

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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to: Anita A. Gill, Senior Counsel (Cleveland)
(Small Business/Self-Employed) CC:SB:4:MIL

from: John Moriarty
Associate Chief Counsel
(Income Tax & Accounting) CC:ITA

subject: Section 170(h)(4)(B)(i) and Installation of an Accessibility Ramp Required by the
Americans With Disabilities Act

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

If a donor of an easement on a building in a registered historic district installs an accessibility ramp to comply with the Americans With Disabilities Act (ADA), does this violate the requirements of section 170(h)(4)(B)(i)?

CONCLUSIONS

No. The donor's installation of an accessibility ramp required to comply with the ADA is treated as a change that is permitted under section 170(h)(4)(B)(i).

LAW AND ANALYSIS

Section 170(h)(4)(A)(iv) allows a charitable contribution deduction for the contribution of a façade easement that preserves a certified historic structure. A certified historic structure means (i) any building, structure, or land area listed in the National Register, or (ii) any building located in a registered historic district and certified by the Secretary of the Interior as being of historic significance to the district. Section 170(h)(4)(C)(i) and (ii).

To qualify for a deduction under section 170(h), a façade easement must constitute a qualified real property interest under section 170(h)(2)(C). The restrictions in the easement deed must be granted in perpetuity, and the conservation purpose of the easement must be protected in perpetuity. Section 170(h)(1)(C), (h)(2)(C), and (h)(5)(A). Further, section 170(h)(4)(B)(i) requires, in the case of an easement encumbering the exterior of a building located within a historic district and certified by the Secretary of the Interior as being of historic significance to the district, that the easement deed preserve “the entire exterior of the building (including the front, sides, rear, and height of the building)” and must prohibit any change to that exterior that “is inconsistent with the historical character of such exterior”.

Section 170(h)(4)(B)(iii)(II) requires the donor of an easement on a building referred to in section 170(h)(4)(B) to include with its return for the taxable year of the contribution “photographs of the entire exterior of the building”. Under regulations, the donor must also make available to the donee, prior to the time the donation is made, baseline documentation “sufficient to establish the condition of the property at the time of the gift.” This documentation must be accompanied by a statement signed by the donor and the donee indicating that the documentation accurately represents the property at the time of contribution. Treas. Reg. § 1.170A-14(g)(5)(i). The documentation assists the donee in protecting the conservation purpose in perpetuity as required by section 170(h)(1)(C) and (5)(A).

Upkeep of a certified historic structure encumbered by a façade easement, though not specifically addressed in section 170(h) or the regulations thereunder, is permitted because upkeep is essential for preservation of the structure. For purposes of section 170(h)(4)(B)(i), the installation of an accessibility ramp, if required to comply with the ADA, is similar to upkeep. Accordingly, installation of such a ramp will not jeopardize a donor’s eligibility for a charitable contribution deduction under section 170(h)(4)(B) with respect to a building in a registered historic district. If there are any questions, please call branches 1, 2, or 3 of ITA at (202) 317-7003, 7011, or 5100, respectively.

John Moriarty
Associate Chief Counsel
(Income Tax & Accounting)