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Senators Start Tax Investigation of Land Conservation Deals

Grassley and Wyden seek details of syndicated conservation easements they suspect exploit laws designed to protect environmentally sensitive land

By Richard Rubin
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WASHINGTON — Sens. Chuck Grassley (R., Iowa) and Ron Wyden (D., Ore.) launched an investigation into syndicated conservation easements, the tax-advantaged land deals that have already drawn scrutiny from the IRS and the Justice Department.

Messrs. Grassley and Wyden, the chairman and top Democrat on the tax-writing Finance Committee, sent letters Wednesday to 14 people involved in easement deals. The letters, which were reviewed by The Wall Street Journal, ask for copies of appraisals, promotional materials and internal documents. The senators are also requesting investors' names and addresses, along with information about promoters' fees.

"The goal of our bipartisan investigation is to ensure a few bad actors don't threaten the program by selling off deductions based on exorbitant appraisals," Mr. Wyden said. "The program must not be abused and used as a lucrative tax shelter for the wealthy."

The inquiry will provide lawmakers with new, detailed information about a tax-avoidance strategy that is popular among some high-income taxpayers, and the investigation could provide momentum for legislative changes.

"There are very legitimate purposes for the conservation easement provisions of the tax code," Mr. Grassley said. "But when a handful of individuals cook up a scheme to cash in at the expense of federal revenue and in violation of Congress's intent, something needs to change."

The tax code allows landowners to claim deductions for donating conservation easements. That is, taxpayers can place a permanent land-use restriction on an environmentally sensitive property and claim a charitable contribution for the value diminished by the restrictions.

For example, if a piece of property is worth $10 million with no restrictions and $2 million without the ability to build houses, the owner can claim an $8 million deduction for donating that restriction to a land trust.

The break is popular with environmental groups and lawmakers, and Congress has expanded conservation easement incentives several times. President Trump has used conservation easements on his properties in at least four states.

Conservation easements can be abused. That is partly because the break's value rises with the value of the land, and taxpayers aren't required to quantify the environmental benefits the public is getting in exchange for forgone tax revenue. Risk also arises because the tax deduction relies heavily on appraisals that can be challenged only with labor-intensive audits by a shrinking Internal Revenue Service.

Committee aides say they support the incentive and are trying to protect its integrity.

In the past few years, particularly in the southeastern U.S., financial advisers have started promoting syndicated easements—deals where tax benefits are parceled out to high-income people who have no previous connection to the property but are looking for deductions.

In some cases, people are offered the opportunity to buy into a partnership and quickly get tax deductions worth more than their initial investments. Promoters describe these transactions as an efficient way to conserve land and shift tax benefits from landowners who don't have the income to take deductions to people who do. But critics inside and outside the government say they often rely on exaggerated, unrealistic appraisals.

In late 2016, the IRS labeled some syndicated easement deals—those in which the deductions are at least 2.5 times the investment—as "listed transactions." That ruling required taxpayers and advisers to flag them on tax returns, making it easier for the IRS to track and audit them.

Those disclosures showed that taxpayers deducted $20 billion from these transactions from 2010 through 2016, including $6 billion for 2016 alone, according to the IRS.

In December, the Justice Department sued Georgia-based promoters including EcoVest Capital Inc., asking a court to stop them from being involved in further transactions.

The defendants in that case have denied wrongdoing.

"EcoVest—through the very projects plaintiff seeks to enjoin—has helped to preserve in perpetuity nearly 20,000 acres of undeveloped property, including forests, meadows, wetlands, streams, and coastal plains," the company wrote in its legal response. "In keeping with the intent of Congress, EcoVest manages real estate projects that protect the environment and comply fully with all applicable laws."

EcoVest received one of the committee's letters Wednesday.

Lawmakers including Rep. Mike Thompson (D., Calif.) and Sen. Steve Daines (R., Mont.) have proposed limiting the break so taxpayers can't get deductions more than 2.5 times as large as their investment.

Mr. Grassley, who regained the chairmanship of the Finance Committee this year, is known for his investigations of nonprofits. In his previous stint as chairman, the panel probed conservation easements and the Nature Conservancy. Those inquiries led to changes in the law, including tougher penalties on appraisers and limits on easements in historic districts.

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