

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

KATHLEEN L. LIEFER,)
)
 Petitioner,)
)
 v.) Docket No. 637-17
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent.)

ORDER

In a notice of deficiency dated November 1, 2016, respondent determined a deficiency in petitioner’s 2012 Federal gift tax liability with respect to a series of gifts made by petitioner to various donees during that year. The case is now before the Court on petitioner’s motion for partial summary judgment, filed June 29, 2017. Respondent’s objections to petitioner’s motion was filed July 27, 2017, and with leave of Court, petitioner’s response to respondent’s objection was filed August 4, 2017.

By Order dated October 13, 2017, petitioner’s motion was assigned for disposition to the undersigned. Neither party has requested that the motion be set for hearing, and after review of the parties submissions, the Court is satisfied that the motion can be resolved without one. See Rule 50(b)¹.

At least one of the issues in this case involves the effect to be given to what petitioner views as a “formula clause” in the relevant gifting document. Pointing to the similarities between that clause, and what the Court found to be a valid formula clause in Wandry v. Commissioner, T.C. Memo. 2012-88, appeal dismissed (10th Cir. Oct. 17, 2012), petitioner argues that no part of the deficiency can result from a resolution of the dispute between the parties over the value of the relevant gift, that is, an interest in a limited partnership. This is so, according to petitioner, because as in Wandry if a different value is determined for the gift, then the formula clause operates to fix the value of the gift to the amount specified in

¹Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at www.ustaxcourt.gov.

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the gifting document by adjusting the respective limited partnership interests of petitioner and the donee to reflect the different value.

In Wandry the parties stipulated to the taxpayer's/donor's intent and the value of the gift. The submissions of the parties show that these facts remain genuinely in dispute in this case, although it would appear that petitioner considers neither fact to be material.

The former fact is material as it has consequence to whether the adjustment clause in the gifting instrument is an ineffective savings clause, or whether the adjustment clause in this case constitutes what the Court in Wandry found to be a valid formula clause. Furthermore, the value of the gift that is the subject of petitioner's motion must first be determined before the calculation contemplated in what petitioner considers to be a valid "formula clause" can be completed so that the appropriate adjustment to the limited partnership interests of petitioner and the donee can be given effect. As noted in Wandry, the "adjustment may have significant Federal tax consequences", and without establishing the value of the relevant gift, the Court would be doing nothing more than "passing judgment on a moot * * * [issue] or issuing merely a declaratory judgment". The Court did not do so in Wandry, and we are unwilling to do so here.

Because there are genuine disputes of material facts, see Rule 121, it follows and is

ORDERED that petitioner's motion is denied.

(Signed) Lewis R. Carluzzo
Special Trial Judge

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