



FCG Valuation Case E-Flash

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Issue 12:9

JAMES HENDRIX, ET AL., Plaintiffs, v. UNITED STATES OF AMERICA, Defendant Case
No. 2:09-cv-132
United States District Court, Southern District of Ohio Eastern Division, Filed July 21,
2010

The U.S. District Court considered whether an income tax charitable deduction for
real property should be allowed. Ultimately, the court denied the deduction because
the Taxpayer failed to submit a qualified appraisal and failed to obtain a
contemporaneous acknowledgement of the donation from the donee.

E-Flash Takeaway

While this case is centered on a real estate appraisal, it suggests business
appraisals are exposed to similar risks. More specifically, "**discount letters**"
(which often are substituted for appraisals of family limited partnership interests)
and "**calculation**" reports may subject taxpayers to unnecessary sanctions.

As stated in *Hendrix*, the purpose of a qualified appraisal is to eliminate
unnecessary guessing. The court found that Taxpayers' appraisal lacked content in
critical areas required by the **qualified appraisal regulations**. As a result, the
court ruled that the Taxpayers were not entitled to the claimed deduction.

While not published as an *E-Flash*, *Scheidelman v. Commissioner* (T.C. Memo.
2010-151, No. 15171-08) also denied a charitable deduction for a façade
easement because the taxpayer's appraisal did not meet the requirements of a
qualified appraisal.

Clearly, the IRS and courts are increasing their scrutiny of taxpayer submitted
appraisal reports.

House Donated To City And Demolished

James and Lori Hendrix ("Taxpayers") intended to demolish a house and rebuild a
larger house in its place. Two estimates for conducting the demolition indicated the
cost would be approximately \$10,000.

Rather than paying for the property to be demolished, Mr. and Mrs. Hendrix donated
it to the city. On June 29, 2004, the Taxpayers entered into a contract with the city's

Upper Arlington Fire Division, which required the house be burned and/or demolished as part of a training exercise.

Ann Ciardelli prepared a real estate appraisal of the property ("Appraisal"). The report was signed on June 11, 2004, and indicated a value of \$520,000. The Appraisal stated "[t]he intended use of this appraisal is to assist the owner in estimating the fair market value of the subject property." Ciardelli failed to include her qualifications in the Appraisal and included only her license number. Additionally, Ciardelli failed to provide the terms of the agreement between the Taxpayers and the city as well as the expected date of the donation.

Mr. and Mrs. Hendrix claimed a charitable deduction for the property in the amount of \$287,400 on their 2004 tax return. The IRS disallowed the deduction and asserted a tax deficiency.

Submitted Appraisal Was Not Qualified Appraisal

The IRS asserted that the Taxpayers were required by 26 U.S.C. § 170(f)(11)(C) to obtain a qualified appraisal and attach it to their tax return. The regulations and statutory scheme provide that the Appraisal must include the following in order to constitute a qualified appraisal:

- The expected date of contribution,
- The terms of agreement between Taxpayers and the city,
- The appraiser's qualifications (background, experience, education, and any membership in professional associations), and
- The required statement that the appraisal was prepared for income tax purposes.

Because the Appraisal failed to meet the preceding requirements, the court concluded that it failed to constitute a qualified appraisal.

The Taxpayers contested and argued that they substantially complied with the regulations and statutory scheme. The court concluded substantial compliance doctrine applies to statutory language that specifically provides for substantial compliance, but the doctrine does not apply to taxpayer deductions.

The court indicated that the substantial compliance doctrine "is at most a means of accepting a nearly complete effort that has simply fallen short in regards to minor procedural errors or relatively unimportant oversights." Even if the doctrine could apply to taxpayer deductions, the court pointed out that the Appraisal failed to comply with numerous statutory and regulation mandates.

For example, the court ruled inclusion of only the appraiser's license number as a substitute for the appraiser's qualifications did not constitute substantial compliance, citing *Bruzewicz v. United States*, 604 F. Supp. 2d 1197, 1205 [103 AFTR 2d 2009-1428] (N.D. Ill. 2009). Furthermore, whether Ciardelli was qualified as an appraiser is not the issue. The issues are what the Taxpayers were required to do, not what they could have done.

Appraisal Analysis Was Incomplete

No explanation was given for the claimed deduction of \$287,400. The Taxpayer later explained the value of the charitable contribution was determined by subtracting the value of the land from the value determined in the Appraisal. The court indicated that a qualified appraisal will "show the work" and eliminate guessing. Ciardelli's appraisal failed to do so.

Contribution Acknowledgement Not Obtained

In addition to obtaining a qualified appraisal, the Taxpayers were required by 26 U.S.C. § 170(f)(8)(B) to file a contemporaneous acknowledgement of the contribution by the donee organization. The court found that the Taxpayers failed to produce such documents.

Court Rules In Favor of IRS

Because the preceding two issues required by 26 U.S.C. § 170 proved dispositive, the court did not address whether a deduction would have been available for this type of transaction or whether the Taxpayers established that they were entitled to the deduction.

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