JUSTICE NEWS

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Justice Department Sues to Shut Down Promoters of Conservation Easement Tax Scheme Operating out of Georgia

The United States filed a complaint seeking an order stopping Nancy Zak, Claud Clark III, EcoVest Capital Inc., Alan N. Solon, Robert M. McCullough, and Ralph R. Teal, Jr., from organizing, promoting, or selling an allegedly abusive conservation easement syndication tax scheme, the Justice Department announced today.

According to the complaint filed in the U.S. District Court for the Northern District of Georgia, the defendants' scheme revolves around donations of conservation easements and corresponding tax benefits from those donations. Defendants also allegedly rely on grossly overvalued appraisals as part of their scheme.

"The Department of Justice is working with our partners in the Internal Revenue Service to shut down fraudulent conservation easement shelters, which in this case were based on willfully false valuations," said Richard E. Zuckerman, the Tax Division's Principal Deputy Assistant Attorney General. "Individuals investing in these schemes with benefits that seem too good to be true should ensure they are paying their proper federal income tax liability."

"When it comes to aggressive transactions marketed by unscrupulous advisors, we will take every enforcement option available, including civil and criminal penalties," said Internal Revenue Service Commissioner Charles P. Rettig. "Cheating on your taxes will not be tolerated."

Under the proper circumstances, the Internal Revenue Code allows a taxpayer to take a charitable donation deduction equivalent to the fair market value of a conservation easement, but only if certain requirements with respect to the donation of an interest in property for conservation purposes are satisfied. This deduction is referred to as the "qualified conservation contribution."

The defendants allegedly organize, promote, and sell ownership interests in limited liability entities, referred to in the complaint as "conservation easement syndicates." According to the complaint, at the time defendants organize, promote, and sell ownership interests in a conservation easement syndicate, the syndicate plans to donate a conservation easement on land it owns, and then claim a corresponding tax deduction for the "qualified conservation contribution."

However, these syndicates lack economic substance and are shams. They only serve as a conduit to transfer overvalued and otherwise improper federal tax deductions to customers, according to the government's complaint. Additionally, the complaint alleges the conservation easements promoted by the defendants do not meet the requirements for a "qualified conservation contribution" under the Internal Revenue Code.

According to the complaint, defendants knew, or had reason to know, that the statements they made to customers regarding the tax benefits were false or fraudulent. In this regard, the complaint alleges that defendants knew the syndicates that they promoted planned to donate a conservation easement but otherwise did not plan to engage in any ongoing business activity. The complaint also alleges that the only return on investment a customer could anticipate from "investing" in a syndicate was the tax benefit from the planned conservation easement donation, which was many times larger than the purported investment. The complaint further alleges that the defendants made or furnished gross valuation overstatements about the valuation of conservation easements and the corresponding tax deductions, or caused others to do so.

The suit alleges that defendants have organized, promoted, and sold at least 96 conservation easement syndicates resulting in the syndicates reporting over $2.0 billion of tax deductions from overvalued and improper "qualified conservation contributions," and have passed those tax deductions through to the thousands of customers of defendants' scheme, resulting in hundreds of millions of dollars of tax harm.

On December 23, 2016, the IRS issued Notice 2017-10, announcing that certain syndicated conservation easement transactions are listed transactions if entered into on or after January 1, 2010. Notice 2017-10 applies to those prospective investors who receive oral or written promotional materials offering the possibility of a charitable donation deduction of at least 2.5 times their investment. A typical transaction covered by Notice 2017-10 involves the advertised investment in a pass-through entity that owns real property or acquires real property for the purpose of encumbering the property with a conservation easement.

In the past decade, the Tax Division has obtained injunctions against hundreds of unscrupulous tax preparers and tax scheme promoters. Information about these cases is available on the Justice Department's website. An alphabetical listing of persons enjoined from preparing returns and promoting tax schemes can be found on this page. If you believe that one of the enjoined persons or businesses may be violating an injunction, please contact the Tax Division with details.

Attachment(s):
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Topic(s):
Financial Fraud
Tax

Component(s):
Tax Division
USAO - Georgia, Northern

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