

J. Cohen

**ORIGINAL**

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U.S. TAX COURT  
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JAN 27 2009

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UNITED STATES TAX COURT  
UNITED STATES  
TAX COURT

HUDA T. SCHIEDELMAN &  
ETHAN W. PERRY,

Petitioner,

v.

Docket No. 15171-08

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

**RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

RESPONDENT MOVES, pursuant to the provisions of Tax Court Rule 121, for summary judgment in Respondent's favor upon the issue of whether Petitioner, Huda T. Schiedelman ("Schiedelman") has properly substantiated her facade easement deduction by providing a "qualified appraisal" within the meaning of Treasury Regulation section 1.170A-13(c)(3), and (2) satisfying the subordination and proceeds requirement under Treasury Regulations § 1.170A-14(g)(2)&(6)(ii), respectively.

IN SUPPORT THEREOF, Respondent respectfully provides the following summary of the relevant undisputed facts, as well as a Memorandum of Law in Support of Respondent's Motion for Partial Summary Judgment ("Respondent's Memorandum of Law") and a Declaration of Attorney Michael Medina along with Exhibits 1-R through 8-R, which Respondent is filing contemporaneously herewith and which Respondent incorporates herein by reference:

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S.T. JUDGE	Cohen
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U.S. TAX COURT  
**DENIED**  
  
MAR 30 2009

SERVED MAR 31 2009

(Signed) Mary Ann Cohen  
Judge

1. The pleadings in this case were closed on July 30, 2008.
2. This motion is made at least 30 days after the date that the pleadings in this case were closed and within such time as not to delay the trial. See Tax Court Rule 121(a).
3. At the time of filing the Petition in this case, Petitioners, Schiedelman and Ethan W. Perry ("Perry") resided in Wappingers Falls, New York.
4. In the notices of deficiency upon which this case is based, Respondent determined Petitioners' deficiencies in income tax and additions to tax as follows:

<u>Year</u>	<u>Deficiency</u>	<u>Additions to Tax/Penalties I.R.C.S</u>
		<u>6662 (a)</u>
2004	\$16,873.00	\$3,374.60
2005	\$17,537.00	\$3,507.40
2006	\$1,015.00	\$203.00

The deficiency and requisite penalty for the 2004 tax year relate to a 2004 façade easement charitable contribution made by Schiedelman in the amount of \$115,000. The 2005 and 2006 deficiencies and requisite penalties are based on carryovers from Scheidelman's 2004 façade easement deduction. See Exhibits 1-R and 2-R Notices of Deficiency for taxable years 2004, 2005, and 2006.

5. Scheidelman's 2004 individual federal income tax return was deemed filed on April 15, 2005. See Exhibit 3-R 2004 tax return.

6. Scheidelman's 2005 individual federal income tax return was deemed filed on April 15, 2006. See Exhibit 4-R 2005 tax return.

7. Scheidelman's 2006 joint federal income tax return, filed with Perry was deemed filed on April 15, 2007. See Exhibit 5-R 2006 tax return.

8. On March 21, 2008, Respondent mailed to Scheidelman's last known address a statutory notice of deficiency for 2004 and 2005, reflecting the tax deficiencies and additions to tax. See Exhibit 1-R.

9. On March 21, 2008, Respondent mailed to Scheidelman's and Perry's last known address a joint statutory notice of deficiency for 2006 reflecting the tax deficiency and addition to tax. See Exhibit 2-R.

10. On June 19, 2007, in an envelope postmarked June 16, 2008, Petitioners timely filed a Petition from the Notices of Deficiency for 2004, 2005, and 2006.

11. In the petition, Petitioners allege that Respondent erred in disallowing Scheidelman's 2004 façade easement charitable deduction. Petitioners allege no further errors or facts in their joint petition.

12. The subject property in this case, currently owned by Scheidelman, is located at 374 Vanderbilt Avenue, Brooklyn, New York (hereinafter the "Property"). The structure is individually listed on the National Register of Historic Places and is located in a certified historic district.

13. On or about September 17, 2003, Scheidelman granted an Open Space and Architectural Façade Conservation Easement on the Property which the donee accepted on or about June 23, 2004. See Exhibit 6-R Deed of Easement.

14. The parties to the Deed of Easement included Scheidelman as the Grantor and the Trust for Architectural Easements, formerly known as the National Architectural Trust, Inc., (hereinafter "TAE" or "NAT") as the Grantee. See Exhibit 6-R Deed of Easement.

15. On her 2004 return, Schedule A, line 16, Scheidelman reported a charitable contribution other than by cash or check in the amount of \$115,000. See Exhibit 3-R, Schedule A. Respondent disallowed the entire \$115,000.

16. Scheidelman attached Form 8283 to the 2004 return. Form 8283 is required to be included with a return for noncash charitable contributions of over \$500.

17. Although the second page of the Form 8283 did not contain all the information required on the form, the following information was included: (1) a description of the donated

property as a "Historic Preservation Easement Donation"; (2) a stated appraised fair market value of the easement of \$115,000; (3) a declaration signed by Michael B. Drazner, Mitchell, Maxwell & Jackson, Inc., real estate appraisals, with the date of appraisal as May 20, 2004; and (4) an acknowledgement of receipt signed by James Kearns, President of the National Architectural Trust (now known as the Trust for Architectural Easements), 1906 R Street, NW, Suite 100, Washington, D.C. 20009 as the donee/recipient of a façade easement received on June 23, 2004.

18. During Scheidelman's audit with the IRS, Scheidelman provided to the audit examiner an appraisal prepared by Michael B. Drazner of Mitchell, Maxwell & Jackson, Inc., (hereinafter "Drazner" or the "Drazner Appraisal"). See Exhibit 7-R the Drazner Appraisal.

19. For the reasons set forth in Respondent's Memorandum of Law and incorporated herein by reference, the façade easement does not satisfy either the "qualified appraisal" requirement nor the subordination and proceeds requirement and thus, as a matter of law, the 2004 claimed charitable contribution deduction should be disallowed in full.

20. If the Court were to grant this motion, the only issue that would remain is whether Petitioners are liable for the additions to tax pursuant to I.R.C. §6662(a).

21. Respondent respectfully submits that counsel of record has reviewed the administrative file and on the basis of the review of the file and the pleadings submits that there remains no genuine issue of material fact for trial upon the issue of whether Schiedelman is prohibited from claiming a charitable contribution deduction for a façade easement on her 2004 individual income tax return.

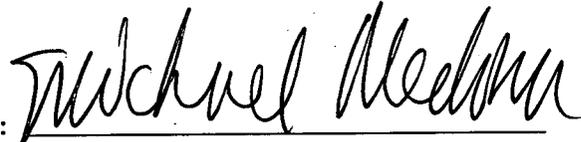
22. Petitioners object to the granting of this motion.

WHEREFORE, it is prayed that this motion be granted.

CLARRISA C. POTTER  
Acting Chief Counsel  
Internal Revenue Service

Date: JAN 26 2009

By:



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(Small Business/Self-Employed)

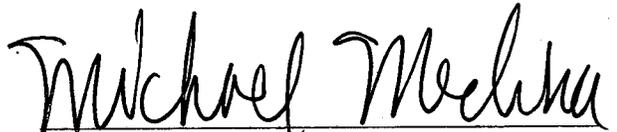
Docket No. 15171-08

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT was served on Petitioners by mailing the same on JAN 26 2009 in a postage paid wrapper addressed as follows:

Huda T. Schiedelman  
Ethan W. Perry  
63 Channingville Road  
Wappingers Falls, NY 12590-2238

Date: JAN 26 2009

  
MICHAEL MEDINA  
Attorney  
(Small Business/Self-Employed)  
Tax Court Bar No. MM0998