TaxNewsFlash

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Proposed regulations: Disallowance of deductions for certain conservation easement contributions by partnerships, S corporations

The U.S. Treasury Department and IRS today released for publication in the Federal Register proposed regulations concerning the statutory disallowance rule enacted by the SECURE 2.0 Act of 2022 to disallow a federal income tax deduction for a qualified conservation contribution made by a partnership or an S corporation after December 29, 2022, if the amount of the contribution exceeds 2.5 times the sum of each partner's or S corporation shareholder's relevant basis.

The SECURE 2.0 Act (signed into law on December 29, 2022, as part of the "Consolidated Appropriations Act of 2023" (H.R. 2617)) added new subsections to the part of the tax law that provides rules for deductions for charitable contributions under section 170.

The proposed regulations [532 KB] (125 pages) would provide:

- Guidance regarding the statutory disallowance rule, including:
    - Definitions
    - Appropriate methods to calculate the relevant basis of a partner or an S corporation shareholder, including in partnership and tiered S corporation structures
    - The three statutory exceptions to the statutory disallowance rule
    - Related reporting requirements
- Reporting requirements for partners and S corporation shareholders that receive a distributive share or pro rata share of any noncash charitable contribution made by a partnership or S corporation, regardless of whether the contribution is a qualified conservation contribution (and regardless of whether the contribution is of real property or other noncash property)

The proposed regulations introduce several new concepts to implement the statutory disallowance rule, such as the new term "ultimate member" and new modified basis calculations. The proposed regulations also clarify the IRS and Treasury's position that the three exceptions to the statutory disallowance rule do not create any "safe harbors."

It is noteworthy that the proposed regulations contain detailed rules for tiered partnership and tiered S corporation structures. At a high level, the statutory disallowance rules are applied at each tier unless and until the test is failed at one tier, in which case that portion of the contribution will be a disallowed qualified conservation contribution to that tier and any subsequent tiers.

According to a related IRS release—IR-2023-216 (November 17, 2023)—the proposed regulations specifically provide guidance on the exception for family partnerships and S corporations and the exception for contributions made outside a three-year holding period, as well as updates concerning substantiation and reporting rules for certain charitable contributions.

Comments on the proposed regulations, as well as requests to speak and outlines of topics to be discussed at the public hearing (scheduled for January 3, 2024, at 10 a.m. ET), are due by the date that is 30 days after the proposed regulations are published in the Federal Register, which is scheduled to be November 20, 2023. If no outlines are received by that date, the public hearing will be cancelled.

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