

TAX COURT CASE UPDATE

Citation:

Huda T. Scheidelman v. Commissioner, 109 AFTR 2d 2012-2536 (682 F.3d 189), June 15, 2012.

Overview:

The Court of Appeals for the Second Circuit, reversing and remanding the Tax Court's decision, has held that a taxpayer's percentage-based appraisal of the value of a facade conservation easement was sufficiently detailed so as to meet the requirements of Regulation §1.170A-13(c)(3). The Court also allowed a deduction for a cash contribution she made to the donee for its acceptance of the easement, finding that there was no quid pro quo involved.

The Facts:

Huda Scheidelman donated a facade conservation easement for her brownstone row house in Brooklyn's historic Fort Greene neighborhood to the National Architectural Trust (the Trust). The easement prohibited her from altering the facade without Trust's permission and required her to maintain the facade and the rest of the structure. The easement gave Trust the right to inspect the facade and to require Scheidelman to cure any violation of her easement obligation. It ran with the land in perpetuity.

The taxpayer had the easement appraised by a qualified real estate appraiser. Employing the “before-and-after method”—i.e., subtracting the value of a house burdened with an easement from the value of the house without one—he valued the easement at \$115,000 (\$1,015,000 unencumbered value – \$900,000 value with easement). His basis for the \$900,000 “after” valuation was arrived at by applying an 11.33 percent reduction to the pre-easement value.

The Trust required the taxpayer to donate \$9,275 (roughly 10 percent of the value of the easement). The Trust then sent her Form 8283, Noncash Charitable Contribution, signed by the real estate appraiser and the Trust. When the IRS challenged both the easement and cash donation, the taxpayer sought relief in the Tax Court.

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Discussion:

The Court rejected the Tax Court's conclusion that there was no valuation method because the application of a percentage to the fair market value before conveyance of the facade easement, without explanation, could not constitute a method of valuation. In fact, the Second Circuit found that the real estate appraiser did explain at some length how he arrived at his numbers. The taxpayer's appraisal relied on a Tax Court case that valued a facade conservation easement at 10 percent of the property value and a government-published article reporting that the proper valuation of a facade easement should range from approximately 10 percent to 15 percent of the value of the property. The appraiser narrowed the range to 11 to 11.5 percent by considering the location of the property in New York City and the existing restraints imposed by the City's historic preservation laws. He then expressly selected the before-and-after method. He used comparable sales to calculate a baseline value for the property (\$1,015,000) and arrived at the after value by applying an 11.33 percent discount to the original value.

The Second Circuit reasoned that, for the purpose of gauging compliance with the reporting requirement in the regulations, it was irrelevant that the IRS believed that the method employed was sloppy or inaccurate, or haphazardly applied. It was nonetheless a method. The real estate appraiser described the valuation method he used, and so provided the information required by the regulations and enabled the IRS to evaluate his methodology.

The Second Circuit also rejected the Tax Court's contention that the valuation lacked meaningful analysis, failed to explain how the specific attributes of the subject property led to the value assigned, and displayed no independent or reliable methodology. As required by the regulations, the real estate appraiser sufficiently supplied the bases for the valuation: IRS publications, Tax Court decisions, the appraiser's past valuation experience, and the location of the house in the regulatory environment of New York City.

In addition, the Second Circuit noted that the fact that the information and signatures required in the regulations were provided to the IRS in two forms submitted together with the return (rather than in a single form) was the most technical of deficiencies, which was properly excused under reasonable cause and the doctrine of substantial compliance.

The Second Circuit rejected the Tax Court's disallowance of the taxpayer's deduction for the cash contribution she made to the Trust. It concluded that the Trust's agreement to accept the gift of the easement wasn't a transfer of anything of value to the taxpayer and thus did not constitute a quid pro quo for the gift of the cash. The Trust gave the taxpayer no goods or services, or benefit, or anything of value in return for her making the money gift. A donee's agreement to accept a gift does not transfer anything of value to the donor, even though the donor may desire to have his gift accepted, and may expect to derive benefit elsewhere (such as by deductibility of the gift on her income taxes).

Conclusion:

The taxpayer gave the Trust the easement to hold, she endowed the maintenance of it, and the whole was an unrequited contribution. Without some way of monitoring compliance, an easement of this kind is easily violated, withdrawn, or forgotten. When a cash contribution (even mandatory in nature) serves to fund the administration of another charitable donation, it is likewise an “unrequited gift.” While the taxpayer hoped to obtain a charitable deduction for her gifts, this did not come from the recipient of the gift and so was not a quid pro quo.