

FACADE EASEMENT CONTRIBUTIONS

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Here we review the potential financial benefits derived from the charitable donation of a facade easement to an organization that is exempt from tax under Internal Revenue Code Section 501(c)(3). A preservation easement is a legal agreement designed to protect a significant historic, archaeological, or cultural resource. In the case of a facade easement, the historic property owner is assured that the building's facade will be maintained, protected and preserved forever.

Other qualified conservation easements that could result in a charitable contribution deduction include the donation of a historically important land area or the donation of a historically important building interior easement.

The deduction the taxpayer is entitled to is equal to the fair market value of the easement, which is generally the decrease in fair market value of the property caused by the restrictions placed on the property because of the easement.

The gift of a facade easement must be made for conservation purposes, such as the preservation of a certified historic structure and must be protected in perpetuity (forever). A certified historic structure is any building, structure or land area which is either: (1) Listed in the National Register; or (2) Located in a registered historic district and certified by the Secretary of Interior as being of historic significance to the district. A structure is certified for purposes of this definition if it is certified either at the time of the contribution or on the due date for filing the donor's tax return for the taxable year of the contribution.

Unlike property eligible for the rehabilitation tax credit, the conservation easement donation can be from a structure that is used for either business or non-business (i.e. personal residence). If the historic structure is not visible from a public way, the terms of the easement must permit regular viewing by the general public of the historic characteristics and features of the property, to the extent such viewing is consistent with the nature and condition of the property.

A special rule applies for contributions of interests in real property subject to a mortgage. No charitable deduction is allowed unless the mortgagee agrees to subordinate its rights to the property to the right of the donee to enforce the conservation purposes in perpetuity.

Internal Revenue Service Engineers have concluded that the proper valuation of a facade easement should range from approximately 10% to 15% of the value of the property. Once fair market values have been determined, the same ratios are used to allocate the basis of the building and the underlying land to the facade easement for both rehabilitation tax credit and depreciation purposes. See Treasury Regulation 1.170A-14(h).

If an individual, personal service corporation, closely held corporation, partnership, or an S-corporation donates and claims a deduction for property valued in excess of \$5,000, the taxpayer must obtain a qualified appraisal and attach a fully completed summary of the appraisal to the income tax return. If the donor is an S-corporation or partnership, it must

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provide a copy of the "appraisal summary" to each partner or shareholder that receives an allocation of the charitable contribution deduction.

The "appraisal summary" is a summary of a qualified appraisal that includes the following information:

- The name and tax identification number of the donor.
- A description of the property in sufficient detail.
- A brief summary of the physical condition of the property.
- An account of the manner of acquisition.
- The cost or other basis of the property.
- The name, address and tax identification number of the donee.
- The date the donee received the property.
- A statement explaining whether or not the contribution was made by means of a bargain sale and the amount of any consideration received from the donee for the contribution.
- The name, address and identification number of the qualified appraiser.
- The fair market value of the property on the date of the contribution.
- A description of the fee arrangement between donor and the appraiser.

See Treasury Regulation 1.170A-13(c) for additional information relating to qualified appraisals.

The donor who makes a qualified conservation easement must reduce the adjusted basis in the portion of the property retained by the amount of the total adjusted basis of the property allocable to the interest contributed. For example:

Fair Market Value before:	\$80,000
Fair Market Value after: (85% of FMV)	<u>68,000</u>
Value of easement:	12,000
Adjusted Basis before:	20,000
Adjusted Basis after: (85% of Adjusted Basis)	17,000

When a façade easement is conveyed during the same year a qualified rehabilitated building is placed in service, the taxpayer would not be entitled to claim the portion of the rehabilitation tax credit attributable to the façade easement.

If a taxpayer claimed a rehabilitation tax credit with respect to property and subsequently makes a qualified conservation contribution (i.e. façade easement) with respect to the property, the charitable contribution is considered a partial disposition of the property. This event will trigger recapture of all or part of the credit if the contribution is made within the recapture period (5 years from the placed in service date).

Please refer to Revenue Ruling 89-90 and *Rome I, Ltd v. Comm.*, 96 T.C.697 (1991) for further information on the tax effect of combining the rehabilitation tax credit with a façade easement donation.