U.S. Tax Court Helps Distinguish the Holding Purpose for Residential Property

In *Reesink vs. C.I.R., T.C. Memo 2012-118, No. 2475-10* (April 23, 2012), the U.S. Tax Court considered whether a single-family house was acquired by the taxpayers as a personal residence or as an investment.

In 2005, the taxpayers sold a 50% TIC interest in a San Francisco apartment building for the gross sales price of $700,000, and they used the net proceeds (except for some intentional boot) a little over one month later to acquire a single-family house and a vacant lot in Guerneville, CA. The taxpayers' mortgage loan application indicated that the property was purchased as an investment. "For Rent" signs were posted on the property. Flyers were distributed throughout Guerneville advertising the property for rent. Two prospective tenants examined the property to consider leasing it, but each decided that they could not afford the asking price of $3,000 per month. The taxpayers never lowered their asking price. The property was never advertised for rent in any local newspaper. The court did not say if the property was ever listed for rent with a real estate broker, although the taxpayers consulted with one.

After failing to rent the Guerneville property for some time, Mr. Reesink wanted sell the parties' San Francisco home because they could not afford the carrying costs of all the real estate that they owned. Mrs. Reesink resisted this idea because she liked living in San Francisco and because she did not want to take their son out of his current high school. Nevertheless, the parties listed their home in San Francisco in April, 2006, about six months after they acquired the Guerneville property. At that time, the Reesinks considered either moving to Guerneville or moving in with Mr. Reesink's sister. Two months later, when their San Francisco home was sold, they elected to move to Guerneville. That was almost eight months after they acquired the Guerneville property. Until they moved in, they had never stayed in the Guerneville property or used it for any personal purpose.

On these facts, the court found that the principal intention of the taxpayers in acquiring the Guerneville property was for investment, not personal use. The court stated that perhaps the strongest evidence of the Reesinks' investment intent came from Mr. Reesink's estranged brother, a witness for the IRS, who testified that Mr. Reesink told him on several occasions that they planned to move to the Guerneville property after their son graduated from high school. That would have been significantly more than two years after they acquired the Guerneville property. This testimony gave weight to the position of the taxpayers that they had changed their minds because of financial difficulties when they decided to move to Guerneville in 2006.

In concluding that the taxpayers had satisfied their burden of proving that they held the Guerneville property principally for investment, the court distinguished this case from *Goolsby v. Commissioner, T.C. Memo. 2010-64*. In *Goolsby,* the Tax Court found that the taxpayers did not have a bona fide investment intention when they acquired replacement property. The court in *Reesink* pointed out that in *Goolsby* (a) the taxpayers made the purchase of the replacement property contingent on the sale of their home; (b) they sought advice concerning when they could move into the replacement property; (c) their rental efforts consisted solely of placing one advertisement in a local newspaper; (d) they began refinishing the basement of the replacement property within two weeks of acquiring it; and (e) they moved into the replacement property within two months of acquiring it.

The distinctions between *Goolsby* and *Reesink* begin to mark a line describing the burden of proof that taxpayers will be expected to meet if they move into residential replacement property before the end of the two-year safe harbor holding period provided by *Rev. Proc. 2008-16*.