

# NATIONAL TRUST FOR HISTORIC PRESERVATION®

## QUALIFIED CONSERVATION CONTRIBUTIONS

Internal Revenue Code of 1986, as amended

Section 170(h) (26 U.S.C. § 170(h))

Showing revisions included in the Pension Protection Act of 2006,  
Pub. L. No. 109-280, 120 Stat. 780 (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 with 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))<sup>1</sup> 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))<sup>2</sup> and is certified by the Secretary of the Interior to the Secretary [of the Treasury] 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.

<sup>1</sup> See revised IRC § 170(f)(11)(E) below.

<sup>2</sup> See IRC 47(c)(3)(B) below.

(5) **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.

(6) **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.

*[Note on the effective dates of Public Law 109-280 revisions:*

*Most of these changes were made applicable to easement donations made after July 25, 2006, except that the changes to the definition of a “certified historic structure” were made applicable to easements donated after the date of enactment of Public Law 109-280 into law, August 17, 2006.]*

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## **CROSS-REFERENCED AND RELATED SECTIONS:**

### **Definition of Registered Historic District under IRC 47(c)(3)(B):**

**(B) Registered historic district.** The term “registered historic district” means—

(i) any district listed in the National Register, and

(ii) any district—

(I) which is designated under a statute of the appropriate State or local government, if such statute is certified by the Secretary of the Interior to the Secretary [of the Treasury] as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, and

(II) which is certified by the Secretary of the Interior to the Secretary [of the Treasury] as meeting substantially all of the requirements for the listing of districts in the National Register.

**Definition of Qualified Appraisal and Appraiser under IRC § 170(f)(11)(E) (revised by H.R. 4):**

**(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.

*[Note: Applicable to appraisals filed after July 25, 2006 for buildings located in registered historic districts.]*

#### **Filing Fee for Easements on Buildings in Registered Historic District under IRC § 170(f)(13) (added by H.R. 4):**

**(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 [170](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).

*[Note: Applicable to contributions made 180 days after enactment of Public Law 109-280 into law, or February 13, 2007.]*

#### **Reduced Deduction for Easements on Buildings for which Taxpayer has received Rehabilitation Tax Credits under IRC § 47 (added by H.R. 4):**

(14) **Reduction for Amounts Attributable to Rehabilitation Credit.**—In the case of any qualified conservation contribution (as defined in subsection (h)), the amount of the

deduction allowed under this section shall be reduced by an amount which bears the same ratio to the fair market value of the contribution as—

(A) the sum of the credits allowed to the taxpayer under section 47 for the 5 preceding taxable years with respect to any building which is a part of such contribution, bears to

(B) the fair market value of the building on the date of the contribution.

[Note: Applicable to easements donated after enactment of Public Law 109-280 into law, August 17, 2006.]