



Conrad Garcia Quoted by Bloomberg BNA about Route 231 Ruling

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Conrad Garcia, chair of Williams Mullen's tax practice, was quoted by Bloomberg BNA about a recent Fourth Circuit court decision that found that more than \$3.8 million contributed to Route 231 LLC should be treated as ordinary income from a disguised sale of Virginia conservation tax credits. Read the article - reprinted with permission - below.

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Jan. 11 — A Fourth Circuit decision finding that more than \$3.8 million contributed to Route 231 LLC should be treated as ordinary income from a disguised sale of Virginia conservation tax credits came as little surprise to practitioners, who saw it as a cautionary tale of sorts for taxpayers.

The U.S. Court of Appeals for the Fourth Circuit ruled Jan. 8 that the U.S. Tax Court correctly held that the transfer of Virginia tax credits between Route 231 and Virginia Conservation constituted a disguised sale of property under tax code Section 707, and that the amounts received were reportable as gross income in the 2005 tax year (06 DTR K-3, 1/11/16).

Timothy L. Jacobs, a partner at Hunton & Williams LLP who represented Route 231, told Bloomberg BNA he didn't believe the court fully considered all of the arguments and avoided testimony as well as evidence that had been presented.

Hopeful for Alternative

"We were disappointed in the Fourth Circuit's holding," Jacobs said. "We were hopeful that the court would give proper consideration to our arguments and the evidence."

Keith Martin, a tax specialist and partner at Chadbourne & Parke LLP, said it wasn't a surprise that the court decided the case the way that it did.

“At the end of the day the court reached the right decision, but it had trouble figuring out the right theory to do so,” Martin said, referencing the court's analysis of the partnership's legitimacy compared to a prior case, *Va. Historic Tax Credit Fund 2001 LLP v. Commissioner*. He added that he felt a cleaner way to have made the decision would have been to say that the credits belonged to the three partners because there was no partnership, and that then the decision was made to sell them.

J. Conrad Garcia, the chair of the tax practice at Williams Mullen, said that the court made it clear in its scrutiny of Route 231 being a bona fide partnership that taxpayers need to have some entrepreneurial risk in transactions involving partnerships such as those in Route 231.

Compelling Facts

“The way I look at it is if you're putting in a significant amount of capital, and compare it to credit allocation, there have to be compelling facts that you have something other than a disguised sale,” Garcia said in an interview with Bloomberg BNA. Garcia added that, particularly in Virginia, taxpayers must be cognizant of the facts in Route 231, and aware of when a developer can accept cash for credits and then not recognize income.

“In the Virginia market, that is a primary concern; the struggle with these types of credits is that you have to recognize income all the time,” Garcia said. Taxpayers in states with types of credits similar to Virginia's need to be aware of the scenario that Route 231 faced in its transaction with Virginia Conservation, he continued.

Legitimate Partnership

Martin commented that if he were working on a transaction like the one in Route 231, he would attempt to make sure a real partnership existed.

“The lesson also is if you don't do this then the IRS will treat the other partners, the real partners, as having sold tax credits and therefore will force them to report income,” Martin said.

There has been no word as to whether Route 231 will appeal the Fourth Circuit's decision.

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