



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

The Honorable Charles Grassley
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

Dear Chairman Grassley:

In February of this year, we provided a response to your November 8, 2019 request for updated data and statistics on the syndicated conservation easement listed transaction that was identified in Notice 2017-10, requiring material advisors and participants involved in these transactions to file disclosure statements with the IRS. This letter follows up on our February 12, 2020 response to your request.

We have received the Syndicated Conservation-Easement Transactions Bipartisan Investigative Report (August 2020) discussing the findings of the Senate Finance Committee's investigation into syndicated conservation easement transactions. We acknowledge that the Report states "Based on the information gathered in this investigation, the Senate Finance Committee Chairman and Ranking Member conclude the IRS has strong reason for taking enforcement action against syndicated conservation easement transactions as it has to date. Furthermore, in light of the continued use of these abusive transactions despite the issuance of IRS Notice 2017-10, the Chairman and Ranking Member believe Congress, the IRS, and Department of the Treasury should take further action to preserve the integrity of the conservation-easement tax deduction."

The IRS has been continuing its cross-function outreach and enforcement efforts with respect to syndicated conservation easement transactions. These efforts include investigations of promoters, examinations of taxpayers and successful litigation as well as outreach through press releases and conferences.

Taxpayers who participate in a syndicated conservation easement or substantially similar transaction must file a Form 8886, Reportable Transaction Disclosure Statement. The Form 8886 disclosures include the individual investor, any conduit partnerships in the transactions, as well as the partnership that donated the easement (or engaged in a substantially similar transaction).

The IRS tracks the information reported on a Form 8886 based on the calendar year in which it was received. The information is captured as it was reported by the taxpayer. A data analytics team then analyzes the information to determine the top-tier entity,

appraiser, number of investors, charitable contribution deduction, and other data. The analysis is based on tax year and informs our compliance approach.

Our February 2020 response provided updated data and statistics through calendar year (CY) 2018. We also explained that we would update our response with data from CY 2019 as it became available. I have enclosed the updated data we gathered to date (new information is in bold). The IRS remains steadfast in its commitment to vigorously audit and combat this abuse.

I hope this information is helpful. I am sending a similar letter to Senator Wyden and have also shared this updated information with the Joint Committee on Taxation. If you have additional questions, please feel free to contact me, or a member of your staff may contact Bart Massey, IRS Senior Advisor, Legislation and Appropriations, at 202-317-6985.

Sincerely,

Charles P. Rettig

Enclosure

- 1. To date, how many different syndicated conservation easement transactions covered by the Notices has the IRS identified as a result of disclosures required by the Notices:**

As we previously shared, the IRS received 39,619 Forms 8886, Reportable Transaction Disclosure Statements, in calendar year (CY) 2017 and 15,499 in CY 2018. The disclosures received in CY 2018 generally relate to tax year (TY) 2017 transactions; the disclosures received in CY 2017 relate to TY 2016 transactions and earlier.

The IRS received 17,182 Forms 8886, Reportable Transaction Disclosure Statements, in CY 2019. The disclosures received in CY 2019 generally relate to TY 2018 transactions.

We have identified the following number of top-tier entities used in connection with this transaction (i.e., the entity that made the contribution of property/easement): approximately 169 entities for TY 2015, 249 entities for TY 2016, 244 entities for TY 2017, **and 296 entities for TY 2018.**

- 2. What is the total number of investors involved in transactions described in Notice 2017-10?**

Determining the total number of investors in all years related to the Notice is a manual and time-intensive process that requires additional analysis on each year. Some investors participate in multiple transactions.

Data is available for TY 2016, TY 2017, **and TY 2018.** For the TY 2016 transactions, there were approximately 22,675 investors, of which approximately 12,000 were unique investors. For the TY 2017 transactions, there were approximately 21,000 investors, or 14,000 unique investors. **For the TY 2018 transactions, there were approximately 32,465 investors, of which approximately 16,900 were unique investors.**

- 3. What is the total amount and nature of the expected aggregate tax benefits generated by the transactions described in Notice 2017-10?**

We do not have complete, reliable data available for this request. The aggregate reduction in tax liability would have to be traced to the ultimate investors in the partnership and would be based on their individual tax return. However, the reported fair market value of the charitable contribution deductions for the top-tier partnerships is approximately \$6 billion for TY 2016, \$6.8 billion for TY 2017, **and \$9.2 billion for TY 2018.**

- 4. What is the total number of appraisers and/or appraisal firms involved in the transaction described in Notice 2017-10?**

The IRS completed additional analysis to determine how many appraisers prepared the appraisal reports for the TY 2015, 2016, 2017 **and 2018** top-tier entities. There were approximately 13 appraisers in 2015, 23 appraisers in 2016, 29 appraisers in 2017, **and 34 appraisers in 2018**. If there were two people from one firm, they were only counted once to help prevent duplication.

5. What is the total number of material advisors involved in developing and/or promoting the transactions described in Notice 2017-10?

We received 6,501 Forms 8918, Material Advisor Disclosure Statement, in 2017, 2,308 in 2018, **and 2,582 in 2019**. In 2017, there were 1,532 unique Material Advisors filing Form 8918 disclosures as required by Notice 2017-10 (identified by unique identification numbers). There were 659 unique Material Advisors in 2018, **and 873 in 2019**.

6. Notice 2017-10 covers transactions in which the share of a charitable contribution equals or exceeds 2.5 times the amount of the investor's investment. Based on the disclosures filed to date pursuant to the Notices,

a. What has been the average return ratio?

b. What has been the average return ratio for the top ten percent of covered transactions, based on return ratio?

We have not calculated actual return ratios but can provide the data as reported directly by the taxpayer on Form 8886 as a proxy. The data as reported by taxpayers has some limitations. For example, taxpayers may not have provided both contribution and deduction amounts; taxpayers may have reported the entire partnership's value, not their individual percentage; duplications may not have been removed; etc.

Of the 15,499 Forms 8886 filed with the IRS under Notice 2017-10 in CY 2018, 9,212 provided both the contribution deduction and investment amounts. Of these, the average deduction to investment ratio was reported as 4.87 times the investment. The IRS identified 172 outliers with ratios less than 1 or greater than 25 times the investment, which may contain invalid investment or deduction amounts. Without the outliers the investment ratio is 4.92.

From the data reported in CY 2018, the top 10% of ratios for those disclosures containing both investment and deduction amounts had an average return to investment ratio of 9.45 times the investment. To account for outliers, a median return to investment ratio for the top 10% of ratios was computed. The median (per reported data) was 6.54 times the investment.

Of the 17,182 Forms 8886 filed with the IRS under Notice 2017-10 in CY 2019, 9,897 provided both the contribution deduction and investment amounts. Of these, the average deduction to investment ratio was reported as 4.31 times the investment. The IRS identified 106 outliers with ratios less than 1 or greater than 25 times the investment, which may contain invalid investment or deduction amounts. Without the outliers the investment ratio is 5.06.

From the data reported in CY 2019, the top 10% of ratios for those disclosures containing both investment and deduction amounts had an average return to investment ratio of 11.72 times the investment. To account for outliers, a median return to investment ratio for the top 10% of ratios was computed. The median (per reported data) was 6.60 times the investment.