

# UNITED STATES TAX COURT

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

Pages: 1 through 6  
Place: Washington, D.C.  
Date: November 23, 2011

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## HERITAGE REPORTING CORPORATION

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 COMMISSIONER OF INTERNAL REVENUE, )  
 )  
 Respondent. )

South Courtroom  
 U.S. Tax Court  
 400 Second Street, N.W.  
 Washington, D.C.

Wednesday,  
 November 23, 2011

The above entitled matter came on for motion  
 hearing, pursuant to notice, at 10:28 a.m.

BEFORE: HONORABLE LEWIS R. CARLUZZO  
 Special Trial Judge

APPEARANCES:

For the Petitioners:

(No Appearance.)

For the Respondent:

NANCY LEE, Esquire  
 Internal Revenue Service  
 Office of General Counsel  
 455 Massachusetts Avenue, N.W., 5th Floor  
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P R O C E E D I N G S

(10:28 a.m.)

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2  
3 THE CLERK: Calling Docket No. 17390-09,  
4 Estate of Gregory T. Mount, Deceased, Allison H. Cook,  
5 Executor, and Allison H. Cook.

6 MS. LEE: Nancy Lee for Respondent.

7 THE COURT: Good morning. How are you?

8 MS. LEE: Good.

9 THE COURT: All right. We're here on  
10 Petitioners' motion for partial summary judgment. Did  
11 you receive the 50(c) statement?

12 MS. LEE: Yes.

13 THE COURT: All right. Do you want to add  
14 anything to your opposition or in response to the  
15 50(c) statement?

16 MS. LEE: The only thing that we would like  
17 to say is that Petitioners' motion for partial summary  
18 judgment completely misses the mark.

19 As a reiteration of our response, that  
20 Petitioners are arguing that somehow New York state  
21 law trumps the regulatory and statutory requirement  
22 that the conservation purpose in this case is required  
23 in perpetuity, but it does not.

24 I'm not sure. I mean, a lot of Petitioners'  
25 arguments don't make sense, and I think in our

1 response we were clear in that they --

2 THE COURT: Do we get to that issue? Isn't  
3 there a more fundamental issue as to the validity of  
4 the appraisal? Isn't that where --

5 MS. LEE: The qualified appraisal. That  
6 motion for partial summary judgment was the first  
7 motion for partial summary judgment.

8 THE COURT: Right.

9 MS. LEE: And that was filed earlier this  
10 year. I believe this motion for partial summary  
11 judgment, the hearing that this one is --

12 THE COURT: Do we even get to these? But do  
13 we even get to these issues before ultimately the  
14 issue with respect to the qualified appraisal is  
15 addressed? I mean, are we out of sequence here?

16 MS. LEE: I think there are two different  
17 tracks.

18 THE COURT: I'm sorry?

19 MS. LEE: I think there are two different  
20 tracks. You can address the qualified appraisal  
21 first, or you can address this (g)(6) argument first.  
22 Either way, they are two different arguments and they  
23 relate to two different requirements for  
24 deductibility.

25 So without a qualified appraisal the

1 contribution itself is not properly substantiated, but  
2 without satisfying the Treasury regulations under dash  
3 14(g)(6) the contribution itself is not a qualified  
4 conservation contribution, regardless of whether it's  
5 properly substantiated or not.

6 THE COURT: All right. With respect to the  
7 current motion and the application of New York law and  
8 the influence that has, if they can be addressed in  
9 any sequence where are the factual disputes with  
10 respect to the application of New York law?

11 MS. LEE: I don't believe there are any  
12 factual disputes with respect to the application of  
13 New York law.

14 THE COURT: It's your position that as a  
15 matter of law it doesn't apply?

16 MS. LEE: Yes. Yes, Your Honor. And also  
17 the Court has already addressed this exact same issue  
18 in Kaufman v. Commissioner and in 1982 East v.  
19 Commissioner

20 Kaufman v. Commissioner was a case in  
21 Massachusetts, and that's why the Petitioners argue  
22 that Kaufman doesn't apply because it's in  
23 Massachusetts, not New York. This case is in New  
24 York. But 1982 East v. Commissioner, Your Honor, was  
25 a New York case, and it followed Kaufman.

1 THE COURT: All right. Anything further?

2 MS. LEE: No.

3 THE COURT: All right. I'm going to take  
4 Petitioners' motion under advisement. I'll have to  
5 have a closer look, and we'll see where we go.

6 MS. LEE: Okay.

7 THE COURT: Thank you. Happy Thanksgiving.

8 MS. LEE: Same to you.

9 (Whereupon, at 10:28 a.m., the motion  
10 hearing in the above-entitled matter was concluded.)

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Certificate of Transcriber and Proofreader

CASE NAME: Mount v. Commissioner

DOCKET NUMBER: 17390-09

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 5, inclusive, are the true, accurate and complete transcript prepared from the tape made by electronic recording by W. André Bellamy, on November 23, 2011, before the United States Tax Court at its session in Washington, D.C., in accordance with the applicable provisions of the current verbatim reporting contract of the Court, and have verified the accuracy of the transcript by comparing the printed transcript against the verbal recording.

_____	<u>Karen Levandowski</u>
(Signature of Transcriber)	(Print-Transcriber Name)

11-25-11  
(Date)

_____	<u>Rebecca McCrary</u>
(Signature of Proofreader)	(Print-Proofreader Name)

11-25-11  
(Date)

