

UNITED STATES TAX COURT
WASHINGTON, DC 20217

HIGH POINT HOLDINGS, LLC, HIGH POINT LAND MANAGER, LLC, TAX MATTERS PARTNER,	)	
Petitioner(s),	)	
v.	)	Docket No. 10896-17.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

O R D E R

This case was assigned to the undersigned by order dated March 6, 2019. It is one of many cases pending in this Court involving "judicial extinguishment" clauses in deeds of conservation easement. Currently before the Court is a motion for partial summary judgment filed by the Internal Revenue Service (IRS or respondent). The questions presented by this motion are substantially identical to those decided in PBBM-Rose Hill, Ltd. v. Commissioner, 900 F.3d 193 (5th Cir. 2018), and Coal Property Holdings, LLC v. Commissioner, 153 T.C. 126 (2019). For the reasons stated in those opinions, we will grant respondent's motion.

In 2013 High Point Holdings, LLC (High Point), owned 840 acres of land in Warren and Van Buren counties, Tennessee. High Point donated a conservation easement covering the property to a qualifying organization under I.R.C. § 170(h)(3). On its Federal income tax return for 2013 High Point claimed a charitable contribution deduction of $8,914,000 for the donation. The IRS selected the return for examination, and on February 24, 2017, issued a Final Partnership Administrative Adjustment (FPAA) to petitioner as tax matters partner for High Point. The FPAA disallowed the deduction in full, stating that "it has not been established that the claimed deduction meets the requirements of Internal Revenue Code Section 170." The IRS determined a 40% accuracy-related penalty under I.R.C. § 6662(h) (applicable in the case of a "gross valuation misstatement") and in the alternative a 20% penalty under other provisions of I.R.C. § 6662.

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Petitioner timely petitioned for readjustment of partnership items under I.R.C. § 6226. On September 18, 2018, respondent filed a motion for partial summary judgment urging that the conservation purpose underlying the easement is not "protected in perpetuity," see I.R.C. § 170(h)(5)(A), because the easement deed fails to comply with the regulations governing judicial extinguishment, see § 1.170A-14(g)(6), Income Tax Regs.

The easement deed provided that, if the property were sold following judicial extinguishment of the easement, the donee organization would receive a share of the proceeds determined by a formula. Under the formula, the donee's share was to equal the property's fair market value (FMV) at the time of sale, "minus any increase in value after the date of th[e] grant attributable to improvements," multiplied by a fraction specified in § 1.170A-14(g)(6)(ii), Income Tax Regs. Alternatively, if this formula produced a result different from that required by the regulation, the deed provided that the donee would receive a share of the proceeds as determined by the regulation.

Respondent contends that the easement does not satisfy the "protected in perpetuity" requirement of I.R.C. § 170(h)(5)(A) and § 1.170A-14(g)(6), Income Tax Regs. That is because the portion of the proceeds to which the donee is entitled, in the event of a sale following extinguishment of the easement, is improperly reduced by amounts inuring to High Point that are attributable to (1) appreciation in the value of improvements existing when the easement was granted, plus (2) the FMV of any improvements that High Point subsequently made to the property. This Court and the U.S. Court of Appeals for the Fifth Circuit have held that a conservation easement does not qualify for a charitable contribution deduction if the deed's judicial extinguishment clause contains a carve-out for donor improvements like that involved here. See PBBM-Rose Hill, Ltd., 900 F.3d at 208; Coal Property Holdings, LLC, 153 T.C. at 138; Oakbrook Land Holdings, LLC v. Commissioner, T.C. Memo. 2020-54. In Oakbrook Land Holdings, LLC v. Commissioner, 154 T.C. __, __ (slip op. at 26-33) (May 12, 2020), we sustained the validity of § 1.170A-14(g)(6), Income Tax Regs., against the contention that the failure to permit a carve-out for donor improvements rendered the regulation invalid as applied to easement deeds of this sort.

Petitioner contends that High Point's easement deed contains a "saving clause" mandating that we interpret the deed so as to comply with the regulatory requirements. The valuation formula containing the impermissible carve-out for donor improvements appears in Section 9.2 of the deed. Section 9.1 of the deed provides that the donee's share of the sale proceeds following judicial extinguish-

ment of the easement "shall be * * * determined in accordance with Section 9.2 or 26 C.F.R. Section 1.170A-14, if different." (emphasis added). The deed further provides: "It is intended that this Section 9.2 be interpreted to adhere to and be consistent with 26 C.F.R. Section 1.170A-14(g)(6)(ii)."

We considered a substantially identical "saving clause" in Coal Property Holdings, LLC, and declined to give it effect. Coal Property Holdings, LLC, 153 T.C. at 140-145. "When a savings clause provides that a future event alters the tax consequences of a conveyance, the savings clause imposes a condition subsequent and will not be enforced." Belk v. Commissioner, 774 F.3d 221, 229 (4th Cir. 2014), aff'g 140 T.C. 1 (2013). We reach the same conclusion here.

As was true in Coal Property Holdings, LLC, the interpretation of the deed at issue is governed by Tennessee law. In Tennessee, "[i]nterpretation of a deed is a question of law." Griffis v. Davidson County Metro. Gov't, 164 S.W.3d 267, 274 (Tenn. 2005). Deeds are interpreted according to the same rules applicable to contracts. Adkins v. Bluegrass Estates, Inc., 360 S.W.3d 404, 411 (Tenn. Ct. App. 2011). "If the language in the contract is clear and unambiguous, then the 'literal meaning controls the outcome of the dispute.'" Id. at 411-412 (quoting Allstate Ins. Co. v. Watson, 195 S.W.3d 609, 611 (Tenn. 2006)).

We find the language of Section 9.2 of the deed to be clear and unambiguous. By reducing the donee's share of the proceeds by reference to "any increase in value after the date of th[e] grant attributable to improvements," Section 9.2 creates valuable property rights in High Point as donor. The only circumstance in which the regulation could be determined to require a calculation "different" from Section 9.2, in derogation of High Point's property rights, would be if some tribunal, State or Federal, authoritatively so held. The clear effect of Section 9.1 is thus to cancel the literal requirements of Section 9.2 in the event the latter are determined to be noncompliant. Section 9.1 thus constitutes a "condition subsequent" saving clause. We have repeatedly declined to give effect to such provisions in deeds of conservation easement. See Coal Property Holdings, LLC, 153 T.C. at 144; Palmolive Bldg. Inv'rs., LLC v. Commissioner, 149 T.C. 380, 405 (2017); Railroad Holdings, LLC v. Commissioner, T.C. Memo. 2020-22, at *18.

In consideration of the foregoing, it is

ORDERED that respondent's Motion for Partial Summary Judgment, filed September 18, 2018, is granted. It is further

ORDERED that the parties shall file, by June 15, 2020, a status report stating their views as to the conduct of further proceedings in this case.

(Signed) Albert G. Lauber
Judge

Dated: Washington, D.C.
May 15, 2020