



IRS Labels Syndicated Conservation Easements as “Listed Transactions,” Adds Disclosure Requirements

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In a notice issued December 23, 2016, the IRS named certain syndicated conservation easements as “listed transactions,” a category of transactions which the IRS believes carry a strong potential for abusive tax avoidance. Consequently, taxpayers who were involved in these newly listed transactions are now required to disclose their participation to the IRS.

In the newly listed transaction described in IRS Notice 2017-10, prospective investors receive oral or written promotional materials offering the possibility of a charitable donation deduction, of at least 2.5 times their investment, through a pass-through entity, such as a partnership or LLC. The pass-through entity holds or acquires real property, then donates a conservation easement over the property to a tax-exempt entity, obtaining a large charitable deduction significantly in excess of the investment. This deduction is then passed through to investors, who report a tax deduction that exceeds their investment.

The IRS has been challenging, and intends to continue challenging, the legality of the tax benefits derived from these transactions. Although Notice 2017-10 does not affect current law regarding the validity of deductions from syndicated conservation easement transactions, the notice does impose additional disclosure requirements on participants in these and any substantially similar transactions.

Under Notice 2017-10, investors who participated in these transactions during any year since 2010 are required to disclose the transactions on their tax returns for the year in which they participated. For years for which a return has already been filed, the investors must disclose their participation to the IRS Office of Tax Shelter Analysis by June 21, 2017. Failure to timely and adequately disclose participation in a listed transaction will result in a penalty of 75% of the tax savings obtained through such transactions, with a minimum penalty of \$5,000 for natural persons (\$10,000 for other taxpayers). In addition, if the IRS succeeds in having the income tax deductions disallowed, investors who fail to disclose the transactions will face heightened penalties for understating their tax liability.

In addition to investors, promoters of syndicated conservation easements and certain material advisors also have disclosure obligations, with significant penalties for failure to disclose.

If you are affected by Notice 2017-10, please contact a member of Arnall Golden Gregory’s Tax practice, who can advise you on necessary action to comply with the new disclosure requirements.

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