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in the press

Rushing for Tax Breaks on Historic Houses

By FREDA BERNSTEIN

TEN years ago, Gregory Hedberg, the director of European art at the Hirschl & Adler Galleries in Manhattan, and his wife, Margaret, who runs the International Debutante Ball, bought a town house on the Upper East Side. Last year, they promised not to alter its facade.

That promise resulted in a $563,000 income tax deduction, which Mr. Hedberg said will significantly reduce the couple's taxes for the next four years.

They are using the money to renovate their house, adding such features as period moldings and doors, although no law requires that they apply the savings to the building.

As the year comes to an end, other owners of historic houses are rushing to finish the paperwork that will give them similar tax breaks, which are based on the value of promises to keep the facades intact. The promises are contained in legal documents called easements. "Everyone waits until December," said James M. Kearns, president of the National Architectural Trust in Washington, an organization that aggressively promotes the deductions.

But recently, the Internal Revenue Service has signaled its intention to crack down on easement deductions it believes are excessive.

The law permitting the deductions was approved by Congress in 1976. It allows the owner of a house listed on the National Register of Historic Places, or located in a federally certified historic district, to take a deduction for donating an easement to a nonprofit preservation group. The easement is a promise, meant to run in perpetuity, that the facade will not be altered — something not typically required in a federal district.

The I.R.S. has warned that it may crack down on excessive deductions.

Taxpayers who donate easements have incentives to put the highest possible value on them, and appraisers seem to be willing to go along. The appraisers argue that a homeowner is giving up something of value by limiting the future use of the property. But the I.R.S. argues that for homeowners in local historic districts, where their ability to alter the outside is already restricted, the easements have little or no monetary value.

Last month, the I.R.S. dispatched its commissioner for tax-exempt and government entities, Steven T. Miller, to the national meeting of the American Society of Appraisers. "Taxpayers are taking improperly large deductions for facade easements," Mr. Miller told the appraisers. Homeowners who already live in historic districts should not get large tax breaks, he said, because "a taxpayer can't give up a right to change the facade of a building if he or she doesn't hold that right in the first place."

In June, a similar warning came from Mark W. Everson, the I.R.S. commissioner, who said that "taxpayers who want to game the system and the charities that assist them will be called to account." An I.R.S. spokesman, Bruce Friedland, declined to

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say if any easement deductions had been overturned.

The stakes are enormous for owners of town houses in New York because the deductions sometimes reach 15 percent of the value of the house. The median price of a town house on the market in Manhattan is $5.725 million, said Patrick Vernon Lilly, a town house specialist at Coldwell Banker Hunt Kennedy, making the promise to maintain the exterior worth as much as $858,750, according to the National Architectural Trust. A deduction that size could result in savings of more than $300,000 in federal, state and city income taxes over six years.

No wonder, Mr. Lilly said, that "suddenly, everyone's talking about easements."

The trust, unrelated to the National Trust for Historic Preservation, was formed in 2001 and is almost certainly the biggest promoter of such easements. Based on forms filed with the I.R.S., the National Architectural Trust appears to have arranged nearly a quarter of a billion dollars in such deductions in just four years. It is only one of about 70 organizations nationwide accepting facade-preservation easements.

Basil Whiting, a community development consultant, and his wife, Eunice, live in the Cobble Hill Historic District in Brooklyn. Last year, they promised not to modernize the facade of their 1850's town house, and received tax deductions of $189,000.

The Whitings were so pleased that they wrote to their neighbors, explaining how to turn a promise not to renovate into a windfall. "There were some who said, 'I'm not going to do it — I think it's wrong,'" Mr. Whiting said. "But others went ahead and took the deduction. Their attitude was, 'If the government is going to offer money, I'm going to take it.'"

Under federal law, a taxpayer who does not have enough income to take the entire deduction in one year can stretch it out over as many as six years.

To receive the deduction, a homeowner signs a document stating that no owner of the house can alter its facade, except with the permission of a qualified historic preservation group.

Mr. Kearns of the National Architectural Trust said that an easement diminishes the value of a house even if it's in a historic district, because an easement runs in perpetuity, while city landmarks laws could lapse. He and the trust's representatives are armed with a short list of instances in which historic protection for buildings ran out.

Eric Haims, vice president of Jerome Haims Realty in Manhattan, one of the appraisers recommended by the National Architectural Trust, said that facade preservation appraisals had become a substantial part of his business.

Appraisers say an easement decreases the value of a house because future owners are limited in what they can do with the property.

"I've given up something of real value," said Mr. Hedberg of East 69th Street. His house is not in one of New York City's 82 historic districts, so he could have altered the building if he hadn't given up that right.

But for houses in historic districts, restrictions may not reduce value. The Whitings' house was covered in stucco, resembling brownstone, decades ago. "It's the ugliest house on the block," Mrs. Whiting said on the couple's stoop. They hope to get permission from the Landmarks Preservation Commission to return the facade to the way it looked before the stucco job.

The I.R.S. has said that some easements may add value and, therefore, should not trigger a deduction. "If the donation of a conservation easement has no material effect on the value of real property or enhances rather than reduces the value of real property, no deduction is allowable," Patricia Zweibel, an I.R.S. lawyer, wrote in an advisory last summer.

In New York, representatives of the National Architectural Trust bombard homeowners with leaflets and run seminars in historic neighborhoods, using presentations that emphasize income tax savings. The representatives work on commission.

Mr. Whiting of Cobble Hill said that the National Architectural Trust made it easy for him to obtain the tax deduction. "Basically, they did everything, and I signed my name in a few places," he said.

For its services, the National Architectural Trust asks homeowners for a fee — typically 10 percent of the value of the easement (or more than $60,000 for some Manhattan houses). Thanks to those fees, the trust has amassed a $10 million fund in just three years, Mr. Kearns said. He said the trust needs that money to monitor compliance with the easements, by inspecting each building each year, and to take legal action if it discovers violations.

Like Mr. Whiting, Mr. Hedberg also told neighbors about the National Architectural Trust — indeed, after two of his neighbors agreed to join him in placing easements on their properties, they received a discount on the fee they paid, he said.

Homeowners can deduct the fees as charitable contributions if they are voluntary, according to the I.R.S. Mr. Kearns called the trust's fees "suggested contributions."

In addition to working as president of the trust, Mr. Kearns is the co-owner of Springfield Management Services, a company that contracts with the charity to complete the paperwork required for the easements and then monitor compliance with their terms. That includes an annual inspection of each facade.

Mr. Kearns said he plans to donate ownership of Springfield Management to the trust by the end of the year and expects to get a tax deduction for the donation.

He defended giving work to a company he profits from, saying, "It is necessary to have a professional set of people paid appropriate salaries to go out and do the education, solicitation and processing" of easements. As a general rule, Thomas A. Troyer of Caplin & Drysdale, a law firm in Washington, said, there is nothing illegal about a nonprofit contracting with a for-profit owned by its directors, although he said he did not know the specifics of this case.

Mr. Kearns said the National Architectural Trust undertakes preservation efforts unrelated to easements — "including helping the Boy Scouts develop a historic preservation merit badge." He also said it had made a grant to Friends of the High Line, a New York preservation organization. A spokesman for the group said the grant was $50,000 over two years.

To those who question the value of easement tax deductions, Mr. Kearns said: "This is a good policy. It's going to preserve these properties in perpetuity. Would you rather spend it on farm subsidies?"

Susan Farley for The New York Times

Although their house is not in a city historic district, Gregory and Margaret Hedberg promised to protect the facade.