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Fifth Circuit: Donation of conservation easement, perpetuity requirement not satisfied

The U.S. Court of Appeals for the Fifth Circuit today affirmed a determination of the U.S. Tax Court, holding in part that a conservation easement did not satisfy the perpetuity requirement of section 170(h)(5)(A) and, thus, that the donation of the conservation easement did not qualify for a deduction.

The case is: *PBBM-Rose Hill, Ltd. v. Commissioner*, No. 17-60276 (5th Cir. August 14, 2018). Read the Fifth Circuit's [decision](#) [PDF 225 KB] (33 pages)

Summary

The taxpayer claimed for the 2007 tax year a charitable contribution deduction of over \$15 million for its donation of a conservation easement of certain land that was part of a country club in South Carolina. On examination, the IRS disallowed the deduction for the conservation easement. Subsequently, the Tax Court concluded that the easement was not exclusively for conservation purposes, among other findings.

On appeal, the Fifth Circuit affirmed the Tax Court's decision. While the Fifth Circuit found that the easement was "for conservation purposes" (as required by section 170(h)(1)(C)), the appeals court concluded that the contribution was not "protected in perpetuity" (as required by section 170(h)(5)(A)) because the easement deed contained an extinguishment provision. In other words, the appeals court held that the contribution protected the conservation purpose of preserving land for outdoor recreation by the general public, but the easement did not satisfy the perpetuity requirement.

The Fifth Circuit also held that the Tax Court did not err in its valuation of the easement or with respect to its determination that a valuation-related penalty applied.

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