



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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The Honorable Ralph Regula  
U.S. House of Representatives  
Washington, DC 20515

Attention: Karen Buttaro

Dear Mr. Regula:

This letter is in response to your May 31, 2000 request for information to the Internal Revenue Service (IRS) Office of Legislative Affairs. You asked two questions:

- (1) If a person grants a utility company an easement on his property to lay an electrical line and receives a fee for this easement, is the amount taxable; and
- (2) If a person conveys a property but reserves a life estate, with the right to use the property, can he still deduct the mortgage interest and property taxes?

The answer to the first question depends upon the taxpayer's specific facts. An easement is an interest in property. Gains derived from dealings in property must be included in gross income. Thus, proceeds received from the granting of an easement must be included in gross income to the extent they constitute gain, i.e., to the extent the proceeds exceed the allocable basis of the property subject to the easement. Section 61(a)(3) of the Internal Revenue Code (the Code).

The answer to your second question is that generally the payment of home mortgage interest is deductible, as long as the taxpayer is personally liable for the mortgage and the mortgage is secured by the taxpayer's home (main home or a second home). A life estate interest will qualify as the life tenant's home, but only if he actually uses the property as his home. Simply owning the life estate (without using it as a home) is not sufficient. Thus, if the other requirements for home mortgage interest are met, the interest paid by the taxpayer is deductible. Section 163(h)(3) of the Code. Similarly,

property taxes paid by the owner of a life estate are deductible, as long as the life tenant has the duty to pay the tax or the payment is made to protect his interest in the property. However, the person owning the remainder interest in the property may not claim a deduction for these same expenditures; property taxes can be deducted only by the person who pays them. Section 164(a)(1) of the Code.

I hope this information is helpful to you. If you have additional questions, or we can assist you further, please call John M. Fischer at 202-622-4950.

Sincerely,

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Heather C. Maloy  
Associate Chief Counsel  
(Income Tax and Accounting)