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Prop. Reg. Section 1.6011-9

Syndicated conservation easement listed transactions

(a) Identification as listed transaction. Transactions that are the same as, or substantially similar to, a transaction described in paragraph (b) of this section are identified as listed transactions for purposes of §1.6011-4(b)(2).

(b) Syndicated conservation easement transaction. The term syndicated conservation easement transaction means a transaction in which the following steps occur (regardless of the order in which they occur)-

(1) A taxpayer receives promotional materials that offer investors in a pass-through entity the possibility of being allocated a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the taxpayer's investment in the pass-through entity as determined under paragraph (d) of this section (2.5 times rule);

(2) The taxpayer acquires an interest directly, or indirectly through one or more tiers of pass-through entities, in the pass-through entity that owns real property (that is, becomes an investor in the entity);

(3) The pass-through entity that owns the real property contributes an easement on such real property, which it treats as a conservation easement within the meaning of paragraph (c)(2) of this section, to a qualified organization and allocates, directly or through one or more tiers of pass-through entities, a charitable contribution deduction to the taxpayer; and

(4) The taxpayer claims a charitable contribution deduction with respect to the conservation easement on the taxpayer's Federal income tax return.

(c) Definitions. The following definitions apply for purposes of this section:

(1) Charitable contribution deduction. The term charitable contribution deduction means a deduction under section 170 of the Internal Revenue Code (Code), which includes a deduction arising from a qualified conservation contribution as defined in section 170(h)(1).

(2) Conservation easement. The term conservation easement means a restriction, within the meaning of section 170(h)(2)(C), exclusively for conservation purposes, within the meaning of section 170(h)(1)(C) and section 170(h)(4), granted in perpetuity, on the use that may be made of specified real property.

(3) Pass-through entity. The term pass-through entity means a partnership, S corporation, or trust (other than a grantor trust within the meaning of subchapter J of chapter 1 of the Code).

(4) Promotional materials. The term promotional materials includes materials described in §301.6112-1(b)(3)(iii)(B) of this chapter and any other written or oral communication regarding the transaction provided to investors, such as marketing materials, appraisals (including preliminary appraisals, draft appraisals, and the appraisal that is attached to the taxpayer's return), websites, transactional documents such as the deed of conveyance, private placement memoranda, tax opinions, operating agreements, subscription agreements, statements of the anticipated value of the conservation easement, and statements of the anticipated amount of the charitable contribution deduction.

(5) Qualified organization. The term qualified organization means an organization described in section 170(h)(3).

(6) Real property. The term real property includes all land, structures, and buildings, including a certified historic structure defined in section 170(h)(4)(C).

(d) Application of 2.5 times rule.

(1) Multiple suggested deduction amounts. If the promotional materials, as defined in paragraph (c)(4) of this section and described in paragraph (b)(1) of this section, suggest or imply a range of possible charitable contribution deduction amounts that may be allocated to the taxpayer, the highest suggested or implied deduction amount will determine whether the 2.5 times rule is met. In addition, if one piece of promotional materials (for example, an appraisal or oral statement) suggests or implies a higher charitable contribution deduction amount than suggested or implied by other promotional materials, then the highest suggested charitable contribution deduction amount determines whether the 2.5 times rule is met.

(2) Rebuttable presumption. The 2.5 times rule is deemed to be met if the pass-through entity donates a conservation easement within three years following taxpayer's investment in the pass-through entity, the pass-through entity allocates a charitable contribution deduction to the taxpayer that equals or exceeds two and one-half times the amount of the taxpayer's investment, and the taxpayer claims a charitable contribution deduction that equals or exceeds two and one-half times the amount of the taxpayer's investment. This presumption may be rebutted if the taxpayer establishes to the satisfaction of the Commissioner that none of the promotional materials contained a suggestion or implication that investors might be allocated a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of their investment in the pass-through entity.

(3) Anti-stuffing rule. For purposes of paragraph (b)(1) of this section, the amount of a taxpayer's investment in the pass-through entity is limited to the portion of the taxpayer's investment described in paragraph (b)(2) of this section that is attributable to the portion of the real property on which a conservation easement is placed and that produces the charitable contribution deduction described in paragraph (b)(3) of this section. For example, if a portion of the taxpayer's investment in the pass-through entity is attributable to property held directly or indirectly by the pass-through entity other than the real

property on which a conservation easement is placed as described in paragraph (b)(3) of this section (including any other real property, cash, cash equivalents, digital assets, marketable securities, or other assets), that portion of the taxpayer's investment is not attributable to the portion of the real property on which a conservation easement is placed for purposes of paragraph (b)(1) of this section.

(4) Example illustrating anti-stuffing rule.

(i) Facts. An individual (A) purchased an interest in a partnership (P) that owns real property with a fair market value of \$500,000 and marketable securities with a fair market value of \$500,000. A is one of four equal investors in P, each of whom purchased its interest in P for \$250,000 of cash. With respect to an investor's \$250,000 payment for its interest in P, the promotional materials stated that P expected to allocate a \$500,000 charitable contribution deduction to the investor (that is, a charitable deduction that is two times the amount an investor paid for its interest in P). After all four investors have purchased their interests in P, P donates a conservation easement to a qualified organization as defined in section 170(h)(3) of the Code and reports a \$2,000,000 charitable contribution deduction on its Form 1065 based on P obtaining an appraisal indicating that the value of the conservation easement is \$2,000,000. The Schedule K-1 (Form 1065) that P furnishes to A indicates that P allocated a \$500,000 charitable contribution deduction to A for the taxable year.

(ii) Analysis. Under paragraph (d)(2) of this section, for purposes of paragraph (b)(1) of this section, the amount of A's investment in P that is attributable to the real property on which a conservation easement is placed described in paragraph (b)(3) of this section is \$125,000 (that is, only the portion of the investment that is attributable to the real property on which a conservation easement is placed and that produces the charitable contribution deduction described in paragraph (b)(3) of this section). Because A's investment for purposes of the 2.5 times rule is \$125,000 and A's expected charitable contribution deduction, based on the promotional materials, is \$500,000 (that is, an expected deduction that is four times the investor's investment), the requirements of the 2.5 times rule of paragraph (b)(1) of this section are satisfied.

(e) Participation in a syndicated conservation easement transaction.

(1) In general. Whether a taxpayer has participated in a syndicated conservation easement transaction described in paragraph (b) of this section is determined under §1.6011-4(c)(3)(i)(A).

(2) Class of participants. For purposes of §1.6011-4(c)(3)(i)(A), participants in a syndicated conservation easement transaction described in paragraph (b) of this section include-

(i) An owner of a pass-through entity;

(ii) A pass-through entity;

(iii) Any other taxpayer whose Federal income tax return reflects tax consequences or a tax strategy arising from the syndicated conservation easement transaction described in paragraph (b) of this section.

(3) Exclusion. A qualified organization to which the conservation easement is donated is not treated as a participant under §1.6011-4(c)(3)(i)(A) in a syndicated conservation easement transaction described in paragraph (b) of this section.

(f) Application of section 4965. A qualified organization is not treated under section 4965 of the Code as a party to the transaction described in paragraph (b) of this section.

(g) Applicability date. This section's identification of transactions that are the same as, or substantially similar to, the transactions described in paragraph (b) of this section as listed transactions for purposes of §1.6011-4(b)(2) and sections 6111 and 6112 of the Code is effective [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].