Forbes

Robert W. Wood
THE TAX LAWYER

Jun. 22 2012 — 12:46 am

Big IRS Defeat In Conservation Easement Case

In *Scheidelman v. Commissioner*, the Second Circuit Court of Appeals reversed the Tax Court and handed the taxpayer—and the whole conservation easement community—a big victory. The IRS has had some victories of its own, including the case reported here: No Appraisal No $18.5M Deduction, Says Tax Court. Perhaps that makes this reversal of fortune all the sweeter.

(Photo credit: Wikipedia)

The *Scheidelman* case involves two important elements of these deals, the ***nature*** of the qualified appraisal rules and the related ***cash*** donations many conservation organizations require. Ms. Huda Scheidelman claimed a modest façade easement donation which the IRS disallowed. There was no qualified appraisal, the IRS said, and not even the cash she contributed was deductible!

That was harsh but the Tax Court agreed. Scheidelman had applied to a charity to donate a façade easement for her brownstone in Brooklyn. The easement would prohibit Scheidelman from altering its facade without

permission and would require her to maintain the façade and the rest of the structure.

She hired an appraiser who valued it at $115,000 using the before-and-after method. He valued the house before and after and the difference was the value of the easement. The charity insisted that Ms. Scheidelman make a cash contribution toward operating costs of ten percent of the value of the easement ($9,275), which she did.

She claimed her deduction, which the IRS denied, adding penalties. The Tax Court ruled the appraisal was not "qualified" and that she couldn't even deduct the cash since it was "donated" as a condition to the charity accepting her easement. The Tax Court concluded the appraiser did not make his before-and-after valuation approach clear.

But the appellate court said he did. He explained how he arrived at his numbers and that was enough. There was also a glitch with the Form 8283 Ms. Scheidelman filed with her return. It failed to include the date and manner of acquisition of the property or its cost basis. The Tax Court thought that alone was enough to nix her deduction.

The appellate court disagreed. After all, she had sent in two Forms 8283, and together they included it all. Any defect was just too technical to prevent a deduction, the court said.

What about the cash donation? It was to cover operating expenses for the donation and wasn't given in exchange for ***anything***. The only transfer of benefit was what the taxpayer gave to the charity in two gifts, the easement and cash. Besides, contributions toward operating expenditures are commonplace among entities that hold and administer façade contribution easements.

Without some way of monitoring compliance, an easement is easily violated, withdrawn, or forgotten. A cash contribution (even a mandatory one) helped administer another charitable donation. That meant the cash was deductible too.

Conservation easements face tough rules but the tax and conservation benefits are worth the effort.

For more, see:

Golf Course Tax Deductions Hit The Rough

IRS Still Fighting Conservation Tax Breaks

Claim Your Facade Easement Now (Just Not With This Promoter)

Mortgage Kills Facade Easement Tax Deduction

Why You Can't Deduct Your Kid's Sporting Events On Your Taxes

Façade Easement: No (Qualified) Appraisal, No Tax Deduction

Best Tax Deductions On Chopping Block?

More Strange Tax Deductions

Still More Strange Tax Deductions

Robert W. Wood practices law with Wood LLP, in San Francisco. The author of more than 30 books, including Taxation of Damage Awards & Settlement Payments (4th Ed. 2009 with 2012 Supplement, Tax Institute), he can be reached at Wood@WoodLLP.com.