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TaxNewsFlash

United States

No. 2020-315
May 13, 2020

Eleventh Circuit: Conservation easement on golf course eligible for charitable deduction

The U.S. Court of Appeals for the Eleventh Circuit today reversed the U.S. Tax Court in a case concerning a taxpayer's claim for a charitable deduction for donating a conservation easement over property that included a private golf course and undeveloped land.

The IRS had disallowed the deduction, and the Tax Court agreed. The Eleventh Circuit—noting that without the golf course, the easement would have satisfied the requirements of section 170(h)(4)(A)(ii) and (iii)(I)—reversed the Tax Court by concluding that the Code does not disqualify an easement just because it includes a golf course.

The case is: *Champions Retreat Golf Founders, LLC v. Commissioner*, No. 18-14817 (11th Cir. May 13, 2020). Read the Eleventh Circuit's **decision** [PDF 83 KB] that includes an opinion concurring in part and dissenting in part.

Summary

The taxpayer developed land along the Savannah River, north of Augusta, Georgia, into a private golf course and homesites. About 57 acres, consisting primarily of bottomland forests and wetlands, remained undeveloped. The land was home to "abundant species of birds … to the regionally declining southern fox squirrel, and to a rare plant species." The land was not accessible to the public, but the property was readily observable to members of the public from the Savannah and Little Rivers.

In 2010, the taxpayer contributed a conservation easement to a trust to hold and enforce the conservation easement and preserve natural habitats and environmentally sensitive areas. The easement covered 348 acres consisting of the undeveloped land and the golf course, including the driving range, but not including the golf course buildings and parking lot. The easement also did not include the homesites. The taxpayer claimed a charitable deduction of about $10 million for the contribution. The IRS disallowed the deduction, and the taxpayer petitioned the Tax Court which in 2018 upheld the disallowance of the deduction.

The taxpayer appealed, and today the Eleventh Circuit reversed, vacated, and remanded the Tax Court's decision for a proper determination of the amount of the deduction.

The Eleventh Circuit stated that at issue was whether the taxpayer contributed the easement for "the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem" or for "the preservation of open space … for the scenic enjoyment of the general public [that] will yield a significant public benefit."

As the appellate court explained, conservation easements across golf courses qualify for a deduction if they meet the otherwise-applicable standards:

> *The Code allows a deduction for an easement contributed for 'the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem.' Under this provision and the implementing regulation, [the taxpayer] is entitled to a deduction if its easement includes habitat for 'rare, endangered, or threatened species of animal, fish, or plants,' or if the easement contributes to the 'ecological viability' of the adjacent national forest. These are the standards that apply despite the presence of a golf course on part of the property. The Code requires only a 'relatively natural habitat . . . or similar ecosystem,' not that the land itself be relatively natural.*

KPMG observation

The treatment of a charitable contribution deduction for the donation of a conservation easement continues to be addressed by the courts. One issue has been whether the conservation purposes of the easement are protected in perpetuity. See, for example, today's **Tax Court memorandum opinion** [PDF 63 KB] in *Woodland Property Holdings, LLC v. Commissioner*, T.C. Memo 2020-55 (May 13, 2020) (judgment for IRS; conservation purpose underlying the easement found not to be "protected in perpetuity" as required by section 170(h)(5)(A)).