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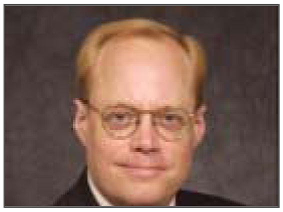

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THE TAX LAWYER

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

Shield of the United States Tax Court. (Photo credit: Wikipedia)

Sometimes, fancy appraisals can defeat the IRS. Sometimes, though, taxpayers end up fighting over deductions they thought were secure. Sometimes they get into trouble because they are too aggressive in their valuation or in how they apply valuation discounts.

Sometimes, though, even people who are behaving reasonably trip over some technical rule and end up not qualifying. In No Appraisal No $18.5M Deduction, Says Tax Court, I noted the Tax Court's tough love in *Mohamed v. Commissioner*. Mr. and Mrs. Mohamed made a sizable donation to charity but the IRS and Tax Court found their Form 8283 deficient.

It seemed a hyper-technical application of the rules and an unfair one. After all, the Mohameds donated the property and the valuation seemed downright reasonable. Even the Tax Court implied that it was reluctantly enforcing quite technical rules.

In fact, it was likely that the property was even ***more*** valuable than the Mohameds claimed on their tax returns, said the court! Nevertheless, the appraisal flub meant no $18.5 million tax deduction.

In *Rothman, et al. v. Commissioner*, the Tax Court faced another noncash donation. This time it was a historic façade easement. There was no question that the easement was placed on the property and no question that the easement was donated to a qualified charity.

Why, then, did the IRS deny the deduction? The appraisal wasn't up to the technical qualified appraisal rules, the same rigorous rules questioned in *Mohamed*. In a painstakingly detailed opinion, the Tax Court agreed with the IRS that this appraisal failed a number of the detailed qualified appraisal provisions of the Treasury Regulations.

For one, the appraisal didn't include a valuation method or a specific basis of valuation. Plus, there were numerous other defects including:

- The appraisal was not made within 60 days before the contribution;
- The appraiser wasn't clearly "qualified";
- The appraisal and the easement were not described identically or even clearly enough to avoid confusion;
- The appraisal didn't include the actual or expected date of contribution;
- The terms between the Rothmans and the receiving charity were not disclosed;
- The appraisal did not list the credentials and background of the appraiser; and
- The appraisal did not clearly state that it was prepared for income tax purposes.

Although the Rothmans argued that their compliance with the rules was close enough, the IRS and the Tax Court disagreed. The lesson seems clear. The tax law is complex. If the Treasury Regulations list requirements you must follow to get your deduction, follow them. Short of challenging the validity of a regulation (which is never easy), you'd better comply.

For more, see:

No Appraisal No $18.5M Deduction, Says Tax Court

Beware: Sometimes 'Bargain Sales' Are No Bargain

Golf Course Tax Deductions Hit The Rough

Beware: Sometimes 'Bargain Sales' Are No Bargain

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

IRS Still Fighting Conservation Tax Breaks

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