COMMISSIONER

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

February 12, 2020

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

Dear Chairman Grassley:

Thank you for your letter dated November 8, 2019. You asked 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.

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.

I enclosed answers to your specific questions. I hope this information is helpful. I am sending a similar letter to Senator Wyden. If you have additional questions, please feel free to contact me, or a member of your staff may contact Amy Klonsky, Acting Director, Legislative Affairs, at 202-317-4228.

Sincerely,

Charles P. Rettig

Enclosure

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:**

   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. We are currently analyzing the disclosures received in 2019.

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

   a. **Of these identified transactions, how many had been (and may still be) subject to IRS Exam, audit or other review prior to the issuance of Notice 2017-10?**

      This information is not readily available. However, prior to the initial data analysis of the Forms 8886 received as a result of Notice 2017-10, the IRS had approximately 102 top-tier partnerships under examination or ready to be examined for TY 2015 and TY 2016.

   b. **Of these identified transactions, how many have been subject to IRS exam, audit or other review subsequent to the issuance of Notice 2017-10?**

      After analysis of the Forms 8886 received, an additional 455 top tier partnerships have been added to the examination process.

      In total, approximately 84% of the top-tier partnerships involved in the transactions for 2015, 2016, and 2017 are now under exam, or an exam is planned but not yet open.

2. **Since January 1, 2010, 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 and TY 2017. 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.

3. **Since January 1, 2010, 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 and $6.8 billion for TY 2017.

4. **Since January 1, 2010, what is the total number of material advisors involved in developing and/or promoting the transactions described in Notice 2017-10, and how does that number break down among different professions such as lawyers, accountants, wealth management professionals, etc.?**

We received 6,501 Forms 8918, Material Advisor Disclosure Statement, in 2017 and 2,308 in 2018. In 2017, there were 1,532 unique Material Advisors filing Form 8918 disclosures as required by Notice 2017-10 (identified by unique identification numbers). In 2018, there were 659 unique Material Advisors. North American Industry Classification System (NAICS) codes associated with these advisors' tax returns identified the following professions:

Profession (based on NAICS)	Received in 2017	% of Total for 2017	Received in 2018	% of Total for 2018
Law/Attorney	78	5%	43	7%
Accounting/CPA	100	7%	61	9%
Finance, Insurance, Wealth Management	121	8%	27	4%
Appraisers	21	1%	15	2%
Real Estate Field	721	47%	286	43%
Securities, Commodities, Other Investments	0	0%	61	9%
Other Industries	367	24%	166	25%
Unidentified	124	8%		0%
Grand Total	**1,532**	**100%**	**659**	**100%**

Please note that the unique Material Advisor numbers are based on unique EIN. The Material Advisors have not been grouped by transaction, promoter, or otherwise. For example, multiple partnerships in one transaction may have filed a Form 8918. The investment partnership, the holding partnership, the actual top-tier partnership, etc. each may have filed a Form 8918. Each would be counted as a unique filer because the entities have different EINs.

5. **Since January 1, 2010, 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, and 2017 top-tier entities. There were approximately 13 appraisers in 2015, 23 appraisers in 2016, and 29 appraisers in 2017. If there were two people from one firm, they were only counted once to help prevent duplication.

6. **As you know, Notice 2017-10 makes certain syndicated conservation easement transactions "listed transactions" under the Internal Revenue Code, which requires individuals involved in such transactions to make disclosures to the IRS by way of Form 8886 and Form 8918. Taxpayers who participated in a listed transaction must file a Form 8886 with the IRS disclosing that participation, and material advisors of listed transactions must file a Form 8918 with the IRS disclosing their statuses as such.**

   a. **Pursuant to the Notices, to what extent have Forms 8886 and 8918 been complete and accurate?**

   The IRS reviews for completeness each Form 8886 and 8918 when received. This review is a manual, subjective process completed by several different employees. Per our initial analysis, the extent of disclosure completeness is as follows:

Complete	Form 8886	Form 8918
Disclosures Received in 2017	91% (36,247/39,619)	97% (6,279/6,501)
Disclosures Received in 2018	97% (14,987/15,499)	98% (2,256/2,308)

   Information on accuracy is not available.

   b. **Pursuant to the Notices, to what extent have Forms 8886 and 8918 indicated that they had been filed as protective disclosures?**

   The Forms 8918 and 8886 each have a check box that is marked by the taxpayer when filing as a protective disclosure. The number and percentage of protective disclosure filings are as follows:

Protective Disclosures	Form 8886	Form 8918
Disclosures Received in 2017	8% (3,250/39,619)	43% (2,781/6,501)
Disclosures Received in 2018	7 % (1,042/15,499)	30% (686/2,308)

The IRS has not completed additional analysis to determine if these were correctly designated as protective disclosures.

c. **Pursuant to the Notices, to what extent have Forms 8886 and 8918 been submitted with incomplete disclosures and therefore potentially subject to disclosure penalties?**

Per our initial analysis of the filings, the extent of incomplete disclosures is as follows:

Incomplete	Form 8886	Form 8918
Disclosures Received in 2017	9% (3,372/39,619)	3% (222/6,501)
Disclosures Received in 2018	3% (512/15,499)	2% (52/2,308)

Further analysis and/or examination work is being performed to determine if penalties are appropriate.

7. **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 partnerships 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.

The data for CY 2017, as recently provided on July 12, 2018 (updated from the March 2018 responses), has not changed and is as follows. The return ratio for the disclosures received in CY 2017, after removing the outliers, was 4.70 times the investment. The average return ratio for the top 10% was 8.23 times the investment. To account for outliers, a median return ratio for the top 10% of ratios was 6.69 times the investment.

8. Please provide an update on the IRS' current and planned enforcement strategy regarding potentially abusive transactions covered by the Notices.

The IRS's comprehensive compliance efforts are focused on the abusive syndicated conservation easement transactions described in Notice 2017-10, recognizing that there are many legitimate conservation easement transactions. Abusive syndicated conservation easement transactions undermine the public's trust in private land conservation and defraud the government of revenue. Putting an end to this offensive scheme remains a high priority for the IRS.

The IRS created a cross-divisional team to develop and implement a comprehensive strategy, which not only includes enforcement activities for those who participated in the transactions, but also for those who facilitated the transactions, including promoters, return preparers, donee organizations and appraisers. The IRS is conducting coordinated examinations across the Small Business/Self-Employed, Large Business and International, and Tax Exempt and Governmental Entities divisions. Separately, the IRS's Criminal Investigation division has initiated investigations.

The IRS is committing significant examination and investigative resources to vigorously audit the entities and individuals involved in this scheme, including those who failed to properly disclose their participation as required. Every available enforcement option is considered, including civil penalties and, where appropriate, criminal investigations that could lead to a criminal prosecution. Additionally, the IRS is litigating cases where necessary, with a substantial number of cases currently docketed in the Tax Court.

In addition to auditing investors of the scheme, the IRS is pursuing investigations of promoters, appraisers, tax return preparers, and others. Further, the IRS is evaluating numerous referrals of practitioners to the IRS Office of Professional Responsibility.

The IRS is developing and asserting all appropriate penalties, including penalties for participants (40 percent gross valuation misstatement/accuracy-related penalties), appraisers (penalty for substantial and gross valuation misstatements attributable to incorrect appraisals), promoters, material advisors, and accommodating entities (penalty for promoting abusive tax shelters and penalty for aiding and abetting understatement of tax liability), as well as return preparers (penalty for understatement of taxpayer's liability by a tax return preparer). The IRS is actively using all the tools provided by Congress to encourage compliance and end this abusive transaction.

In December of 2018, the Department of Justice filed an injunction complaint seeking to stop several individuals and an entity from organizing, promoting, or selling allegedly abusive syndicated conservation easement transactions. The IRS continues to work closely with the Department of Justice in this area.

9. **Does the IRS have any information indicating whether the Notices have prevented the promotion or marketing of potentially abusive syndicated conservation easement transactions? To what extent are taxpayers continuing to engage in transactions covered by Notice 2017-10, as amended?**

There was no notable decrease in the volume/dollars of syndicated conservation easement transactions from TY 2016 to TY 2017. The IRS identified 249 pass-through entities for TY 2016 examination from the disclosures filed pursuant to Notice 2017-10. According to the disclosures, the 249 entities claimed total charitable contribution deductions of approximately $6 billion dollars. The IRS identified 244 pass-through entities for TY 2017 examination. According to the disclosures, the 244 entities initially identified for examination claimed total charitable contribution deductions of $6.8 billion dollars. The IRS continues to receive and analyze disclosures filed in CY 2019.