Tax-Exempts Shielded From Easement Penalties, Official Says

By Colleen Murphy

The IRS wasn’t trying to catch all tax-exempt organizations involved in conservation easement transactions when it flagged some of the transactions as abusive, a Treasury Department official said.

Tax-exempt groups that receive easement donations are generally excluded from the additional reporting requirements the Internal Revenue Service added when it labeled syndicated easement transactions as abusive in a December notice (Notice 2017-10), Elinor Ramey, an attorney-adviser at Treasury, said Feb. 24 during a Joint TE/GE Council meeting in Baltimore.

The notice says donations of land are tax avoidance maneuvers if they allow investors to claim charitable contribution deductions at least 2.5 times larger than the investments, often through partnership setups. Exempt organizations aren’t considered parties to the transaction, meaning they won’t automatically have to pay penalties described in tax code Section 4965, Ramey said.

But if an organization is “actually more involved in setting up these agreements and setting up these partnerships” on the front end, they should talk with their advisers about whether they need to report their involvement, she said.

“My understanding is this is rare, but we are starting to hear this is a concern,” she said, adding Treasury doesn’t receive information on individual taxpayers, because that is confidential under IRS rules.

The notice requires individuals involved in the described transactions from 2010 on to disclose them to the IRS by May 1.

To contact the reporter on this story: Colleen Murphy in Baltimore at cmurphy@bna.com

To contact the editor responsible for this story: Meg Shreve at mshreve@bna.com

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