

UNITED STATES TAX COURT  
WASHINGTON, DC 20217 PA

JANICE LUCK O'CONNOR,	)	
	)	
Petitioner(s),	)	
	)	
v.	)	Docket No. 2472-11.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	
	)	

**ORDER**

This case was on a trial calendar for Buffalo, New York but was continued and then moved onto a summary-judgment track after settlement talks stalled. We granted respondent’s motion for partial summary judgment earlier this year. Petitioner moved for reconsideration of this order on February 22, 2017.

We assume the parties’ familiarity with the background facts of the case.

In our original order, we ruled in respondent’s favor on the issue of a charitable deduction that petitioner claimed. The problem was the absence of a qualified appraisal, and most specifically the appraisal’s failure to consider the effect on the contributed property’s value of restrictive covenants in the deed. (A letter from the appraiser admits that it didn’t consider the restrictions.)

Petitioner’s counterargument was that these restrictions were included at the request of the donee. One of the cases we cited in support of our conclusion was *Deukmejian v. Commissioner*, 41 T.C.M. (CCH) 738 (1981). Petitioner points out in her motion that *Deukmejian* featured a reverter clause -- a clause that could have led to a reconveyance to the donor.

The Court acknowledges that petitioner's case features no such clause. We, however, cited *Deukmejian*, not because of the importance of such a clause to the value of the donated property, but because it stands for the proposition that an appraisal must take into account even restrictions placed on a donated property's use at the request of the *donee*.

This is also what the regulation itself says. *See* 26 C.F.R. § 1.170A-13(c)(3)(ii)(D) (appraisal must include an "agreement or understanding entered into . . . by or on behalf of the donor *or the donee* that relates to the use, sale, or other disposition of the property contributed, including, for example, the terms of any agreement . . . that restricts temporarily or permanently a donee's right to use or dispose of the donated property.") (Emphasis added.)

The appraiser here was similarly required to consider the restrictions placed in the deed, regardless of which party wanted them. The appraiser failed to do so.

It is therefore

ORDERED that petitioner's motion for reconsideration of motion for partial summary judgment dated February 22, 2017 is denied.

**(Signed) Mark V. Holmes  
Judge**

Dated: Washington, D.C.  
March 27, 2017