

TaxNewsFlash

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Proposed regulations: Certain syndicated conservation easement transactions identified as listed transactions (text of regulations)

The U.S. Treasury Department and IRS today released for publication in the Federal Register proposed regulations (REG-106134-22) identifying certain syndicated conservation easement transactions and substantially similar transactions as listed transactions, a type of reportable transaction. Taxpayers use Form 8886, *Reportable Transaction Disclosure Statement* to disclose information for each reportable transaction in they participate. Material advisors to any reportable transaction file Form 8918, *Material Advisor Disclosure Statement* to disclose certain information about the reportable transaction.

The [proposed regulations](#) [PDF 340 KB] (41 pages) provide that material advisors and certain participants in these listed transactions would be required to file disclosures with the IRS (i.e., Forms 8886 and 8918) and would be subject to penalties for failure to disclose.

Comments on the proposed regulations are due by February 6, 2023. Requests to speak and outlines for topics to be discussed at a public hearing scheduled to be held by teleconference on March 1, 2023, at 10 a.m. ET, are also due by February 6, 2023. If no outlines are received by that date, the public hearing will be cancelled.

As noted in [Announcement 2022-28](#) [PDF 154 KB], which accompanied the proposed regulations' release, the proposed regulations were issued in response to two recent court decisions holding that IRS notices identifying particular transactions as listed transactions did not comply with the Administrative Procedure Act (APA) and thus were invalid. Specifically, the announcement referenced the U.S. Tax Court's recent decision in *Green Valley Investors, LLC v. Commissioner*, 159 T.C. No. 5 (2022) (invalidating Notice 2017-10). Read [TaxNewsFlash](#). In addition, the announcement mentioned the decision earlier this year of the U.S. Court of Appeals for the Sixth Circuit in *Mann Construction, Inc. v. United States*, 27 F.4th 1138 (6th Cir. 2022) (invalidating Notice 2007-83). Read [TaxNewsFlash](#). Announcement 2022-38 indicates that the Treasury Department and the IRS disagree with these decisions, and that they are continuing to defend the validity of the existing listing notices in circuits other than the Sixth Circuit.

The IRS stated in Announcement 2022-28 that it intends to finalize the proposed regulations, after due consideration of public comments, in 2023, and intends to issue proposed regulations identifying additional listed transactions in the near future.

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