

## **TAX COURT CASE UPDATE**

### **Citation:**

*Scheidelman v. Commissioner*, No. 13-2650 (2<sup>nd</sup> Circuit), June 18, 2014.

### **Overview:**

The Court of Appeals for the Second Circuit affirmed the Tax Court's decision that a taxpayer was not entitled to a charitable deduction for a façade easement because the easement had no value. The Court found that, given the nature of the property at issue and the landmark-based regulations already imposed on it, the easement did not actually have any negative impact on the property's value.

### **The Facts:**

Huda Scheidelman (the "taxpayer") donated a façade conservation easement for her brownstone row house in Brooklyn's Fort Greene Historic District to the National Architectural Trust ("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 Fort Greene Historic District is designated as a historic district by New York City's Landmarks Preservation Commission (the "LPC"). In New York City, it is unlawful to alter, reconstruct, or demolish a building in a historic district without the prior consent of the LPC.

### **Discussion:**

The IRS initially determined that the taxpayer's appraisal of the easement was not proper. When the taxpayer brought suit on that issue, the Tax Court agreed with the IRS (T.C. Memo 2010-151). On appeal, the Second Circuit reversed the Tax Court, concluding that the taxpayer's appraisal was a qualified appraisal. However, the court remanded the case back to the Tax Court to resolve the IRS's additional contentions that the taxpayer had failed to comply with other statutory and regulatory requirements (109 AFTR 2d 2012-2536).

On remand, the Tax Court concluded that the taxpayer was not entitled to a deduction for the façade easement because the easement had no value for charitable contribution purposes (T.C. Memo 2013-18).

The Tax Court found that the taxpayer's appraisal applied a percentage-based discount to the property in order to determine the easement's value. The discount was based on what various courts and the IRS had allowed in prior cases, and was not based on market data or specific attributes of the subject property. That methodology was not sufficiently reliable for the appraisal to be credible.

The taxpayer's expert at trial essentially admitted that his report did not accurately describe the easement at issue, and it used physically and geographically dissimilar properties as comparables. The Tax Court stated that his testimony "had all of the earmarks of overzealous

advocacy in support of [the trust's] marketing program," and ultimately rejected it as not credible.

The IRS's first valuation expert, on the other hand, concluded that the imposition of an easement in "highly desirable, sophisticated home markets like brownstone Brooklyn" had no negative effects on buyer interest, marketing time, or financing. Another IRS expert's testimony, applying an alternative approach based on condemnation techniques, similarly determined that the easement did not have a material effect on the property's fair market value. He also stated that, given the landmark-based regulations imposed on the property, the easement did not make much of a difference.

**Conclusion:**

The Second Circuit affirmed the Tax Court's finding that the façade easement had no value. It cited much of the same reasoning that the Tax Court provided, adding only that one of the taxpayer's mortgagors had noted that, as a practical matter, the easement did not add any new restrictions on the use of the property because the historic preservation laws of the City of New York already required a specific historic review of any proposed changes to the exterior of this property.