

AUGUST 2006 CHANGES TO THE INTERNAL REVENUE CODE AFFECTING HISTORIC PRESERVATION EASEMENTS

The changes to the Internal Revenue Code affecting charitable donations for historic preservation easements, signed into law as part of the Pension Protection Act of 2006, signed August 17, 2006, are extracted here. The changes to the old law are shown as follows.

New Language: Shown in blue

Deleted Language: ~~Struck through~~

Unchanged Language: remains in black

► **Easement Contribution Special Rules.** Section 170(h) is shown below in its entirety as amended. The new added paragraph (B) was effective July 25, 2006. The changes shown to renumbered paragraph (C) were effective August 17, 2006.

170(h) **QUALIFIED CONSERVATION CONTRIBUTION—**

- (1) **IN GENERAL.**—For purposes of subsection (f)(3)(B)(iii), the term “qualified conservation contribution” means a contribution—
 - (A) of a qualified real property interest,
 - (B) to a qualified organization, and
 - (C) exclusively for conservation purposes.
- (2) **QUALIFIED REAL PROPERTY INTEREST.**—For purposes of this subsection, the term “qualified real property interest” means any of the following interests in real property:—
 - (A) the entire interest of the donor other than a qualified mineral interest,
 - (B) a remainder interest, and
 - (C) a restriction (granted in perpetuity) on the use which may be made of the real property.
- (3) **QUALIFIED ORGANIZATION.**—For purposes of paragraph (1), the term “qualified organization” means an organization which—
 - (A) is described in clause (v) or (vi) of subsection (b)(1)(A), or
 - (B) is described in section 501 (c) (3) and:
 - (i) meets the requirements of section 509(a)(2), or
 - (ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.
- (4) **CONSERVATION PURPOSE DEFINED.**
 - (A) **IN GENERAL.**—For purposes of this subsection, the term “conservation purpose” means—
 - (i) the preservation of land areas for outdoor recreation by, or the education of, the

general public,

- (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- (iii) the preservation of open space (including farmland and forest land) where such preservation is—
 - (I) for the scenic enjoyment of the general public, or
 - (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or
- (iv) the preservation of a historically important land area or a certified historic structure.

(B) SPECIAL RULES WITH RESPECT TO BUILDINGS IN REGISTERED HISTORIC DISTRICTS. In the case of any contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in subparagraph (C)(ii), such contribution shall not be considered to be exclusively for conservation purposes unless—

- (i) such interest—
 - (I) includes a restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of the building), and
 - (II) prohibits any change in the exterior of the building which is inconsistent with the historical character of such exterior,
- (ii) the donor and donee enter into a written agreement certifying, under penalty of perjury, that the donee—
 - (I) is a qualified organization (as defined in paragraph (3)) with a purpose of environmental protection, open space preservation, or historic preservation, and
 - (II) has the resources to manage and enforce the restriction and a commitment to do so, and
- (iii) in the case of any contribution made in a taxable year beginning after the date of the enactment of this subparagraph, the taxpayer includes with the taxpayer's return for the taxable year of the contribution—
 - (I) a qualified appraisal (within the meaning of subsection (f)(11)(E)) of the qualified property interest,
 - (II) photographs of all the entire exterior of the building; and
 - (III) a description of all restrictions on the development of the building.

~~(B)~~ **(C) CERTIFIED HISTORIC STRUCTURE.** For purposes of subparagraph (A)(iv), the term certified historic structure means ~~any building, structure or land area which~~:

- (i) ~~any building, structure or land area which~~ is listed in the National Register, or
- (ii) ~~any building which~~ is located in a registered historic district (as defined in section 47(c)(3)(B)) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district. A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer is made.

(2) EXCLUSIVELY FOR CONSERVATION PURPOSES. For purposes of this subsection—

- (A) **CONSERVATION PURPOSE MUST BE PROTECTED.** A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.
- (B) **NO SURFACE MINING PERMITTED.—**
 - (i) **IN GENERAL.** Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.
 - (ii) **SPECIAL RULE.** With respect to any contribution of property in which the ownership of the surface estate and mineral interests has been and remains separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.
- (3) **QUALIFIED MINERAL INTEREST.** For purposes of this subsection, the term "qualified mineral interest" means—
 - (A) subsurface oil, gas, or other minerals, and
 - (B) the right to access to such minerals.

► **Establishment of Fee Payment.** Section 170(f)(13), relating to special rules for charitable deductions, is amended to add the following new paragraph 13. This paragraph is effective February 13, 2007.

- (13) **CONTRIBUTIONS OF CERTAIN INTERESTS IN BUILDINGS LOCATED IN REGISTERED HISTORIC DISTRICTS.—**
 - (A) **IN GENERAL.—**No deduction shall be allowed with respect to any contribution described in subparagraph (B) unless the taxpayer includes with the return for the taxable year of the contribution a \$500 filing fee.
 - (B) **CONTRIBUTION DESCRIBED.—**A contribution is described in this subparagraph if such contribution is a qualified conservation contribution (as defined in subsection (h)) which is a restriction with respect to the exterior of a building described in subsection (h)(4)(C)(ii) and for which a deduction is claimed in excess of \$10,000.
 - (C) **DEDICATION OF FEE.—**Any fee collected under this paragraph shall be used for the enforcement of the provisions of subsection (h).

► **Increase in Allowable Deduction and Carryover.** Section 170(b)(1), relating to deductions for charitable contributions for individuals, was changed to add a new paragraph 170(b)(1)(E). This new paragraph increases the limitation on the annual deductible amount for conservation contributions from 30% of the taxpayer's adjusted gross income to 50% of adjusted gross income. It also extends the carryover for the unused portion of the deduction from 5 years to 15 years. The new paragraph is below, and is effective for donations made between January 1, 2006 and December 31, 2007.

170(b) **PERCENTAGE LIMITATIONS—**

- (1) **INDIVIDUALS.**—In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

...

(E) CONTRIBUTIONS OF QUALIFIED CONSERVATION CONTRIBUTIONS.—

- (i) **IN GENERAL.**—Any qualified conservation contribution (as defined in subsection (h)(1)) shall be allowed to the extent the aggregate of such contributions does not exceed the excess of 50 percent of the taxpayer's contribution base over the amount of all other charitable contributions allowable under this paragraph.
- (ii) **CARRYOVER.**—If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution to which clause (i) applies in each of the 15 succeeding years in order of time.
- (iii) **COORDINATION WITH OTHER SUBPARAGRAPHS.**—For purposes of applying this subsection and subsection (d)(1), contributions described in clause (i) shall not be treated as described in subparagraph (A), (B), (C), or (D) and such subparagraphs shall apply without regard to such contributions.
- (iv) **SPECIAL RULE FOR CONTRIBUTION OF PROPERTY USED IN AGRICULTURE OR LIVESTOCK PRODUCTION.—**
- (I) **IN GENERAL.**—If the individual is a qualified farmer or rancher for the taxable year for which the contribution is made, clause (i) shall be applied by substituting '100 percent' for '50 percent'.
- (II) **EXCEPTION.**—Subclause (I) shall not apply to any contribution of property made after the date of the enactment of this subparagraph which is used in agriculture or livestock production (or available for such production) unless such contribution is subject to a restriction that such property remain available for such production. This subparagraph shall be applied separately with respect to property to which subclause (I) does not apply by reason of the preceding sentence prior to its application to property to which subclause (I) does apply.
- (v) **DEFINITION.**—For purposes of clause (iv), the term 'qualified farmer or rancher' means a taxpayer whose gross income from the trade or business of farming (within the meaning of section 2032A(e)(5)) is greater than 50 percent of the taxpayer's gross income for the taxable year.
- (vi) **TERMINATION.**—This subparagraph shall not apply to any contribution made in taxable years beginning after December 31, 2007.

► **Taxpayer Penalties.** Section 6662 for accuracy-related penalties modified the penalties to taxpayers for substantial and gross overstatements of valuations. The modified sections are shown below.

SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY

...

(e) SUBSTANTIAL VALUATION MISSTATEMENT UNDER CHAPTER 1

- (1) **IN GENERAL.**—For purposes of this section, there is a substantial valuation misstatement under chapter 1 if—
- (A) the value of any property (or the adjusted basis of any property) claimed on any return of tax imposed by chapter 1 is ~~200 percent~~ **150 percent** or more of the amount determined to be the correct amount of such valuation or adjusted basis (as the case may be), or
 - (B) —
 - (i) the price for any property or services (or for the use of property) claimed on any such return in connection with any transaction between persons described in section 482 is 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the correct amount of such price, or
 - (ii) the net section 482 transfer price adjustment for the taxable year exceeds the lesser of \$5,000,000 or 10 percent of the taxpayer's gross receipts.

...

(g) SUBSTANTIAL ESTATE OR GIFT TAX VALUATION UNDERSTATEMENT

- (1) **IN GENERAL.**—For purposes of this section, there is a substantial estate or gift tax valuation understatement if the value of any property claimed on any return of tax imposed by subtitle B is ~~50 percent~~ **65 percent** or less of the amount determined to be the correct amount of such valuation.
- (2) **LIMITATION.**—No penalty shall be imposed by reason of subsection (b)(5) unless the portion of the underpayment attributable to substantial estate or gift tax valuation understatements for the taxable period (or, in the case of the tax imposed by chapter 11, with respect to the estate of the decedent) exceeds \$5,000.

(h) INCREASE IN PENALTY IN CASE OF GROSS VALUATION MISSTATEMENTS

- (1) **IN GENERAL.**—To the extent that a portion of the underpayment to which this section applies is attributable to one or more gross valuation misstatements, subsection (a) shall be applied with respect to such portion by substituting "40 percent" for "20 percent".
- (2) **GROSS VALUATION MISSTATEMENTS.**—The term "gross valuation misstatements" means -
- (A) any substantial valuation misstatement under chapter 1 as determined under subsection (e) by substituting -
 - ~~(i) "400 percent" for "200 percent" each place it appears,~~
 - (i) in paragraph (1)(A), "200 percent" for "150 percent",**
 - ~~(ii) "25 percent" for "50 percent", and~~
 - (ii) in paragraph (1)(B)(i)—**
 - (I) "400 percent" for "200 percent", and**
 - (II) "25 percent" for "50 percent", and**
 - (iii) in paragraph (1)(B)(ii) -

- (I) "\$20,000,000" for "\$5,000,000", and
 - (II) "20 percent" for "10 percent".
- (B) any substantial overstatement of pension liabilities as determined under subsection (f) by substituting "400 percent" for "200 percent", and
- (C) any substantial estate or gift tax valuation understatement as determined under subsection (g) by substituting ~~"25 percent" for "50 percent"~~ "40 percent" for "65 percent".

► **Appraisal and Appraiser Rules.** Section 170(f)(11)(E) (relating to Definition of Qualified Appraisal and Appraiser) is amended to read as follows:

(E) **QUALIFIED APPRAISAL AND APPRAISER.**—For purposes of this paragraph—

- (i) **QUALIFIED APPRAISAL.**—The term “qualified appraisal” means, with respect to any property, an appraisal of such property which—
 - (I) is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and
 - (II) is conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed under subclause (I).
- (ii) **QUALIFIED APPRAISER.**—Except as provided in clause (iii), the term “qualified appraiser” means an individual who—
 - (I) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,
 - (II) regularly performs appraisals for which the individual receives compensation, and
 - (III) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance.
- (iii) **SPECIFIC APPRAISALS.**—An individual shall not be treated as a qualified appraiser with respect to any specific appraisal unless—
 - (I) the individual demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and
 - (II) the individual has not been prohibited from practicing before the Internal Revenue Service by the Secretary under section 330(c) of title 31, United States Code, at any time during the 3-year period ending on the date of the appraisal.

► **Appraiser Penalties.** A new Section 6695A was added after Section 6695 regarding other assessable penalties. The new section related to penalties on appraisers whose appraisals result in substantial or gross valuation misstatements. The new section reads as follows:

SEC. 6695A. SUBSTANTIAL AND GROSS VALUATION MISSTATEMENTS ATTRIBUTABLE TO INCORRECT APPRAISALS.

(a) IMPOSITION OF PENALTY.—If—

- (1) a person prepares an appraisal of the value of property and such person knows, or reasonably should have known, that the appraisal would be used in connection with a return or a claim for refund, and
- (2) the claimed value of the property on a return or claim for refund which is based on such appraisal results in a substantial valuation misstatement under chapter 1 (within the meaning of section 6662(e)), or a gross valuation misstatement (within the meaning of section 6662(h)), with respect to such property, then such person shall pay a penalty in the amount determined under subsection (b).

(b) AMOUNT OF PENALTY.—The amount of the penalty imposed under subsection (a) on any person with respect to an appraisal shall be equal to the lesser of—

(1) the greater of—

- (A) 10 percent of the amount of the underpayment (as defined in section 6664(a)) attributable to the misstatement described in subsection (a)(2), or
- (B) \$1,000, or

(2) 125 percent of the gross income received by the person described in subsection (a)(1) from the preparation of the appraisal.

(c) EXCEPTION.—No penalty shall be imposed under subsection (a) if the person establishes to the satisfaction of the Secretary that the value established in the appraisal was more likely than not the proper value.