



CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

August 9, 2023

Hon. Danny Werfel
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Commissioner Werfel:

As long-time champions of the preservation and rehabilitation of historic buildings, we write to share suggestions to improve the recent proposed safe harbor guidance for the historic preservation community. We would like to work with the IRS to ensure that taxpayers and preservationists are not deterred from utilizing historic building preservation tools due to uncertainty or threats of audits or litigation and that the rules are clear so they can be followed by taxpayers.

In the Consolidated Appropriations Act, 2022, Congress included a provision focused on ending abusive conservation easements. In clarifying new limits for accessing conservation easement deductions, Congress excluded easements for historic structures from the general anti-abuse rule. Congress intentionally instituted new reporting requirements for historic preservation easements to help with IRS oversight of these types of transactions. The exception to the general rule combined with the special reporting requirements make clear that Congress acknowledges the fundamental differences between historic preservation and land conservation easements.

Specific Historic Preservation Easement Safe Harbor is Lacking

Congress also directed the IRS to issue safe harbor language for deeds, specifically on boundary disputes and extinguishment clauses. While the IRS released this safe harbor on time, we believe the guidance does not adequately differentiate historic preservation easements on buildings from greenspace conservation easements on open land. This inadequacy makes the safe harbor difficult to use and ignores the effort and direction that Congress intended by explicitly excluding historic structure easements.

As partners within our communities, historic preservationists play a large role in urban renewal and the protection of cultural sites and landmarks. The adaptive reuse of historic buildings has great potential to provide for workforce and affordable housing and to revitalize disadvantaged communities around the country. Clear guidance should resolve many of the issues the IRS is concerned about encountering and help to target enforcement activities following implementation of the Consolidated Appropriations Act on truly abusive transactions. More importantly, an effective and clear safe harbor will ensure that these vital programs remain available to the historic preservation community. Such guidance will further the

congressional intent of preservation incentives designed to drive investment into saving historic and culturally important properties.

Guidance Needed to Clarify and Settle Historic Preservation Easement Controversy

As Commissioner you have an opportunity to take a fresh look at how the historic preservation community has been included in the tax controversy surrounding conservation easements. Currently, the program is primarily used on large projects to protect historic commercial properties in urban centers. Unfortunately, we hear all too often that this is the only practical way to currently use the program given the high cost of accountants and attorneys necessary to complete these projects. As members representing both urban and rural neighborhoods with an abundance of at-risk historic buildings, we would like to see easements used more widely to protect historic buildings of all sizes. This would empower historic preservationists that might not have the resources of larger developers.

When valid concerns over the inflated valuation of land or property are raised by the IRS or others, property valuation should be challenged. Too often, however, we hear from taxpayers who feel that they are virtually guaranteed to face years of tax controversy for utilizing a historic preservation easement. They should also not get caught in the middle of interagency battles over whether certain improvements diminish the historic character of a building, or over the broader question of whether the National Park Service or the IRS determines the meaning of "historic character". Too often, preservation non-profits feel forced to hire expensive accountants and attorneys to navigate shortcomings over a lack of technical details needed for easement deeds to be deemed sufficient.

These types of issues should be worked out by engaging with stakeholders to identify solutions. The current path of auditing every easement transaction, removing the ability of exam or appeals to resolve cases, then litigating in court for years on end incurs great expense to historic building owners, the government, and all parties involved. This path is unsustainable and could be quickly remedied with clear, comprehensive guidance to the historic easement community.

Our sincere hope is that under your leadership the IRS will provide the guidance and clarity needed for historic building owners, taxpayers, and the preservation community to utilize historic preservation easements with confidence going forward and to settle outstanding cases. Preservationists have long been able to rely on clear IRS guidance regarding historic tax credits, but that level of clarity is not available for the historic preservation easement program.

You recently stated to be open to the IRS using more strategies to "explore agreements, safe harbors, and voluntary compliance initiatives" to help close the "tax gap" between taxes owed and taxes paid. We believe that your office has an opportunity to do just that here and we ask for your commitment to engage with the historic preservation community and our offices to protect access to this program, as Congress intended. We believe that by working together with our office and stakeholders in the historic preservation community we can target and improve the agency's enforcement posture, so that it no longer places this critical tool out of reach for many property owners and preservationists.

Without these important preservation programs, many historic buildings will fall into disrepair and be lost for posterity. We cannot afford to deter well-intentioned preservationists from using federal incentives because of the lack of clarity around how to access them and what their rules are. Every penny counts to a property owner weighing whether to undertake a costly historic preservation project or to bulldoze and build new. Once a historic building is gone, it is lost forever.

We support improvements to congressionally enacted preservation programs because we believe that federal investment in historic preservation is crucial to our communities and the country. Unfortunately,

however, we've seen less value in these programs in recent years in part due to a lack of taxpayer clarity. We are hopeful that we can work with you to improve tools like the historic preservation easement program and the historic tax credit.

Thank you for your attention to these issues, and we look forward to working with you and other stakeholders to ensure that the historic preservation easement program remains a robust and valuable tool for saving at-risk historic buildings.

Sincerely,



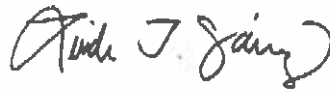
Mike Carey (OH-15)
Member of Congress



Earl Blumenauer, (OR-3)
Member of Congress



Brian K. Fitzpatrick (PA-1)
Member of Congress



Linda T. Sanchez (CA-38)
Member of Congress



Darin LaHood (IL-16)
Member of Congress



J.D. Vance
United States Senator