Select Charitable Contribution Cases
2012 Forward (updated 1/14/20)

1. Carpenter v. Commissioner, T.C. Memo. 2012-1 (on respondent's partial summary judgment motion) (see also # 32)

Issue: If deed language allows extinguishment of the easement either by judicial proceedings or by mutual written agreement of the parties, is the easement nevertheless granted in perpetuity?

Holding: No. Deduction denied because easement was not granted in perpetuity; Court rejects petitioners' arguments that a judicial proceeding was required (by application of the cy pres doctrine) under petitioners' theory that the easement is a restricted gift or the deed created a charitable trust.

Decision to extinguish "should not be made solely by interested parties".

2. Cohan v. Commissioner, T.C. Memo. 2012-8

Issues: (1) Are petitioners entitled to a charitable contribution deduction in connection with their bargain sale agreement?

(2) Are petitioners liable for the sec. 6662(a) accuracy-related penalties?

Holdings: (1) No, petitioners received consideration that was not disclosed by the charity on the contemporaneous written acknowledgment. Any claimed reliance by petitioners on the acknowledgment was unreasonable.

(2) Petitioners are not liable for the sec. 6662(a) penalties and underpayments with respect to the 2001 transaction because they reasonably relied on professionals' advice for that transaction, but negligence penalties under sec. 6662(a) and (b)(1) are sustained with regard to the denial of charitable contribution deductions and underreporting on certain gains.

3. Esgar Corp. v. Commissioner, T.C. Memo. 2012-35 (see #39)

Issues: (1) Did petitioners overvalue the easements (what was the highest and best use of the land-- gravel mining or agriculture-- before the easements were donated)?

(2) Should accuracy-related penalty apply?

Holdings and Findings: (1) Tax Court agrees with Service's highest and best use as agricultural; easement was overvalued.

(2) Petitioners met the reasonable cause and good faith exception to the accuracy-related penalty because their tax advisor was a competent professional with whom petitioners had worked for over 25 years, petitioners provided him with all relevant information, and they relied on his advice in good faith.

4. Butler v. Commissioner, T.C. Memo. 2012-72

Issues: (1) Is there a protection of a relatively natural habitat under sec. 170(h)(4)(A)(ii)?

(2) Can baseline documentation be considered part of the deeds even though not separately recorded?

(3) Did petitioners overvalue the deductions?

Holdings and Findings: (1) Yes, and IRS did not show by expert witness testimony that destruction of habitat, an inconsistent use, was permitted.

(2) Yes, under Georgia law, because they are incorporated by reference.

(3) Yes, but they had reasonable cause and acted in good faith with respect to their underpayment.

5. Mitchell v. Commissioner, 138 T.C. 324 (2012) (see also #33)

Issue: Does a 2-year delay in receiving a mortgage holder's subordination for a conservation easement violate the subordination regulations and statutory perpetuity requirement?

Holding: Yes, perpetuity requirements must be satisfied at the time of the gift.

6. Dunlap v. Commissioner, T.C. Memo. 2012-126

Issue: Did the petitioners meet their burden to show donated easement had value?

Finding: No. Petitioners failed to meet their burden of proof to show that the value of the façade easement was greater than zero. Also, in section discussing reasonable cause exception to accuracy-related penalty, Court held that petitioners substantially complied with the substantiation requirements of the appraisal summary despite omission of date, manner of acquisition, and cost basis required under Treas. Reg. sec. 1.170A-13(c)(4)(ii)(D) and (E).

7. Durden v. Commissioner, T.C. Memo. 2012-140

Issue: Did petitioners properly substantiate under sec. 170(f)(8) their contributions by cash and check?

Holding: No. Petitioners' contemporaneous acknowledgment did not contain the goods or services statement.

8. Mohamed v. Commissioner, T.C. Memo. 2012-152

Issue: Was land donation of "extremely valuable real estate" properly substantiated with a qualified appraisal and fully completed appraisal summary?

Holding: No, the taxpayer, who is also the donee in his capacity as the trustee of the trust, cannot be a qualified appraiser. "The most important requirement [in the regulations] is that the appraisal be done by a qualified appraiser, which the regulations say cannot be the donor claiming the deduction or the donee. . . .There is no way we can possibly find he was a qualified appraiser". Also, the attached

statements were not appraisal summaries (bases omitted, no bargain sale statement, no statements from a qualified appraiser). "We recognize that this result is harsh—a complete denial of charitable deductions to a couple that did not overvalue. . . .[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."

9. Rothman v. Commissioner, T.C. Memo. 2012-163 (see also # 13 below)

Issue: Was petitioners' conservation easement appraisal a qualified appraisal?

Holding: No.

10. Scheidelman v. Commissioner, unpublished opinion (2d Cir. 2012), vacating and remanding the opinion of the Tax Court. (see #22)

Issue: Did petitioner substantiate her easement deduction with a qualified appraisal that meets the requirements of Treas. Reg. sec. 1.170A-13(c)(2)(ii)(J) and (K)?

Holding: Yes. Treas. Reg. sec. 1.170A-13(c)(2)(ii)(J) and (K) are met. (J) only requires identification of the method used. (K) is satisfied by a percentage.

11. Wall v. Commissioner, T.C. Memo. 2012-169

Issue: Does the deduction fail because of absence of letter from lender that complies with Treas. Reg. sec. 1.170A-14 (g)(6)?

Holding: Yes, Kaufman I applies. (caveat: note that the 1st Circuit subsequently reaches a contrary result in Kaufman III).

12. Averyt v. Commissioner, T.C. Memo. 2012-198

Issue: Does the conservation easement deed meet the requirements of section 170(f)(8)?

Holding: Yes, under these facts, because the deed, taken as a whole, provides that no goods or services were received in exchange for the contribution.

13. Kaufman v. Commissioner, 687 F.3d 21 (1st Cir. 2012) (see also # 41 and #55)

Issues: (1) Did petitioners meet the appraisal summary requirements?

(2) Did petitioners overstate the value of their conservation easement?

(3) Does Treas. Reg. sec. 1.170A-14(g) require bank to give up its priority interest upon extinguishment?

Holdings and findings: (1) Yes, omissions of date, manner of acquisition, and cost basis did not doom the appraisal summary, (2) value of easement is for determination of Tax Court on remand, (3) No, "given the ubiquity of super-priority for tax liens, the IRS's reading . . . would appear to doom practically all donations of easements".

14. Rothman v. Commissioner, T.C. Memo. 2012-218 (supplemental memorandum opinion reconsidering prior opinion in light of Scheidelman v. Commissioner, 682 F.3d 189 (2d Cir. 2012)

Issue: Is petitioners' conservation easement appraisal a qualified appraisal?

Holding: No, even in light of Scheidelman, it "still fails to satisfy 8 of 15 requirements".

15. Trout Ranch v. Commissioner, unpublished order and judgment (10th Cir. 2012)

Issue: Did Tax Court properly exercise discretion by incorporating post valuation data into the income

Holding: Yes.

16. Foster v. Commissioner, T.C. Summ. Op. 2012-90

Issue: Did petitioners meet their burden of establishing the value of the easement?

Holding: No, valuation method employed by the petitioners' appraiser is not persuasive.

17. R.P. Golf, LLC v. Commissioner, T.C. Memo. 2012-282 (motion for summary judgment)

Issues: (1) Did petitioner satisfy sec. 170(f)(8) with respect to the easement?

(2) Did easement protect a relatively natural habitat?

(3) Did easement preserve open space pursuant to a clearly delineated governmental policy?

Holdings: (1) The Grant of Permanent Conservation Easement suffices under sec. 170(f)(8).

(2) Habitat issue is question of material fact, reserved for trial.

(3) Petitioner concedes that easement was not pursuant to clearly delineated governmental policy.

18. Whitehouse Hotel Limited Partnership v. Commissioner, 139 T.C. 304 (2012) (on remand from 5th Cir. Court of Appeals) (see #44)

Issues: (1) Did petitioner overstate the value of the easement?

(2) Does the reasonable cause exception apply?

Findings and Holdings: (1) Yes.

(2) No.

19. Irby v. Commissioner, 139 T.C. 371 (2012)

Issues: (1) Was perpetuity met in bargain sale where upon extinguishment, government funding entities would be repaid?

(2) Is appraisal a qualified appraisal even though it does not state it was prepared for income tax purposes?

(3) Did petitioners obtain an acknowledgment that meets the requirements of section 170(f)(8)?

Holdings: (1) Yes, because donee would receive its proper share upon extinguishment.

(2) Yes, because the appraisal stated that the purpose of the appraisal was to value a donation of a conservation easement under section 170(h).

(3) Yes, a number of "documents, taken in their totality, constitute contemporaneous written acknowledgment".

20. Minnick v. Commissioner, T.C. Memo. 2012-345 (see #60)

Issue: Is easement nondeductible because Bank's mortgage was not subordinated at time of the grant?

Holding: Yes, regulations require subordination, so easement is not deductible.

21. Historic Boardwalk Hall, LLC v. Commissioner, 694 F.3d 425 (3d Cir. 2012)

Issue: Was purported partner claiming rehabilitation tax credits a bona fide partner?

Holding: No; partner's investment had no meaningful upside potential or downside risk.

22. Scheidelman v. Commissioner, T.C. Memo. 2013-18 (on remand from 2d Cir.) (see #10)

Issue: What is the fair market value of the easement?

Holding: The preponderance supports respondent's position that the easement had no value for charitable contribution purposes.

23. Belk v. Commissioner, 140 T.C. 1 (2013) (see also #29 and 52 below)

Issue: Is the conservation easement disallowed because it was not granted in perpetuity.

Holding: Yes, easement was not in perpetuity under sec. 170(h)(2)(C) because agreement permitted petitioners to remove real property from the easement restrictions.

24. Pollard v. Commissioner, T.C. Memo. 2013-38

Issue: Is petitioner entitled to a charitable contribution deduction for conservation easement?

Holding: No; easement was granted to Boulder County in exchange for grant of a subdivision exemption.

25. Boone Operations Co., LLC. v. Commissioner, T.C. Memo. 2013-101

Issue: Is petitioner entitled to a charitable contribution deduction related to alleged bargain sales of fill dirt?

Holding: No, section 170(f)(8) requirement of good faith estimate of value of goods and services provided. The substantial compliance doctrine does not excuse failure to provide a contemporaneous written acknowledgment. Also, petitioner did not meet burden of proving that it transferred property that exceeded the fair market value of consideration received.

26. Evenchik v. Commissioner, T.C. Memo. 2013-34

Issues: (1) Did petitioners meet the "qualified appraisal" requirements for contributions of stock?

(2) Did petitioners substantially comply with the qualified appraisal requirements?

Holdings: (1) No, the appraisals did not appraise the correct asset, and the appraisal did not strictly comply with the regulations.

(2) A taxpayer can't substantially comply with the qualified appraisal requirements if the appraisal fails to meet the essential requirements of the governing statute—here the appraisals had gaping holes of required information.

27. Crimi v. Commissioner, T.C. Memo. 2013-51

Issues: (1) Did fair market value of the donated land exceed the price paid by the donee?

(2) Did petitioners properly substantiate their contribution?

Holdings: (1) yes

(2) yes, the acknowledgment as a whole meets the requirements of IRC sec. 170(f)(8). Any failure to comply with sec. 170(f)(11) is excused on ground of reasonable cause (petitioners relied on tax advisors for over 20 years). But see #36, where reasonable cause is not met.

28. Mountanos v. Commissioner, T.C. Memo. 2013-138 (see #38 and #69)

Issue: (1) Is petitioner entitled to carryover deductions for an easement?

(2) Is petitioner liable for an accuracy-related penalty?

Holdings: (1) No, petitioner failed to show that the easement had any value; he failed to show that the before and after highest and best uses differed.

(2) On his original return for the year of contribution, petitioner claimed a value that was 400% or more of the correct amount.

29. Belk v. Commissioner, T.C. Memo. 2013-154, motion for reconsideration denied.

Issue: Was petitioners' easement subject to a use restriction in perpetuity under sec. 170(h)(2)(C)?

Holding: No, because the amendment provision (intended by the parties to permit substitutions) does not limit substitutions to impossible or impractical situations.

30. Graev v. Commissioner, 140 T.C. 377 (2013) (see #76)

Issue: Was easement a nondeductible conditional gift because side agreement between the donors and donee allowed the easement to be extinguished if deduction is disallowed.

Holding: Yes, the easement was a conditional gift, and the possibility that the easement would be defeated was not "so remote as to be negligible".

31. Pesky v. US (D. ID 2013), cross motions for summary judgment denied.

Issues: (1) Was this a quid pro quo transaction?

(2) Did acknowledgment falsely state that no goods or services were provided?

(3) Is qualified appraisal requirement inapplicable because of reasonable cause?

Holding: there are genuine issues of material facts.

32. Carpenter v. Commissioner, T.C. Memo. 2013-172, denying petitioners' motion to reconsider. (see also # 1)

Issues: (1) Is extinguishment possible without a judicial proceedings?

(2) Does Kaufman III sanction extinguishment by mutual agreement?

Holding: No (to both questions)

33. Mitchell v. Commissioner, T.C. Memo. 2013-204, denying petitioner's motion to reconsider.

Issue: Does 1st Cir. decision in Kaufman III apply to CO case with 2-year delay in obtaining lender's subordination?

Holding: No, because Kaufman III was different issue and different circuit.

34. Gorra v. Commissioner, T.C. Memo. 2013-254

Issues: (1) façade easement deduction; (2) gross valuation misstatement penalty

Findings and Holdings: (1) Burden of proof did not shift to IRS

(2) Easement more restrictive than Landmarks Law

(3) Conservation purpose requirements are met

(4) Perpetuity satisfied

(5) Easement was qualified real property interest

(6) Easement was exclusively for conservation purposes

(7) "Market value" in appraisal means fair market value

(8) Appraisal is qualified appraisal

(9) Easement value in $104,000 (2% diminution) not $605,000

(10) 40% Gross valuation misstatement applies

35. 61 York Acquisition, LLC v. Commissioner, T.C. Memo. 2013-266

Issue: Can a partnership grant an easement restricting the entire exterior of the building as required by IRC § 170(h)(4)(B)(i)(I) when the partnership does not own the entire exterior?

Holding: No.

36. Alli v. Commissioner, T.C. Memo. 2014-15

Issues: (1) In the case of a contribution of an apartment building, did taxpayer's appraisals and appraisal summary meet the requirements of section 170(f) (11)? (2) If not, is this noncompliance excused under the judicial doctrine of substantial compliance or statutory exception for reasonable cause?

Holdings: (1) No, the taxpayer's substantiation provides false information in part and omits required information. (2) No, the substantial compliance doctrine should not be liberally applied, citing Mohamed. Courts have routinely declined to apply the substantial compliance doctrine where substantive requirements set forth in the qualified appraisal regulations are not met or entire categories of required information are omitted. Petitioners did not meet their burden of establishing reasonable cause based on their alleged reliance upon professional advice—they produced no reliable evidence of their paid preparer's qualifications, no reliable evidence that they provided him with complete information, no reliable evidence of the content of his advice, and no reliable evidence that they reasonably relied on that advice. Also, they did not call him as a witness. Furthermore, they did not meet their burden with respect to their reliance on their appraisers.

37. Route 231, LLC v. Commissioner, T.C. Memo. 2014-30

Issues: (1) Is taxpayer engaged in a disguised sale under section 707? (2) If so, were proceeds from the disguised sale income to taxpayer?

Holdings: (1) Yes, citing Va. Historic Tax Credit Fund 2001 LP v. Commissioner, 639 F.3d 129 (4th Cir. 2011). (2) Yes.

38. Mountanos v. Commissioner, T.C. Memo. 2014-38 (Supplemental Memorandum Opinion) ("Mountanos II") (see #28)

Issue: Will the Tax Court address alternative grounds for disallowing the deduction? (Tax Court notes that the taxpayer was seeking to avoid the accuracy-related penalty that was to be imposed under Mountanos I.)

Holding: No. Addressing alternative grounds would have no impact on disposition of the case.

39. Esgar Corp. v. Commissioner, 744 F.3d 648 (10th Cir. 2014) (see #3)

Issue: Was the Tax Court clearly erroneous in determining that gravel mining was not the property's highest and best use?

Holding: No. The Tax Court applied the correct highest and best use standard, looking for the use that was most reasonably probable in the reasonably near future, and it did not clearly err by concluding that use was agriculture.

40. Wachter v. Commissioner, 142 T.C. 140 (2014) (IRS moves for summary judgment)

Issues: (1) If easement expires after 99 years by operation of state law, does this prevent easement from being granted in perpetuity and does this prevent the easement from being deductible under section 170(h)? (2) Has the taxpayer substantiated his cash contribution with a contemporaneous written acknowledgment?

Holdings: (1) Because the easement will expire after 99 years, it does not meet the perpetuity requirement and is therefore not deductible. (2) Material facts remain in dispute as to the contemporaneous written acknowledgment, so that issue remains for resolution after trial.

Note: Order dated June 16, 2014, petitioners' motion for reconsideration denied.

41. Kaufman v. Commissioner, T.C. Memo. 2014-52 ("Kaufman IV") (see also #13 and #55)

Issues: (1) What is the fair market value of the façade easement? (2) Should accuracy-related penalties be imposed?

Holdings: (1) Zero. Because the typical buyer would find the easement restrictions no more burdensome than the restrictions already imposed by the South End Standards and Criteria, the easement has no fair market value. (2) Yes. Reported value exceeds correct value by 400% or more, IRS met its burden that it is proper to impose the valuation misstatement penalty. Reasonable cause and other exceptions to the penalties do not apply because taxpayers did not prove that they made a good faith investigation that confirmed that the value of the easement was as claimed, they failed to prove the underpayments resulted from good-faith reliance on professional advice; they failed to show a reasonable basis for claimed deduction; and they failed to show substantial authority supports their tax treatment of the easement.

42. Palmer Ranch Holdings Ltd. v. Commissioner, T.C. Memo. 2014-79 (see #65 and #74)

Issues: (1) Did Partnership overstate the fair market value of its conservation easement? (2) Is Partnership liable for an accuracy-related penalty?

Holdings: (1) Yes. (2) No.

The Court concludes that a zoning change was "reasonably probable" and that there is no penalty because Partnership retained a qualified appraiser who provided a qualified appraisal and retained an experienced tax attorney and a land planning and engineering firm and Partnership relied on these advisors in good faith.

43. Chandler v. Commissioner, 142 T.C. 279 (2014)

Issues: (1) Did Taxpayers prove their easements had any value? (2) Are Taxpayers liable for a gross valuation misstatement penalty for their 2006 underpayment (carryover year) because law in effect when they filed their return in 2006 not provide a reasonable cause exception (even though the reasonable cause exception was in effect on the date of the easement contribution)?

Holdings: (1) No; they failed to prove their façade easements had any value and are therefore not entitled to claim related charitable contribution deductions. (2) Yes.

44. Whitehouse Hotel Limited Partnership v. Commissioner, 755 F.3d 236 (5th Cir. 2014) (Whitehouse IV)

Issues: (1) What is the highest and best use of the property? (2) Did Tax Court err in rejecting the reproduction cost and income valuation methods? (3) Did taxpayer have "reasonable cause" for its undervaluation as to avoid the gross undervaluation penalty?

Holdings: (1) Either a luxury hotel or non-luxury hotel; (2) no; (3) yes.

45. Scheidelman v. Commissioner, 755 F.3d 148 (2d Cir. 2014) (Scheidelman V)

Issue: Did the Tax Court err in finding that the easement had no negative impact on the value of her property?

Holding: No. Neither the Tax Court nor any Circuit Court of Appeals has held that the grant of a conservation easement effects a per se reduction in the fair market value of the underlying property.

46. Seventeen Seventy Sherman St. LLC v. Commissioner, T.C. Memo. 2014-124

Issue: Is deduction disallowed for failure to disclose a quid pro quo (favorable zoning)?

Holding: Yes, deduction disallowed. Negligence penalty imposed, but no gross valuation misstatement penalty or substantial valuation misstatement penalty because respondent's appraisers were not found by the Tax Court to be credible on the value of the exterior easement.

47. Schmidt v. Commissioner, T.C. Memo. 2014-159 (valuation case; court does not find either expert report to be complete and convincing).

48. Zarlengo v. Commissioner, T.C. Memo. 2014-161

Issues: (1) Under New York law, if the deed was executed in Sept. 2004 but not recorded until Jan. 2005, what is the year of the donation? (2) Does an easement have value, or is it merely duplicative of local law? (3) Does "substantial compliance" or "does not relate to the essence of section 170" excuse the following: (a) appraisal prepared earlier than 60 days before contribution date, (b) description omits easement terms, (c) omits date or expected date of contribution, (d) omits terms (but includes sample deed), (d) omits "income tax purposes" language, (e) sometimes uses "market value" instead of "fair market value", (f) omits signature of appraiser's helper.

Holdings: (1) 2005, because NY law requires conservation easements to be recorded and purchaser before recording would not be bound, (2) has value, not merely duplicative, (3) noncompliance with appraisal regulations excused, based on Bond and substantial compliance.

49. Smith v. Commissioner, T.C. Memo. 2014-203

Deduction in excess of $500 claimed for contributions of clothing or household items but TP presented no evidence that they were in "good used condition or better" and did not furnish a qualified appraisal with his return. Petitioner claimed deduction in excess of $5000 without obtaining a qualified appraisal or attaching a fully completed appraisal summary. Acknowledgment did not constitute CWA.50.

50. Reisner v. Commissioner, T.C. Memo. 2014-230

Facts: Parties stipulated that façade easement donated to NAT had a value of zero but dispute whether TPs are liable for the gross valuation misstatement penalty for 2006.

Holding: The section 6664(c)(3) elimination of the reasonable cause exception applies to the underpayment in the carryover or carryback year.

51. Belk v. Commissioner, 774 F.3d 221 (4th Cir. 2014), "a conservation easement must govern a defined and static parcel." Deduction denied, pursuant to section 170(h)(2)(C) (defining a qualified real property interest to include a restriction granted in perpetuity). A perpetual use restriction must attach to a defined parcel of real property rather than simply some or any (or interchangeable parcels of) real property.

52. Mitchell v. Commissioner, 775 F.3d 1243 (10th Cir. 2015), affirming 138 T.C. 324 (see #5 and #33)

Requiring subordination at the time of the donation is consistent with the Code's requirement that the conservation purpose be protected in perpetuity. The Commissioner is entitled to demand strict compliance with the mortgage subordination provision.

53. Balsam Mountain, LLC v. Commissioner, T.C. Memo. 2015-43 (22-acre easement boundaries may shift by up to 5% during a 5-year period; therefore, no perpetuity (citing Belk opinions).

Held: The easement is not a "qualified real property interest" of the type described in IRC sec. 170(h)(2)(C). "[A]n interest in real property is a "qualified real property interest" of the type described in section 170(h)(2)(C) only if it is an interest in an "identifiable, specific piece of real property."

54. Kunkel v. Commissioner, T.C. Memo. 2015-71

Facts: TPs claimed noncash contributions in TY 2011 in amount of $37,000. Except for a spreadsheet they created during the audit and undated doorknob hangers left by Purple Heart and Vietnam Veterans (saying thank you for your contribution) TPs had no substantiation or receipts or CWAs for the noncash contributions.

Holding: no deduction, because no CWA, receipts not adequate, did not present credible evidence that the allegedly donated household items were in good used condition or better in accordance with sec. 170(f)(16)(C).

55. Kaufman v. Commissioner, 784 F.3d 56 (1st Cir. 2015) (Kaufman V). (see also #13 and # 41)

Held: The TPs failed to make a good faith investigation as required to raise the (then- applicable) reasonable cause defense to the gross valuation misstatement penalty. Tax Court decision on this point was affirmed.

56. Costello v. Commissioner, T.C. Memo. 2015-87

Held: 1. TP failed to obtain a qualified appraisal of a conservation easement.

2. TP's Form 8283 did not comply with the regulations (no donee's signature, no disclosure of quid pro quo).

3. Appraisal and appraisal summary did not "substantially comply"; numerous categories of important information was omitted, including accurate description of the donated property, the salient terms of the agreement, signature of the done, explanation of the quid pro quo received, and the date of the contribution. Appraisal did not even mention "conservation easement" or "land preservation easement". TPs claim of substantial compliance rejected.

4. Grant of a conservation easement was not deductible, because it was part of a quid pro quo transaction. TP was required to convey the easement in order to sell development rights.

5. TPs liable for accuracy-related penalties.

57. Davis v. Commissioner, T.C. Memo. 2015-88

Held: Deduction for bargain sale of land allowed.

58. Isaacs v. Commissioner, T.C. Memo. 2015-121

Facts: TP donated fossils to charity in late December 2006 and late December 2007. TPs' appraiser did not write or recognize the letters purported to be his appraisals, and the purported appraisals were not admitted into evidence. No reliable written records of the contribution, no CWA, no qualified appraisal.

Holding: deduction denied.

59. Bosque Canyon Ranch, L.P. v. Commissioner, T.C. Memo. 2015-130 (see # 88)

Facts: Partnerships donated conservation easements. Purchasers of partnership units would each receive a fee simple interest in an undeveloped 5-acre parcel (homesite) that was not subject to the easements. Purchasers of the partnership units were permitted by deed to modify the easement boundaries by agreement with the donee land trust ("by mutual agreement"). The Court found the baseline documentation to be unreliable, incomplete, and insufficient.

Held: 1. The homesite transfers were disguised sales, and the partnerships were required to recognize gain from the sales.

2. The boundary line adjustment rules in the deed violated the sec. 170(h)(2)(C) "granted in perpetuity" requirement; therefore, no deduction for the easements.

3. The Treas. Reg. sec. 1.170A-14(g)(5)(i) baseline requirements were not met; no substantial compliance.

4. Partnerships are liable for gross valuation misstatement penalties; zero was the correct value because the partnership was not entitled to a deduction (citing Woods v. US, 571 US __ (2013)).

60. Minnick v. Commissioner, 796 F.3d 1156 (9th Cir. 2015), affirming T.C. Memo. 2012-345 (see #20)

Held: Treas. Reg. sec. "1.170A-14(g)(2) requires that the mortgage be subordinated at the time of the gift for the gift to be deductible".

61. Legg v. Commissioner, 145 T.C. 344 (2015)

Facts: Parties stipulated that the legal requirements for a charitable contribution of a conservation easement were met and the value of the easement was $80,000. They initially valued the donation at $1,418,500. Issue was whether the 40% gross valuation misstatement penalty applied even though examination report calculated the penalty at 20%. Construction of sec. 6751(b) was at issue.

Holding: 40% penalty was proper.

62. Atkinson v. Commissioner, T.C. Memo. 2015-236

TPs donated conservation easements on an operating golf course. The Service challenged conservation purpose and valuation. The court held that the easements did not protect a relatively natural habitat,

and that TPs "failed to establish that the easement area exists for the scenic enjoyment of the general public or yields a significant public benefit".

63. Gemperle v. Commissioner, T. C. Memo. 2016-1

TPs contributed a façade easement on a building that was a certified historic structure in a registered historic district, but they failed to attach a qualified appraisal to the return for the tax year of the contribution as required by §170(h)(4)(B)(iii)(I). On that basis alone, the Tax Court disallowed the deduction. TPs were also found liable for the 40% substantial valuation misstatement penalty because the Tax Court found that the maximum value of the easement was $35,000 and the TPs' valuation, $108,000, was more than $200% of the correct value.

64. Mecox Partners LP v. US , 11 CIV, 8157 (S.D.N.Y 2016)

Holdings: (1) The deed of easement is not effective until it was recorded (in the year following the year of the deduction). Also (fn 6) no "protection in perpetuity" before recordation.

(2) An appraisal prepared more than 60 days before the date of recordation does not meet the federal substantiation requirements.

65. Palmer Ranch v. Commissioner, 812 F.3d 982 (11th Cir. 2016) (see #42 and #74)

Holdings: (1) Because both parties' appraisers used the comparable sales method, the Tax Court's departure from that method, without explanation of its departure, disapproval of the method, or acknowledgement of the departure, was in error.

(2) Tax Court's highest and best use determination affirmed, but valuation reversed.

66. French v. Commissioner, T.C. Memo. 2016-53

Holding: Deed here is not a CWA because it does not specifically, or as a whole, address goods or services. Factors that would have supported compliance are that the deed recites no consideration other than preservation and the deed states that it is the entire agreement of the parties.

67. Carroll v. Commissioner, 146 T.C. 196 (2016), Motion for reconsideration denied, by Order, July 29, 2016 (appeal pending)

Holding: P's deed is inconsistent with Treas. Reg. sec. 1.170A-14(g)(6)(ii) because it bases the donee's right to proceeds (on extinguishment) on P's deduction amount rather than proportionate share as the regs. require. Therefore, the perpetuity requirements are not met and there is no deduction.

68. R.P. Golf v. Commissioner, T.C. Memo 2016-80, aff'd, 860 F.3d 1096 (8th Cir. 2017) (see #83)

Holdings: (1) no charitable contribution deduction for an easement on a parcel the donor did not own.

(2) Unsubordinated mortgages on the date of the grant and for 3 ½ months thereafter violate perpetuity.

69. Mountanos v. Commissioner, unpublished opinion (9th Cir. 2016), affirming Tax Court opinion. (see #28 and #38)

70. Palmolive v. Commissioner, Order, Docket No. 23444-14 (Aug. 26, 2016), "to propose that the mortgagee is subordinate except as to such proceeds would seem problematic. The mortgagee's defining right and interest is presumably in receiving proceeds, and it is that right and interest that must be subordinated".

71. PBBM-Rose Hill Ltd v. Commissioner, US Tax Court (bench opinion Sept. 9, 2016) (see #96)

Facts: TP owned a golf course in a gated community. After filing a bankruptcy petition, TP contributed a conservation easement to a land trust, burdening 234 acres of the golf course and claiming a $15 million charitable contribution deduction for the easement.

Issues: (1) Was there a conservation purpose under section 170(h)?

(2) Were the extinguishment/perpetuity requirements met?

(3) Were the appraisal summary requirements met?

(4) Was there a qualified appraisal?

(5) Was the value correct?

(6) Does the 40% penalty apply?

Held: (1) No conservation purpose (very limited public access, either physical or visual, not a relatively natural habitat), (2) the perpetuity/extinguishment requirements were not met (TP failed to comply with sec. 1.170A-14(g)(6)(ii) formula), (3) TP "substantially complied" with the appraisal summary requirements (missing information on Form 8283 was attached to the return), (4) TP's appraisal was a qualified appraisal, (5) the value was $100,000, and (6) the 40% penalty under sec. 6662(h) applies.

72. Cave Buttes, LLC v. Commissioner, 147 T.C. 338 (2016)

Facts: Bargain sale of real property to local government. IRS appraiser based his appraisal on the assumption that the parcel was landlocked, with no legal access. TP's appraiser assumed legal access, but with a cost to obtain the access. The IRS position was that the appraisal failed to comply with 5 separate requirements in the -13 regs.

Legal issue: Was there a qualified appraisal even though there was some failure to strictly comply with the regulations?

Held: The TP **undervalued** the property by $650,000; there was legal access; and the TP complied either strictly or substantially with the -13 regs.

Reasoning: The Court concluded that the TP should be treated as obtaining a "qualified appraisal" under the -13 regulations. The Court opined that TP substantially complied with the signature requirement on

the appraisal, with the "prepared for income tax purposes" requirement, definition of FMV, and valuation date. The Court also concluded that the TP's inclusion of "address and characteristics" strictly complied with the description requirement.

73. Sells v. Commissioner, Tax Court Order (Sept 22,2016)

Facts: Amendment clause allows parties to amend the deed of easement but only if the amendment doesn't endanger qualification under section 170(h). The subordination agreement was not recorded until four years after the date of contribution. IRS moved for summary judgment, which the Court denied.

Issues: (1) Does amendment clause cause easement to be nondeductible? (2) Does extinguishment clause violate perpetuity? (3) Does a delay in the recording of the subordination violate perpetuity?

Tax Court: (1) Words in the deed in this case are not a problem; for example, a clause that enabled an amendment that adds property subject to a conservation easement would not violate sec. 170(h). (2) Terms in the extinguishment clause in this case don't affect perpetuity. (3) There is a genuine factual issue about whether the subordination agreement was referred to in an endorsement to the recorded mortgage note.

74. Palmer Ranch Holding, Ltd. v. Commissioner, T.C. Memo. 2016-190 (see #42 and #65)

Held: TP's valuation used; respondent failed to use comparable sales data to support an adjustment for declining market.

75. Partita Partners, LLC v. US S.D.N.Y. (Oct. 26,2016)

Facts: Easement donated on a building in a registered historic district in NYC. The deed allowed for additional construction on the building, conditioned on the donee's approval. TP testified that development rights were reserved to add a couple of floors on the roof and potentially to extend the ground floor. The deed of easement required that any exercise of development rights may not interfere with the conservation purposes of the easement.

Holding: No deduction; statute unambiguously requires preservation of the entire exterior of this building. Motion for Summary Judgment granted in favor of the US.

76. Graev v. Commissioner, 147 TC 460 (2016)

Issues: (1) Did the notice of deficiency comply with the requirement of sec. 6751(a) to include a computation of the 20% penalty? (2) Did the Service comply with the sec. 6751(b) requirement that the agent's immediate supervisor personally approve the assessment of the penalty in writing? (3) Did the taxpayers show reasonable cause and good faith (sec. 6664(c)), substantial authority (sec. 6662(d)(2)(B)(i)), or adequate disclosure and reasonable basis for the return position (sec. 6662d)(2)(B)(ii))?

Held: (1) Yes. (2) Argument is premature. (3) No.

77. 15 West 17th Street LLC v. Commissioner, 147 T.C. 557 (2016)

Facts: TP claimed a $64.5 M charitable contribution deduction in 2007. In 2011, the IRS commenced an examination of TP's 2007 return. In 2014, the donee filed an amended Form 990 for 2007 that included the language that is required to be included in a CWA.

Issue: May the TP rely on reporting by the donee on an information return filed with the IRS to meet the requirements of sec. 170(f)(8)?

Holding: No. Although the Service has discretionary authority under sec. 170(f)(8)(D) to allow for this, the IRS has not exercised that authority. "We conclude that the rulemaking authority delegated in subparagraph (D) is discretionary, not mandatory, and that subparagraph (D) is not self-executing in the absence of regulations."

78. McGrady and Antoniacci v. Commissioner, T.C. Memo. 2016-233

Facts: TPs contributed an easement in one parcel and a fee interest in another parcel as "components of a "complex conservation planning". The Court found that they negotiated for 18 months to determine the contributions that each party would be required to make.

Holding: The Court rejected the Service's argument that the transfers were part of a quid pro quo exchange and lacked charitable intent. The Court did find an overvaluation.

79. O'Connor v. Commissioner, Docket No. 2472-11, US Tax Court (Jan. 23, 2017) (motion for reconsideration denied March 27, 2017)

Facts: Donation of a fee interest in land. The deed stated that the land would not be open to the public, and no permanent structures could be built on the property. The appraisal did not take into account these deed restrictions.

Issue: Can an appraisal that fails to take into account restrictions that could limit the property's marketability be a qualified appraisal?

Held: No; no deduction allowed. Even under a substantial compliance standard, this appraisal falls short.

80. Izen v. Commissioner, 148 T.C. 71 (2017)

Facts: Alleged deduction first claimed on April 14, 2016 (Form 1040X), for gift of a 40-year old airplane in TY 2010. IRS argued that TP failed to satisfy the substantiation requirements of section 170(f)(12), which is the contemporaneous written acknowledgment requirement for motor vehicles, including airplanes.

Held: In the absence of a CWA meeting the statute's demands, no deduction shall be allowed.

"The doctrine of substantial compliance does not apply to excuse the failure to obtain a CWA meeting the statutory requirements." The requirement that a CWA be obtained for charitable contributions described in section 170(f)(8) and (12) is a strict one. In the absence of a CWA meeting the statute's demands, no deduction shall be allowed. "The doctrine of substantial compliance does not apply to excuse the failure to obtain a CWA meeting the statutory requirements."

81. Ten Twenty Six Investors v. Commissioner, T.C. Memo. 2017-115

Facts: Motion for partial summary judgment. Partnership granted a façade easement on a warehouse to the National Architectural Trust. The deed was executed by the parties in December 2004, but not recorded until December 2006.

IRS argued that under NY law, the easement had no legal effect until recorded and, citing Treas. Reg. 1.170A-14(g)(1), was therefore not deductible in 2004.

Held: No deduction in 2004 because the deed was not recorded in that year; recordation is necessary for easement to be enforceable in perpetuity. The possibility of the deed being unenforceable was not so remote as to be negligible.

82. ORC Partners, LLC v. Commissioner, TL-1041-16 (Order June 16, 2017), IRS's Motions for Summary Judgment Denied

IRS contended: (1) the deed evidences the intent of the taxpayer and donee to allow extinguishment by merger, and (2) the amendment clause in the deed allows inconsistent use under Treas. Reg. sec. 1.170A-14(e)(2).

Court's analysis: Both issues raise genuine factual disputes as to material facts. The Court reserved for trial the question of whether there is only a negligible possibility that the donee would agree to extinguish the easement upon merger. The Court also reserved for trial the question of whether, under the donee's policies, the donee would agree to an amendment that would harm one of the purported conservation purposes of the easement.

83. R. P. Golf, 860 F.3d 1096 (8th Cir. 2017) (see #68)

Held: The 8th Circuit Court of Appeals affirmed the Tax Court judgment and held that because the bank mortgages were not subordinated before the easement conveyance, the deduction for the year of conveyance was disallowed.

84. RERI Holdings I, LLC v. Commissioner, 149 T.C. No. 1 (2017), aff'd sub. nom., Blau v. Commissioner, No. 17-1266 (D.C. Cir. 2019) (see # 104)

Facts: Contribution of a remainder interest in property to a University. Cost or other basis was missing from the Form 8283. TP relied on the standard actuarial tables under section 7520, but in fact there were limitations under the covenants.

Held: (1) TP's failure to comply with Treas. Reg. sec. 1.170A-13(c)(4)(ii)(E) (the regulations requiring disclosure of cost or other basis on the Form 8283) requires full disallowance of the deduction. "[B]ecause RERI's omission of its basis … on the Form 8283 it attached to its 2003 return prevented the appraisal summary from achieving its intended purpose, RERI's failure to meet the requirement of section 1.170A-13(c)(4)(ii)(E), Income Tax Regs., cannot be excused by substantial compliance…. The significant disparity between the claimed fair market value and the price RERI paid to acquire [it], had it been disclosed, would have alerted respondent to a potential overvaluation."

(2) The actuarial tables under section 7520 do not apply because of limitations on remedies under the agreement.

85. Partita Partners LLC v. US, Memorandum and Order (S.D.N.Y. July 10, 2017) (see #75)

TPs' motion for summary judgment denied—Court rules that a valuation misstatement penalty could be imposed, even if the underlying deduction was disallowed in its entirety on grounds other than a valuation misstatement. Court also rules that effect of purported approvals for penalties will be decided at trial.

86. Hoffman Properties II, LP v. Commissioner, TL-14130-15, (Tax Court Order dated July 12, 2017)

Facts: The deed, recorded on Dec. 31, 2007, gives the TP conditional rights to alter the building's exterior unless the donee, within 45 days, rejects the donor's proposal to exercise those rights (45-day default provision). There was no written agreement signed by the donor and the donee certifying under penalty of perjury that the donee is qualified with a purpose specified in sec. 170(h)(4)(B)(ii)(I) and has the resources and commitment described in sec. 170(h)(4)(B)(ii)(II) (sworn statement requirement).

Order Granting IRS's Partial Summary Judgment Motion: Deficiency in the deed is not cured by a subsequent agreement that is unrecorded and does not portend to amend the easement. The deed does not satisfy section 170(h)(4)(B)(i), which requires preservation of the entire exterior of the building. Failure to satisfy the sworn statement requirement results in a conservation contribution failing to be considered exclusively for conservation purposes under sec. 170(h)(4)(B).

87. Rutkoske v. Commissioner, 149 T.C. No. 6 (2017)

Issue: IRS motion for partial summary judgment granted on question of whether TPs were "qualified farmers" at the time of their bargain sale of a conservation easement.

Held: For a conservation contribution to qualify for the special rule of sec. 170(b)(1)(E)(iv), the IRS will consider the income derived from the sale of agricultural and/or horticultural products created rather than income derived from the sale of land on which the products were grown

88. BC Ranch II L.P., also known as Bosque Canyon Ranch II, L.P. vs. Commissioner, 867 F3d 547 (5th Cir. 2017)

Decision of the Tax Court in Bosque Canyon Ranch LP v. Commissioner , T.C. Memo. 2015-130, (see #59) vacated and remanded.

Held: (1) "homesite adjustment provision" does not violate perpetuity and does not result in disallowance of deduction. Belk distinguished. (2) Baseline was more than sufficient. (3) Tax Court needs to determine correct amount of taxable income resulting from disguised sale, and (4) Tax Court needs make a finding of the values of the easements and determine whether the gross valuation misstatement penalty is applicable.

89. 310 Retail, LLC v. Commissioner, T.C. Memo. 2017-164

Issues: (1) Can a Form 990 be a CWA under sec. 170(f)(8)(D)?

(2) Is a Deed of Easement a CWA?

Holding: (1) No, see 15 West. (see #77)

(2) Yes, under the facts of this case.

Rationale for holding (2) that deed is a CWA:

The deed here is the same in all material respects as the deed in RP Golf, the deed was contemporaneous, the deed has a clause that indicates it is the entire agreement of the parties, and the deed does address consideration in a boilerplate clause that has "no legal effect for purposes of sec. 170(f)(8)". The court then says, "Taken as a whole, therefore, the deed of easement includes the required affirmative indication that [the donee] supplied LLC with no goods or services in exchange for its contribution."

90. Gardner v. Commissioner, T.C. Memo. 2017-165

Facts: Donation of hunting specimens to an ecological foundation. TP valued the specimens using replacement cost (cost that a hunter would incur), but IRS valued the specimens using the market approach and comparable sales.

Held: If an active market exists, we generally rely on comparable sales. Replacement cost may be a relevant measure of value where the property is unique, the market is limited, and there is no evidence of comparable sales.

91. Big River Development v. Commissioner, T.C. Memo 2017-166

Held: a deed of easement constitutes a valid CWA where it was properly executed by the donee, provided a good faith estimate of the value of services rendered, and stated that it represented the entire agreement of the parties.

92. Palmolive Building Investors, LLC v. Commissioner, 149 T.C. No. 18 (October 10, 2017) (on cross-motions for partial summary judgment)

Facts: Façade easement deed gave 2 mortgagees insurance and condemnation claims prior to that of the donee.

Held: Deed did not comply with Treas. Reg. secs. 1.170A-14(g)(6)(ii) or 1.170A-14(g)(2). The Tax Court will not follow the First Circuit Court of Appeals decision in Kaufman v. Shulman because the Palmolive case is appealable to the Seventh Circuit, not the First Circuit. The savings clause does not cure the deed. Therefore, the easement is not protected in perpetuity and fails to qualify under section 170(h)(5)(A).

93. Salt Point Timber, LLC v. Commissioner, T.C. Memo. 2017-245.

Held: no charitable contribution deduction because the easement deed permitted the holder of a replacement easement to be an entity other than a qualified organization.

94. Wendell Falls Development, LLC v. Commissioner, T.C. Memo. 2018-45

Facts: Easement on 125 acres to be used as a park was donated in connection with a "planned unit development" or "PUD".

Held: No charitable contribution deduction because the donor expected to receive a substantial benefit (quid pro quo) from the donation and because the easement had no value. As the prospective seller of the residential lots, the taxpayer would benefit from the increased value to the lots from the park as an amenity.

95. Triumph Mixed Use Investments III, LLC v. Commissioner, T.C. Memo. 2018-65

Facts: TP transferred real property and development credits to a city in exchange for a development plan approval and with the expectation of a future development plan approval. TP did not report these expected benefits to the IRS.

Held: No deduction allowed. Transfer was part of a quid pro quo arrangement, and TP did not report or establish FMV of what it received. A transfer of real property in exchange for development approvals or the expectation of future development approvals is a benefit and precludes a finding of the requisite intent for a charitable gift.

Cases cited by the court: US v. American Bar Endowment, 477 U.S. 105 (1986), Seventeen Seventy Sherman v. Commissioner, T.C. Memo. 2014-124, Pollard v. Commissioner, T.C. Memo. 2013-38. McGrady v. Commissioner, T.C. Memo. 2016-233 distinguished as a case in which the taxpayer received only a small benefit of privacy.

96. PBBM-Rose Hill, Ltd. V. Commissioner, 900 F.3d 193 (5th Cir. 2018), affirming #71

Held: (1) outdoor recreation conservation purpose is met because the terms of the deed protects land for outdoor recreation "for use by the general public".

(2) deduction fails because the extinguish clause does not comply with § 1.170A-14(g)(6)(ii); the value of improvements could decrease the amount of proceeds below the minimum the donee must receive.

(3) Court should rely on language of deed to determine satisfaction of conservation purpose requirement and should not look to actual use unless the donor knew that the access would be significantly less than indicated by the deed.

(4) future rezoning should be disregarded if not reasonably probable.

(5) §6751(b) managerial approval requirement met for gross valuation misstatement penalty where the managerial signature is on the cover page of a summary report on the examination of TP.

97. Harbor Lofts Associates v. Commissioner, 151 T.C. No. 3 (August 27, 2018)

Held: (1) A party that does not have a fee interest in the buildings cannot contribute a conservation restriction in perpetuity; only the owner of real property or holder of a fee interest is able to grant a perpetual conservation restriction.

(2) A lessee is not entitled to a deduction under §170(h) for joining the fee owner in granting a conservation easement.

98. Champions Retreat Golf Founders, LLC. v. Commissioner, T.C. Memo. 2018-146

Facts: 350-acre easement on a golf course, with purposes of preserving habitat for "species of conservation concern", and open space for scenic enjoyment of general public and pursuant to clearly delineated governmental policy.

Issue: Was the easement contribution "exclusively for conservation purposes" within the meaning of section 170(h)(1)(C) and (h)(4)(A)(ii) and (iii)?

Held: no

Basis: (1) Habitat purpose not met because there is insufficient presence of rare, endangered, or threatened species and easement area is not a natural area.

(2) Even taking into account the annual charity events held at the golf club, the public does not have sufficient physical access to enjoy the easement area.

(3) TP does not cite any law or program that meets the clearly delineated government policy purpose within the meaning of Treas. Reg. § 1.170A-14(d)(4)(iii)(A).

99. Belair Woods, LLC v. Commissioner, T.C. Memo. 2018-159

Facts: TP claimed a $4.8 deduction for contribution of a conservation easement. TP did not disclose its "cost or adjusted basis" on its Form 8283 but attached a statement to the Form 8283 stating that the basis was omitted because the basis is not relevant to the calculation of the deduction and the easement was long-term capital gain property.

Issue: Is TP's deduction denied on account of cost basis being omitted from the Form 8283?

Held: (1) TP did not strictly or substantially comply with the regulatory requirement that cost basis be included on the Form 8283. Court cites full Tax Court opinion in RERI Holdings I v. Commissioner with approval.

(2) Disputes of material fact exist as to whether the omission is excused by the defense of "reasonable cause" under § 170(f)(11)(A)(ii)(II).

100. Chrem v. Commissioner, T.C. Memo. 2018-164

Tax Court denies cross motions for summary judgment. Individuals claimed charitable contribution deductions for donation of securities that were not publicly traded.

Facts: Acquiring Corp (SDI) and Target Corp (Comtrad) are related parties. Acquiring Corp announced a proposal to acquire 100% of stock in Target Corp. Target Corp shareholders subsequently transferred their shares in Target Corp to charity, and Acquiring Corp purchased them from the charity shortly thereafter.

Issues: (1) Were taxpayers liable for tax on the disposition of the shares, under the anticipatory assignment of income doctrine?

(2) Is an appraisal of the entire company that was prepared for ERISA compliance purposes and that does not comply with the requirements of Treas. Reg. § 1.170A-13(c)(3) treated as a qualified appraisal under the substantial compliance doctrine?

(3) Can failure to attach a qualified appraisal to the return under § 170(f)(11)(D) for contributions of property for which a deduction of more than $500,000 is claimed be excused under the substantial compliance doctrine?

(4) Does reasonable cause excuse the § 170(f)(11) failures set out in (2) and (3)?

Held: (1) The evidence may support respondent's contention that the charity agreed in advance to tender its shares to Acquiring Corp. and that all steps in the transaction were prearranged, but there are genuine disputes of material facts.

(2) and (3): If TPs prevail on the reasonable cause defense, it will be unnecessary to decide whether they complied with the appraisal reporting requirements.

(4) The reasonable cause defense presents genuine issues of material facts.

101. Pine Mountain Preserve v. Commissioner, 151 T.C. No. 14 (Dec. 27, 2018) (appeal pending)

Facts: Deeds allowed homesites on the easement property but they could be moved with the consent of the donee.

Issues: (1) Do moveable homesites cause the deduction to be disallowed? (2) Is an amendment clause that allows amendments upon agreement of the donor and the donee that are "consistent with conservation purposes" a violation of perpetuity?

Held: (1) Yes, because if the homesite is moveable, there is no restriction granted in perpetuity and therefore no "qualified real property interest". Deductions for TY 2005 a TY 2006 disallowed. (2) No, because a charitable organization will respect its charitable purpose, and because a deed is a form of a contract. Deduction for TY 2007 allowed.

102. Pine Mountain Preserve v. Commissioner, T.C. Memo. 2018-214 (Dec. 27, 2018)

Issue: Valuation of 2007 easement

Held: Court gives equal weight to the donor's appraisal and the Service's appraisal.

Basis: IRS's comparables were inferior to the subject property because IRS expert incorrectly assumed that the property would not be developed. TP's appraisal did not take into account the increased value (positive external effects) on contiguous parcels by preserving scenic views of the ridgelines and preserving the ridgelines for recreational purposes. Also, TP's expert should not have used the "before and after approach" because the easement was on "highly developable property". IRS expert has to comply with the -14 regs. because the regulation is not a "verification regulation". Errors by each expert have effects of "roughly the same magnitude".

103. Roth v. Commissioner, No. 18-9006 (10th Cir. 2019)

Held: Tax Court opinion affirmed on issue of whether IRS properly obtained written, supervisory approval for its initial determination of a penalty assessment as required by § 6751(b).

104. Blau v. Commissioner, No. 17-1266 (D.C. Cir. 2019), RERI Holdings I, LLC v. Commissioner (# 84) affirmed.

105. Evergreen Church Road, LLC v. Commissioner , No. 8493-17 (Order served June 5, 2019)

Facts: TP did not report cost basis on Form 8283, stating that basis "is not taken into account in computing deduction." Also, the extinguishment clause had a carve out for the value of improvements.

Court: granted partial summary judgment to Commissioner on issue of basis omission, citing RERI and Belair Woods. The Court stated that the TP "did not comply, strictly or substantially, with the reporting regulation, assuming it is valid." The Court also stated that TP's argument that the reg. is invalid in unpersuasive, but reserved the issue for further consideration. The Court denied the Commissioner's motion for summary judgment on the improvements clause, stating that a genuine issue of material facts exists.

106. Coal Property Holdings, LLC v. Commissioner, 153 T.C. No. 7 (October 28, 2019)

(On IRS's Motion for Partial Summary Judgment, deduction denied in its entirety)

Issues: (1) Does extinguishment clause, which reduces donee's proceeds on account of improvements, comply with Treas. Reg. sec. 1.170A-14(g)(6)(ii)?

(2) Does the deed protect the conservation purpose in perpetuity as is required by sec. 170(h)(5)(A)?

(3) Does savings clause cure this defect?

Held: (1) No, the taxpayer's formula for proceeds on extinguishment does not strictly comply with the regulations. T.C. cites Carroll v. Commissioner, 146 TC 196 (2016), and PBBM-Rose Hill v. Commissioner, 900 F.3d 193 (5th Cir. 2008).

(2) Because of the defective extinguishment clause, the deed did not protect the conservation purpose in perpetuity.

(3) Taxpayer's clause was a "condition subsequent savings clause", which is ineffective because it purports to countermand the plain text of the Easement Deed. T.C. cites Belk v. Commissioner, 774 F.3d 221, 225 (4th Cir. 2014, aff'g 140 T.C. 1 (2013)).

107. TOT Property Holdings, LLC v. Commissioner, Docket # 5600-17 (Bench Opinion issued 12/13/2019)

Facts: 2017 contribution of an easement by an LLC. TOT claimed a charitable contribution deduction of $6.9 million on its return for donation of an easement on 637 acres of property in rural Tennessee. Extinguishment clause in the deed denied the donee proceeds attributable to improvements. The highest and best use before and after remained the same (recreational use and timber harvesting).

Issues Raised: (1) Does extinguishment clause violate perpetuity?(2) Does merger clause violate perpetuity? (3) Were the reserved rights impermissible inconsistent use? (4) Was there overvaluation? (5) Were the penalties properly approved in advance?

Held: (1) Extinguishment clause violates perpetuity because of improvements language (citing Coal Property #106); condition subsequent savings clause does not fix the problem, deduction denied (citing #106 and Palmolive (#92). (2) FMV was $496,00 because there was no difference in highest and best use before and after the easement was granted; Tax Court accepted the valuation of the IRS expert. (3) Penalty was properly approved in advance because the Letter 1807 transmitting the agent's summary report detailing the penalties was signed by the supervisor.