

TAX COURT CASE UPDATE

Citation:

Seventeen Seventy Sherman St., et al. v. Commissioner, T.C. Memo 2014-124, June 19, 2014.

Overview:

The Tax Court has ruled that a taxpayer received two items of property in return for his contribution of an easement. It then held that the taxpayer's failure to consider the second item of property as part of the transaction, and its failure to assign a value to that property, meant that the taxpayer deserved no charitable contribution at all.

The Facts:

The taxpayer, Seventeen Seventy Sherman Street, LLC ("Seventeen Seventy"), granted deeds of conservation easement with respect to property that the taxpayer owned, to a charitable organization, Historic Denver. As consideration for the grant of the easements, Seventeen Seventy received the approval of a new zoning plan that it proposed. As part of the same development agreement, Seventeen Seventy also received a recommendation from the local Community Planning and Development Agency ("CPDA") to the Planning Board to approve a variance. There was a dispute between the IRS and the taxpayer as to whether the taxpayer received that recommendation as consideration for the grant of the easements. The taxpayer did not value that recommendation in computing its charitable contribution for the easements.

Discussion:

The taxpayer contended that the development agreement was a divisible agreement that obligated Seventeen Seventy to contribute the easements to Historic Denver upon approval of the new zoning plan by the Denver City Council and that all of the above took place before, and independent of, the Planning Board's consideration of the variance. It also contended that variances of the type at issue here were "exceedingly rare" and that the independent nature of the Planning Board placed "grave doubt over whether the CPDA recommendation would have any influence over the Planning Board or any real value to the recipient of the recommendation."

Conclusion:

The court disagreed. It said that the record established that Seventeen Seventy highly valued and negotiated for CPDA's recommendation to the Planning Board to approve the variance. The record further established that Seventeen Seventy used the easements as leverage to obtain CPDA's recommendation, and ultimately, the Planning Board's approval of the variance. A witness who represented both CPDA and the Planning Board testified that the Planning Board follows CPDA's recommendation more than 90 percent of the time.

The court then said that when a taxpayer grants a conservation easement as part of a quid pro quo transaction and fails to identify or value all of the consideration received in the transaction,

the taxpayer is not entitled to any charitable contribution deduction with respect to the grant of the conservation easement because he has failed to comply with Regulation Section 1.170A-1(h)(1). The court concluded that Seventeen Seventy failed to value all of the consideration it received in the quid pro quo exchange, and therefore, failed to prove that the fair market values of the easements exceeded the value of the consideration it received in exchange for the easements.