



Not Quite Horseshoes—Close Isn't Good Enough for Charitable Appraisals
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All Appraisals Are Not Created Equal

Charitable contributions have attracted a lot of attention recently, both with changes in the law Congress recently passed and with a series of cases the Tax Court has decided in the past couple of weeks. As was discussed in *Steve Leimberg's Charitable Planning Newsletter #104*, the Tax Court recently dealt with a series of undocumented charitable contributions for clients of a single tax preparer in the *Harrell*, *Warren*, and *Warfield* cases.

This week the Tax Court took on another issue—this time the Tax Court reminded the taxpayers involved that there are strict documentation requirements for contributions of property above \$5,000 that requires appraisals—and if you fail to meet these

requirements, the deduction will be disallowed even if it is clear that a real contribution was made and even if the taxpayer actually has an appraisal—just not the proper one. The case in question is the case of *Ney v. Commissioner*, TC Summary 2006-154.

Taxpayer Unable to “Reuse” Appraisal

The taxpayers contacted the Delaware Agricultural Lands Preservation Foundation (DALPF) about selling the development rights to their two parcels of farmland to the foundation. That foundation was established to prevent the conversion of Delaware’s farmland to other uses. The Neys would continue to have title to their property, but would have agreed that it would only be used for agricultural purposes.

DALPF had appraisals of the development rights for each property prepared by an appraiser they hired in November 1999. In April of 2000, the Neys had another appraisal of one of the properties development rights prepared by a second company. The Ney’s appraisal specifically stated it was prepared solely for use in determining development rights in accordance with the DALPF, and neither appraisal indicated they were to be used for income tax purposes.

The Neys sold the development rights in both parcels for an amount less than the appraised value of the rights to DALPF in 2001. On their 2001 return, they claimed a noncash charitable contribution related to this transaction of \$210,306 on Form 8283. The Form 8283 was not signed by DALPF in the donee acknowledgment section. The form also was signed by any of the appraisers in the section containing the “Declaration of Appraiser.”

The IRS Comes Calling

The IRS examined the Ney’s 2001 return and, as would be expected, a key issue was the noncash charitable contribution. In May 2004, the IRS sent the Neys an Information Document Request (IDR) requesting a Form 8283 signed by an appraiser and the donee, as well as complete appraisals for both parcels. The IDR also reminded the Neys the appraisals had to be qualified appraisals as defined in Reg. §1.170A-13(c)(3).

The Neys were able to get DALPF to sign off on the 8283s, but the appraisers each refused to sign the Form 8283. Generally, since appraisals are intentionally restricted in use by the appraiser, this result is not surprising, though it may have come as a bit of a shock to the Neys at the time. In lieu of the appraisals, they submitted a letter from an attorney for DALPF indicating that their appraisers were not willing to sign the Form 8283 along with the 8283. This document was submitted in July of 2004, or about two months after the IDR.

The IRS was not impressed and in June 2005 disallowed the deduction in full, determining a deficiency of \$46,628 in the Neys’ 2001 income tax report, at which point the Neys filed their Tax Court petition.

In November of 2005, the Neys obtained an additional appraisal document from the company they had retained in their negotiations with DALPF. In February 2006, the Neys provided the IRS with that appraisal along with an 8283 signed by the president of the company that handled the appraisal.

This Isn't Horseshoes...

At this point, it looks like a “no harm, no foul” situation—the IRS finally was given an appraisal to substantiate the deduction and an appraiser had signed off on the 8283 along with the statements on that form. However, the IRS did not see it that way and stood by their position that the entire deduction was disallowed due to the fact the taxpayers did not comply with the specific requirements of the regulation.

The taxpayers were about to learn an expensive lesson, as the Tax Court agreed with the IRS. The Court pointed out that, as was held in 1997 in the *Hewitt* case (109 TC 258), strict compliance with these regulations is generally required. The Court pointed out that these regulations deal not with whether a contribution was made or its amount, but rather with strict documentation rules that are to be applied for the deduction to be allowed, and taxpayers who don't follow the rules will lose out.

The Neys agreed they had not strictly followed the regulations, but argued they should still be allowed a deduction. Rather they argued for substantial compliance with the regulations. They relied heavily on the 1993 case of *Bond* (100 TC 32). The court notes that in *Bond* the taxpayers had a property that was appraised by a qualified appraiser within the specified time period. However, the appraiser did not prepare a separate appraisal document, nor did he list his qualifications on the Form 8283. Shortly after the exam began, the appraiser submitted a letter outlining his qualifications to the IRS.

In *Bond* the Court held that the taxpayers had provided substantially all of the information required by the regulations. However, the *Ney* opinion makes note that in *Bond* that the taxpayer had actually obtained a qualified appraisal within the time period.

The Court makes clear that the obtaining of a qualified appraisal is mandatory, not discretionary, and was imposed by the Deficit Reduction Act of 1984 (DEFRA) to discourage claiming excessive amounts for charitable deductions. In this case, the failure was more serious than the issues in *Bond* and rather much closer to the facts in *Hewitt* and *D'Arcangelo* (TC Memo 1994-572).

Regulatory Last Chance

The Court notes that Reg. §1.170A-13(c)(4)(iv)(H) provided one last out that the taxpayers did not fall under. That regulation provides that if the appraisal summary is not attached, if the taxpayer provides the information to the IRS within 90 days of a request from the IRS, the deduction will not be denied so long as failure to attach the summary was a good faith omission and a qualified appraisal was completed within the specified

period. However, the taxpayers never provided either the information or the appraisal until well past the time the 90 day period had expired.

Lessons

If we hadn't learned from the *Hewitt* case that strict compliance with these rules is important, this is another reminder that taxpayers can't skip over these requirements once they are triggered.

As well, taxpayers need to be aware that appraisals generally are restricted use, and they should not presume that just because an appraisal exists that it will count for purposes of valuing the contribution unless the appraiser was retained specifically to handle the appraisal for Form 8283 purposes. Restricted use reports are something that are very much the norm in the appraisal world and, in fact, such a concept has been gaining ground for accountants reports in the attest arena.

Appraisers reasonably wish to be compensated appropriately for the exposures they have, and clients should be aware that even if the appraiser might agree to extend work to cover the tax issue, they will be an additional fee to pay. Despite the taxpayers' view that they "just need a signature" that is not how an appraiser is likely to view—nor, frankly, how CPAs view that same issue (just think about the heated discussions in recent years over the absurd requests to sign various documents for clients obtaining mortgages).