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Benefit from façade easements - Cautiously

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The donation of a façade easement can provide a valuable tax deduction to property owners and can also promote sustainable development practices by supporting historic preservation. However, property owners must enter into these transactions carefully because the IRS and the courts continue to scrutinize such donations.

A façade easement generally prohibits the owner of the property from developing or altering the façade, and thus includes restrictions preserving the exterior of the building, including the front, sides, rear, and height, and prohibiting any changes to the exterior of the building inconsistent with its historic character. Generally, the donor of a qualifying façade easement will be able to claim a charitable deduction equal to the decrease in the fair market value of the property caused by the restrictions placed on the property.

Property owners interested in making a façade easement donation must be careful to follow all regulatory guidelines to benefit from the charitable deduction. Recent Tax Court cases in 2011 have upheld IRS challenges to façade easement donations and highlight areas of caution:

- * Denying a \$3.8 million deduction because the taxpayer failed to submit a qualified appraisal for the easement.
- * Denying a \$220,800 deduction for a façade easement on a historic Boston rowhouse because there was a mortgage on the property (and so the donee did not receive full control over the property donated, or rights to any proceeds on its sale or destruction).
- * Denying a \$705,000 deduction for a façade easement on a commercial building in Alabama because there was no contemporaneous written

Also, a district court permanently barred an architectural trust from promoting a façade easement program that suggested charitable deductions should be equal to 10% to 15% of the value of the underlying property. The total value of façade easement deductions attributable to the scheme was more than \$1.2 billion.

Taxpayers who are interested in obtaining the tax advantages from the donation of a façade easement should seek advice from tax professionals who are familiar with qualified charitable conservation contributions, and who can assist them with navigating the beneficial, but complex process.

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