



# BURR ALERT

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## IRS to Treat Some Conservation Easement Syndicated Deals and Similar Transactions as Listed Transactions

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The IRS has announced that it will begin treating certain syndicated conservation easement transactions and "substantially similar" transactions as "listed transactions." Notice 2017-20 published on December 23, 2016 (the "Notice") provides that the IRS intends to challenge the proposed tax benefits offered by certain transactions involving the promotion and syndication of conservation easements.

### *Covered Transactions*

Under the Notice, an example of a syndicated conservation easement transaction includes the following fact pattern. Oral or written promotional materials offer an investment in a pass-through entity (generally a partnership or LLC) to prospective investors that may entitle an investor to a charitable contribution deduction that equals or exceeds an amount that is two and a half times (2.5X) the investor's investment. In furtherance of the transaction, the promoter syndicates ownership in a pass-through entity that holds or acquires certain real property. The promoter selects real property which could qualify for a charitable deduction if contributed for a conservation easement to encumber said property. The promoter obtains an appraisal for the real property that inflates the value of the conservation easement based on certain (potentially unreasonable) conclusions about the development potential and future value of the real property. The pass through entity contributes a conservation easement encumbering the property to a tax-exempt entity and allocates the charitable deduction to the investor that the investor reports on his or her tax return.

### *Reporting Obligations*

According to the Notice, certain transactions executed on or after January 1, 2010 that are the same or similar to the transaction described in the Notice will be identified as "listed transactions" under Sections 6111, 6112 of the Code, as well as Treasury Regulation §1.6011-4(b)(2). Taxpayers involved in listed transactions must disclose each such transaction for each taxable year in which the taxpayer participated in the transaction. When combined, the Notice and the listed transaction rules generally require taxpayers who have participated in syndicated conservation easement transactions, or substantially similar transactions, in 2010 or thereafter to disclose those transactions to the IRS.

Anyone who has invested in a transaction similar to the fact pattern described above should consult their financial and legal advisors, including their CPA and tax attorney to discuss the appropriate measures to take in light of the IRS's recently announced position.

If you would like further information on this Notice or any other tax matter, please contact:

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