Brian Bojo Tax Moment
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Latest Conservation Land Easement Decision: Deduction Adjusted to $0 Due to Lack of Basis on 8283

Yesterday the US Tax Court issued its opinion in Oakhill Woods, LLC v. Commissioner.[1] The property that would eventually be placed into a conservation easement ("Property") was originally part of thousands of acres of undeveloped forest property in Effingham County, all of which was owned by a subsidiary of a large paper-products company. This company was in the process of liquidating its real property holdings in the wake of the 2008 financial crisis when the promoter came along and acquired the Property. The promoter hired Forever Forests, LLC – owned and operated by Nancy Zak – to consult on a number of issues related to a conservation easement. Dave Roberts was hired to prepare a qualified appraisal of the proposed conservation contribution.

In and around 2010, it was very common to hear advisors (including Ms. Zak) take the position that it was not necessary to include the property's basis on IRS Form 8283.[2] Oakhill Woods, LLC followed this advice and declined to list the Property's basis (the opinion gets into their reasoning, and the Court doesn't buy any of it). Due to this failure to list the basis, the Tax Court agreed with the IRS that the original deduction of $7.9M should be adjusted to $0.

This is the latest in a line of cases that explore the line between strict compliance and substantial compliance. What does this mean? Imagine you are given a job to do, along with a checklist of 100 tasks, and if you do them you get $100. Some of the tasks confuse you, but you give it the old college try and you complete 99 of those tasks. Have you done the job, and do you get the $100? Under a substantial compliance theory, you have completed 99% of the job, and the facts show that you worked diligently and gave it your all, so you should still get the $100. Under a strict compliance theory, you only completed 99 tasks, which means you didn't complete 100 tasks, which means you get $0.

The government has consistently taken a strict compliance approach to conservation easement cases. Using my hypothetical, a taxpayer can complete 99 out of 100 requirements to get the deduction, and in the government's mind that means the taxpayer gets $0. This is the case in spite of taxpayers arguing in a number of cases that the requirements are confusing, unduly burdensome, don't make sense, and may be unrelated to anything having to do with a conservation easement (this last thought is partly what Oakhill Woods argued). Bringing this example back to the Oakhill Woods case, Oakhill Woods can satisfy 99 out of 100 requirements, but listing the property's basis on the 8283 is a requirement they did not meet, so they get a deduction of $0.

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[1] https://www.ustaxcourt.gov/UstcInOp/OpinionViewer.aspx?ID=12170

[2] https://www.irs.gov/pub/irs-pdf/f8283.pdf

To date, the Tax Court as a group has stuck with a strict compliance approach in conservation land easement cases. Some of the judges have wondered aloud whether a substantial compliance approach may be appropriate in certain circumstances, but as a group, they remain committed to strict compliance. From a tax policy perspective, this position is consistent with tax law doctrine that deductions are matters of legislative grace, and a taxpayer's responsibility is to fulfill <u>all</u> requirements placed on them by Congress and Treasury in claiming them.

An article about the Oakhill Woods case, along with the case itself, is attached. Judge Lauber writes well and the opinion is relatively easy reading. Anson Asbury, who practices in Decatur and argued the case on behalf of Oakhill Woods, is a friend of our firm and I am happy to take your questions about this case to him.

UGA Seeks to Avoid Excise Tax on Smart/Crean's Salaries
[This is another interesting story we are following.](#)[3] Under the [Tax Cuts and Jobs Act of 2017,](#)[4] sometimes called the "Trump Tax Cuts", certain tax exempt organizations are subject to an excise tax of 21% on compensation above $1M to any of their five highest paid employees. At issue is whether Kirby Smart and/or Tom Crean are employees of the University of Georgia (UGA), which operates as an arm of the State of Georgia, or the University of Georgia Athletic Association (UGAA), which is a 501(c)(3) tax exempt organization. Smart earns a base salary of $500,000 from UGA, while Crean earns a base salary of $400,000 from UGA. Smart's total compensation in 2019 was around $6.7M – the amount over $500k was comprised of bonuses, benefits, and assurances paid to Coach Smart by UGAA. Crean's total compensation was approx. $3.2M, with anything over the 400k he received from UGA coming from UGAA.

Given at least three factors – (1) rapidly escalating salaries of coaches and assistant coaches at public "football" universities around the country, and (2) the growing discussion around name, image, and likeness rights for college athletes, and (3) word that the NCAA will seek an anti-trust exemption from Congress – it will be interesting to see if the IRS begins to scrutinize coaching arrangements like this and assess excise taxes against athletic associations around the country. The Athens Banner-Herald reports that this would result in a tax bill of approximately $1.7M for the UGAA for tax year 2019.

Coaches Smart and Crean have written contracts that state they are employed by the University System of Georgia at the University of Georgia. These written agreements are one piece of evidence the government would consider if it sought to show that, from a form over substance standpoint, these men are actually employees of UGAA. Other factors would include how their job activities are directed and controlled, where they spend their working hours, and the like.

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[3]https://www.onlineathens.com/sports/20200210/georgia-seeks-to-avoid-excise-tax-on-highest-paid-coaches

[4] https://en.wikipedia.org/wiki/Tax_Cuts_and_Jobs_Act_of_2017