

146 T.C. No. 13

UNITED STATES TAX COURT

DOUGLAS G. CARROLL, III AND DEIRDRE M. SMITH, Petitioners v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 5445-13.

Filed April 27, 2016.

In 2005 Ps contributed a conservation easement on a parcel of land to two qualified organizations. Ps' conservation easement provides that, in the event that the conservation purpose is extinguished because of an unexpected change in circumstances surrounding the donated property, the donee organizations are entitled to a proportionate share of extinguishment proceeds at least equal to (1) the amount allowable as a deduction for Federal income tax purposes over (2) the fair market value of the property at the time of the contribution. Ps claimed a charitable contribution deduction on their 2005 Federal income tax return and carried forward the remaining deduction to their taxable years 2006, 2007, and 2008.

I.R.C. sec. 170(h) allows a deduction for a "qualified conservation contribution." A qualified conservation contribution requires that the contribution be exclusively for conservation purposes. I.R.C. sec. 170(h)(1)(C). For a contribution to be made exclusively for conservation purposes, the conservation purpose must be protected in perpetuity. I.R.C. sec. 170(h)(5)(A).

Sec. 1.170A-14(g)(6)(ii), Income Tax Regs., provides that the conservation purpose of a contribution is not protected in perpetuity unless the contribution “gives rise to a property right, immediately vested in the donee organization, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the property as a whole at that time. * * * Accordingly, when a change in conditions give rise to the extinguishment of a perpetual conservation restriction under paragraph (g)(6)(i) of this section, the donee organization, on a subsequent sale, exchange, or involuntary conversion of the subject property, must be entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction”.

Held: Ps’ easement provides that the value of the contribution for purposes of determining the donees’ rights to extinguishment proceeds is the amount of Ps’ allowable deductions rather than the fair market value of the easement and therefore does not comply with the requirements of sec. 1.170A-14(g)(6), Income Tax Regs. The conservation purpose is not protected in perpetuity as required by I.R.C. sec. 170(h)(5)(A).

Held, further, Ps are liable for accuracy-related penalties under I.R.C. sec. 6662.

Scott A. Schwartzberg, David J. Polashuk, and William J. Marchica, for petitioners.

Michael A. Raiken, Elizabeth C. Mourges, and Nancy M. Gilmore, for respondent.