



DEPARTMENT OF THE TREASURY
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February 27, 2010

FACSIMILE TRANSMITTAL FORM

TO: John Barrie

Fax (212) 261-9890

FROM: MICHAEL D. WILDER
Attorney
(Large and Mid-Size Business)

This transmittal contains 10 pages (including this cover sheet). If you do not receive all of the pages, please call us at the telephone number listed above.

COMMENTS: Pursuant to our discussion today, attached is a copy of our Statement previously served on you on February 25, 2010.

If you have any questions, please call me at (917) 421-4669.

Sent by: _____

Time: _____

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UNITED STATES TAX COURT

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

STATEMENT RE: THE TRUST'S MOTION FOR LEAVE TO FILE AN AMICUS BRIEF IN THIS CASE

RESPONDENT OBJECTS to the Trust for Architectural Easement's ("Trust") Motion for Leave to File an Amicus Brief in Support of Petitioner.

IN SUPPORT THEREOF, respondent respectfully states:

1. On February 17, 2010, the Trust for Architectural Easement's Motion for Leave to File an Amicus Brief in Support of Petitioner was filed with the Court.
2. On February 19, 2010, the Court ordered each party to file by February 26, 2010, with the Court a "Statement Re: The Trust's Motion for Leave to File an Amicus Brief in This Case" that sets forth that party's position as to whether the Court should grant or deny the Trust's motion. The Court ordered that the statement shall also discuss what weight, if any, the Court should give to any assertion as to the credibility of Respondent's expert witness Robert Von Ancken, contained in the Trust's motion or in its lodged amicus brief.

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3. Whether the Court should grant a Motion for Leave to File an Amicus Brief is a matter within the Court's discretion. Erwin v. Commissioner, T.C. Memo. 1986-474. In exercising its discretion, the Court should consider whether the movant makes any "credible argument" that the parties before the Court cannot "fully and completely address all aspects" of the case. Id.

4. The Court may also consider whether the movant "may be more knowledgeable than a party as to facts underlying particular arguments" or whether the movant is in a "superior position" to inform the Court of the effect of its decision on interests other than those of the parties. Id.; see also F.R.A.P. 29(b). In addition, the Court has taken into account whether "proffered information is timely, useful, or otherwise helpful" when the amicus brief is lodged with the Court before it ruled on the attendant motion for leave. Trump Village Section 3, Inc. v. Commissioner, T.C. Memo. 1995-281 (denying motion for leave to file brief as amicus curiae).

5. Petitioner and Respondent are fully capable of adequately addressing the issues and the Trust makes no credible argument otherwise. Both parties have filed extensive Pretrial Memoranda, Pretrial Briefs, and Opening Briefs and will be filing second briefs exclusively to point out discrepancies in opposing party's findings of fact as ordered by the Court.

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6. Regarding the Trust's allegation that it is the true party in interest on the grounds that the Trust purportedly drafted over 800 deeds of easement substantially similar to the terms of the Deed of Easement in this case, Petitioner is fully capable of addressing the issues and allowing the Trust to file an Amicus Brief would not add anything useful.

7. Further, the Trust has not shown that it is more knowledgeable about the arguments in this case or in a superior position to address the issues. The Trust has not established that it can provide any related useful or helpful information not otherwise provided by the parties. Petitioner's Opening Brief and the lodged Brief of Amicus Curiae Trust for Architectural Easements in Support of Petitioner are essentially identical with the same Arguments and similar Proposed Findings of Fact, except for the allegations regarding Respondent's expert witness Robert Von Ancken.

8. Granting leave for the filing of an amicus brief by an entity that has not proffered information that is timely, useful, or otherwise helpful and the probable need to permit the parties to file responses, will delay rather than advance "the just, speedy, and inexpensive determination" of this case. Tax Court Rule 1(d).

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9. Respondent's Counsel first learned of the Trust's allegations regarding Robert Von Ancken when the Trust served its Motion for Leave to File an Amicus Brief. Respondent's Counsel then contacted Robert Von Ancken on February 22, 2010. Robert Von Ancken then provided an Affidavit, attached hereto as Exhibit A. As stated in the attached Affidavit of Robert Von Ancken, Leslie Garfield, the other 50% owner of 127 MacDougal Associates, contacted Robert Von Ancken with the idea of donating a facade easement to the Trust. The Trust gave Robert Von Ancken a list of potential appraisers, attached hereto as Exhibit B, to value the facade easement and he chose the least expensive one to prepare the appraisal. During the course of preparing the application to the Trust and ordering the appraisal, Robert Von Ancken "was dubious that a deduction of federal taxes could be obtained" for gifting a facade easement on the property. Upon receipt of the appraisal, Robert Von Ancken concluded that "there was simply no proof" that the donation of the facade easement would reduce the value of the property. At the same time Robert Von Ancken and his partner learned that the building "was not listed on the National Historic Register." Robert Von Ancken and his partner then terminated the application to donate a facade easement.

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10. As the Trust acknowledges, Robert Von Ancken's actions with respect to the property in which he had an interest is not determinative of the value of Petitioner's noncash contribution to the Trust in this case. Furthermore, Robert Von Ancken's decision to terminate the application to donate a facade easement on property in which he had an interest only bolsters his credibility.

11. Regarding the allegations involving Robert Von Ancken, if the Court does not deny the Trust's Motion for Leave to File an Amicus Brief, Respondent requests that the Court reopen the record to allow cross examination of Robert Von Ancken as well as any necessary redirect examination of Robert Von Ancken to address all the allegations raised in the Trust's Motion for Leave to File an Amicus Brief regarding Robert Von Ancken's consideration of a donation of a facade conservation easement to the Trust in connection with property at 127 MacDougal Street, New York, New York, of which Robert Von Ancken, through an entity called 127 MacDougal Associates, had a 50% interest.

12. The Court should not give any weight to the Trust's assertion as to the credibility of Respondent's expert witness Robert Von Ancken because the Trust's assertion of facts relating to Robert Von Ancken's consideration of a donation of a facade conservation easement to the Trust in connection with

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property at 127 MacDougal Street, New York, New York are not in the record. To the extent the Court has any concern about this assertion, the Court can reopen the record.

WHEREFORE, it is prayed that the Trust for Architectural Easement's Motion for Leave to File an Amicus Brief in Support of Petitioner be denied.

FEB 25 2010

Date: _____

WILLIAM J. WILKINS
Chief Counsel
Internal Revenue Service

By: Michael D. Wilder

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ELIZABETH P. FLORES
Associate Area Counsel
(Manhattan)
(Large & Mid-Size Business)

February 22, 2010

Affidavit

To: Michael Wilder

Re: 127 MacDougal Street, New York, NY

I am a 50% owner of the LLC that owns 127 MacDougal Street. My partner who owns the other 50% is Leslie Garfield

At or around 2004, Mr. Garfield contacted me with the idea of gifting the façade of our townhouse at 127 MacDougal Street to the National Architectural Trust. Mr. Garfield is a townhouse broker that became aware of façade easements in his business. He asked me to contact the National Architectural Trust which I did.

I received a package of information and afterwards filled out an application some time at the end of 2004. I was provided a list of potential appraisers to value the façade easement and chose the least expensive to prepare an appraisal.

During the course of preparing our application and ordering the appraisal, I was dubious that a deduction of federal taxes could be obtained for gifting a façade.

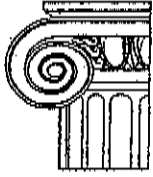
Upon receipt of the appraisal, it was obvious to me that there was simply no proof that the gifting of the façade reduces the value of the property. At the same time we learned that the building would not lend itself to a façade conservation easement because it was not listed on the National Historic Register. I prevailed on Mr. Garfield not to try to have it listed since the concept of this type of gift is not tested in the courts and could create substantial tax problems for both of us. We terminated the application and I requested the return of my initial fee.


Robert Von Ancken

Exhibit No. A
Docket No. 30052-08

*Sworn to before me
this 22nd day of February 2010
Connie Russo*

CONNIE RUSSO
Notary Public, State of New York
No. 24-4943758
Qualified in Richmond County
Commission Expires October 31 2010



NATIONAL ARCHITECTURAL TRUST

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AREA MANAGER

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reardon@natarchtrust.net

APPRAISING EASEMENTS

Listed below are a few commercial appraisers who are familiar with the National Architectural Trust & the Easement Program.

Matthew C Mondanile, MAI
Senior Managing Director
Valuation Advisory Services
Cushman Wakefield, Inc.
51 West 52nd Street
New York, NY 10019
V 212-841-7680
F 212-841-7849
matthew_mondanile@cushwake.com
www.cushwake.com

Jerome Haims, MAI, CRE
President
Jerome Haims Realty, Inc
Real Estate Appraisers & Consultants
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John Cicero, MAI
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Commercial Real Estate Valuation
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Michael Ehrmann
President
Jefferson and Lee
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FAX: (202) 797-5295
www.natarchtrust.com

Exhibit No.

B

ocket No.

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing STATEMENT
RE: THE TRUST'S MOTION FOR LEAVE TO FILE AN AMICUS BRIEF IN THIS
CASE was served on counsel for petitioner by mailing the same on

FEB 25 2010

in a postage paid wrapper addressed as

follows:

John P. Barrie
Bryan Cave LLP
1290 Avenue of the Americas
35th Floor
New York, New York 10104

Date: **FEB 25 2010**

Michael D. Wilder

MICHAEL D. WILDER
Attorney (Manhattan)
(Large & Mid-Size Business)
Tax Court Bar No. WM0412