UNITED STATES TAX COURT

WASHINGTON, DC 20217

GEORGE & LEILA GORRA,

Petitioners .

v.

Docket No. 15336-10.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

ORDER

This case is before the Court on Petitioners' Motion for Partial Summary Judgment filed November 12, 2010. Respondent's response to petitioners' motion was filed December 15, 2010.

The issues in this case derive from claimed charitable contribution deductions under Internal Revenue Code section 170 as a result of donation of a facade easement to the Trust for Architectural Easements and a related cash payment. The notice of deficiency also determined accuracy-related penalties under section 6662. Neither the cash payment nor the penalties are the subject of petitioners' motion. Petitioners seek partial summary judgment solely on the issue of whether an appraisal of the subject easement is a qualified appraisal within the meaning of Internal Revenue Code section 170(f)(11) and section 1.170A-13(c)(3), Income Tax Regulations.

Petitioners contend that two opinions of this Court currently on appeal, <u>Scheidelman v. Commissioner</u>, T.C. Memo. 2010-151, and <u>Simmons v. Commissioner</u>, T.C. Memo. 2009-208, are in direct conflict and that <u>Scheidelman</u> also conflicts with <u>Consol. Investors Group v. Commissioner</u>, T.C. Memo. 2009-290. Each of those cases, however, was decided after a trial on the merits. In <u>Scheidelman</u> and in <u>Simmons</u>, motions for partial summary judgment on the qualified appraisal issue were opposed by the taxpayers and denied by the Court.

In <u>Scheidelman</u>, the Court considered the testimony of the appraiser at trial in concluding that the appraisal was not qualified. The memorandum opinion expressly distinguished <u>Simmons</u>, stating that:

in <u>Simmons</u>, the appraisals included statistics gathered by the donee organizations that the appraiser took into account; and each appraisal identified the method of valuation used and the basis for the valuations reached. The Drazner report used only estimates based on prior cases and displayed no independent or reliable methodology applied to the subject property as the basis for the valuation reached.

See also <u>Evans v. Commissioner</u>, T.C. Memo. 2010-207, n.4. The Court, therefore, rejects petitioners' assertion that "there is a clear split among divisions." Moreover, if there were a conflict, it would be premature and inefficient for this Court to resolve it in the face of pending appeals.

Petitioners also request that their motion be "directed to the full Court." Review by the Court is by statute a matter for the Chief Judge, pursuant to Internal Revenue Code section 7460(b). That statute contemplates review of the report of a division. There is neither statutory provision nor precedent for a motion, rather than a report, to be reviewed by the Court.

Petitioners in effect seek an advisory opinion to facilitate settlements. The parties should always consider the uncertainties and risks of litigation and the strength of their respective positions in evaluating prospects for settlement. The Court is not inclined to provide piecemeal resolution of issues that could be more readily settled by the parties.

Respondent's response asserts that there are genuine issues of material fact in relation to the appraisal that preclude summary judgment and that the appraisal is otherwise defective. Partial summary judgment will not avoid a trial unless all issues are settled. The purposes of summary adjudication would not be served in this instance. Upon due consideration and for cause, it is hereby

ORDERED that petitioners' motion for partial summary judgment filed November 12, 2010, is denied. It is further

ORDERED that this case is restored to the general docket for trial in due course.

(Signed) Mary Ann Cohen Judge

Dated: Washington, D.C. May 10, 2011