

UNITED STATES TAX COURT

WASHINGTON, DC 20217

SALT POINT TIMBER, LLC, JOHN B.
HOOD, TAX MATTERS PARTNER,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket No. 18057-14.

ORDER

In November 2015, this case was tried. In January 2016, the parties filed simultaneous opening briefs. In March 2016, they filed simultaneous answering briefs. This Order requires the parties to state their views about various aspects of section 1.170A-14(c)(2), Income Tax Regs. This regulatory provision has the internal heading, “Transfer by donee.” It is referred to in this Order as the transfer-by-donee regulation.

Background

Salt Point Timber, LLC (hereafter “Salt Point”) owned 1,032.39 acres of land. Stip. para. 8. On June 30, 2009, it executed a conservation easement on the land in favor of the Lord Berkeley Trust (hereafter the “Berkeley land trust”). Stip. para. 31. The parties dispute whether the easement is a qualified conservation contribution. Resp’t opening br. 13. See sec. 170(f)(3)(B)(iii) (excepting a qualified conservation contribution from the general rule of sec. 170(f)(3)(A) that no charitable-contribution deduction is allowed for the contribution of less than the taxpayer’s entire interest in the property).

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Section 170(h)(1) defines a qualified conservation contribution as a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes.¹

A qualified real property interest is defined by section 170(h)(2)(C) to include a perpetual restriction on the use of the real property. Petitioner contends that the conservation easement is a qualified real property interest because it is such a restriction. Pet'r answering br. 8.

There is no dispute that the Berkeley land trust is a qualified organization. Stip. para. 33; Pet'r opening br. 16 para. 41-42; Resp't answering br. 6 para. 41-42.

A contribution is considered to be exclusively for conservation purposes only if the conservation purpose is protected in perpetuity. Sec. 170(h)(5)(A).

Part 6.22 of the easement provides that if (1) any of the land protected by the easement is transferred to the owner of adjacent land, (2) the adjacent land is encumbered by a comparable conservation easement, and (3) the owner of the adjacent land and holder of the adjacent easement agree to modify the easement on the adjacent property to encumber the transferred property, then the conservation easement will be amended by the landowner and the Berkeley land trust to release the transferred property from the conservation easement.

Questions

Although the parties have filed briefs, the Court wants the parties' views on the following three questions (and subquestions):

1. Part 6.22 and the conservation purpose condition
 - A. Part 6.22 of the easement permits the easement held by the Berkeley land trust to be substituted with a comparable conservation easement held by another entity (under certain conditions). The transfer-by-

¹Unless otherwise indicated, all references to sections are to sections of the Internal Revenue Code of 1986, as amended.

donee regulation requires the easement to prohibit the donee from subsequently transferring the easement unless, as a condition of the subsequent transfer, the donee requires that the conservation purpose of the easement continues to be carried out. Is it true that no such condition appears in part 6.22 of the conservation easement?

- B. If the answer to question 1.A is yes, does this mean that the contribution of the conservation easement is not deductible?
- C. If the answer to question 1.B is yes, what statutory provision precludes deductibility?

2. Part 6.22 and the eligible donee requirement

- A. Part 6.22 of the easement permits the easement held by the Berkeley land trust to be substituted with a comparable conservation easement held by another entity (under certain conditions). The transfer-by-donee regulation requires that subsequent transfers of the easement be restricted to eligible donees. Is it true that no such restriction appears in part 6.22 of the conservation easement?
- B. If the answer to question 2.A is yes, does this mean that the contribution of the conservation easement is not deductible?
- C. If the answer to question 2.B is yes, what statutory provision precludes deductibility?

3. Respondent's argument regarding the qualified organization requirement

Respondent's opening brief contends that no deduction is allowable because under the terms of part 6.22 of the easement there is no requirement that the holder of a substituted easement be a qualified organization. Resp't opening br. 17-18; see also Resp't answering br. 46. Is this argument consistent with the transfer-by-donee regulation, which requires a transfer of the easement to be restricted to an eligible donee (as opposed to a qualified organization)?

Conclusion

It is

ORDERED that each party will file memoranda on or before September 18, 2017. The memoranda will be entitled “Petitioner’s memorandum regarding the transfer-by-donee regulation” and “Respondent’s memorandum regarding the transfer-by-donee regulation”, respectively. The memoranda will answer the three questions and subquestions stated in this Order.

The parties may state in their memoranda any disagreement with (1) the statements embedded within the questions in this Order and (2) any statements in the Background section of this Order.²

**(Signed) Richard T. Morrison
Judge**

Dated: Washington, D.C.
July 19, 2017

²All such statements are for the purpose of argument. They do not constitute either findings of fact or conclusions of law.