

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

DUANE PANKRATZ, ET AL.,)		
)		
Petitioner(s),)		
)		
v.)	Docket No. 21255-13,	27239-13.
)		
COMMISSIONER OF INTERNAL REVENUE,)		
)		
Respondent)		
)		
)		
)		
)		
)		

ORDER

These cases were on the Court’s June 15, 2015 St. Paul, Minnesota trial calendar, and arise from the 2008 and 2009 tax years. We continued them on petitioner’s motion because the cases presented a very large number of issues. The parties reasonably proposed to take some time to corral the relatively noncontroversial issues, and then identify the remaining issues that both thought had a reasonable probability of needing to be tried. The Court issued a pretrial order whose deadlines were extended when no St. Paul calendar was set until September of this year. These cases are set to be tried at that calendar.

On July 3, 2017 respondent moved for partial summary judgment on three of those issues, all of which are purported noncash charitable deductions subject to the enhanced substantiation requirements of IRC § 170(f)(11). The parties have since settled one of those issues. What remain are petitioner’s claimed deductions for donations of four oil-and-natural-gas fields, and a conference center in South Dakota.

The Court will assume the parties know the background facts of the cases and the usual rules on summary judgments.

Respondent's argument is simple -- one of those substantiation requirements is a qualified appraisal attached to the return on which a taxpayer claims a deduction. IRC § 170(f)(11)(C). There is no genuine dispute that petitioner here did not attach any appraisals whatsoever to his returns. Respondent asserts that this entitles him to judgment as a matter of law because "[a] taxpayer does not qualify to deduct a noncash charitable contribution, in excess of \$5,000, without an appraisal." In support of this assertion, respondent points to *Todd v. Commissioner*, 118 T.C. 334, 336, 347 (2002); *Hewitt v. Commissioner*, 109 T.C. 258 (1997); and *Jorgenson v. Commissioner*, 79 T.C.M. 1444, 1450-51 (2000).

Petitioner points out, however, that these authorities all predate 2004, when Congress amended that section of the Code to include a new section, 170(f)(11)(A)(ii)(II), that creates a reasonable-cause exception to the detailed requirements of the rest of that section. Petitioner is right about this, and attached to his response his affidavit, in proper form, asserting that he meets the requirements of the exception and laying out the facts he'll testify to to establish those requirements.

This means that it must be

ORDERED that respondent's July 3, 2017 motion for partial summary judgment is denied.

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

Dated: Washington, D.C.
September 8, 2017