

**UNITED STATES TAX COURT**  
**WASHINGTON, DC 20217**

PLATEAU HOLDINGS, LLC, WATERFALL	)	
DEVELOPMENT MANAGER, LLC, TAX	)	
MATTERS PARTNER,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 12519-16.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER**

This case is calendared on the Court’s May 20, 2019, Atlanta, Georgia, special trial session. A primary issue is the valuation of two conservation easements donated by Plateau Holdings, LLC (Plateau). On April 19, 2019, petitioner submitted to the Court and exchanged with respondent an expert report, authored by Martin H. Van Sant and Thomas F. Wingard, which appraises the value of the two easements (the Report). On May 9, 2019, respondent filed a motion in limine seeking to exclude the Report on the grounds that (1) the appraisal does not rest on a reliable foundation, see Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 597 (1993), and (2) the Report represents the testimony of more than one author. We will deny respondent’s motion.

Respondent first contends that the Report must be excluded under Daubert because it values the easements together rather than separately and because it allegedly employs an improper methodology. We believe that these concerns are properly addressed by cross-examination and post-trial briefing, not by excluding the Report from evidence. See Bazemore v. Friday, 478 U.S. 385, 400 (1996) (“Normally, failure to include variables will affect the analysis’ probativeness, not its admissibility.”); Quiet Tech. DC-8, Inc. v. Hurel-Dubois UK Ltd., 326 F.3d 1333, 1341 (11th Cir. 2003) (“Vigorous cross-examination [and] presentation of contrary evidence \* \* \* are the traditional and appropriate means of attacking \* \* \* admissible evidence.”) (quoting Daubert, 509 U.S. at 596).

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Second, respondent urges that the Report is problematic because it represents the testimony of two experts, without making clear which expert is responsible for which portions. According to respondent, this could complicate the task of cross-examination.

In the case of a co-authored report, we agree with respondent that both experts must testify in person and be subject to cross-examination. If the experts do not share all opinions or if they did not work collaboratively to reach those opinions, then that division of opinion or labor must be disclosed. See Adams v. United States, No. 4:CV 03-49-BLW, 2011 WL 2144574, at \*1 (D. Idaho May 29, 2011). But no explicit delineation of authorship is required if all opinions are held by both experts. See Dale K. Barker Co., P.C. v. Valley Plaza, 541 F. App'x 810, 815 (10th Cir. 2013) (recognizing permissibility of joint report where experts “reviewed the same materials and, working together, came to the same opinions”). We will allow respondent to investigate these points during his voir dire of Messrs. Van Sant and Wingard. If the voir dire reveals anything that respondent views as problematic, he may seek appropriate relief from the Court at that time.

Upon due consideration, it is

ORDERED that Respondent's Motion in Limine, filed May 7, 2019, is denied to the extent set forth above.

**(Signed) Albert G. Lauber  
Judge**

Dated: Washington, D.C.  
May 13, 2019