



COMMISSIONER

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

July 12, 2018

The Honorable Orrin G. Hatch  
Chairman  
Committee on Finance  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

I am writing to supplement our July 13, 2017, March 13, 2018, and March 20, 2018, responses regarding information reported to the IRS related to Notice 2017-10, Syndicated Conservation Easement Transactions.

As I mentioned in my prior responses, the IRS has been working to capture the information included in the disclosures filed on Form 8886, Reportable Transaction Disclosure Statement, pursuant to Notice 2017-10 (disclosures). We have also been working to validate and analyze the data reported. The disclosures received in 2017 are for a number of years; however, to inform our compliance approach, our initial focus has been on analyzing disclosures for the 2016 tax year. We have not completed additional analysis of disclosures for the 2017 tax year. This letter is intended to provide you with the results of our analysis of the information provided on Forms 8886 with respect to the 2016 tax year as well as to update some of the overall information reported on disclosures received in 2017 and 2018.

Our analysis of the 2016 tax year Forms 8886 shows that approximately 238 top-tier pass-through entities (that is, the entity where the contribution transaction occurred, generally TEFRA partnerships) filed disclosures. We also identified approximately 10 top-tier entities that did not file the required disclosures. To date, we have information regarding approximately 25 appraisers who provided appraisals for conservation easements donated by the entities that we have identified.

The total contribution deduction amount claimed with respect to the contributions made by these 248 entities is approximately \$6 billion for tax year 2016 (\$20 billion for all years, as stated in our March 20, 2018 letter). As of the date of this letter, the IRS has begun enforcement activity with respect to more than 40 of these entities. Data for the 2016 tax year continues to be refined as our compliance work progresses.

In addition, we would like to update our earlier responses to reflect our analysis of the Forms 8886 received in 2017. We previously reported the average return ratio (Total contribution deductions divided by Total Investments) of 4.07 based on 22,621 disclosures that provided both deduction and investment amounts (response to question 8 in the enclosure to our March 13, 2018, letter). Upon further analysis of the Forms 8886, the return ratio was 4.74 based on 22,638 disclosures that provided both the contribution deduction and investment amounts. We also identified 488 outliers, previously reported as 387, with return ratios less than one or greater than 25, which may contain invalid deduction or investment amounts. Without these outliers, the return ratio is 4.70.

We also previously provided that the average return ratio for the top 10 percent of syndicated transactions was 7.48, with total deductions of \$8,927,360,528 and investments of \$1,193,698,723 (response to question 8b in the enclosure to our March 13, 2018, letter). Our latest analysis shows that the average return ratio for the top 10 percent of syndicated transactions was 8.23, with total deductions of \$7,526,512,804 and investments of \$914,714,364. To account for outliers, a median return ratio for the top 10 percent of ratios was also re-computed to be 6.69 times the investment, rather than 5.58 times the investment as previously provided.

You previously inquired if the IRS has any information indicating whether the issuance of Notice 2017-10 has prevented the promotion or marketing of syndicated conservation easement transactions (question 13 in the enclosure to our March 13, 2018 letter). Our latest analysis of the data suggests that the number of transactions has declined since the issuance of Notice 2017-10. However, that response is provided with the caveat that the IRS continues to receive disclosures, which must be manually processed. Therefore, it is unclear whether all of the disclosures received in 2018 relate to the 2017 taxable year or whether they are late disclosures for prior years. As of May 31, 2018, the IRS has processed 552 Forms 8886 for this transaction and 1,928 Forms 8918 for 2018.

The information included in the disclosures, as well as our growing experience with current inventory of open enforcement cases, shows the need for a varied approach for this issue. We are currently in the process of determining what our specific enforcement strategy should be, consistent with current resources, including with respect to failures to disclose.

I hope this information is helpful. I am sending a similar letter to Senator Wyden. If you have additional questions, please contact me, or a member of your staff may call Leonard Oursler, Director, Legislative Affairs, at 202-317-6985.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Kautter". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

David J. Kautter  
Acting Commissioner