TaxNewsFlash

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IRS offers settlement for docketed Tax Court cases involving conservation easement transactions

The IRS today issued a release announcing that the IRS Office of Chief Counsel is offering a time-limited settlement offer for certain taxpayers with pending docketed Tax Court cases involving syndicated conservation easement transactions.

According to today's release—**IR-2020-130** (June 25, 2020)—eligible taxpayers will be notified by letter with the applicable terms.

- The settlement offer would bring finality to these taxpayers with respect to the syndicated conservation easement issues in their docketed U.S. Tax Court cases.
- The settlement requires a concession of the income tax benefits claimed by the taxpayer and imposes penalties.

According to the IRS release, the IRS will continue to actively identify, audit, and litigate these syndicated conservation easement transactions "as part of its vigorous and relentless effort to combat abusive transactions."

The IRS stated that it recognizes the important role of conservation easement deductions in incentivizing land preservation for future generations; however, the IRS also noted it has been concerned about abusive syndicated conservation easement transactions for several years, identifying them in Notice 2017-10 as tax avoidance transactions and listed transactions for purposes of Reg. section 1.6011-4(b)(2) and Code sections 6111 and 6112.

The IRS release continues with the following:

- The U.S. Tax Court has held in the government's favor in several opinions and orders in syndicated conservation easement cases.

- Some promoters may tell taxpayers that their transaction is "better" than or "different" from the transactions previously rejected by the Tax Court and that it may be better to litigate than accept this resolution; however, the IRS encouraged taxpayers to consult with independent counsel—

defined by the IRS as a qualified advisor who was not involved in promoting the transaction or handpicked by a promoter to defend it—when deciding whether to accept the settlement offer.

Background—IRS's discussion of syndicated conservation easements

According to today's IRS release, in the identified listed syndicated conservation easement structures, promoters syndicate ownership interests in real property through partnerships, using promotional materials to suggest that prospective investors may be entitled to a share of a conservation easement contribution deduction that equals or exceeds two and one-half times the investment amount. The promoters obtain an appraisal that greatly inflates the value of the conservation easement based on a fictional and unrealistic highest and best use of the property before it was encumbered with the easement. After the investors invest in the partnership, the partnership donates a conservation easement to a land trust. Investors in the partnership then claim a deduction based on an inflated value. The investors typically claim charitable contribution deductions that grossly multiply their actual investment in the transaction and defy common sense.

IRS syndicated conservation easement efforts

According to today's release, the IRS has developed a comprehensive, coordinated enforcement strategy to address abusive syndicated conservation easement transactions, and has been working closely with the U.S. Justice Department to shut down the promotion of them. The IRS stated that it will continue to disallow the claimed tax benefits, asserting civil penalties to the fullest extent, considering criminal sanctions in appropriate cases, and continuing to pursue litigation of the cases that are not otherwise resolved administratively.

The IRS cautioned that the resolution offered today for docketed Tax Court cases is not expected to affect the potential criminal exposure, investigation, and/or prosecution of any promoter or individual or entity that participated in or assisted or advised others in participating in a syndicated conservation easement transaction in any manner whatsoever.

The IRS noted that as part of its strategy to address syndicated conservation easement transactions, two new functions have been created to actively investigate these transactions—the Promoter Investigation Coordinator and the Office of Fraud Enforcement.

Terms of the docketed Tax Court case offer for settlement

For certain taxpayers involved in syndicated conservation easement transactions, the IRS Office of Chief Counsel's settlement offer will be sent by mail to eligible taxpayers. Among the key terms of the settlement offer:

- The deduction for the contributed easement is disallowed in full.
- All partners must agree to settle, and the partnership must pay the full amount of tax, penalties and interest before settlement.
- "Investor" partners can deduct their cost of acquiring their partnership interests and pay a reduced penalty of 10 to 20% depending on the ratio of the deduction claimed to partnership investment.
- Partners who provided services in connection with any syndicated conservation easement transaction must pay the maximum penalty asserted by IRS (typically 40%) with no deduction for costs.

The IRS cautioned that taxpayers should not expect to settle their docketed Tax Court cases on better terms. Based on cases that the IRS Independent Office of Appeals has encountered to date, and the existing state of the law, the IRS stated its position is that taxpayers cannot later expect a better result than what is provided in this settlement offer.