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U.S. Tax Court: Regulations on charitable donation of conservation easement upheld as valid

The U.S. Tax Court today issued a “reviewed opinion” in which the majority upheld the validity of the regulations under section 170 with respect to the rules for charitable donations of conservation easements.

The case is: *Oakbrook Land Holdings, LLC v. Commissioner*, 154 T.C. No. 10 (May 12, 2020). Read the Tax Court’s [opinion](#) [PDF 467 KB] (128 pages) that includes concurring and dissenting opinions.

Summary

The taxpayer in 2008 donated a conservation easement to a qualified organization and claimed a charitable contribution deduction under section 170(a).

The easement deed provided that, if the conservation restriction were to be extinguished at some future date, the donee would receive a share of the proceeds equal to the fair market value of the easement on the date the contribution was made. The deed further provided that the donee’s share as thus determined would be reduced by the value of any improvements made by the donor after granting the easement.

The IRS disallowed the deduction, contending (among other things) that the extinguishment clause violated the requirements of Reg. section 1.170A-14(g)(6).

In a related Tax Court memorandum opinion (also released today), the Tax Court held that the easement deed violated the “protected in perpetuity” requirement of section 170(h)(5), as interpreted by Reg. section 1.170A-14(g)(6), because the donee’s share of the extinguishment proceeds: (1) was based on a fixed historical value rather than a proportionate share; and (2) was reduced by the value of any improvements made by the donor.

The taxpayer challenged the validity of the regulation, and this is the subject of this reviewed opinion by the full court.

The Tax Court majority held:

- Reg. section 1.170A-14(g)(6) was properly promulgated and is valid under the Administrative Procedure Act
- The construction of section 170(h)(5) as set forth in Reg. section 1.170A-14(g)(6), was valid under *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

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