taxes for every $1.00 invested."

Putting these costs in perspective

With costs in the range between $1.3 and $2.4 billion in 2016, syndicated easements alone are among the largest natural resource programs in the Federal Budget. For instance, the total enacted funding in 2015 for direct purchases of land for conservation (the USDA and Department of Interior Land and Water Conservation Fund) was $306 million. In 2016, the entire budget of the Bureau of Land Management was $1.2 billion and $1.6 billion for the Fish and Wild Service. Taking into account syndicated and non-syndicated deals, the high range of the estimate suggests that in 2016 we may have spent almost as much on conservation easements ($2.9 billion) as we did on the entire National Park Service ($3.0 billion).

$100,000 in mortgage interest and other charitable deductions residing in Georgia, Connecticut, or California would face an effective marginal tax rate on charitable contributions of around 43 percent (depending on the state).

Appendix: Sources and background

How much is invested in syndicated conservation easement partnerships? Evidence from SEC Form D Filings

Companies with Regulation D exemptions—in this case, the entities held by investment groups in order hold the land and raise funds—use SEC Form D to file private offerings and sales of securities. Based on the documentation of investment projects described in the promotional material above, we manually searched and identified (using advanced search on the SEC EDGAR database) 202 Form D filings associated with syndicated conservation easement promoters between 2013 and 2016 (focusing on 2015 and 2016) using the SEC EDGAR database. Subsequently, we also scoured the internet (e.g., by searching for "conservation easement" AND "investment option" AND LLC), tax court cases, websites of certain land trusts and advocacy organizations (e.g., the partnership for conservation), and articles (e.g., tax notes articles) for other LLCs and manager names. For each registered securities registration, we compiled a list of the names of the LLC, the issuer, address, phone number, related persons, issuance and sale amounts.

We identified 83 filings in 2015 and 98 in 2016 related to conservation easement partnerships.

- The LLCs we identified raised over $483 million in 2015 and $622 million in 2016.
- The top three filers by dollar amount in 2016 raised 48% of the funds invested in conservation easement transactions we found in SEC filings. Of the securities offerings we identified in 2015 and 2016, 99 percent were filed by entities residing in Georgia, Alabama, North Carolina, and Florida–representing 96 percent of the total investments made.
- We identified these transactions based on text searches of the names of LLCs, promotors, and participants gleaned from promotional materials, public documents, websites, lobbying disclosures, and super PAC contributions. Hence, these data are unlikely to be comprehensive. Based on the letter (referenced below) from IRS Commission Koskinen, total easement syndications could be higher.
    - The Koskinen letter reports that more than 5,500 material advisors to syndication transactions have stepped forward in response to the IRS listing notice 2017-10. Hence, the total number of advisors exceeds the number of individuals we are able to identify based on public filings.

Corroboration of SEC Registrations with other materials

In order to confirm that this pool of registered LLCs were indeed related to conservation easements, we attempted to match the names of the LLCs raising money from investors with documents describing the activities of the LLC. In some cases, we were able to verify that the LLCs were associated with syndicated deals based on promotional materials, managers' websites, or from proxy voting summaries found online.

What was the return to investors?

Investors in the partnerships above invest to 'earn' a financial return in the form of tax benefits well in excess of the amounts invested. To understand the magnitude of the tax deductions promised, we examined a letter from IRS Commissioner Koskinen, promotional materials, prospectuses, and descriptions of transactions.

Promotional materials provide investors in conservation easement partnerships with information about conservation easement deals, how they are structured, the characteristics of the properties, and participants. In some cases, they identify key players like the organizers, the land trusts they work with, their partners, and, in certain cases, the names and descriptions of specific transactions. We use this information to identify and collect securities filings tied to conservation easement transactions.

Below is the IRS letter and one of several such promotional materials.

Letter from IRS Commissioner John Koskinen to Senator Ron Wyden (D-OR)

- “The average contribution deduction from this preliminary analysis was 9 times the amount of the investment in the transaction (computed by excluding a few outlier disclosures that would otherwise have skewed the result higher).

30 Latitude Lake, LLC

- “Partners could realize reduction of taxable income of over 4.5 times their investment amount.”