

Daily Tax Report®

September 22, 2016

Charitable Contributions

Attorneys Say 'Cave Buttes' Good for Real Property Donors

BNA Snapshot

- Bargain sale valuation case helps conservation easement donors defend appraisals
- Court reaffirmed substantial compliance over strict compliance with appraisal regulations



By [Erin McManus](#)

Sept. 21 — Tax attorneys who represent grantors of conservation easements lauded a recent U.S. Tax Court opinion that reaffirms the substantial compliance standard for qualified appraisals of donated property.

Cave Buttes, LLC v. Commissioner, a [division opinion](#) authored by Judge Mark V. Holmes, prescribes a substantial compliance standard—rather than the strict standard seemingly favored by the Internal Revenue Service—in determining whether taxpayers have complied with

Treasury regulations in obtaining a “qualified appraisal” to substantiate their claimed deduction for a donation of a real property interest ([183 DTR K-3, 9/21/16](#)).

David D. Aughtry, a partner at Chamberlain, Hrdlicka, White, Williams & Aughtry in Atlanta, told Bloomberg BNA in a Sept. 21 e-mail, “this case is a breath of fresh air in rejecting hyper technical attacks on charitable contributions that Congress encourages. The Court’s application of substantial compliance thankfully reaffirms the practical approach so badly needed in this area.”

Same Valuation Regulations

Deductions for charitable contributions are allowed under tax code Section 170, and the same regulations for qualified appraisals govern both the bargain sale of property to an eligible organization—the transaction at issue in *Cave Buttes*—and the more frequently litigated grants of a conservation easement to preserve the natural or historic character of property.

Anson Asbury, a tax attorney at the Asbury Law Firm in Atlanta, told Bloomberg BNA in a Sept. 20 e-mail, “this case is yet another example of the IRS trying to deny a real property interest donation deduction based on a technical foot fault. The elevation of form over substance in some of the government’s arguments is disconcerting. Yes, tax is technical but cases still should be decided on substance.”

Ronald Levitt, a shareholder in the tax and business practice at Sirote & Permutt PC in Birmingham, Ala., told Bloomberg BNA in a Sept. 21 interview that Holmes “seemed exasperated” with the IRS’s emphasis on technicalities.

Substance Over Form

Levitt told Bloomberg BNA in an April interview regarding a Tax Court case that the IRS’s rejection of a deduction for a conservation easement based on a poorly drafted clause pertaining to an unlikely future event “leads you to the conclusion that there is no nit too small for the IRS to pick. They are looking for any reason to disallow these deductions, despite what Congress has said.”

Citing past cases where the Tax Court found taxpayers failed to substantially comply with the qualified appraisal requirements, Holmes said, “we explained that our focus in substantial-compliance cases was on whether the appraisals described the contributed property well enough to permit the Commissioner to understand the appraiser’s valuation

methodology.”

“The Court clearly favored the substance of the transaction when it recognized that a difference of 11 or 21 days between contribution and valuation should only matter if there is ‘any significant event that would obviously affect the value of the property.’ When you see these arguments, it’s easy to lose track of the fact that this provision exists because Congress actually wants taxpayers to make these kind of donations,” Asbury said.

The IRS didn’t respond to a request for comment.

To contact the reporter on this story: Erin McManus in Washington at emcmanus@bna.com

To contact the editor responsible for this story: Meg Shreve at mshreve@bna.com