

TAX COURT CASE UPDATE

Citation:

E. Bruce and Denise A. Agness DiDonato v. Commissioner, T.C. Memo 2011-153, June 29, 2011.

Overview:

The taxpayers were denied a charitable contribution deduction for failure to meet the written acknowledgement requirements of Code Section 170 and its applicable regulations.

The Facts:

Around July 11, 1995, the taxpayer (Mr. and Mrs. DiDonato) purchased two pieces of property in Princeton, New Jersey. The property was subdivided from a single lot and could be accessed versus a dirt road by crossing over land owned by the county. Adjacent to this parcel was a local park owned by the county. On May 10, 1997, the county conveyed a 50-foot wide easement and right of way across the county's property for \$1 which gave the taxpayer access for pedestrian and automobile access from the property to the road. This easement was recorded in October 1997.

Subsequently, the taxpayers and the State of New Jersey became embroiled in a lawsuit regarding the easement. The result of that easement was that the county granted a 35-foot easement with the balance remaining the property of the county to allow access into the park. At this time, the taxpayer agreed that he would only build one residential property and gave up his development rights to the property. In return, the county was to acknowledge receipt of a donation of the taxpayer's development rights and the taxpayer would pay for the property conveyed to him through a donation to the Green Acres Fund. The amount of the donation was a percentage of the value of the driveway commensurate with the partial driveway interest conveyed to him.

After a number of different hearings, in December 2006, the county acknowledged the receipt of the development rights and advised the taxpayer that the county did not independently appraise the donated property and that it was the taxpayer's responsibility to determine the value of the donated property.

In October 2005, the taxpayer filed his 2004 tax return claiming a charitable deduction for a land conservation easement in the amount of \$1,870,000, with a cost basis of \$300,000. Although an appraisal was prepared by an appraisal group, the Form 8283 attached to the tax return was not signed. The appraisal valued three parcels of property before and after the easement restricted the development rights and the amount of the deduction was the difference in value before and after. The IRS requested a signed Form 8283 which the taxpayer was unable to provide. As a result the IRS determined that the taxpayer was not entitled to a charitable contribution. The taxpayer petitioned the Court on May 1, 2009.

Discussion:

The issue before the Court was whether the taxpayer substantiated the reported charitable contribution in the manner required by the Internal Revenue code and regulations. The IRS claimed that the taxpayer “(1) failed to obtain a contemporaneous written acknowledgement of the donated property, and (2) did not attached to their 2004 return a completed appraisal summary.” The taxpayer argued that “(1) the settlement agreement qualifies as a contemporaneous written acknowledgement, and (2) the Form 8283 which they attached to their 2004 Federal income return substantially complied with the requirements.”

The Court agreed with the IRS stating that “the settlement agreement does not qualify as a contemporaneous written acknowledgement within the meaning of section 170(f)(8)(A). Given that petitioners do not have a written acknowledgement requirement, see, e.g., sec 170(f)(8)(D), we conclude that petitioners are precluded by statute from deducting the \$1,870,000 as a charitable contribution.”

Conclusion:

Based on the evidence submitted, Judge Laro agreed with the IRS and denied the taxpayers a charitable contribution deduction.