

Maria O'Toole Jones Quoted on Conservation Easement Ruling in Law360

"Fallout From 11th Circ. Easement Ruling Could Be Blunted"

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Maria O'Toole Jones commented on the Eleventh Circuit's recent decision which overturned the Tax Court and found that David and Tammy Hewitt were wrongly denied a conservation easement deduction. The Eleventh Circuit's opinion can be read as invalidating the entirety of a regulation requiring the easement recipient be entitled to a certain proportionate share of proceeds in the event the easement is extinguished. But it also can be read as merely a rejection of the Internal Revenue Service's interpretation of that rule under the facts of this case, where the deed had an "improvements provision," that allowed any post-donation improvements to the property to be subtracted out before determining the proportionate share of any extinguishment proceeds payable to the donee. Jones said she is waiting to see how the Sixth Circuit decides an appeal in a case brought by Oakbrook Land Holdings LLC challenging another Tax Court opinion that denied deductions for a conservation easement donation. In that opinion, the Tax Court found that Treasury Regulation Section 1.170A-14(g)(6) was procedurally valid under the Administrative Procedures Act (APA), with a notable dissent from Senior Judge Mark Holmes, who said that Treasury didn't adequately weigh public feedback on the regulation. Jones said there's potential for a circuit split should the Sixth Circuit depart from the Hewitt case in making its decision in Oakbrook, which deals with the improvements provision as well as a distinct issue in the language of the deed but overlaps with the Hewitt case in its focus on the validity of the regulation. "It should be all eyes on the Oakbrook case at this point," Jones said.