

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

ESTATE OF GREGORY T. MOUNT,	)	
DECEASED, ALLISON H. COOK,	)	
EXECUTOR, AND ALLISON H. COOK,	)	
	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 17390-09.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER**

This case for the redetermination of a deficiency is before the Court on petitioners' Motion for Partial Summary Judgment, filed February 10, 2011. In their motion, petitioners request rulings in their favor on the following issues: (1) Whether the appraisal report on which petitioners relied to determine the value of a conservation easement is a qualified appraisal for purposes of section 170(f)(11);<sup>1</sup> if not (2) whether the appraisal report substantially complies with the qualified appraisal requirements set forth in section 170(f)(11) and its corresponding regulation; and, if not (3) whether petitioners' failure to comply with the requirements of section 170(f)(11) was due to reasonable cause and not willful neglect under section 170(f)(11)(A)(ii)(II). Respondent's Response in Opposition to petitioners' motion was filed March 17, 2011.

Summary judgment may be granted where there is no genuine issue of any material fact and a decision may be rendered as a matter of law. Rule 121(a) and (b); see Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), affd. 17 F.3d 965 (7th Cir. 1994); Zaentz v. Commissioner, 90 T.C. 753, 754 (1988). The moving party bears the burden of proving that there is no genuine issue of material fact, and factual inferences will be read in a manner most favorable to the party opposing summary

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<sup>1</sup>Section references are to the Internal Revenue Code of 1986, as amended. Rule references are to the Tax Court Rules of Practice and Procedure.

judgment. Dahlstrom v. Commissioner, 85 T.C. 812, 821 (1985);  
Jacklin v. Commissioner, 79 T.C. 340, 344 (1982).

The first issue to which petitioners' motion relates involves a mixed question of law and fact. See Commissioner v. Simmons, \_\_\_ F.3d \_\_\_ (D.C. Cir. 2011), affg. T.C. Memo. 2009-208. A comparison of representations contained in petitioners' motion against representations contained in respondent's response show that there are genuine issues of material fact in dispute with respect to that issue. The other issues addressed in petitioners' motion need only be resolved if the first issue is decided in respondent's favor. Because that has yet to occur, and because a ruling on those issues at this point in the proceedings would be more in the nature of an advisory opinion than resolution by summary adjudication, we will not consider those issues as presently presented. See Greene-Thapedi v. Commissioner, 126 T.C. 1, 13 (2006); LTV Corp. v. Commissioner, 64 T.C. 589 (1975).

Premises considered, it is

ORDERED that petitioners' motion is denied.

**(Signed) Lewis R. Carluzzo**  
**Special Trial Judge**

Dated: Washington, D.C.  
July 5, 2011