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Facade Easements

[EDITOR'S NOTE: The following article is an editorially updated reprint of the article "Facade Easements - A Tax Break for the Homeowner" from the Fall 1979 issue of **Historic Huntsville Quarterly**. Recent changes in the preservation tax laws require a thorough investigation of current tax regulations by property owners interested in the use of facade easements for their historic properties.]

All of the tax advantages for historic properties established by the Tax Reform Act of 1976 and the Revenue Act of 1978 [and the Tax Reform Act of 1986 -- Ed.] apply only to depreciable properties, which eliminates owner occupied houses. However, there is one [possible] tax vehicle that can be utilized by owners of historic residential properties and that is the facade easement.

A facade easement, also known as a preservation easement, is a binding legal commitment, permanent in nature, to preserve a building in a given condition. It is a conveyance of a restrictive covenant to a non-profit organization that assures that the architectural integrity of the structure shall be maintained. It usually applies to the exterior, or street facade, of the building but can be extended to the interior as well. The terms of individual facade easements can vary widely and may include affirmative obligations of restoration and maintenance as well as simply restrictions on change.

The facade easement is a permanent agreement that runs with the land and is recorded in the county probate office. It provides permanent protection for the building facade even when the property changes ownership, because the property passes to the next owner minus the right to alter the exterior.

The facade easement is given to a public agency such as the Alabama Historical Commission or to a private non-profit organization dedicated to preservation such as the Historic Huntsville Foundation.

A facade easement is a method of making a charitable contribution, in the form of a building facade rather than cash, while assuring that the structure will be preserved. Because it is a charitable contribution, the owner [might] receive a tax savings via a deduction because the marketable value of the property has been reduced. The decreased value of the property should also be reflected in decreased ad valorem taxes. Property that will be

included in the owner's estate for federal estate tax purposes will presumably have a lesser value at the time of his death than the property would have had if the facade easement had not been granted; therefore, estate taxes attributable to that property [might] be reduced.

The facade easement has few firm rules governing its use or application. It can include component parts of a building, the grounds, or the interior or exterior of the structure. Each facade easement needs to be prepared in accordance with the individual property owner's intended use of the property in order to maximize his tax savings without restricting his expected use and enjoyment of it.

The terms of the easement may require that the property be maintained in good state of repair, that the property will not be subdivided, and that the property will not be altered or enlarged without the permission of the agency holding the easement. The easement can stipulate the use of the property for all time. A restriction on future usage would affect the value of the property and would specifically define the highest and best use of the property regardless of surrounding uses.

It should be understood that such an agreement to maintain the architectural integrity of the structure or property is legally binding and enforceable in the courts of law. The agency holding the easement may not be en-

forcing the terms today but could choose to do so in the future, and it can determine the specific maintenance required to keep the facade in satisfactory condition. It is reasonable to assume that maintenance requirements will become more, rather than less, rigid in the future and that inflation will continue to increase the cost of repairs.

On the positive side, the owner will be able to receive a tax savings [only taxpayers who itemize their returns] via a deduction as a charitable contribution because the covenant reduces the marketable value of the property.

To execute an easement, the owner must have an easement drafted by his lawyer and accepted by the charitable organization or public agency. The easement must then be recorded in the appropriate county probate office. When the easement is used for the purpose of preserving a historic property, it is assumed that the recipient organization will require the property to be registered on either the State or National Register of Historic Places. If the structure is in a historic district, the agency may require that it be certified as being of historic or architectural significance.

For the owner to qualify for the tax deduction, he must give the easement to an organization that satisfies the requirements of section 501 (c) (3) of the Internal Revenue Code. [Due to the 1986 preservation tax law

changes, an owner wishing to qualify should check with the Internal Revenue Service, which has recently helped clear up controversy over easement donations.] Basically, this defines a private, tax exempt organization established and operated exclusively for charitable or educational purposes. If the owner desires to give the easement to the State of Alabama, the accepting agency would be the Alabama Historical Commission.

Once the easement has been accepted and recorded, a qualified appraisal of the property must be made to determine the value of the gift. It is recommended that a well qualified appraiser be utilized in justifying the amount by which the facade easement reduces the market value of the property. A Member of the Appraisers Institute should be used.

To summarize, a facade easement is a legal means of assuring that specific features of a structure will be preserved in good condition in perpetuity. It can also be used to limit the uses to which the property can be put. Because the easement reduces the marketable value of the property, the owner can deduct the value of the gift, as determined by an appraisal, ... [according to current IRS codes]. The lowered appraisal value of the property should also be reflected in lower property taxes. The preservation easement permits an owner to contribute to the future of the community while [possibly] gaining a tax break for himself.

The disadvantage is that the property could be more difficult to sell because of the restrictions on its use and maintenance. Also keep in mind that the deduction taken as a result of the facade easement reduces the owner's basis in the property so that if sold, a prospective realization of income could incur that could be larger than anticipated.

It is important to recognize that the facade easement can be used with commercial and industrial properties as well as with residential ones. The facade easement placed on historic storefronts is becoming an increasingly popular method of insuring the architectural integrity of commercial areas. In Macon, Georgia, a program was established whereby an owner gives a facade easement on his storefront to the City of Macon in return for having it restored with Community Development Block Grant funds. Once the facade is restored, the owner is responsible for maintaining it.

It should be apparent that the preservation easement can be a very versatile tool when used for the conservation of the built environment. However, because the easement is a complex legal instrument with few rules, it is important that anyone considering its use consult his lawyer and/or accountant to determine how it might benefit his particular situation.

