TAX COURT DECISIONS ON CHARITABLE DEDUCTIONS BACK IRS POSITION THAT STRICT CONFORMITY WITH REGULATIONS IS REQUIRED

Charitable contributions, and the associated deductions, have long been a part of the federal income tax system and most taxpayers generally believe that all charitable contributions are deductible. However, the deductibility of charitable contributions is not automatic, as affirmed by two recent Tax Court decisions.

The Tax Court's recent decisions in *Oakhill Woods LLC v. Commissioner*, and *Loube v. Commissioner*, highlight that deduction of large charitable contributions requires strict compliance with the associated regulatory requirements.

The decisions address regulations that were issued by the Treasury because of Congressional concerns that taxpayers were overstating charitable deductions. The regulations mandate increased reporting associated with deducting charitable contributions.[1] For deductions of $5,000 or more arising from noncash charitable contributions, the regulations require more than a dozen items to be disclosed to the IRS.[2] The applicable regulations also require taxpayers to attach to their return an appraisal summary containing the required information. The IRS promulgated Form 8283, Noncash Charitable Contributions, to serve as the required appraisal summary.

Both *Oakhill* and *Loube* involved deductions in excess of $5,000 arising from noncash charitable contributions. In both cases, the charitable deductions were based on suspect valuations of the underlying contribution. In *Oakhill*, the taxpayer claimed a deduction on its 2010 income tax return for its donation of a conservation easement on undeveloped forest property. The valuation appeared suspect because the conservation easement was valued at $20,975 per acre despite the taxpayer's purchase of the land a few years earlier for approximately $2,500 per acre. In *Loube*, the taxpayers purchased property intending to construct a new residence on the property after demolishing the existing home. Less than a month after the acquisition, the taxpayers donated the existing house (but not the land) to a qualifying charity. The taxpayers claimed a deduction of $297,000 on their 2013 income tax return. The valuation appeared suspect because the value of the home that was to be demolished was based on the cost to construct the property as opposed to the fair market value of the property.

In addition to the valuation issues, the taxpayers in both cases failed to include the cost or adjusted basis of the donated property on Form 8283. Cost or adjusted basis is one of the items the regulations specifically requires to be included on the appraisal summary.

In both cases, the IRS disallowed the deductions for failing to establish the fair market value of the donated property and failing to strictly comply with all the reporting requirements associated with noncash charitable contributions. The taxpayers filed petitions with the Tax Court challenging the IRS's determinations. In both cases, the IRS filed motions for summary judgment, arguing that it was entitled to decisions in its favor without trial, because the taxpayers failed to include the cost or adjusted basis of the donated property on Form 8283 as required by the regulations. In opposition, the taxpayers argued that they

[1] See T.D. 8199.
[2] Treas. Reg. § 1.170A-13.

substantially complied with the reporting requirement by including the required information elsewhere on their returns or in on an attachment to their returns.

In *Loube*, for example, the taxpayer attached a copy of an appraisal which contained the cost or adjusted-basis information that was missing from Form 8283. In *Oakhill* the taxpayer argued that the missing cost or adjusted-basis information was included on Schedule L, the balance sheet and schedules included with the return. In both cases, the Tax Court granted the IRS's requests for summary judgment.[3] In rejecting the taxpayers' substantial compliance arguments, the Tax Court noted that the regulations added the appraisal summary requirement so that the IRS could efficiently review and flag potentially overvalued charitable deductions from the face of Form 8283 without slogging through other aspect of the returns and attachments. As such, the Tax Court reasoned that taxpayers cannot substantially comply with the regulatory requirements without completely and accurately filling out Form 8283 with the required information.

The decisions are particularly noteworthy for those involved in planning future charitable deductions because the Tax Court's decisions did not turn on the suspect valuations. Instead, the Tax Court focused on strict compliance with the regulatory requirements. Thus, the IRS could argue in future cases that the court's holdings extend to deductions that, although properly valued, are not reported in strict compliance with the regulations. As such, taxpayers and their advisors should give careful attention to satisfying the reporting requirements when planning large charitable deductions.

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[3] The court's decisions were consistent with its holdings on this issue in 2017 and 2018. *See Bellair Woods, LLC v. Commission*er, T.C. Memo 2018-159 (Sep. 20, 2018), *RERI Holdings I, LLC v. Commissioner*, 149 T.C. 1 (Jul. 3, 2017).