

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

1982 EAST, LLC., SOLOMON D.)	
ASSER, TAX MATTERS PARTNER,)	
)	
)	
)	
Petitioner,)	
)	
v.)	Docket No. 30052-08.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

O R D E R

On December 10, 2009, this case was submitted to the Court for decision. One issue in this case is the applicability of the 40-percent gross valuation misstatement accuracy-related penalty under section 6662(h), I.R.C. Respondent primarily determined that that penalty applies to this case. Respondent determined alternatively that the accuracy-related penalties under section 6662(b)(1) and/or (2) applied to this case.

On April 26, 2010, the Court held in Kaufman v. Commissioner, 134 T.C. ____ (2010), that a facade easement contribution similar to the one here failed to satisfy the subordination requirement in section 1.170A-14(g)(6), Income Tax Regs., and thus failed to satisfy the enforceability in perpetuity requirement under section 170(h)(2)(C) and (5)(A), I.R.C., because the mortgagee had retained a preferential claim vis-a-vis NAT to all proceeds of condemnation and to all insurance proceeds as a result of any casualty, hazard, or accident occurring to or about the property. The Court noted that respondent had conceded that such a holding meant that the gross misstatement valuation penalty would not apply.

Upon due consideration of the record in this case in the light of Kaufman v. Commissioner, supra, and the referenced concession therein, it is

ORDERED that respondent shall by the close of business on August 11, 2010, inform petitioner's counsel whether a similar concession applies to this case. It is further

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ORDERED that if a similar concession does apply to this case, then respondent shall by August 13, 2010, file with the Court a Statement stating as such. It is further

ORDERED that if a similar concession does not apply to this case, each party shall by August 13, 2010, file with the Court a Memorandum of Law that sets forth that party's position as to whether the gross misstatement valuation penalty of section 6662(h), I.R.C., applies to this case were the Court to decide this case similarly to Kaufman v. Commissioner, supra.

(Signed) David Laro
Judge

Dated: Washington, D.C.
August 10, 2010