TAX COURT CASE UPDATE

Citation:

John Crimi, et al. v. Commissioner, T.C. Memo 2013-51, February 14, 2013.

Overview:

The Tax Court concluded that a taxpayer who contributed property to the county in a part-sale, part-gift transaction was entitled to a charitable contribution deduction.

The Facts:

In July 2004, John Crimi transferred more than 65 acres of undeveloped land to Morris County, New Jersey for $1,550,000, in what he maintained was a part-sale, part-gift transaction. He reported the value of the land for Federal income tax purposes as $2,950,000 and claimed a charitable contribution and related carryover deductions for 2004 and 2005.

On August 16, 2004, the township's administrator wrote and signed a letter (August 16 letter) to Mr. Crimi acknowledging the contribution of block 101, lot 1; block 201, lot 1; and block 703, lot 12. It stated in part:

> As you know, this property was appraised by Beyer Williams Associates for a total value of TWO MILLION NINE HUNDRED AND FIFTY THOUSAND DOLLARS ($ 2,950,000) and you conveyed the property to the Morris County MUA, the Morris Land Conservancy and the Township of Mine Hill for a total of ONE MILLION FIVE HUNDRED AND FIFTY-FIVE THOUSAND DOLLARS ($1,550,000), and making a charitable donation to our open space preservation efforts of the remaining equity in the amount of ONE MILLION FOUR HUNDRED THOUSAND DOLLARS ($1,400,000).

On audit, the IRS challenged the deduction. The IRS argued that the taxpayer was not entitled to the claimed charitable contribution deductions because he failed to obtain a contemporaneous written acknowledgment from the county as required, and failed to attach a qualified appraisal to his return. The IRS also argued that he incorrectly inflated the value of the property contributed because he valued it based on potential residential development, when the highest and best use of the property was for conservation purposes (which yielded a lower fair market value).

The taxpayer asserted that he transferred the property to the county in a part-sale, part-gift transaction, at which time the fair market value of the property was $3,760,000. He claimed entitlement to charitable contribution deductions totaling $2,210,000, in other words, the difference between the claimed fair market value of the subject property on the contribution date ($3,760,000) and the consideration received from the county ($1,550,000). He also asserted that he actually or substantially complied with the recordkeeping requirements of Code Section 170(f)(8) and Code Section 170(f)(11), or, alternatively, that the reasonable cause exception of Code Section 170(f)(11)(A)(ii)(II) precluded disallowance of the charitable contribution deductions.

In particular, the IRS maintained that the August 16 letter did not satisfy the contemporaneous written acknowledgment requirements because: (1) it was not signed by the county that was the purported donee; (2) it incorrectly described a part of the contributed property as "Block 703, Lot 12" as opposed to block 702, lot 12; and (3) it did not include a statement as to whether the donee provided any goods or services in consideration, in whole or in part, for the property contributed.

Discussion:

The Internal Revenue Regulations require that the appraisal give "The appraised fair market value of the property on the date (or expected date) of contribution…" something that clearly an appraisal four years earlier failed to do. But the IRS found other problems with the 2000 appraisal being used to meet the qualified appraisal rules. As the court opinion notes:

> Respondent argues the 2000 appraisal was not a qualified appraisal because it (1) did not value the subject property as of the contribution date; (2) was prepared four years before the contribution date; (3) did not include the date or expected date of contribution; (4) did not contain a statement that the appraisal was prepared for income tax purposes; (5) incorrectly described the subject property as having more acreage than what was actually transferred; and (6) used market value instead of fair market value as its valuation standard.

The Tax Court was skeptical of the "substantial compliance" theory. The Court noted "[w]e have previously held that an appraisal substantially complied with the qualified appraisal requirements when the appraisal was almost five months premature, did not have the contribution date, failed to include a statement that the appraisal was prepared for income tax purposes, and failed to provide the fair market value of the appraised property as of the contribution date." However, the judge indicated it was "doubtful" that the appraisal in this case could meet the substantial compliance test—five months is a much shorter time than four years.

But The Court did not rule on that issue, since it dealt with the matter on the reasonable cause exception instead. Even if the appraisal did not substantially or actually comply with the requirements for a qualified appraisal, the taxpayer had reasonably relied on the advice of his CPA that the appraisal was adequate.

The Court noted that reasonable cause generally requires the taxpayer to exercise ordinary business care and prudence with regard to the matter in question. The CPA in question had been advising the taxpayer for over 20 years, the taxpayer had not been made aware of errors in any prior advice he had received from the CPA, the CPA was part of an established accounting firm, the CPA had experience filing returns that claimed charitable contributions and the taxpayer had provided access to the CPA of all relevant information.

The Court noted that the appraisal that was undertaken prior to trial actually found that the property was more valuable than it had been at the 2000 appraisal date and thus it was reasonable for the taxpayer to believe that the amount he was claiming as a deduction was not being overstated by using an appraisal prepared at a time when the property was worth significantly more than it was worth at the contribution date.

There was no reason why the taxpayer should second-guess the CPA's advice or believe he was claiming an overstated value. He had sought advice from an adviser whose qualifications the taxpayer was aware of and which appeared sufficient to justify reliance. Thus, even though he may have submitted a return that did not have a qualified appraisal, it was due to reasonable cause and not willful neglect.

Conclusion:

The Court allowed the charitable contribution and excess carryover deductions. It determined that the taxpayer had met the Code Section 170(f)(8) requirements and substantiated the contribution with a donor's contemporaneous written acknowledgment. Further, The Court found that even if the taxpayer had failed to attach a qualified appraisal required under Code Section 170(f)(11), any failure was excused on the ground of reasonable cause under Code Section 170(f)(11)(A)(ii)(II).