2010

Conservation Easement Appraisal Rules and Questions

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CONSERVATION EASEMENT APPRAISAL RULES AND QUESTIONS

by

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APPRAISAL RULES AND QUESTIONS

APPRAISAL RULES

What follows is from the Treasury Regulations under Section 170(h).

(3) Perpetual conservation restriction **[I have inserted numbers 1-4 in bold below; they do not appear in the text of the regulation]**

(i) In general.

The value of the contribution under section 170 in the case of a charitable contribution of a perpetual conservation restriction is the fair market value of the perpetual conservation restriction at the time of the contribution. See section 1.170A-7(c). **(1)** If there is a substantial record of sales of easements comparable to the donated easement (such as purchases pursuant to a governmental program), the fair market value of the donated easement is based on the sales prices of such comparable easements. **(2)** If no substantial record of market-place sales is available to use as a meaningful or valid comparison, as a general rule (but not necessarily in all cases) the fair market value of a perpetual conservation restriction is equal to the difference between the fair market value of the property it encumbers before the granting of the restriction and the fair market value of the encumbered property after the granting of the restriction. **(3)** The amount of the deduction in the case of a charitable contribution of a perpetual conservation restriction covering a portion of the contiguous property owned by a donor and the donor's family (as defined in section 267(c)(4)) is the difference between the fair market value of the entire contiguous parcel of property before and after the granting of the restriction. **(4)** If the granting of a perpetual conservation restriction after January 14, 1986, has the effect of increasing the value of any other property owned by the donor or a related person, the amount of the deduction for the conservation contribution shall be reduced by the amount of the increase in the value of the other property, whether or not such property is contiguous. If, as a result of the donation of a perpetual conservation restriction, the donor or a related person receives, or can reasonably expect to receive, financial or economic benefits that are greater than those that will inure to the general public from the transfer, no deduction is allowable under this section. However, if the donor or a related person receives, or can reasonably expect to receive, a financial or economic benefit that is substantial, but it is clearly shown that the benefit is less than the amount of the transfer, then a deduction under this section is allowable for the excess of the amount transferred over the amount of the financial or economic benefit received or reasonably expected to be received by the donor or the related person. For purposes of this paragraph (h)(3)((i), related person shall have the same meaning as in either section 267(b) or section 707(b). (See example (10) of paragraph (h)(4) of this section.)

<u>Here is section 267(c)(4) of the tax code</u>:

(4) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

<u>Here is section 267(b)</u>:

(b) Relationships

The persons referred to in subsection (a) are:

(1) Members of a family, as defined in subsection (c)(4);

(2) An individual and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

(3) Two corporations which are members of the same controlled group (as defined in subsection (f));

(4) A grantor and a fiduciary of any trust;

(5) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(6) A fiduciary of a trust and a beneficiary of such trust;

(7) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(8) A fiduciary of a trust and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(9) A person and an organization to which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or indirectly by such person or (if such person is an individual) by members of the family of such individual;

(10) A corporation and a partnership if the same persons own--

(A) more than 50 percent in value of the outstanding stock of the corporation, and

(B) more than 50 percent of the capital interest, or the profits interest, in the partnership;

(11) An S corporation and another S corporation if the same persons own more than 50 percent in value of the outstanding stock of each corporation;

(12) An S corporation and a C corporation, if the same persons own more than 50 percent in value of the outstanding stock of each corporation; or

(13) Except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.

<u>Here is section 707(b)</u>:

(b) Certain sales or exchanges of property with respect to controlled partnerships

(1) Losses disallowed

No deduction shall be allowed in respect of losses from sales or exchanges of property (other than an interest in the partnership), directly or indirectly, between--

(A) a partnership and a person owning, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in such partnership, or

(B) two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

In the case of a subsequent sale or exchange by a transferee described in this paragraph, section 267(d) shall be applicable as if the loss were disallowed under section 267(a)(1). For purposes of section 267(a)(2), partnerships described in subparagraph (B) of this paragraph shall be treated as persons specified in section 267(b).

(2) Gains treated as ordinary income

In the case of a sale or exchange, directly or indirectly, of property, which in the hands of the transferee, is property other than a capital asset as defined in section 1221--

(A) between a partnership and a person owning, directly or indirectly, more than 50 percent of the capital interest, or profits interest, in such partnership, or

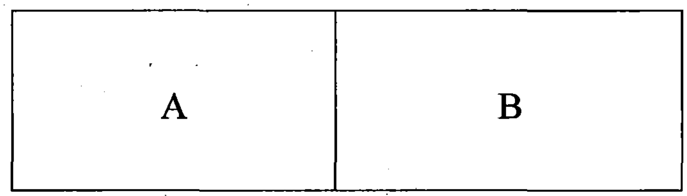
(B) between two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests, any gain recognized shall be considered as ordinary income.

(3) Ownership of a capital or profits interest

For purposes of paragraphs (1) and (2) of this subsection, the ownership of a capital or profits interest in a partnership shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) other than paragraph (3) of such section.

APPRAISAL QUESTIONS

PART I



Aunt Sally donates a conservation easement on Lot A. What does the appraiser need to value (before and after, enhancement, etc.) to comply with the Treasury Regulations. Assume Lots A and B are owned as follows.

1. A – Aunt Sally
   B – Aunt Sally

2. A – Aunt Sally
   B – Sally's daughter Connie

3. A – Aunt Sally
   B – Sally's Family LLC #1 (Sally 60%; Connie 20%; Sally's son Bob 20%)

4. A – Aunt Sally
   B – Sally's Family LLC #2 (Sally 34%; Connie 33%; Bob 33%)

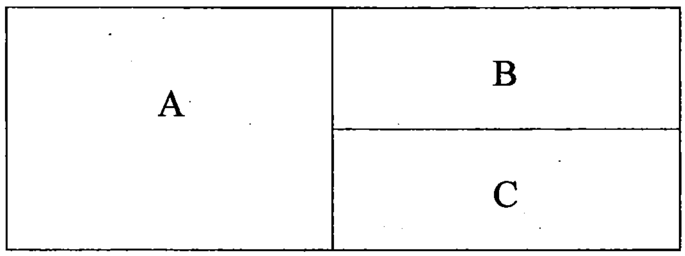
5. A – Aunt Sally
B – Wentworth Family LLC #1 (Sally 60%; Cousin Alice 20%; Cousin Bertie 20%)

6. A – Aunt Sally
B – Wentworth Family LLC #2 (Sally 34%; Alice 33%; Bertie 33%)

7. A – Sally Family LLC #1
B – Wentworth Family LLC #1

8. A – Sally Family LLC #1
B – Wentworth Family LLC #2

PART II



Aunt Sally donates a conservation easement on Lot A. What does the appraiser need to value (before and after, enhancement, etc.) to comply with the Treasury Regulations. Assume Lots A, B, and C are owned as follows.

1. A – Aunt Sally
   B – Connie (Sally's daughter)
   C – Bob (Sally's son)

2. A – Aunt Sally
   B – Connie
   C – Bob's son Willie

3. A – Aunt Sally
   B –Connie
   C – Sally's Family LLC #1

4. A – Aunt Sally
   B – Bob
   C – Wentworth Family LLC #1

5 A – Aunt Sally
B – Bob
C – Wentworth Family LLC #2

What are some of the observations we can make about these rules?

First, a **person** donor can have related family members that can trigger rule three or rule four.

Second, a **person** donor can have related entities that can trigger rule four, but not rule three.

Third, a donation by an **entity** on a portion of the contiguous property owned by that donor can trigger rule three.

Fourth, a donation by an **entity** could trigger rule four.

Fifth, if two **entities** own abutting land, a donation by one of the entities on all its contiguous property will never trigger rule three (in other words, even if the entities are related, they are not the same donor).