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A recent Tax Court case illustrates the importance of following the substantiation and appraisal requirements for charitable gifts. Or at least, the importance of making a good try. The Internal Revenue Service (IRS) disqualified a \$1,400,000 charitable deduction because the donor failed to follow the rules. Despite that, the donor's lawyers managed to save the charitable deduction in the Tax Court.

Crimi v. Commissioner ([T.C. Memo. 2013-51](#)) involved John Crimi, a New Jersey producer of ready-mix concrete, sand, and crushed gravel products. He and his company owned 65 acres of land he hoped to develop as residential real estate lots. When a development plan hit some approval snags in 1997, Crimi began looking at other options. In 2000, the local township expressed an interest in the property for open space purposes, and Crimi obtained an appraisal of the property in March of that year placing its market value at \$2,950,000.

Financial constraints put the deal on hold, but in 2003 the township was able to form a partnership with a local land conservancy group, a municipal utilities authority, and the county to purchase the property. The deal finally closed in July 2004, deeding the property to the county in exchange for \$1,550,000. In August 2004, the township administrator sent a letter acknowledging this as a bargain sale gift of \$1,400,000, the difference between the sale price and the earlier appraisal.

Crimi's CPA completed IRS Form 8283 for the appraisal and dutifully attached it, along with the appraisal and the 2004 acknowledgment letter, to the 2004 tax returns. Tax law aficionados will have already identified a big problem: the appraisal was stale. Under IRS regulations, a qualified appraisal supporting a charitable deduction must be made "no earlier than 60 days before the date of the contribution." In this case, the appraisal was made more than 4 years before the date of contribution.

Sure enough, the IRS audited. Perhaps the IRS auditor was just a stickler for details, but a section of the March 2000 appraisal may have given the IRS auditor the idea that the property was not worth any more than the \$1,550,000 that had been paid for it:

- “The owner has received various inquiries from reputable land developers about the availability of the tract. These offers were in the range of \$1,350,000 to \$1,550,000 or \$20,924 per acre or \$24,024 per acre respectively. These offers are considerably less than our estimated value of \$2,950,000 or \$45,722 per acre.”

Auditors dug deeper and learned that the property had an old mine shaft on it, the Scrub Oaks Mine, one of the largest and oldest iron ore mines in New Jersey, reaching a total depth of 3,400 feet. In addition, the property contained a brook and freshwater wetlands, which under New Jersey law would require vegetated buffers and transition zones to develop, and was home to an endangered wood turtle species. To the IRS, all these factors seemed to render the property unfit for the residential subdivision use on which the \$2,950,000 March 2000 appraisal was based.

The IRS threw the book at Crimi with a long litany of violations that it argued disqualified the charitable deduction:

- The August 2004 letter had the wrong description of one of the three lots in the property, referencing block 703, lot 12 when in fact the correct description was block 702, lot 12.
- The township administrator who signed the August 2004 letter did not work for the specific legal entities receiving the property.
- The August 2004 letter failed to indicate that the recipient organization had not provided other goods, services, or valuable consideration. The March 2000 appraisal was for the wrong purpose as it had been labelled “for discussion purposes with township officials” rather than for purposes of claiming a charitable deduction as required by the qualified appraisal rules.
- Most importantly, the March 2000 appraisal was out of date for the July 2004 gift.

The crux of the IRS arguments was that without both a contemporaneous written acknowledgment signed by the recipient organization including a description of the property contributed and a valid qualified appraisal, no charitable deduction can be taken. That’s a good statement of the tax law, but it turns out that there is some flexibility in the administration of it, at least if a donor is willing to take the case to the Tax Court.

While the donor has to obtain a qualified appraisal at the time the tax return is filed claiming the charitable deduction, that appraisal carries no special weight in the Tax Court. The IRS hires its own valuation expert to support its case. Likewise, the donor is not bound by the original appraisal and can obtain additional appraisals and experts to testify at trial.

The IRS found an appraiser to testify that the property was only worth \$1,510,000 for residential purposes, but that wasn't a feasible use, so it was only worth \$660,000 for open space conservation purposes. Both of those amounts were less than the \$1,550,000 paid for the land, leaving no bargain sale element on which to claim a charitable deduction. There was also evidence introduced that the county had obtained an April 2003 appraisal putting the market value of the property at \$1,900,000 as of March 6, 2003.

However, Crimi's attorneys were equally tenacious. They obtained a 2007 appraisal which valued the property at \$5,225,000 as of July 30, 2004 "for Internal Revenue purposes". They produced at trial yet another appraisal expert putting the value of the property at \$3,760,000 as well as a mining engineer who testified that the mine shaft and other mining depressions could be properly sealed for \$110,000. The CPA firm testified that Crimi's long-time CPA had referred the appraisal question to another expert at the CPA firm who found that the March 2000 appraisal was in substantial compliance. The lawyers argued both that the 2000 appraisal substantially complied and that any noncompliance should be excused for reasonable cause, due to Crimi's reliance on the CPA's expert judgment.

The Tax Court made short shrift of the IRS's technical arguments. The Tax Court found that the substantiation problems cost the taxpayer the burden of proof (ordinarily the IRS has the burden of proving the tax deficiency) but did not cost the taxpayer the charitable deduction. The township administrator had been the point person on the bargain sale, and so was acting with apparent and actual authority on behalf of the recipient in signing the August 2004 acknowledgment letter. The Tax Court dismissed the description inaccuracy as "essentially a small typographical error". It was enough for the Tax Court that the August 2004 letter stated the cash price of \$1,550,000 as the whole consideration without need to recite any additional words as to "other goods, services, or valuable consideration." As to the qualified appraisal, the Tax Court found that the reliance on the CPA was in good faith, and therefore excusable due to reasonable cause not wilful neglect.

Even the wood turtle argument didn't hold. The Tax Court found the species was merely threatened but not endangered, for which the IRS had presented no evidence affecting the value of the property. After much analysis, the Tax Court ruling set a \$2,965,840 valuation. That would give the donor an additional \$15,840 charitable deduction, probably not enough to cover lawyer's fees, but preserving the claimed tax savings.

What does this case mean for gift planners and donors? While it is possible to win against an IRS ruling, it is better to ensure that all aspects of a gift adhere to IRS regulations. However, it is comforting to know that the consequences of gift documentation mistakes are not always set in concrete.

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