

Congress Enacts Easement Reform Provisions in Pension Bill

9/8/06 - President Bush signed easement reform provisions into law (PL 109-280) on August 17th as part of a larger pension reform bill (HR 4) negotiated by Congress prior to exiting for its summer recess.

These changes constitute the first major reforms in the law relating to tax deductions for historic preservation easements in twenty-five years and were instituted to address questionable practices by some easement holding organizations and promoters, as highlighted in recent years by Congress, the IRS, and the news media. For example, the new law would:

- Disallow deductions for façade easements that don't protect the entire exterior of a property;
- Prohibit easements that allow changes incompatible with a building's historic character;
- Require donor and donee to certify under perjury that the easement-holding organization is qualified to accept easements, and has the resources and commitment to manage and enforce the easement;
- Require the owner to provide the IRS more detailed substantiation to prove the value of the donation;
- Impose a new filing fee of \$500 for easement deductions over \$10,000;
- Increase overvaluation penalties for donors and impose new overvaluation penalties for appraisers; and
- Impose new qualification standards for appraisals and appraisers.

At the same time, the new law includes several provisions that appear less logical or warranted. For example, it eliminates deductions for non-building structures or land areas in registered historic districts, and imposes a new reduction for easements on structures that have also qualified for the rehabilitation tax credit. Regarding the latter, the percentage-based reduction in the easement deduction is to be equivalent to the proportion of tax credits allowed to the taxpayer over the previous five years compared to the fair market value of the building at the time of the easement contribution. This provision is to be effective for easements donated after the date of enactment of the law.

For a complete summary and analysis of the easements reform provisions please visit <http://www.nationaltrust.org/legal/easements/developments.html>.