



TaxNewsFlash

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Eleventh Circuit: IRS violated APA notice and comment procedures in issuing Notice 2017-10

The U.S. Court of Appeals for the Eleventh Circuit today upheld a legal challenge to Notice 2017-10, which designates certain conservation easement transactions as presumptively tax-avoidance listed transactions. The taxpayer, which facilitates investments in conservation easements, argued that the IRS issued the notice without the required public notice and comment process stipulated by the “Administrative Procedure Act” (APA).

The case is: *Green Rock LLC v. Internal Revenue Service*, No. 23-11041 (11th Cir. June 4, 2024). Read the Eleventh Circuit’s [decision](#)

The Eleventh Circuit held that in issuing Notice 2017-10, which has the force of law and carries significant penalties for non-compliance, the IRS must follow APA notice and comment procedures unless explicitly exempted by Congress. The court found the statute did not provide such an express exemption in this case and rejected the government’s argument that section 6707A, which established civil penalties for failure to report listed transactions, ratified the government’s approach of designating listed transactions without notice and comment.

The court noted in its decision that it does not purport to rule on the validity of any other notices of listed transactions, in particular those not backed by statutory penalties at the time of their issuance.

KPMG observation

Today’s case follows earlier opinions invalidating Treasury rulemaking from the U.S. Tax Court (read [TaxNewsFlash](#)) and Sixth Circuit (read [TaxNewsFlash](#)).

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