

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of )  
[Redacted], ) DOCKET NO. 24637  
Petitioner. )  
DECISION  
\_\_\_\_\_ )

[Redacted] (petitioner) protests the Notice of Deficiency Determination (NODD) issued by the auditor for the Idaho State Tax Commission (Commission) dated September 29, 2011, making adjustments to the return filed by the petitioner for 2007. Since the petitioner is a limited liability corporation filing income tax returns as a partnership, no liability is asserted against the petitioner. Instead, the implications flow through to the member or members of the limited liability corporation.

The only issues in this docket are whether the petitioner is entitled to a charitable contribution deduction for selling property to a charitable organization for less than the fair market value of the property and, if so, the amount of such deduction. The petitioner claimed a \$400,000 deduction. The auditor determined that the charitable contribution deduction was not allowable due to the petitioner not having acquired a “qualified appraisal” as provided in Internal Revenue Code § 170(f)(11)(C) and, therefore, denied the claimed deduction.

According to the Form 8594 supplied to the Commission by the petitioner, the sale here in question took place on May 18, 2007. Purportedly, the property was worth \$1,000,000, and it was purportedly sold to a charitable organization for \$600,000. The petitioner submitted an appraisal for the property addressed to [Redacted] dated January 10, 2007, indicating that the property was worth \$1,000,000. The appraisal included the following:

## PURPOSE OF THE APPRAISAL

The purpose of this appraisal was to estimate the market value of the leased fee simple estate of the subject property (See Definition in Addendum for market value.)

## INTENDED USE OF REPORT

For the sole purpose of estimating a market value for internal uses. (See Definition in Addendum)

\* \* \*

## EFFECTIVE DATE OF VALUE

January 10, 2007

## DATE OF REPORT

January 11, 2007

On November 28, 2011, the appraiser submitted a letter with the following statement:

Based on data available in March of 2010 showing no supportable change, this Appraisal Report has been extended, per this Addendum, through March 18, 2007. The values assigned to the appraised property remain in effect through the 18<sup>th</sup> of March 2007. Therefore the “As Is Including Land: value referred to on page 2 of the Appraisal Report is still One Million Dollars (\$1,000,000) as of March 18, 2007. The other values addressed on page 2 of the Appraisal Report are the same as of March 18, 2007 as well.

Treasury Regulation 1.170A-13(c)(3) set forth some of the requirements for a “Qualified Appraisal.” It stated, in part:

### *Qualified appraisal.*

(i) In general. For purposes of this paragraph (c), the term “qualified appraisal” means an appraisal document that—

(A) Relates to an appraisal that is made not earlier than 60 days prior to the date of contribution of the appraised property nor later than the date specified in paragraph (c)(3)(iv)(B) of this section;

(B) Is prepared, signed, and dated by a qualified appraiser (within the meaning of paragraph (c)(5) of this section);

(C) Includes the information required by paragraph (c)(3)(ii) of this section; and

(D) Does not involve an appraisal fee prohibited by paragraph (c)(6) of this section.

(ii) Information included in qualified appraisal. A qualified appraisal shall include the following information:

(A) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was (or will be) contributed;

(B) In the case of tangible property, the physical condition of the property;

(C) The date (or expected date) of contribution to the donee;

(D) The terms of any agreement or understanding entered into (or expected to be entered into) by or on behalf of the donor or donee that relates to the use, sale, or other disposition of the property contributed, including, for example, the terms of any agreement or understanding that—

(1) Restricts temporarily or permanently a donee's right to use or dispose of the donated property,

(2) Reserves to, or confers upon, anyone (other than a donee organization or an organization participating with a donee organization in cooperative fundraising) any right to the income from the contributed property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire, or

(3) Earmarks donated property for a particular use;

(E) The name, address, and (if a taxpayer identification number is otherwise required by section 6109 and the regulations thereunder) the identifying number of the qualified appraiser; and, if the qualified appraiser is acting in his or her capacity as a partner in a partnership, an employee of any person (whether an individual, corporation, or partnerships), or an independent contractor engaged by a person other than the donor; the name, address, and taxpayer identification number (if a number is otherwise required by section 6109 and the regulations thereunder) of the partnership or the person who employs or engages the qualified appraiser;

(F) The qualifications of the qualified appraiser who signs the appraisal, including the appraiser's background, experience, education, and membership, if any, in professional appraisal associations;

(G) A statement that the appraisal was prepared for income tax purposes;

(H) The date (or dates) on which the property was appraised;

(I) The appraised fair market value (within the meaning of §1.170A-1(c)(2)) of the property on the date (or expected date) of contribution;

(J) The method of valuation to determine the fair market value, such as the income approach, the market-data approach, and the replacement-cost-less-depreciation approach; and

(K) The specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed.

(iii) Effect of signature of the qualified appraiser. Any appraiser who falsely or fraudulently overstates the value of the contributed property referred to in a qualified appraisal or appraisal summary (as defined in paragraphs (c)(3) and (4), respectively, of this section) that the appraiser has signed may be subject to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability and, moreover, may have appraisals disregarded pursuant to 31 U.S.C. 330(c).

(iv) Special rules.

(A) Number of qualified appraisals. For purposes of paragraph (c)(2)(i)(A) of this section, a separate qualified appraisal is required for each item of property that is not included in a group of similar items of property. See paragraph (c)(7)(iii) of this section for the definition of similar items of property. Only one qualified appraisal is required for a group of similar items of property contributed in the same taxable year of the donor, although a donor may obtain separate qualified appraisals for each item of property. A qualified appraisal prepared with respect to a group of similar items of property shall provide all the information required by paragraph (c)(3)(ii) of this section for each item of similar property, except that the appraiser may select any items whose aggregate value is appraised at \$100 or less and provide a group description of such items.

(B) Time of receipt of qualified appraisal. The qualified appraisal must be received by the donor before the due date (including extensions) of the return on which a deduction is first claimed (or reported in the case of a donor that is a partnership or S corporation) under section 170 with respect to the donated property, or, in the case of a deduction first claimed (or reported) on an amended return, the date on which the return is filed.

There are a number of shortcomings in the appraisal report which were pointed out by the auditor in her audit report. Part of this may be due (at least in part) to the person who obtained the appraisal. The appraisal report was addressed to [Redacted], CPA, CVA. The tax returns filed by the petitioner were prepared by another accountant. The 2007 return filed by the petitioner was filed in October 2007, several months after the appraisal report prepared for [Redacted]. The purpose specified for the appraisal also was not stated to be for income tax purposes which might also be explained by the appraisal having been prepared for someone other than the petitioner. It is not clear what Mr. [Redacted] relationship was to the parties to the transaction at the time of the appraisal.

As was stated in Treasury Regulation 1.170A-1(c)(3) , the appraisal must have been done no more than 60 days prior to the date of the contribution or later than as provided in paragraph (c)(3)(iv)(B) of the regulation. That portion of the regulation states:

Time of receipt of qualified appraisal. The qualified appraisal must be received by the donor before the due date (including extensions) of the return on which a deduction is first claimed (or reported in the case of a donor that is a partnership or S corporation) under section 170 with respect to the donated property, or, in the case of a deduction first claimed (or reported) on an amended return, the date on which the return is filed.

There is no evidence in the file to establish when the donor received the appraisal. Presumably, the donor received the addendum to the appraisal within a short time after it was issued to [Redacted] on November 28, 2011. In any case, neither the original appraisal nor the addendum was received by the donor within the time period to qualify it as a “qualified appraisal.”

Treasury Regulation § 1.170A-13(c)(3)(ii) required that the appraisal set out the “date (or expected date) of contribution to the donee.” The original appraisal obviously was not intended for the purposes of establishing the amount of a charitable contribution, so made no mention of a contribution. The Addendum (dated November 28, 2011) stated, in part, the following:

#### Purpose of Report

The Appraisal Report states the purpose of the report was for bank lending purposes but the purpose could also state that it is for valuing charitable contributions as well. The value is not precipitated on what the purpose is, so much as market value. The purpose can also be for many different uses and does not change the value or the definition of market value in this report. Therefore, the Appraisal Report was prepared for income tax purposes as well.

[Redacted], CPA (the preparer of the income tax returns for the petitioner) stated:

We are unable to provide an appraisal within 60 days of the settlement date. Our original intention was to have everything completed within 60 days but between scheduling problems with the appraiser, the [Redacted]we were not able to complete the transaction within 60 days of the appraisal. It was the opinion of all parties concerned and their legal counsel that the appraisal was still valid and did

not change when the closing was completed on May 18, 2007. The intent of the law was fulfilled.

At a minimum, the appraisal in question fails to comply with the pertinent requirements. It fails due to the date. It fails to state that it was done for income tax purposes. It fails to state the intended date of the donation.

Section 1.170A-13(C)(4)(ii), Income Tax Regs., lays out the required contents of the appraisal summary, which include:

- (B) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was contributed;
- (C) In the case of tangible property, a brief summary of the overall physical condition of the property at the time of the contribution;
- (D) The manner of acquisition (e.g., purchase, exchange, gift, or bequest) and the date of acquisition of the property by the donor \* \* \*

In the return filed by the petitioner, no Form 8283 (Noncash Charitable Contributions) was present. No disclosure was made that a noncash donation had been made. The contribution of \$400,000 was listed. A sale of property for \$400,000 with a basis of \$400,000 was listed. The amount of the purported charitable contribution was shown on the K-1s. A sale of the property showed that it was sold for \$600,000 with an adjusted basis of \$268,383. Therefore, the total basis claimed with regard to the disposition of the property was \$668,383 (\$400,000 + \$268,383). The date of acquisition for both areas in which basis was claimed indicated that the asset was acquired on December 9, 1997. The total adjusted basis for all assets listed at the end of 2006 on the balance sheet included in the [Redacted] income tax return was \$300,141.<sup>1</sup> Statement 4 in the return listed, “CASH CONTRIBUTIONS – 50% LIMITATION . . . \$400,000.” The nature of the contribution was clearly misrepresented.

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<sup>1</sup> The balance sheet in the 2007 Form 1065 was not completed.

The Tax Court addressed a case in which the petitioners were seeking to gain the charitable contribution due to their substantial compliance with the applicable requirements. The Court stated, in part:

Moreover, it is clear that the principal objective of section 155 was to provide a mechanism whereby respondent would obtain sufficient return information in support of the claimed valuation of charitable contributions of property to enable respondent to deal more effectively with the prevalent use of overvaluations. See S. Comm. on Finance, Deficit Reduction Act of 1984, Explanation of Provisions Approved by the Committee on March 21, 1984, S. Prt. 98-169, vol. I, at 444-445 (S. Comm. Print 1984); Staff of Joint Comm. on Taxation, General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984 (J. Comm. Print 1985); cf. Atlantic Veneer Corp. v. Commissioner, 85 T.C. 1075, 1084, 1985 WL 15429 (1985), affd. 812 F.2d 158 (4th Cir.1987). Such need exists even though in a particular case, such as this, it turns out that the taxpayer's deduction was in fact based on the fair market value of the property. This happenstance is insufficient to constitute substantial compliance with a statutory condition to obtaining the claimed deduction. As we see it, what petitioners are seeking is not the application of the substantial compliance principle but an exemption from the clear requirement of the statute and regulations in a situation where there is no overvaluation of the charitable contribution. We are not prepared to follow that path to decision.

In Hewitt v. Commissioner, 109 T.C. 258, 265 (1997), affd. without published opinion 166 F.3d 332 (4th Cir.1998).

In the case before the Commission, the petitioner made every effort to camouflage the nature of the transaction and put nothing in the return to notify the government that there was a noncash contribution involved. In fact, the contribution was specifically listed as a cash contribution. It also appears that far more basis was claimed than that to which it was entitled. Therefore, the claimed deduction is denied.

THEREFORE, the NODD dated September 29, 2011, is hereby APPROVED, AFFIRMED, and MADE FINAL.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2012, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.  
  
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