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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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The Honorable John Koskinen
Commissioner, Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

March 29, 2017

Dear Commissioner Koskinen:

I am following-up on earlier informal communications between your agency and the Senate Finance Committee regarding a matter of great concern – the growth in abusive syndicated conservation easement transactions. These transactions are designed to allow tax “syndicators” to funnel charitable deductions to so-called “investors” who have no material interest in the conservation easement being contributed.

I am a strong supporter of the enhanced tax incentive for charitable donations of conservation easements and believe these donations are critical to preserving and protecting vital habitat all across the country. That is why the IRS must continue to work to ensure that this critical program does not fall victim to tax cheats whose only goal is to sell deductions to the highest bidder.

On December 23, 2016, the IRS took an important step in this direction by issuing Notice 2017-10, designating a narrow class of syndicated conservation easement transactions with a high risk of abuse as “listed transactions.” Under this notice, syndicated conservation easement transactions involving one or more pass-through entities, which use marketing materials suggesting to prospective investors that they may be entitled to a charitable contribution deduction that is greater than 2½ times the investment made must be reported to the IRS. Pursuant to the Notice, participants in these potentially abusive transactions or any similar transaction entered into on or after January 1, 2010 must file a disclosure statement to the IRS by May 1, 2017.

In anticipation of the May 1, 2017 disclosure filing deadline, I am requesting that you provide a report on the scope and nature of the syndicated conservation easement problem, compliance with the Notice disclosure requirements, and forthcoming enforcement actions by the IRS. Specifically, I am requesting information on the following relating to Notice 2017-10:

- (1) The number of different syndication transactions identified by the Forms 8886 and 8919 disclosure statements (i.e., how many different syndication transactions covered by the Notice have been identified in the disclosures since January 1, 2010);

- a. Of these identified transactions, how many were subject to IRS exam, audit, or other review prior to the issuance of Notice 2017-10?
- (2) The total number of investors involved in transactions described by the Notice;
 - (3) The number and percentage of investors covered by the notice who had an interest in the property contributed for:
 - a. less than six months;
 - b. less than one year;
 - c. less than three years;
 - d. three years or more;
 - (4) The amount and nature of the expected aggregate tax benefits generated by the syndication transactions covered by the Notice;
 - (5) The number and type of different material advisors involved in developing and promoting transactions covered by the Notice (i.e., law firms, accounting firms, wealth management professionals, etc.);
 - (6) The number of different appraisers and/or appraisal firms identified through the disclosures;
 - (7) Regarding Forms 8886 and 8918:
 - a. to what extent were the forms complete and accurate (i.e., did the forms contain all the required information, including a complete description of the transaction and the expected tax benefits generated by the transaction);
 - b. how many and what percentage of disclosure forms filed indicated they were filed as a protective disclosure;
 - c. to what extent did the forms identify all the parties involved in the transaction;
 - d. how many and what percentage of forms contained a statement saying "information will be provided on request";
 - e. how many and what percentage of disclosure forms filed were incomplete and potentially subject to disclosure penalties?
 - (8) The Notice covers syndication transactions where the share of a charitable contribution deduction equals or exceeds $2\frac{1}{2}$ times the amount of the investor's investment. From the disclosures filed:
 - a. what was the average return ratio?
 - b. what was the average return ratio for the top ten percent of syndication transactions based on return ratio?
 - (9) Please explain for the Committee what the IRS intends to do with the information received from the Forms 8886 and 8919. What is IRS's current and planned enforcement strategy regarding conservation easement deduction abuses?

- (10) What is the process and what actions will the IRS take with respect to incomplete disclosures in response to the Notice?
- (11) What is the process for identifying those who failed to make the required disclosure? What are the list maintenance requirements for material advisers and will the IRS be seeking those investors lists?
- (12) Is there any indication that some taxpayers involved in these listed transactions took appropriate corrective action and filed amended tax returns?
- (13) Does the IRS have any information indicating whether the Notice has prevented the promotion or marketing of conservation easement syndication transactions going forward?
- (14) The use of the disclosure requirements to identify and curb certain abusive tax avoidance transactions has been employed on many occasions. Is there anything to learn from Notice 2017-10 in terms of strengthening its effectiveness?

I appreciate your attention to this request and am asking that the report be provided to me by July 1, 2017. I look forward to receiving your report and any recommendations you might have for how to protect the integrity of this program. If you have any questions, please contact Christopher Arneson (Christopher.Arneseon@finance.Senate.gov) or Dave Berick (David.Berick@Finance.Senate.gov) on my staff.

Sincerely,


Ranking Member