

Pension Protection Act Changes for Historic Tax Preservation Incentives

Easements on Buildings in Historic Districts

For charitable contributions after July 25, 2006, no deduction can be claimed for an easement donated on property located in a historic district unless the contributed interest includes restrictions preserving the entire exterior of the building (including front, sides, rear, and height) and prohibiting any change to the exterior of the building inconsistent with its historical character. Certain contribution reductions for amounts attributable to rehabilitation credits previously taken are required for contributions after August 17, 2006.

In addition, the donor and donee must enter into a written agreement certifying, under penalties of perjury, that the recipient organization is a qualified organization with a purpose of environmental protection, land conservation, open space preservation, or historic preservation, and has the resources to manage and enforce the restriction and a commitment to do so.

If a deduction is claimed for this type of contribution, you must include with your return:

- A qualified appraisal
- Photographs of the entire exterior of the building, and
- A description of all restrictions on the development of the building.

If the donation is made after February 13, 2007, and the claimed deduction is more than \$10,000, the deduction will not be allowed unless a \$500 filing fee is paid. See Form 8283-V, Payment Voucher for Filing Fee and the instructions at <http://www.irs.gov/pub/irs-pdf/f8283v.pdf>.

Please note that these rules do not apply to buildings individually listed in the National Register of Historic Places.

Qualified Appraisal and Qualified Appraiser; Penalties

With limited exception, for donated property for which a deduction of more than \$5,000 is claimed, a donor must obtain a qualified appraisal prepared by a qualified appraiser. The Pension Protection Act modified the Internal Revenue Code to define a “qualified appraisal” and a “qualified appraiser.” In general, for a claimed deduction of more than \$500,000, a donor must attach a qualified appraisal to his return. The Pension Protection Act provides special substantiation rules with respect to contributions of restrictions with respect to the exterior of buildings in registered historic districts. Under this section, for contributions made after July 25, 2006, the appraisal must be attached to the tax return on which a deduction of more than \$5,000 is claimed, even if the claimed deduction is less than \$500,000.

In addition, the Act added a new penalty, which provides that, if the claimed value of property based on an appraisal results in a substantial or gross valuation misstatement, a penalty is imposed on any person who prepared the appraisal and who knew, or reasonably should have known, the appraisal would be used in connection with a return or claim for refund. The Act also modified the penalty thresholds. Detailed information with respect to these requirements is contained in Publication 561 Determining the Value of Donated Property which is available at <http://www.irs.gov/pub/irs-pdf/p561.pdf>. Transitional guidance is provided in Notice 2006-96 I.R.B.902 available at http://www.irs.gov/irb/2006-46_IRB/ar13.html.

The basic rules for contributions are contained in Publication 526 Charitable Contributions at <http://www.irs.gov/pub/irs-pdf/p526.pdf>.