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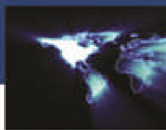

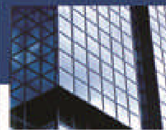

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Boltar, L.L.C. Joseph Calabria, Jr., Tax Matters Partner, Petitioner vs. Commissioner of Internal Revenue Service, Respondent, 136 T.C. No. 14, Dated April 5, 2011.

The Facts:

Boltar, L.L.C. (Boltar) claimed a federal income tax deduction for a conservation easement as a qualified conservation contribution of $3,245,000 on their timely filed partnership return. The IRS disallowed all but $42,400 of the charitable contribution deduction. The case was brought before the Court to determine the admissibility of Boltar's experts appraisal of the conservation easement donation at trial.

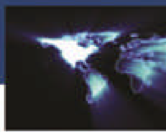
The Arguments:

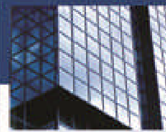
The IRS claimed the appraisal produced by Boltar's experts was "neither reliable nor relevant under the Federal Rules of Evidence and *Daubert v. Merrell Dow Pharm., Inc.* U.S. 579 (1993)."

According to Section 1.170A-14(h)(3)(i) of the Income Tax Regs, "if comparable sales are not available for an appraisal, as a general rule (but not necessarily in all cases)" the before and after method of valuation should be used. During the trial the Court determined Boltar and their experts did not provide any persuasive reason as to why they did not apply the method in their appraisal. In addition, the Court agreed that Boltar's appraisal assumed, at least in part, potential development of the property which was not feasible. The IRS claimed Boltar's appraisal was "based on whatever use generates the largest profit, apparently without regard to whether such use is needed or likely to be needed in the reasonably foreseeable future."

In addition, the Court also agreed with the IRS that the standard of admissibility of Boltar's appraisal as evidence in a Tax Court case should not be lower than the admissibility standard at a jury trial- the "Daubert" standard.

Neither the IRS nor the Court disputed Boltar's appraisers' qualifications, but rather "their willingness to use their resumes and their skills to advocate the position of the party who employs them without regard to objective and relevant facts, contrary to their professional





obligations." The Court was not inclined to admit Boltar's appraisal and then weigh its judgments because "Neither petitioner nor the petitioners' appraisers suggested any quantitative adjustment in response to their admitted errors or the problems addressed in respondent's motion in limine. The appraisers simply persisted in asserting an unreasonable position. We are not inclined to guess at how their valuation should be reduced by reason of their erroneous factual assumptions. Their report as a whole is too speculative and unreliable to be useful."

The Findings:

The Court agreed with the IRS's motion to entirely exclude Boltar's appraisal from the trial record as "unreasonable, unreliable, and irrelevant expert testimony". The Court agreed with the IRS that the taxpayer's appraisal failed to determine value using the before and after method of valuation and failed to consider the potential residential use of the property. It also found that the appraisers' projected condominium development could not physically fit on the property and that the appraisers ignored the effect of a pre-existing pipeline gas easement.

Parting Thoughts:

This case stresses the importance that appraisers stay objective and be an advocate of their value, not an advocate of the position of the party that employs them. The appraisers ended up doing a true disservice to their clients in this case. While this case was for a charitable easement, it establishes precedent for applying Daubert to valuation evidence in Tax Court.