

**SPECIAL RULES FOR  
HISTORIC PRESERVATION EASEMENTS**

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I. **SPECIAL QUALIFICATIONS FOR HISTORIC PRESERVATION  
EASEMENTS**

Historic preservation easements are part of the class of conservation easements. Historic preservation is one of the approved purposes for conservation easements recognized by the Internal Revenue Code. Reg. §1.170A-14(d)(1)(iv) Historic preservation easements include easements for historically important land area and certified historic structures.

A. Historically important land area includes:

- (1) independently significant land area including related historic structures (e.g., a Civil War battlefield) that meets the National Register Criteria for Evaluation
- (2) any land within a registered historic district including any buildings on the land area that can be considered as contributing to the significance of the district, and
- (3) any land area adjacent to a property individually listed in the National Register of Historic Places where the physical or environmental features of the land area contribute to the historic or cultural integrity of the property. Reg. §1.170A-14(d)(5)(ii)

B. Certified historic structures include a building, structure, or land area:

- (1) listed in the National Register of Historic Places, or
- (2) located in a registered historic district and certified by the Secretary of the Interior to the Secretary of the Treasury as being of historic significance to the district. Reg. §1.170A-14(d)(5)(iii)

Under this definition, a structure does not have to be depreciable. Consequently, easements on private residences will qualify.

## II. VALUATION OF HISTORIC PRESERVATION EASEMENTS.

The method of valuation which is preferred by the IRS regulations is based upon comparing the donated conservation easement with sales of other easements (when there is a substantial record of such sales) which are comparable to the donated easement. However, if there is no substantial record of sales available, the fair market value of the historic preservation easement is equal to the difference between the fair market value of the property before the granting of the restriction and the fair market value of the property after granting the restriction. Reg. §1.170A-14(h)(3)(i) One court noted in 1988 – and it is just as true today as it was then – that there is no well established market for façade easements. *Richmond v. U.S.*, 699 F. Supp. 578, 581 (E.D.La., 1988)

A. If the before and after valuation is used, the fair market value before contribution of the historic preservation easement must take into account not only the current use of the property but an objective assessment of how immediate or remote the likelihood is that the property, absent the restriction, would be developed and any effect from zoning or historic preservation laws that already restrict the property's highest and best use. Reg. §1.170A-14(h)(3)(ii)

- (1) Listing a property on the National Register of Historic Places, either individually or as a contributing property in an historic district, does not, by itself, impose any restrictions on the development of that property. However, demolition or the substantial alteration of a property that is of sufficient historic importance to be listed on the National Register would probably generate significant local political opposition to a demolition or building permit. On the subject of political opposition to a project the courts have taken somewhat contrasting view.
  - (a) Even with restrictions on development, one court held that the evidence in the record did not suggest that there would be local opposition to the development. *Stanley Works v. Commissioner*, 87 T.C. 389, 408 – 410 (1986)
  - (b) Another court held that so long as the highest and best use of a property is not prohibited by law, community opposition to such a use would not preclude the court from valuing it as if it were so used. *Symington v. Commissioner*, 87 T.C. 892, 897 (1986)

- (c) Another court held that where there are restrictions on the use of the property, the presence of significant local opposition to a variance would be considered by the court in determining value. *McMurray v. C.I.R.*, 985 F.2d 36, 40 – 41 (1<sup>st</sup> Cir., 1993)
- (2) If the property is restricted because the property is a designated local landmark or is in a local historic district, the local historic preservation laws must be examined to determine the extent of the restrictions on the property.
- (a) In some cases, the restrictions will impose a delay in the development of the property but will not prohibit further development of the property. One court held that a moratorium on development alone would not prevent the court from valuing the property without reference to the moratorium. *Stanley Works v. Commissioner*, 87 T.C. 389, 410 – 411 (1986)
  - (b) On the other hand, there are a number of historic districts in the United States which so restrict alterations to the exterior of buildings in that district that the donation of a preservation easement on the building façade will have little or no value. *Richmond v. U.S.*, 699 F. Supp. 578, 582 – 583 (E.D.La., 1988)
  - (c) However, even if a property is in an historic district that restricts alterations to the exterior of the buildings in that district, there may still be considerable value in the preservation easement depending upon the added burdens the preservation easement imposes upon the property and whether the landowner must restore portions of the property as a condition to the donation of the easement. *Hilborn v. Commissioner*, 85 T.C. 677, 691 – 692, 698 – 699 (1985)
  - (d) In addition, if the property is in an historic district which grants to a board or commission discretion regarding alterations to the building (e.g., adding height to the building), the court will examine whether it is likely that the board or commission would grant such alterations in determining the “before” value of the property. *Dorsey v. Commissioner*, 59 T.C. Memo. 592, 599 – 600 (1990)

## TABLE OF CASES

*Dorsey v. Commissioner*, 59 T.C. Memo. 592, 599 – 600 (1990)

*Hilborn v. Commissioner*, 85 T.C. 677 (1985)

*McMurray v. C.I.R.*, 985 F.2d 36, 40 – 41 (1<sup>st</sup> Cir., 1993)

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