

Mohamed v. Commissioner - TC Memo 2012-152

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CITATION

Joseph Mohamed, Sr. and Shirley Mohamed, Petitioners v. Commissioner of Internal Revenue, Respondent
TC Memo 2012-152

Docket Nos. 13947-07, 12882-08 Filing date May 29, 2012

Judge Holmes

OVERVIEW

Taxpayers donated real estate to a trust for the benefit of a charity. The court concluded that the actual value of the claimed deduction may have been understated. It also concluded that Form 8283 might be misleading to someone who did not read the associated instructions. Even so, the court denied the deduction.

e-FLASH TAKEAWAY

The taxpayers' income tax credit of at least \$7.6 million was disallowed even though the court acknowledged that the taxpayers' estimated charitable deduction was likely understated. If the taxpayers had submitted a qualified appraisal prepared by a qualified appraiser, they would have overcome one of the obstacles associated with acceptance of their charitable deduction.

THE FACTS

Taxpayers had accumulated a significant amount of real estate wealth. Using a charitable remainder trust ("CRUT") as a vehicle, taxpayers donated real estate worth millions of dollars to the trust in exchange for income tax deductions in 2003 and 2004 under IRC § 170. Husband prepared the Form 8283, acknowledged that he had read the instructions on Form 8283, but also stated he did not read the instructions that were separate from the form.

Among other qualifications, husband was a certified real estate appraiser. He attached a description of the donated properties and their improvements to the 2003 Form 8283, and he signed the document as "Real Estate Broker/Appraiser." Because he did not want to risk overvaluing the properties, he claimed a lower value than their market values. Unlike the 2003 return, the husband signed the 2004 supplemental information as "Owner and Licensed Real Estate Broker." The taxpayer claimed he attached the supplement to the tax return, but the Commissioner indicated it was not received until after the 2006 audit.

After the Commissioner began an audit of the 2003 gift in 2005, the taxpayer hired an independent appraiser who concluded that the taxpayer's estimates of value understated market values by approximately \$1.8 million. Subsequent to transfer to the trust, the properties were sold at values in excess of their appraised values. Even so, the Commissioner's original claim asserted that the taxpayer's claimed values were overstated. In the process of preparing the respondent's case, the Commissioner identified mistakes the taxpayers made in filing the claims for charitable deductions. The Commissioner then amended the claim to assert that the deductions should not be allowed.

DISCUSSION

The court's ruling reviewed the substantiation requirements in § 1.170A-13(c), including the need for a qualified appraisal prepared by a qualified appraiser. In part, the regulations say that the qualified appraiser cannot be the donor or taxpayer claiming the deduction or the donee of the property. In this particular dispute, the taxpayer was the trustee of the trustee, which was the donor; so the court ruled, "there is no way we can possibly find that he was a qualified appraiser for the gifts."

Regarding the qualified appraisal issue, the court concluded the taxpayers' supplement attached to the Forms 8283 did not meet the regulation's qualified appraisal expectations. The court also pointed out that the regulations allow the taxpayer to qualify for a deduction if a qualified appraiser is provided within 90 days of a request by the IRS and if the appraisal complies with the other requirements of § 1.170A-13(c)(4)(ii) and § 1.170A(c)(4)(iv)(H). Because the taxpayer did not provide an independent remedial appraisal until after the Commissioner's audit had begun, relief was unavailable.

Based on an alternate argument, the taxpayers asked the court to consider the regulations invalid, "claiming they disallow deductions for verified and substantiated donations, whereas the statute permits the Secretary to disallow only unverified donations." Citing previous court rulings and the Deficit Reduction Act of 1984 (DEFRA), Pub. L. No. 98-369, sec. 155, 98 Stat. at 691, the court ruled the regulations were valid.

As yet another argument, the taxpayers argued that they should still get a deduction because they had substantially complied with the regulations. Except for *Bond v. Commissioner*, 100 T.C. 32 (1993), the court noted that few taxpayers had succeeded in showing substantial compliance and then listed the following fatal mistakes:

- Failure to get an appraisal.
- Failure to fill out section B of Form 8283 (the appraisal summary).
- Having someone without expertise in appraisals to complete the appraisal.
- Failure to have an appraisal prepared at the right time (i.e., either more than 60 days before the gift or after the return was filed).
- Including insufficient information or inappropriate information in an appraisal or appraisal summary.

Ruling that the taxpayer had made numerous mistakes filling out the Forms 8283, the taxpayer appended supplements were not appraisals, appraisals had been submitted after the allowable date, and the appraiser had failed to "include any of his qualifications other than his appraiser-license number, or any of the statements about fees and prohibited relationships required by the regulations," the court disallowed the taxpayers' deductions.

In a final desperate argument, the taxpayers asserted that Form 8283 does not require an independent appraisal and presents conflicting directions regarding completion of the form. Even though the court professed sympathy for the taxpayers' position and noted that the Commissioner had subsequently changed the form, the court did not hold the Commissioner at fault. Furthermore, the court stated, "A taxpayer relies on his private interpretation of a tax form at his own risk."

CONCLUSION

Based on the preceding, the court disallowed the deductions. The court went on to say,

"We recognize that this result is harsh--a complete denial of charitable deductions to a couple that did not overvalue, and may well have *undervalued*, their contributions--all reported on forms that even to the Court's eyes seemed likely to mislead someone who didn't read the instructions. But the problems of misvalued property are so great that Congress was quite specific about what the charitably inclined have to do to defend their deductions, and we cannot in a single sympathetic case undermine those rules."