Historic Preservation Easements

Historic preservation easements are one of the few protections that historic buildings have against current real estate trends and other well-intentioned federal, state and local programs encouraging new development.

- A historic preservation easement is a voluntary legal agreement, typically in the form of a deed, that permanently protects an historic property. Through the easement, a property owner places restrictions on the development of or changes to the historic property, then transfers these restrictions to be monitored by a preservation organization. A historic property owner who donates an easement may be eligible for tax benefits, such as a Federal income tax deduction, while the public benefits through the permanent protection of irreplaceable heritage.

- Congress first introduced federal tax incentives ("the Program") for the preservation of historic properties in the Tax Reform Act of 1976. The Program was made permanent in the Tax Treatment Extension Act of 1980.

- Research from the National Park Service, Rutgers University, and others has proven that the rehabilitation of historic structures has positive economic impacts. Recent studies from Columbia, SC and Columbus, OH demonstrate that rehabilitations of downtown buildings that utilize a preservation easement as part of the financing package supported increased local property tax revenue, job growth, small business start-ups, new housing units, and decreased vacancy.

THE ISSUE

- A well-intentioned IRS enforcement campaign targeting abuse of syndicated open space conservation easements has negatively impacted the ability to rehabilitate and protect historic buildings through easements, diminishing the economic impact of historic preservation. In commercial real estate, syndication is a standard and fundamental component for real estate investment structures.

- IRS auditors should not paint syndicated real estate transactions used to raise capital for the renovation and protection of historic properties (where money raised through syndication is invested in the historic property just as it would be in any commercial real estate transaction) with the same brush as abusive syndicated open space easements.

OUR ASK

→ Clarity from IRS is needed; specifically, the IRS must differentiate between open space conservation and historic preservation easements.

- While the IRS narrative to date has been about abusive land conservation easements, there has been no mention of historic preservation easements.

- The IRS has been focusing on syndication and claiming its use is abusive. Select comments from the Commissioner and other IRS professionals are being interpreted by IRS auditors as an absolute that “all easements are bad.”

- Despite requests for guidance by industry professionals and groups involved, the IRS has decline to provide guidance on the use of this program.

- The IRS needs to provide clarity to taxpayers and IRS personnel on what entails abusive conservation easements in order to root out abuse while furthering Congressional intent relating to historic preservation.

- Recent Presidential Executive Orders related to “Unfair Surprise” must also be respected on Exam and IRS Appeals. This will make it easier to ensure that Exam and other IRS Professionals do not raise “novel” arguments to disallow all conservation easements and will instead require them to determine if actual transactions are abusive or not.