

SENATE TAX BILL TIGHTENS RULES ON EASEMENT DONATIONS IN HISTORIC DISTRICTS; APPRAISERS

November 18, 2005 - On Wednesday, the Senate Finance Committee led by Charles Grassley (R-IA) passed the Tax Relief Act of 2005 (S. 2020) that includes language tightening rules on conservation easements within National Register historic districts. The proposed changes to the 1986 tax code respond directly to the well-publicized controversy surrounding easement donations on building facades in locally-protected districts and appraiser practices.

The bill contrasts sharply with the recommendations described in the Joint Committee on Taxation's report, released this past January that would have eliminated easement donations on owner-occupied historic properties and placed caps on the donations of easements on nonresidential properties.

While the Joint Committee on Taxation initial report suggested changes for easements on the donation of open space; S. 2020 concentrates on easements protecting historic buildings.

The bill prescribes that the conservation easement donation will be considered only in cases where the easement restriction preserves the entire exterior of the building contributing to a National Register district, including the front, sides and rear elevation and height. Currently, easements are allowed on portions of a building's exterior. Deductions on easements granted to buildings within historic districts would require a \$500 filing fee for contributions made 180 days after the proposed bill language becomes law should the easement contribution exceed 3% of the fair market value of the building (determined immediately before the contribution) or \$10,000, whichever is greater.

The bill also requires that the donor and the organization receiving the donation enter into a written agreement certifying under penalty of perjury that the donee be dedicated to environmental protection, land conservation, open space preservation, or historic preservation and has the means to manage and enforce the easement restrictions and is committed to doing so.

For those contributing easements after these amendments become law, the taxpayer has to include a "qualified appraisal ... of the qualified property interest," photographs of the entire exterior of the building and a description of all restrictions on the development of the building in the taxpayer's return for the taxable year of the contribution. A qualified appraisal, as outlined in the bill, is conducted by a qualified appraiser in accordance with generally accepted appraisal standards and regulations.

The bill defines "a qualified appraiser" as an individual who 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. This individual performs appraisals regularly, for compensation. An appraiser must demonstrate verifiable education and experience valuing the type of

property subject to the appraisal, and has not been prohibited from practicing his or her work by the IRS for three years preceding the date of the appraisal.

An appraiser is subject to disciplinary action for misstatements. The penalty for misstatements would be 10 % of the amount of the underpayment, \$1000, or 125% of the gross income received. There is some question about whether or not certain sections of the bill would be retroactive. Preservation Action will keep you posted as this bill proceeds.