

**Technical Differences Between S.170 and New Legislation**

* Where a partnership makes a charitable contribution of a conservation easement, both bills deny a deduction for the partner’s allocable share of the deduction where the allocable share exceeds two and one-half times a specified amount. In S. 170, the specified amount is the partner’s adjusted basis in the partnership that makes the contribution (sometimes referred to as “outside basis”). In the revised bill, the threshold amount generally is the portion of the partner’s outside basis that is allocable to the real property with respect to which the contribution is made, applying basis allocation rules of present law, and without taking into account partnership-level debt that could increase the partner’s outside basis. The revised bill seeks to address concerns that taxpayers might artificially inflate outside basis through the use of debt or by contributing unrelated assets to the partnership in an attempt to more easily satisfy the two-and-one-half-times ratio.

* The revised bill adds a new rule under which a partner’s distributive share of the charitable deduction relating to the easement contribution is not allowed if the partner’s interest in the partnership is held through one or more other pass-through entities. This rule does not prohibit structures under which tiers of partnerships might exist above or below the partnership that makes the contribution. It instead requires only that the partner’s interest in the partnership that makes the contribution be held directly and not be held through other pass-through entities. The rule is intended to reduce the possibility that taxpayers might (before satisfaction of the holding period described below) use complex structures that make enforcement of the two-and-one-half-times ratio difficult.

* S. 170 provides that the deduction disallowance rule of the bill applies only to the first three taxable years ending after the date the partner became a partner in the partnership (the “holding period”). Once the holding period is satisfied, the two-and-one-half-times ratio does not apply. To address concerns that the holding period rule in S. 170 might be easy to avoid through planning, the revised bill strengthens the holding period so that it generally extends to the later of (1) the date on which the partnership acquired the real property with respect to which the easement contribution is made and (2) the date on which the partner acquired his or her entire interest in the partnership. In addition, the holding period in the revised bill applies both to (1) the rule that denies a deduction where the two-and-one-half -times ratio is exceeded, and (2) the rule that denies a deduction where the partner holds his or her interest through one or more other pass-through entities. As a result, once a partner satisfies the holding period, neither of the deduction disallowance rules of the revised bill applies to the partner’s allocable share of the charitable deduction.

* Finally, both bills are generally effective for contributions made in taxable years ending after December 23, 2016. Thus, for example, the bills apply to a contribution made at any time during calendar year 2016 in the case of a calendar year taxpayer. The revised bill, however, provides that the rule denying a deduction where a partner’s interest in the partnership is not directly held is effective only for contributions made after the date of enactment.