

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

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|---------------------------------|---|------------------|
| In the Matter of the Protest of |) | |
| |) | DOCKET NO. 23200 |
| [Redacted], |) | |
| |) | |
| Petitioner. |) | DECISION |
| _____ |) | |

[Redacted] (petitioner) protests the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated March 31, 2010. The Notice of Deficiency Determination (NODD) asserted additional liability for Idaho income tax and interest in the total amounts of \$975, \$48, and \$26 for 2006, 2007, and 2008, respectively.

On October 31, 2006, [Redacted], [Redacted], [Redacted], and [Redacted] (collectively the Owners) conveyed approximately 1.5 acres to the city of [Redacted], Idaho, for the purpose of building a street.

Prior to the transfer of the land to the city of [Redacted], a bridge had been built across [Redacted] to the property. The petitioner held an indirect interest in the property in question. The owners contend that they were willing to convey the property desired by the city for the construction of a road, even though they did not request or desire that the road go through their property.

The petitioner claimed a charitable contribution deduction for a portion of the value of the property. The auditor determined that the transfer of the land did not constitute a charitable contribution. Therefore, he disallowed the entire deduction. In this docket, the Commission need only decide whether the petitioner is entitled to a charitable contribution deduction and, if so, the amount thereof.

The auditor does not challenge either that the property in question was conveyed or the value assigned to the property by the petitioner. As put by the U.S. Tax Court:

It is well established that payments to an organization which qualifies as a charity are deductible as a charitable contribution under section 170 only to the extent the amount thereof exceeds the fair market value of any material benefit received in return. Murphy v. Commissioner, 54 T.C. 249, 253 (1970).

Connell v. Commissioner, T.C. Memo 1986-333.

The value of the property transferred is established. The only remaining item to be determined is whether the petitioner received a material benefit from the transfer and, if so, the fair market value of that benefit. The government has the burden of proving this value.

Id.

The auditor sets forth three arguments for the disallowance of the charitable contribution deduction:

1. The road going through the property would increase traffic through the unimproved property and, accordingly increase the value of the owners' retained property,
2. The owners obtained "benefits" through their not being required to pay for half of the cost of a bridge and the cost of a temporary road through the property, and
3. The road might be moved, therefore the owners had retained an interest in the road; therefore, transfer was less than the owners' entire interest.

The auditor's first contention is that the road going through the property would increase the car count past their property and this should enhance the value of the petitioner's remaining property in an amount equal to or greater than the value of the property transferred. We have no appraisal of the values of the adjacent land before and after the donation of land for the street. We have only the unsupported contention by the auditor that the increase in the value was at least as much as the value of the land given up.

From the information in the file, it appears that the bridge over the [Redacted] was in place prior to the conveyance of the land here in question. The Commission finds it doubtful that

the bridge was placed there without any further intention of putting the road through the property. If the road was put through without the donation of the land, traffic would have been the same or comparable. The Commission staff has been advised by officials of the city of [Redacted] that the road would have been completed even if it had been necessary for the city of [Redacted] to annex the property and condemn it. If the petitioner sold the land or donated the land, the additional traffic, if any, would be gained. Cf. Scheffres, T.C. Memo 1969-41. The owners were not in any particular hurry. It appears that no additional development or sales have occurred in the land directly adjacent to the donated land to this date, several years later.

The auditor did not cite authority or evidence with the Notice of Deficiency for his position that the property adjacent to the property donated for the street would become more valuable due to the “frontage feet” gained by the installation of the road. He did, however, cite authority in the “protest summary.” This stated, in part:

Use of the front foot as a unit of comparison is based on the premise that frontage significantly contributes to value. A front foot is a one-foot-wide strip of land that fronts on a street, railroad siding, or body of water and continues to the rear of the parcel.

The front-foot method is useful in the valuation of downtown commercial property. For these properties, the amount of frontage is important because of the exposure it provides for display and customer access. (Italics added.)

International Ass’n Of Assessing Officers, Property Assessment Valuation (2nd ed 1996).

The property here in question was not “downtown commercial property.” The Commission finds that this argument is inconclusive at best. Additionally, the traffic would have been substantially the same whether the property had been donated or, alternatively, annexed and condemned.

There may have been savings due to the costs which would be incurred by the petitioner with regard to the construction and/or the maintenance of the temporary road and the bridge.

The auditor stated, in part, in the "Protest Summary":

Ultimately, the Owners didn't have a final development plan, didn't know exactly how they wanted the roadway configured, didn't know where they wanted any of the accesses or exits from the roadway to their properties located, and didn't have the capital or other financing arrangements available in order to pay for their share of a final road. Since these issues were not resolved, a decision was ultimately made to install the temporary road as suggested by the city. These conclusions were verified with [Redacted], Engineering Administrator with the City.

The auditor did not derive a fair market value for these alleged savings. A representative for some of the owners involved in this matter stated, relating to the alleged savings:

In support of his position, the auditor provides, "Generally, a property developer is required to pay all the costs of constructing public roadways as part of the development agreement." While this is generally true, in the present case the Owners were not developing the property and there was no development agreement. To reach the auditor's conclusion, one must assume that the Owners were developing the land and wanted this road. There is absolutely no evidence to support such an assumption. Instead, a road was built in such a manner as to ultimately diminish the value of the land because it was located in such a fashion as to leave a fairly narrow strip of land on the south side of the road. It will like [sic] be able to be developed, but the location of the road will require that any lots developed there will be quite shallow. If and when the Owners do develop those lots, they will still be burden [sic] with the expense of constructing a permanent road in place of the temporary road built by the city.

The auditor also contends that the petitioner retained an interest in the property in question based upon a statement that the route for the permanent road might be moved from the location of the temporary road. The Commission reviewed the gift deed in the record to determine whether there was a retained interest. No such provision was found in the deed. Conveyance or retention of any such interest in real property must be in writing. Idaho Code § 9-503. The Commission finds no other qualified writing retaining any interest in the land conveyed. Even if there had been a change in the course of the roadway, the difference in the

value of the transferred property would probably not be significant. In Morton v. Commissioner, T.C. Memo 1979-484, the Tax Court dealt with a reversionary provision in the transfer of property to the city of [Redacted]. If the city ceased to use the property for the designated purpose, the property would revert to the donor. The Court stated, in part:

As to the first two conditions, namely, the possibility of the reversion because of future non-use of the property as part of the city's water system and control over certain aspects of construction, we think it fair to conclude that these were sufficiently remote or incidental so as not to affect the fair market value of the land.

Similarly, in this matter, if the course of the roadway is moved a few feet in one direction or another, it would appear to be insignificant in that the road must connect two distinct points.

In addressing the concepts to be applied in a similar matter, the U.S. Tax Court stated, in part:

If the contemplated transaction had taken the form of a sale or if the City of Jacksonville had condemned the property (as it had the power to do, see N.C. Gen. Stat. sec. 160A—241), petitioners would in all likelihood have received \$12,500—the amount which, on the basis of the record herein, was its fair market value at the time of transfer. Some years ago, we commented that the meaning of the term ‘gift,’ as used in section 170, as reflected in the decided cases, represented a ‘thicket of subjective and occasionally ephemeral concepts.’ See Perlmutter v. Commissioner, 45 T.C. 311, 317 (1965). Later decisions have done little to cause us to change that description. They have, under varying circumstances, applied standards of ‘detached and disinterested generosity’ (Commissioner v. Duberstein, 363 U.S. 278 (1960)), direct versus indirect or incidental benefit, and/or the existence of a quid pro quo. See, e.g., Allen v. United States, 541 F.2d 786 (9th Cir. 1976); Stubbs v. United States, 428 F.2d 885 (9th Cir. 1970); United States v. Transamerica Corporation, 392 F.2d 522 (9th Cir. 1968); Singer Co. v. United States, 196 Ct.Cl. 90, 449 F.2d 413 (1971); Louisville & Nashville Railroad v. Commissioner, 66 T.C. 962, 1008—1010 (1976); Pettit v. Commissioner, 61 T.C. 634 (1974). See also Marquis v. Commissioner, 49 T.C. 695, 702 (1968). [footnote omitted] We see no need to analyze the various concepts expounded in the decided cases. We are satisfied that, to the extent of \$12,500, petitioners herein made a charitable contribution within the meaning of section 170 and we so hold.

Morton.

In discussing the burden to be applied, the U.S. Tax Court stated the following:

For us to find that petitioner's dedication of the right-of-way was not a gift for purposes of section 170, respondent must prove that petitioner made the dedication expecting to receive economic benefits which he might not otherwise receive. Respondent has asserted that petitioner made the dedication in expectation of receiving three such benefits: (1) public road access or frontage for some of his property; (2) favorable zoning of the remainder of his land; and, (3) a favorable alignment of the right-of-way.

We note that respondent has offered no evidence which suggests that petitioner's dedication of the right-of-way increased the likelihood of the loop road being built through petitioner's property.

Connell.

The Ninth Circuit Court of Appeals stated in their decision in Collman v. Commissioner, 511 F.2d 1263, 1269, in footnote 2:

In every reported tax decision (except Sutton) disallowing a charitable deduction for dedication of land to a political subdivision, the taxpayer received in exchange either a desired zoning change or some other direct economic benefit. Stubbs v. United States, 428 F.2d 885 (9th Cir. 1970), cert. denied, 400 U.S. 1009, 91 S.Ct. 567, 27 L.Ed.2d 621 (1971) (dedication of land conditioned on receipt of favorable zoning); United States v. Transamerica Corp., 392 F.2d 522 (9th Cir. 1968) (private roadway conveyed on understanding that city would improve and maintain it as a public street to taxpayer's benefit); Taynton v. United States, 5 Am.Fed.Tax R.2d 1466 (E.D.Va.1960) (land donated pursuant to sales contract with third party and new road would economically benefit taxpayer's other property); Karl D. Pettit, 61 T.C. 634 (1974) (land dedicated in exchange for subdivision concession from local planning board); Charles O. Grinslade, 59 T.C. 566 (1973) (land dedicated in exchange for money, other land for development purposes, and zoning variances); Ackerman Buick, Inc., 1973 P-H Tax Ct. Mem. 73,224 (1973), appeal dismissed, (8th Cir., July 26, 1974) (dedication of roadway in exchange for zoning changes); Jordon Perlmutter, 45 T.C. 311 (1965) (dedication in order to obtain approval of subdivision).

The Ninth Circuit Court of Appeals further stated in the Collman decision:

Apart from these distinguishing facts, there is another equally important reason why we decline to apply Sutton to this case. The Sutton court, we feel, drew impermissible inferences from the existence of a local zoning ordinance and from the taxpayer's attempt after the conveyance to develop the land. The mere existence of a zoning ordinance like the one in Sutton or the two ordinances in this case cannot be sufficient evidence of economic motivation because,

otherwise, it would be impossible for a person subject to such ordinance ever to make a charitable dedication of a right-of-way. In urging this court to follow Sutton, the Government also emphasizes the fact that in Sutton and this case the taxpayer only 'several months' after the conveyance made moves towards development of his property. Those 'several months', however, were in fact ten months in Sutton and seventeen months in this case. Where the charitable dedication of a roadway is at issue, a seventeen month gap between the date of conveyance and the first move towards land development is too great to support an inference that the transfer was made in expectation of zoning changes for commercial development.

Collman, 511 F.2d at 1268-1269.

In our instant case, no development of the property in question took place for several years after the conveyance of the property.

In Sutton v. Commissioner, 57 T.C. 239 (1971), the taxpayer was not able to improve his real property until the street adjacent to the property was widened. The taxpayer stated that he had no immediate plans for the commercial development of his land. He conveyed the property for the widening of the street on June 13, 1966. In May 1967 the taxpayer was contacted by [Redacted] regarding a lease on one corner of his property. They entered into a lease in August 1967. In denying the deduction, the court stated, in part:

Although the facts in some of those cases reveal somewhat stronger evidence of an immediate 'trade-off' or quid pro quo than those in the present case, we think it clear that Sutton's transfer was made in the expectation of the receipt of specific direct economic benefits in the form of additional utility and value which may be realized through the commercial development of the remainder of the land. Sutton was fully aware that such development was not possible without complying with the city ordinance on street widening. Although he was not compelled to make the transfer, and he testified that he had no immediate plans for the commercial development of his land, the widening of the street had the effect of making his land usable for commercial purposes at any time in the future if he so desires.

Sutton, 57 T.C. at 244.

The burden of establishing the value of any benefit derived by the owners in the transaction is upon the government. The Commission finds that it has not been established that

the donors received such benefit within the requisite period. Accordingly, the Notice of Deficiency must be overturned.

Therefore, the Notice of Deficiency Determination dated March 31, 2010, is canceled.

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

DATED this _____ day of _____ 2015.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, 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]
[Redacted]

Receipt No.
