

Is this a listed transaction?

This is not a listed transaction as it is not substantially similar to syndicated conservation easements.

A review of the Notice related to conservation easements (<https://www.irs.gov/pub/irs-drop/n-17-10.pdf>) highlights the following points.

- i. It clearly states that the conservation easements are based on inflated hypothetical valuations.
- ii. In addition, in contrast to traditional charitable gifting where an asset is put into productive use for the benefit of a charity, in conservation easements the charity is yoked with the burden of enforcing the easement.
- iii. This goes against typical public policy encouraging the productive use of assets and
- iv. the specific congressional intent of Congress that charities receive the benefit of donated assets to actively further their charitable purpose.

More procedurally,

- v. the Notice does not alter the rule regarding tacking of holding periods which allows a donation to be greater than the cash contribution of the donor (indeed it specifically allows tacking and only requires reporting on transactions with valuations of greater than 2.5, their contribution... if the Notice's concern was with the tacking rules they simply would have proscribed tacking).

In our transaction, in contrast to being

- vi. real estate, with
- vii. hypothetical future values, our transaction is appraised at the
- viii. actual fair market value of the product has a **clear, non-hypothetical market value**
- ix. which is at the price that the current owners sell it at and
- x. at the lower range of the market rates.

xi. The charity is not yoked with any burden, but in fact is ecstatic at its opportunity in receiving the donation and using it towards fulfillment of its charitable purpose.

In summary, our transaction is consistent with congressional intent and common industry practice related to charitable gifting (unlike the conservation easements) and is valued consistent with the other products actually in the marketplace and sold in the ordinary course of business.

It is inconsistent with the facts, the reasoning, the state of the law, and public policy and congressional intent to hold that eleemosynary donations of actual magnesium are "substantially similar" to the inflated hypothetical values of restricting potential future real estate land development that burdens a charity in perpetuity with the duty to monitor and enforce the easement.

Under the Notice deductions that are 2.5x the investment are allowed. This goes against the rule that a donation is for the cash outlay if it is made within the current year. The multiple is allowed, however, because of the tacking of the long-term holding period of the contributing partner. Thus, **because the contributing partner's holding is long term, the actual appraisal is allowed even if it is more than the taxpayer's outlay** (up to 2.5x under the Notice).

Thus, the Notice squarely rests on the inflated valuation of the appraiser based on hypothetical future uses of the donated property. With our product, the appraisal is not based on the future development of the asset. Instead it is at the actual fair market value for which the previous owner and its competitors currently sell it in its raw form.

Thus, this is not a listed transaction; it is not based on hypothetical valuations of future developments which was the crux of the Notice covering syndicated easements.

Nor is it real estate, nor an easement, which imposes an ongoing burden on the charity or a prohibition from development.

Instead, as with traditional charitable contributions, it is a product designed to be commercially developed for productive use towards the charity's charitable purpose. (Note also that in charitable giving law, a donation is the fair market value unless the holding period is for less than a year, and then it is for the cash outlay).

The fact that the Notice does not 'notice out' transactions of 2.5x or less AND does not attack the longstanding rule of allowing the tacking of a holding period of a contributing partner, thereby specifically allowing the donor's to take a long term holding period in their donated asset).

In summary, none of the points made in the Notice logically make this 'similar or substantially similar' to our transaction.