

Ranches' \$16M Easement Case Needs More Review: Fifth Circuit

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- * Tax Court ignored "significant information" in the record
- * Easement boundary adjustment provision didn't prohibit deductions

By Matthew Beddingfield

(BNA) -- Two Texas ranches will have another shot at \$16 million in charitable deductions that were rejected by the U.S. Tax Court after a federal appeals court vacated the lower court's ruling.

The Tax Court failed to consider significant information related to easements donated by Bosque Canyon Ranch I LP and BC Ranch II LP (BCR), and needed to review the case again on remand, the U.S. Court of Appeals for the Fifth Circuit ruled Aug. 11 (BC Ranch II, LP v. Commissioner, 5th Cir., No. 16-60068, 8/11/17).

"It's not often the circuit court completely remands the case and says start over like this," Ronald Levitt, a shareholder at Sirote & Permutt PC in Birmingham, Ala., told Bloomberg BNA. "This case is one we've been watching a lot. The IRS has been using the Tax Court decision as a hammer in many of our own cases."

Boundary Adjustments

A homesite boundary adjustment provision in the conservation easements didn't prevent the companies from satisfying the perpetuity requirement of tax code Section 170, and therefore didn't prevent them from claiming the charitable deductions, Circuit Judge Jacques L. Wiener Jr. said.

According to Wiener, the Tax Court also "inexplicably" failed to review detailed maps, photographs, and reports on the easements that were "more than sufficient to establish the condition of the property prior to the donation."

"What this is doing is forcing the Tax Court to take a closer look at substantial compliance and what it means," Anson H. Asbury, a principal at Asbury Law Firm LLC, told Bloomberg BNA.

Rejected Deductions

The Tax Court in July 2015 rejected the companies' \$16 million in deductions claimed for the value of conservation easements they donated to the North American Land Trust (NALT). court. It said the easements failed to qualify for the deductions because they weren't given in perpetuity, and BCR sales of partnership interests were actually disguised sales of partnership property.

The Tax Court cited *Belk v. Commissioner* when it found BCR's easements didn't qualify under Section 170's perpetuity requirement because the boundaries of the property subject to the easement could be modified.

The lower court's reliance on *Belk* was "misplaced," the Fifth Circuit said, adding that the BCR easements were distinguishable from those in the *Belk* case, which could be moved.

"What that seems to recognize is that *Belk* isn't as broad as the IRS claims it to be," Sirote said.

"This is distinguishable from *Belk*. It's about moving boundaries that are already defined." The concern put forward in *Belk* is we don't know what's protected in perpetuity if we don't know where the parcel is," Asbury said.

Taking a Second Look

The Fifth Circuit also vacated the Tax Court's determination that the entirety of the limited partners' contributions was disguised sales and that BCR owed a gross valuation misstatement penalty, leaving the lower court to rehear those issues on remand.

Circuit Judges James L. Dennis and Catharina Haynes sat on the court's panel.

Dennis dissented with the majority, saying the Belk case had "persuasive reasoning" and that the U.S. Supreme Court has made it clear that deductions should be strictly construed. "I must conclude that the easements at issue in this case did not comply with the requirements in § 170(h)(2)(C) that a defined parcel of real property be protected in perpetuity."

George Asimos of Saul Ewing LLP, who filed a supporting brief on behalf of the NALT, told Bloomberg BNA he was pleased with the court's decision. "The court chose to adopt our views and demonstrated a keen understanding of the purpose of conservation easements, and the legal requirements and role of the land trust process."

Jeffrey Scott Levinger, Val J. Albright, and Joseph Carl Cecere Jr. represented BCR. The Department of Justice represented the commissioner.

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For More Information

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