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Revenue Ruling 89-51

Business expenses; rental of vacation home. The right to use a vacation home for one week, donated by the owner to a charitable fund-raising auction and sold for fair rental value, is counted as one week of personal use by the owner in determining the owner's right to deduct expenses.

ISSUE

If the owner of a vacation home donates a week's use of the home to a charity auction, is the use of the home by the successful bidder deemed personal use by the owner under section 280A (d) of the Internal Revenue Code?

FACTS

A, an individual, owns a vacation home that is a dwelling unit under section 280A (f) (1). A rented the home to individuals unrelated to A for 80 days during 1988 at fair rental value. A occupied the home for 14 days during the year for personal purposes.

In 1988 A donated to charity X a 1-week right of occupancy in the property, for disposition at X's fund-raising auction. At the auction, B was the highest bidder and paid X an amount that represented fair rental. B occupied the property for one week during that year.

LAW AND ANALYSIS

Section 280A (a) of the Code generally disallows business deductions for an individual with respect to the use of a dwelling unit which is used by the individual during the taxable year as a residence.

Section 280 (c) (3) of the Code provides that section 280A (a) shall not apply to an item attributable to the rental of the dwelling unit. This exemption is subject to the gross income limitation of section 280A (c) (5).

Section 280A (d) of the Code provides that a taxpayer uses a dwelling unit during a tax year as a residence if the taxpayer uses the unit for personal purposes for a number of days that exceeds the greater of 14 days or 10 percent of the number of days during the year for which the unit is rented at fair rental. Section 280A (d) (2) (C) provides that a taxpayer is deemed to have used a dwelling unit for personal purposes for a day if, for any part of such day, the unit is used by any individual, unless for such day the dwelling unit is rented for a rental which, under the facts and circumstances, is fair rental.

Congress enacted section 280A of the Code to provide objective standards for the allocation of expenses attributable to a residence between personal and business use. See H.R. Rep. No. 658, 94th Cong., 1st Sess. 164 (1975), 1976-3 (Vol. 2) C.B. 695, 856. Under section 280A (d) (2) (C), the use of a dwelling unit by any individual is generally attributed to the owner and treated as personal use by the owner. B's use of A's vacation home is use by an individual under section 280A (d) (2) (C) of the Code and is deemed personal use by A.

Section 280A (d) (2) (C) excepts from its application use by any individual on a day on which the unit is rented for fair rental value. The purpose of that rental exception is to prevent a taxpayer's business use of a dwelling unit from being counted as personal use. The donation of the use of a dwelling unit for charitable purposes is not business use by a taxpayer. Thus even though the amount B paid to X equalled fair rental for the home, B's use did not fall within the fair rental exception to the attribution rule of section 280A (d) (2) (C). Similarly, B's payment to X could not be fair rental under the rule for attributing expenses to rental under section 280A (e) (1).

A used the dwelling unit as a residence during 1988 because the sum of the days A personally occupied the dwelling unit (14 days) and the days for which A is deemed to have used the property (7 days) is 21 days, which exceeds the greater of 14 days or 10 per cent of the number of days (80 days) during the year for which the unit was rented at fair rental (8 days).

Neither A nor B is entitled to a charitable contribution deduction. The gift of the right to use property is not a deductible contribution. Income Tax Regulations section 1.170A-7 (a) (1). A payment to a charity is not a contribution to the extent that valuable consideration is received in return. Revenue Ruling 67-246, 1967-2 C.B. 104.

HOLDING

For purposes of section 280A (d) of the Code, the one week occupancy of the dwelling unit by B constitutes personal use of the unit by A, the owner, who had donated the right of occupancy to charity X. Because A used the unit as a residence during the taxable year, A's deductions with respect to the dwelling unit are subject to the gross income limitation of section 280A (c) (5).