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## IRS Finalizes Conservation Contribution Disallowance Rule Regs (2)

The IRS on Monday issued final guidance on an amendment to the US tax code limiting partnerships' ability to take a tax deduction for charitable contributions of conservation easements.

Conservation easements have increasingly faced criticism from the IRS, which has argued that many deductions are often highly inflated appraisals of what the donated rights are worth. When the agency [proposed rules](#) in November disallowing tax deductions for qualified conservation contributions made by partnerships or S corporations, Commissioner Danny Werfel said the regulations "will stem the tide of certain syndicated conservation easements that are nothing more than retail tax shelters."

The final rule ([TD 9999;1545-BQ90](#)) adopts the proposed rules with some modifications to provide clarity on a provision included in legislation signed into law at the end of 2022. The provision added a paragraph to tax code under Section 170 (h) that limited the deduction of a charitable conservation easement for partnerships.

The final regulations further define the amount of qualified conservation contributions, adds a new step when determining basis to take into account acquisitions of additional partnership interests or partial dispositions of partnership interests that occurred before the conservation contribution, and creates additional examples.

The law provides that a charitable contribution by a partnership will not be considered a "qualified conservation contribution" if the amount exceeds 2.5 times the sum of "each partner's relevant basis in such partnership."

The regulations include definitions, appropriate methods to calculate the relevant basis of a partner or an S corporation shareholder, three statutory exceptions to the statutory disallowance rule, and related reporting requirements.

The regulations provide reporting requirements for partners and S corporation shareholders who receive a distributive or pro rata share of any noncash charitable contribution made by the 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.

Land Trust Alliance conservation defense director Leslie Ratley-Beach said her organization has pushed for more rules around conservation easements for years and is happy to see the agency incorporate some of the group's comments into the final rules.

"Ensuring the integrity of conservation easements and our tax laws and protecting those who work tirelessly and ethically to conserve our country's irreplaceable working and natural lands is the Alliance's highest priority," she said in a statement. "We commend the IRS for issuing these final regulations and look forward to continuing to work with them to ensure compliance across our community."

Steve Small, a tax attorney who has studied syndicated easements, said this won't be the final word on the matter.

"Talking about the rule of Section 170(h)(7) does not end the discussion," he wrote in an email. "Misinformation about valuation of conservation easements continues to be widespread."

He said there are many other kinds of abuse that can occur outside the scope of Section 170(h)(7).

“Planners and appraisers who avoid the application of Section 170(h)(7) do not get a ‘get out of jail free’ card for the countless other transactions, and misinformation, where there continues to be valuation abuse,” he said.

(Adds additional comments beginning in eighth paragraph.)

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