TAX COURT CASE UPDATE

Citation:

Patrick J. Wachter, et ux. et al. v. Commissioner, 142 T.C. No. 7, March 11, 2014.

Overview:

The Tax Court has ruled on summary judgment that a state law which limits the term of an easement to 99 years precludes real property easements from being granted in perpetuity. Accordingly, a conservation easement conveyed subject to that law cannot give rise to a charitable contribution deduction. However, the court denied IRS summary judgment on whether the taxpayers were entitled to claim charitable deductions for related cash contributions.

The Facts:

Michael and Kelly Wachter filed joint income tax returns for 2004 through 2006 (the years at issue), as did Patrick and Louise Wachter. During the years in issue, Michael, Patrick, and Louise (collectively, "the Wachters") each held varying interests in two entities: WW Ranch, a partnership, and Wind River Properties LLC (Wind River), a limited liability company that is treated as a partnership for tax purposes. At times, Wind River operated under the name Windsor Storage.

On its returns for the years in issue, Wind River reported cash charitable contributions to the North Dakota Natural Resource Trust ("NRT"), which it allocated among its members, in amounts of $170,000, $171,150 and $144,500, respectively. NRT provided letters stating that it provided no goods or services in exchange for each donation.

On its partnership returns for the years in issue, WW Ranch reported bargain sales of conservation easements as charitable contributions in the amounts of $349,000, $247,550 and $162,500, respectively. For each year, the parties to the transaction obtained two appraisals of the property that was to be contributed. Each appraisal valued the property according to a different land use, and the Wachters used the difference in appraised values to determine the value of the conservation easement, and thus, the amounts of their charitable contributions. Each couple report both cash and non-cash contributions on their joint tax returns.

On April 8, 2011, the IRS issued notices of deficiency to both couples disallowing the charitable contribution deductions related to WW Ranch and Wind River and determining accuracy-related penalties under Code Section 6662. Each couple filed a timely petition disputing their notice of deficiency, and the court consolidated the cases. The IRS motioned for partial summary judgment.

Discussion:

The IRS argued that state law restrictions prevent the easements from being granted in perpetuity, which in turn prevents them from being both qualified real property interests under

Code Section 170(h)(2), and contributions exclusively for conservation purposes under Code Section 170(h)(5). The taxpayers, however, assert that the 99-year limitation should be considered the equivalent of a remote future event or the retention of a negligible interest because at present, the remainder is "essentially valueless."

Conclusion:

The Tax Court, finding that the term "remote" referred to the likelihood of an event occurring, easily concluded on summary judgment that the 99-year term was not remote. Rather, it was inevitable that the term would ultimately divest the donee of its interests in the easements. Therefore, the easements were not restrictions granted in perpetuity, and thus, were not qualified conservation easements.

The Tax Court found that there were disputed material facts as to whether the Wachters satisfied Code Section 170(f)(8)(A)'s contemporaneous written acknowledgment requirement with regard to the cash contributions. The IRS argued that none of the letters provided to it were sufficient because they were not addressed to Wind River (i.e., the entity that made the cash contributions), because NRT provided goods or services to the Wachters each year that were not mentioned in the letters and the values of which were not provided, and that the 2005 letter was unsigned and pre-dated the check. However, the court found that the IRS had not proved that the taxpayers expected or received a benefit for their donations, and it further held that the Wachters might be able to authenticate the disputed documents and provide additional evidence that, taken together, could potentially meet the requirements of a contemporaneous written acknowledgment.