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Easement deductions may qualify if certain requirements are met

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The federal tax laws permit an income tax deduction for the value of certain qualified real property interests that are donated to charity exclusively for conservation purposes. A taxpayer's contribution of an easement to preserve the faÃ§ade of a certified historic structure may qualify for deduction, if the necessary requirements are met.

In response to misinformation by certain tax advisors and charitable organizations, who have been representing to prospective donors that the Internal Revenue Service generally recognizes tax deductions equal to 10% to 15% of the fair market value of the property subject to a faÃ§ade easement, the IRS's Office of Chief Counsel issued formal advice this fall regarding the manner in which the valuation of faÃ§ade easements must occur. The IRS will not accept appraisals which value a faÃ§ade easement as a percentage of the fair market value of the underlying real property, without reference to the actual value of the property before and after the easement has been granted.

In order to substantiate a charitable deduction for a faÃ§ade easement, a taxpayer must obtain an appraisal valuing the underlying real property both before and after the contribution, with the easement value calculated as the difference (if any) between these Â“before and afterÂ” values. IRS Regulations require this analysis to take into account not only the current use of the underlying property, but also an objective assessment of the likelihood of development and the effect of existing zoning, conservation and historic preservation laws that may already restrict the highest and best use of the property. Thus, there are instances where the grant of an easement may have no material effect on the property value.

Given the degree of IRS scrutiny in this area, taxpayers who are contemplating a charitable deduction of a faÃ§ade easement should be certain to analyze the extent to which the easement will impair the value of the underlying property, particularly given the impact of other preservation laws which may already be in place. If it appears that the easement will result in a real diminution of value, the taxpayer should be certain to obtain a qualified appraisal which utilizes the required Â“before and afterÂ” valuation methodology in order to substantiate the charitable deduction.

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