Senate Taxwriters Probe Possible Abuses of Conservation Easements
by Fred Stokeld and Stephen K. Cooper

The Senate Finance Committee is launching a bipartisan investigation into possible abuses of a popular tax break applied to land donations.

Finance Committee Chair Chuck Grassley, R-Iowa, and ranking member Ron Wyden, D-Ore., sent letters March 27 to 14 people potentially tied to investment groups that might have unfairly profited from conservation easements.

Such groups typically grant easements on land they buy for conservation purposes and then boost their tax benefits by getting “extravagantly high appraisals” for the land, a committee release noted.

Grassley said there are legitimate reasons for conservation easements, 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.”

Wyden said the investigation seeks “to ensure a few bad actors don’t threaten the program by selling off deductions based on exorbitant appraisals.”

The Questions

The letters went to individuals supposedly tied to a partnership or passthrough entity for a listed transaction described in Notice 2017-10, 2017-4 IRB 544. Listed transactions are those flagged as being similar to tax avoidance transactions.

The letters ask the recipients for information about the distributions of tax deductions for property donations, whether appraisals included dates and costs related to the entity’s acquisition of the property, what assessments were performed on the donated properties, and whether investors were given legal opinions or memoranda about the tax treatment of the investments.

Grassley and Wyden also wanted to know if investors were instructed on how to comply with tax laws and IRS guidance. Other questions concerned the roles of the entity’s partners in deciding “whether to contribute a conservation easement, hold for investment, or develop the real property.”
The senators requested copies of all promotional materials and other communications made to prospective investors that describe the investment opportunities or the amount of tax benefits expected. Replies are due April 30.

**Grassley: Problems Getting Worse**

Asked about the scope of the committee’s probe into easements and the possibility of legislation, Grassley told reporters, “Right now it’s an investigation, and you can’t draw any conclusions until you get answers to your letters. We know there was a terrific effort last fall to get some [legislative] language in whatever tax bill might come up — to forestall, somehow to take the controversy out of these.”

Grassley noted that he tried to prevent conservation abuses when he served as chair and ranking member of the Finance Committee, but the problems have grown worse since then.

“We feel that in this case there’s an abuse, but maybe on a bigger business scale, in the sense of partnerships being created,” Grassley said, adding that if the schemes turn out to be improper they would represent a lot of lost money to the treasury.


“They are really abusive syndicated conservation easement high-write-off tax shelters masquerading as conservation transactions,” Small said.

“Defenders of these transactions claim that they are important for conservation of important land, but they are really abusive syndicated conservation easement high-write-off tax shelters masquerading as conservation transactions,” said Small, who in a 2016 *Tax Notes* article presented his own proposal for stopping conservation easement abuses.

**‘Spreading Like Wildfire’**

“As I have previously stated many times, these transactions have been spreading like wildfire, most recently apparently even in the face of Notice 2017-10,” Small added. “That is an indication to me that sufficient enforcement efforts by the federal government have been missing.”

Andrew Bowman of the Land Trust Alliance said the investigation “is the right step toward permanently ending this abuse. It shines a bright light on transactions that disguise a profitable tax shelter as a charitable donation.”

Bowman noted his organization’s support of the Charitable Conservation Easement Program Integrity Act (S. 170), which would limit a partner’s deduction for a partnership’s qualified conservation contributions.

The Partnership for Conservation has been critical of Notice 2017-10 and believes there are no meaningful differences between conservation easement donations made through partnerships and those made directly by individuals. The group praised Grassley and Wyden for working in a bipartisan manner to gather information about conservation easement donations made by partnerships.

“We look forward to being part of the discussion as we work to promote increased land conservation through clearer guidance that ensures conservation partnerships comply with both the spirit and the letter of the law Congress has passed on multiple occasions,” said Robert Ramsay, the partnership’s executive director. “We . . . look forward to working with all stakeholders to find solutions that will continue to encourage and incentivize private conservation of land for generations to come.”