

# CPA gets 25 years for Promoting Conservation Easement Deductions

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Judge Batten, Chief United States District Judge for the Northern District of Georgia, handed down lengthy sentences in the first-of-its-kind criminal trial related to syndicated conservation easements (“SCEs”). On January 9th, CPA Jack Fisher was sentenced to 25 years in prison, and attorney James Sinnott was sentenced to 23 years in prison for organizing syndicated conservation easement deals that resulted in over \$1.3 billion in allegedly fraudulent charitable tax deductions obtained from 2004–2019.

According to the government, Fisher was among the first individuals to organize and market SCEs and helped spearhead the growth of the industry. Acting Deputy Assistant Attorney General Stuart M. Goldberg of the Justice Department’s Tax Division made a statement that “the significant sentences and convictions obtained are the direct result of the skill and tenacity of career prosecutors and agents, whose multiyear investigation pulled back the curtain on this massive criminal scheme.”

As **reported** by The Atlanta Journal-Constitution, Ronna Weyland, a public affairs officer with the IRS criminal investigation division in Charlotte, said the agency is currently examining \$21 billion in deductions from tax years 2016–2018. The value of the deductions reportedly under examination for three tax years—2016, 2017, and 2018—dwarfs the value of deductions generated by Fisher’s funds over the course of 15 years. The Department of Justice (“DOJ”) **press releases** following the conviction and sentencing clearly indicate that the DOJ wants to send a message. The government’s sentencing memorandum requested that the court impose a sentence of no less than 30 years in prison for Fisher and at least 28 years in prison for Sinnott. In doing so, the DOJ urged the Court to stack the length of the sentences instead of allowing the defendants to serve the sentence for each count concurrently.

The sentence handed down by Judge Batten exceeded the maximum for any single count Fisher and Sinnott were convicted of, the longest of which was 20 years. Judge Batten’s choice to stack the sentences and his remarks from the bench show that he did not accept the defendants’ arguments that the court should reduce their sentences because they relied on experts. “It shocks the conscience, the degree of fraud in this case,” Judge Batten stated, “At the core of this is a level of greed that is sinister.”

Fisher and Sinnott argued that the lengthy recommended sentence penalizes them for taking the case to trial. Randall Lenz, who plead guilty to marketing Fisher's funds and filing false tax returns claiming conservation easement deductions, was sentenced to one year of probation and a \$4,000 fine. Judge Batten sentenced Terry Roberts, an appraiser who also plead guilty, to twelve months in prison and three years' supervised release. Although the Senate Finance [Report](#) called the appraisers the engines "of syndicated conservation-easement transactions, giving power to a deduction that otherwise would not be profitable for a participating taxpayer-investor," Robert's substantial cooperation appears to have weighed heavily in his reduced sentence. The six other CPAs who pled guilty face statutory maximums of five years. In addition, another appraiser, Clayton Weibel, was acquitted of all charges.

For professional advisors and their clients who invested in Fisher's funds, the Tax Court cases are currently pending the resolution of the criminal case. It is unclear if the Tax Court will continue to stay those cases pending Fisher's and Sinnott's all-but-certain appeals. Fisher and Sinnott have an interesting array of potentially appealable issues, ranging from the mundane to complex jury issues that sound more like a hypothetical law school final exam than actual events. However, investors in Inland Capital funds and their advisors undoubtedly have significant risk and should consult with independent counsel to understand their rights and exposure.

Professional advisors and their clients should also be aware of the potential risk associated with similarly structured transactions for tax years 2023 and 2024. Congressional action in December 2022 essentially ended SCEs like those organized by Fisher but left the door open for syndicated fee simple land donations that use the same strategies at issue in the Fisher trial. Fee-simple donations and donations of conservation easements are commendable and serve a noble public good, and the IRS and DOJ believe they are targeting those who have abused those sections. Although there is no safe harbor, investors and the professionals who advise on them need to deeply consider the increased enforcement risk and transaction costs associated with any syndicated fee simple donation that generates over \$2.50 in deductions for every \$1 invested. The IRS and DOJ view these deals with a high degree of skepticism, and this has translated into aggressive enforcement that will increase the cost of the deal and risk, even years after the donation and subsequent economic benefit. Professionals, professional firms, and investors should take into account this latent risk when evaluating these types of deals.

For professional advisors and their clients who previously invested in SCEs, understanding the exposure to the potential latent civil and criminal risks associated with these investments is paramount so that you can take steps to mitigate the risk, if warranted. Polsinelli's government investigations, tax, and business attorneys have extensive experience with conservation easements and are prepared to assist with tax compliance or any potential enforcement action by the government.