

Syndicated Conservation Easement Transactions: Internal Revenue Service Announces Increased Enforcement Action



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The Internal Revenue Service (“IRS”) issued a November 12th announcement titled:

IRS Increases Enforcement Action on Syndicated Conservation Easements (“Memorandum”)

See IR-2019-182.

The *Memorandum* states that the IRS is increasing from an enforcement standpoint its focus on syndicated conservation easement transactions (“transactions”). As a result, these transactions are now deemed a “priority compliance area” for the IRS.

Conservation easement deductions have been in place for decades. Congress intended the deduction to incentivize property owners to conserve land natural and historic sites by offering a charitable deduction. The amount of the tax deduction is based on the value of what was donated. This is determined by an independent appraiser.

Section 170(f)(3)(B)(iii) of the Internal Revenue Code (“IRC”) specifies that the deduction is only available for a qualified conservation contribution. A qualified conservation contribution is described as a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. See § 170(h)(1) through (5); § 1.170A-14. Further, qualified real property interest includes a restriction, granted in perpetuity, on the use that may be made of real property. A qualified real property interest is typically denominated a conservation easement.

To fit within the scope of the term “qualified conservation contribution” certain criteria must be met. This includes the property being utilized exclusively for conservation purposes. If such criteria are met, the taxpayer may claim a charitable contribution deduction for the fair market value of the conservation easement that is donated.

The IRS previously published a “Listing Notice” in 2017 addressing syndicated conservation easement transactions. See Notice 2017-10 (“Notice”). The 2017 Notice stated that the IRS is aware:

... that some promoters are syndicating conservation easement transactions that purport to give investors the opportunity to claim charitable contribution deductions in amounts that significantly exceed the amount invested.

The intent of the Notice was to alert both taxpayers and their representatives that such transactions constitute a tax avoidance transaction. It further delineated the elements of a prohibited transaction.

The 2019 enforcement *Memorandum* states the IRS is now conducting coordinated examinations in the:

- Small Business and Self-Employed Division
- Large Business and International Division
- Tax Exempt and Government Entities Division

The investigations have been initiated by the IRS's Criminal Investigation Division. Such audits and investigations are stated to encompass "billions of dollars of potentially inflated deductions as well as hundreds of partnerships and thousands of investors."

The IRS describes promoters of such transactions as identifying a pass-through entity that owns real property or forms a pass-through entity to acquire real property. They are stated to syndicate ownership interest in the pas-through entity or tiered entities that own the real property. Suggestions are stated to be made to prospective investors that they may be entitled to share of the charitable contribution deduction that greatly exceeds the amount of an investor's investment. The promoters are stated to obtain an inflated appraisal of the conservation easement based on unreasonable factual assumptions and conclusions about the development potential of the real property.

A copy of the Notice 2017-10 can be downloaded [here](#) and IR-2019-182 [here](#).