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U.S. Tax Court: No charitable contribution deduction for facade easement, long-term lessee

The U.S. Tax Court today issued an opinion concluding that a facade easement did not result in a charitable contribution because the taxpayer failed to meet the requirements of section 170(h).

The case is: *Harbor Lofts Associates v. Commissioner*, 151 T.C. No. 3 (August 27, 2018). Read the Tax Court's [opinion](#) [PDF 187 KB]

Summary

A nonprofit development corporation was the fee simple owner of two buildings listed on the National Register of Historic Places, and a partnership (the taxpayer) was a long-term lessee of those buildings.

In 2009, the taxpayer and the nonprofit development corporation joined together in transferring a facade easement to a qualified organization under Code section 170(h)(3). The taxpayer claimed a charitable contribution deduction of \$4,457,515 for 2009. In a notice of final partnership administrative adjustment issued with respect to the partnership, the IRS disallowed the taxpayer's claimed charitable contribution deduction for the donation of the facade easement. The IRS also determined that an accuracy-related penalty under Code section 6662(a) applied.

The taxpayer's tax matters partner filed a petition challenging the IRS's determinations and filed a motion for partial summary judgment under Rule 121. The IRS filed a cross-motion for partial summary judgment on the same issue. The IRS argued that the taxpayer, as the long-term lessee of the two buildings, was not entitled to a charitable contribution deduction under Code section 170(f)(3)(B)(iii) and (h) because the taxpayer did not hold a fee interest in the buildings and could not meet the perpetuity requirements of Code section 170(h)(2)(C) and (5)(A) and section 1.170A-14, Income Tax Regs.

The taxpayer argued that fee ownership of real property is not expressly required by Code section 170(h) and that the contribution was similar to a facade easement granted by tenants in common. Alternatively, the taxpayer argued that it was the equitable owner of the buildings for tax purposes and therefore was eligible for deductions relating to the buildings.

The Tax Court concluded that as the buildings' long-term lessee, the taxpayer did not have a fee interest in the buildings and did not contribute a conservation restriction protected in perpetuity under section 170(h). Under the lease agreement, the taxpayer gave up contractual rights, which are personal property rights. Because the taxpayer failed to meet the requirements of section 170(h), the facade easement does not result in a charitable contribution deduction to the taxpayer under section 170(f)(3)(B)(iii).

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