

Simmons — Substantial Compliance Revisited

By David Woolridge, Ronald Levitt,
and Gregory P. Rhodes

David Woolridge and Ronald Levitt are shareholders at the Birmingham, Ala., office of Sirote & Permutt where they lead the firm's conservation easement practice group representing taxpayers in the implementation of conservation easement contributions, and in the defense of any IRS challenges to conservation easement contributions. Gregory P. Rhodes is an associate in the conservation easement practice group.

This article analyzes, in light of the Tax Court's recent holding in *Simmons v. Commissioner*, the state of the substantial compliance doctrine (the doctrine that the regulations are directory and not mandatory) as it applies to specific issues relating to conservation easement contributions.

Congress has, over the decades, unambiguously expressed its desire to promote the preservation of valuable land areas and historic structures by creating tax incentives for conservation easements. The framework for conservation incentives was enacted by Congress in the Tax Treatment Extension Act of 1980,¹ which created section 170(h). In the act, Congress recognized what it stated was the important role that conservation easements play in the preservation of the country's natural resources and cultural heritage.²

In accordance with Congress's instructions, Treasury has issued a broad set of regulations to implement section 170(h). The regulations cover everything from establishing the criteria for determining a "conservation purpose" to the documentation a taxpayer must provide to deduct the value of a conservation easement. Also, the regulations provide guidance on establishing the value of a conservation easement, the types of organizations that are qualified to accept conservation easements, and the characteristics and time period requirements that apply to conservation easement appraisals, as well as a myriad of other technicalities concerning conservation easement contributions.

The regulations provide detailed rules about the type of documentation a donor must receive when contribut-

ing a conservation easement³; those rules vary depending on the value of a contribution. In general, however, the regulations focus on four major requirements found in the code: (1) the type of "contemporaneous acknowledgment" a donor must receive from the donee of the easement,⁴ (2) the type of "qualified appraisal" the donor of the easement must obtain,⁵ (3) rules as to who constitutes a "qualified appraiser" of the property,⁶ and (4) rules concerning the method of valuing a conservation easement.⁷

The regulations were expressly intended by Congress to provide a basis for which taxpayers could be "secure in their knowledge that a conservation easement will qualify for a deduction."⁸ However, because of the IRS's application of the regulations, they have become an often insurmountable obstacle to qualifying for a charitable contribution.

Apparently recognizing that the complexity of the conservation easement regulations frustrates Congress's intention to promote the preservation of the country's natural resources, the courts have in many instances ruled that "substantial compliance" with the regulations will satisfy the requirements for a conservation easement deduction. However, the IRS has consistently maintained that taxpayers are required to strictly comply with the regulations, justifying that position on a dubious interpretation of a couple cases.

This article provides a survey of the decisions pertinent to the substantial compliance doctrine, and how they have shaped the application of the doctrine for conservation easement contributions. The article then turns to the Tax Court's recent decision in *Simmons v. Commissioner*,⁹ and analyzes its potential effect on the issue.

³Although reg. section 1.170A-14(i) addresses the substantiation requirements particular to conservation contributions, many of the regulations apply to other types of charitable contributions.

⁴See, e.g., reg. section 1.170A-13(g).

⁵See, e.g., reg. section 1.170A-13(c)(3). The Pension Protection Act of 2006 amended section 170(f)(11)(E) to modify the terms "qualified appraiser" and "qualified appraisal." These changes are not reflected in the regulations as of this time, but the Service has provided temporary guidance reflecting the changes in Notice 2006-96, 2006-46 IRB 902, Doc 2006-21534, 2006 TNT 203-3. To the extent that Notice 2006-96 contradicts reg. section 1.170A-13(c), the notice governs.

⁶See, e.g., reg. section 1.170A-13(c)(5).

⁷See, e.g., reg. section 1.170A-14(h)(3).

⁸Tax Treatment Extension Act of 1980.

⁹*Simmons v. Commissioner*, T.C. Memo. 2009-208, Doc 2009-20571, 2009 TNT 177-17. In *Consolidated Investors Group v. Commissioner*, T.C. Memo. 2009-290, Doc 2009-27621, 2009 TNT 240-18, a recently decided case involving a contribution by a taxpayer of a nonconservation easement charitable contribution, the Tax Court cited *Simmons* in support of the substantial compliance doctrine articulated therein as it applies to the charitable contribution regulations. See *infra* note 38.

¹Tax Treatment Extension Act of 1980, section 6. Conservation easement deductions were provided for before 1980 under former section 170(f)(3)(B)(iii) and (iv). See Tax Reform Act of 1976, providing a deduction for an easement regarding real property granted in perpetuity made "exclusively for conservation purposes."

²*Id.*

A. Applicable Law

The code appears in some respects to require that, to obtain a deduction for a charitable contribution of property, a taxpayer must strictly comply with the regulations. The code states:

There shall be allowed as a deduction any charitable contribution . . . payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction *only if verified under regulations* prescribed by the Secretary.¹⁰

In 2004 Congress codified the substantiation requirements, and in section 170(f)(11)(A)(ii)(II) it codified an exception to strict compliance with the substantiation requirements in instances when a taxpayer has “reasonable cause” for noncompliance.¹¹ The 2004 provisions, including the reasonable cause exception, are applicable to contributions made after June 3, 2004. As the statute is written, the reasonable cause exception applies only to the qualified appraisal and qualified appraiser requirements, and does not facially apply to the other contribution requirements (that is, the contemporaneous acknowledgement and other related requirements).

Despite the seemingly strict language contained in section 170(a) (both before and after the 2004 changes), the courts have generally not required taxpayers to rigidly comply with the regulations to be entitled to a charitable contribution for a conservation easement. The instances in which the courts have found substantial compliance with the regulations have been widespread and have involved taxpayers’ noncompliance with several different regulations. Moreover, the courts have applied the substantial compliance doctrine to conservation easement contributions occurring both before and after June 3, 2004.

1. Substantial compliance permissible. Some of the instances in which the courts have not required taxpayers to comply strictly with the regulations are provided below.

2. *Bond v. Commissioner.* The concept of substantial compliance was first fully articulated in the charitable contribution context in *Bond v. Commissioner*.¹²

In *Bond* the Tax Court had to determine whether the failure of a taxpayer to attach a qualified appraisal to his tax return prevented the taxpayer from receiving a charitable deduction for the contribution. The taxpayer in the case had attached an appraisal summary to his income tax return in the year of the contribution. The applicable regulations, however, required a full appraisal compliant with reg. section 1.170A-13 to be attached to the return.

The IRS argued that the taxpayer’s failure to attach a qualified appraisal, as required by the regulations, resulted in a disallowance of the taxpayer’s deduction. The Tax Court, however, sided with the taxpayer. It stated that, by attaching the appraisal summary, the taxpayer

substantially complied with the regulations, and that a deduction should be allowed for the contribution. The Tax Court explained its position as follows:

Under the above test we must examine section 170 to determine whether the requirements of the regulations are mandatory or directory with respect to its statutory purpose. At the outset, it is apparent that the essence of section 170 is to allow certain taxpayers a charitable deduction for contributions made to certain organizations. It is equally apparent that the reporting requirements of reg. section 1.170A-13, income tax regulations, are helpful to respondent in the processing and auditing of returns on which charitable deductions are claimed. However, the reporting requirements do not relate to the substance or essence of whether or not a charitable contribution was actually made. We conclude, therefore, that the reporting requirements are *directory and not mandatory*.¹³

3. *Daniel v. Commissioner.* In *Daniel v. Commissioner*,¹⁴ the Tax Court confirmed that substantial compliance with the regulations is all that is required in some instances. The Tax Court found that a taxpayer had failed to retain records related to property the taxpayer had contributed to a charity and did not strictly comply with reg. section 1.170A-13(b)(2) and (3). Nonetheless, the Tax Court determined that the taxpayer was entitled to a charitable deduction for the donation:

We find that petitioners have substantially complied with the substantiation requirements and have made a good faith attempt to provide respondent with sufficient information. We accept [petitioner]’s estimates of the fair market values of the donated items.¹⁵

Surprisingly, the Tax Court in *Daniel* did not cite *Bond* as support for its holding that the taxpayer substantially complied with the regulations. Rather, the Court seemed to presume that substantial compliance was a well-established, equitable aspect of Tax Court jurisprudence.

4. *Mudd v. Commissioner.* In *Mudd v. Commissioner*,¹⁶ the Tax Court found that a taxpayer substantially complied with the contemporaneous written acknowledgement requirement of section 170(f)(8), even though the taxpayer did not receive an acknowledgement letter that met the requirements of the code section.

In *Mudd* the only acknowledgement that the taxpayer received from the charitable donee regarding the \$3,685.64 of property contributions the taxpayer made

¹³*Id.* (Emphasis added.)

¹⁴T.C. Memo. 1997-328, Doc 97-21379, 97 TNT 140-7.

¹⁵*Id.* See also *Fair v. Commissioner*, T.C. Memo. 1993-377, Doc 93-9034, 93 TNT 176-11. (Tax Court addressing substantial compliance in context of reg. section 1.170A-13(b), and determining that the taxpayer substantially complied with regulations because his only omission in reporting pertained to the basis of the contributed property.) In *Fair*, the Tax Court cited *Bond* as authority for its holding.

¹⁶T.C. Summ. Op. 2004-1, Doc 2004-450, 2004 TNT 6-15. Although a summary opinion is not citable as precedent, the case does indicate the attitude of the Tax Court on the issue.

¹⁰Section 170(a) (emphasis added).

¹¹See American Jobs Creation Act of 2004, section 883, 118 Stat. 1631, which added section 170(f)(11).

¹²100 T.C. 32 (1993).

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was a letter that stated the charity had received the described items. Although the letter did not fully comply with section 170(f)(8) and the regulations promulgated thereunder, the Tax Court allowed the deduction.¹⁷

As demonstrated below, before the Tax Court's decision in *Simmons v. Commissioner*, *Mudd* was something of an anomaly, as the Tax Court has been hesitant to find that a failure to comply with the contemporaneous acknowledgement requirement was excusable under a concept of substantial compliance.

5. Substantial compliance not found (*Bond* distinguished). There have been some cases when the courts adopted a more rigid approach to substantiation, thereby disallowing a deduction for charitable contributions when a taxpayer failed to fully comply with the regulations. The rationale for the stricter application of the regulations is generally that full compliance with the substantiation requirements is necessary to accomplish the congressional intent underlying the specified regulations.

6. Contemporaneous written acknowledgement. The courts have been more hesitant to apply the doctrine of substantial compliance in instances dealing with section 170(f)(8), which requires a contemporaneous written acknowledgement of all contributions of more than \$250.¹⁸

The instances in which the Tax Court has disallowed a deduction because of a taxpayer's failure to comply with the contemporaneous written acknowledgement requirement, however, have generally been situations in which the taxpayer completely neglected to receive or produce any type of acknowledgment from a donee. Because no acknowledgment of any kind was received by the taxpayer, the issue of *substantial* compliance was not

directly addressed by the Tax Court in those instances (that is, the Tax Court never overruled, and generally did not address, *Bond*).¹⁹

Moreover, the Tax Court has stated that the legislative history pertaining to the contemporaneous written acknowledgement requirement makes the requirement uniquely critical. In *Weyts v. Commissioner*,²⁰ the Tax Court noted that the legislative history behind the provision indicates the provision was enacted to prevent "difficult problems of tax administration [that] arise with respect to fundraising techniques in which an organization that is eligible to receive tax deductible contributions provides goods or services in consideration for payments from donors."²¹

7. Qualified appraisal and appraisal summary. The requirement that a taxpayer obtain a qualified appraisal (or in some instances, an appraisal summary) has also been more strictly applied by some courts. For instance, in *Hewitt v. Commissioner*, 109 T.C. 258 (1997), the Tax Court determined that a taxpayer's failure to attach an appraisal to his tax return prevented the taxpayer from receiving a deduction for the contribution. The Tax Court, however, expressly noted that there were multiple non-compliance problems at issue in the case: The taxpayer did not even obtain a qualified appraisal and no summary appraisal was attached to the taxpayer's return as required by reg. section 1.170A-13.

In addressing the taxpayer's argument that, under the precedent of *Bond*, he substantially complied with the regulations, the Tax Court stated:

[In *Bond*] we concluded that the *reporting* requirements of section 1.170A-13 . . . were directory, not mandatory, and therefore, that these requirements could be met by substantial, rather than strict, compliance. In effect, we held that the appraisal summary itself constituted the required appraisal. In this connection, we note that the appraisal requirements may not be entirely procedural so as to justify the application of the substantial compliance rules under any and all circumstances. We find nothing in *Bond* . . . which relieves petitioners of the requirement of *obtaining a qualified appraisal*. Such a requirement is statutorily imposed by section [170(a)] and its impact is reflected in the legislative history of that provision.²²

¹⁹Although in *Weyts*, the Tax Court did not address the *Bond* decision, it addressed the taxpayer's argument that the Tax Court's decision in *Cohan*, 11 B.T.A. 743 (1928), should apply. *Cohan* can be read generally as a rule regarding substantial compliance because, in that case, the Tax Court held that a taxpayer could receive a deduction for expenses despite being unable to substantiate the deduction items. However, *Cohan* is not generally thought of as a substantial compliance case, and the Tax Court in *Weyts* did not characterize it as such.

²⁰T.C. Memo. 2003-68, *supra* note 18.

²¹*Id.* (quoting H. Rept. 103-111, 1993-3 C.B. 167, 361).

²²*Hewitt v. Commissioner*, 109 T.C. 258, 263-264, Doc 97-29748, 97 TNT 210-12 (1997) (citations omitted) (emphasis added). The Tax Court decision was appealed and confirmed by the Court of

(Footnote continued on next page.)

¹⁷Section 170(f)(8) requires the acknowledgement to be contemporaneous and to provide: a description of the property donated and a statement whether the donee provided any goods or services in exchange for the property contributed (as well as a description of such goods or services, if provided). Reg. section 1.170A-13(f), which was promulgated by the Service under the authority delegated to it in section 170(f)(8)(E), contains additional requirements.

¹⁸See, e.g., *Hill v. Commissioner*, T.C. Memo. 2004-156, Doc 2004-13564, 2004 TNT 127-9 (deduction disallowed because no contemporaneous written acknowledgment); *Stussy v. Commissioner*, 86 T.C. Memo. 2003-232, Doc 2003-18079, 2003 TNT 150-14 (no deduction because taxpayer lacked a contemporary written acknowledgment); *Weyts v. Commissioner*, T.C. Memo. 2003-68, Doc 2003-6509, 2003 TNT 49-10 (contribution not substantiated by contemporary written acknowledgment); *Whitehurst v. Commissioner*, T.C. Summ. Op. 2003-7, Doc 2003-2893, 2003 TNT 21-15 (charitable contributions deduction disallowed because lack of acknowledgement of contribution); *Gomez v. Commissioner*, T.C. Summ. Op. 2008-93, Doc 2008-16748, 2008 TNT 148-13 (stating written acknowledgement dated as of the date of the Tax Court trial did not satisfy the *contemporaneous* acknowledgement requirement in the regulations). Note, however, that *Whitehurst* and *Gomez* are summary opinions, and are cited merely as examples of prior Tax Court decisions.

In *Smith v. Commissioner*,²³ the Tax Court found that a taxpayer's failure to attach a qualified appraisal summary to the taxpayer's return, as is required by the regulations, prevented the taxpayer from claiming a charitable deduction for the contribution. The Tax Court noted that the holding in *Bond* provided for substantial compliance in many instances, but that the taxpayer at hand could not avail himself of the benefits of the rule because the taxpayer had failed to substantially comply with the applicable regulation. The Tax Court noted that, like the taxpayer in *Hewitt*, the taxpayer at issue violated multiple substantiation requirements. The court stated:

Under these circumstances we consider whether petitioners' compliance was substantial or whether they failed to meet the statutorily mandated regulatory requirements.

We hold that petitioners did not provide sufficient information . . . to have substantially complied. . . . Petitioners, in each year under consideration, did not attach to their returns qualified summary appraisal reports as required by the statute and the regulations. In addition, it has not been shown that petitioners' [appraiser] was a qualified appraiser within the meaning of the regulatory requirements. Moreover, certain of the reports that were referenced on the returns were not shown to exist, and none of the purported reports or documentation submitted met the time requirements for their preparation and submission.²⁴

B. Bruzewicz — Substantial Compliance Criticized

*Bruzewicz v. United States*²⁵ is the only instance in which a court has directly questioned the continued viability of *Bond* in the context of the charitable contribution regulations. In *Bruzewicz*, the District Court for the Northern District of Illinois stated that *Bond*, and the doctrine of substantial compliance, had a very limited application in cases arising within the Seventh Circuit.

Before addressing the facts in *Bruzewicz*, the court analyzed the history of the substantial compliance cases, noting that the Seventh Circuit Court of Appeals had "adhered to a tough standard for applying the doctrine of

Appeals for the Fourth Circuit. In its opinion, the court of appeals also distinguished the facts at hand with the facts of *Bond* by stating:

In *Bond*, the taxpayers made a good faith effort to comply with the appraisal requirement. In the case at bar, the [taxpayers] utterly ignored the appraisal requirement. Furthermore, unlike the taxpayers in *Bond*, the [taxpayers before us] failed to supply all the information required by the regulations. In sum, the taxpayers failed to substantially comply with the regulations.

Hewitt v. Commissioner, 166 F.3d 332, 333 (4th Cir. 1998), *Doc 98-34000*, 98 TNT 227-3.

²³T.C. Memo. 2007-368, *Doc 2007-27573*, 2007 TNT 243-12.

²⁴*Id.*

²⁵604 F. Supp.2d. 1197 (N.D. Ill. 2009), *Doc 2009-6839*, 2009 TNT 58-85.

substantial compliance" in cases involving the code and regulations outside the charitable contribution context.²⁶

The court recognized that the Tax Court had, based on *Bond*, applied the doctrine of substantial compliance in charitable contribution cases, but stated that the Tax Court rulings had no binding effect on the district court, and that the district court would instead apply the general position of the Seventh Circuit that the doctrine of substantial compliance should be very narrowly applied, even in the context of charitable contribution situations.

Turning to the facts at issue in the case, the court found that even though the taxpayer received a letter from the land trust that vaguely acknowledged the receipt of contributions made by the taxpayer, the taxpayer in the case had failed to comply with the contemporaneous written acknowledgement requirement of section 170(f)(8).²⁷

The court stated that allowing the letter to satisfy the contemporaneous acknowledgement requirement would be to "flout the express language of section 170(f)(8)(A) and (B)."²⁸ It went on to state that the code section at issue was neither "unclear" nor "confusing" and that the taxpayer neither substantially nor strictly complied with the code.²⁹

After noting that the taxpayer's deduction would be disallowed for the reasons stated above, the district court proceeded to address other deficiencies pertaining to the contribution. First, the court noted that the appraisal used by the taxpayer failed to set out the qualifications of the appraiser as required by reg. section 1.170-13(c)(3)(ii)(F). The court stated that the regulation was neither "unimportant" nor "confusing," and determined that the taxpayer's failure to comply with this provision was also fatal to the taxpayer's claim for a deduction.³⁰

Next, the court addressed the taxpayer's failure to provide a description of the parts of the taxpayer's property which were subject to the facade easement at issue in the case. The court noted that the taxpayer's failure to provide such a description was in violation of reg. section 1.170A-13(c)(3)(ii)(A). Nonetheless, the court stated that this one failure alone would not have caused the court to disallow the taxpayer's deduction:

These substantiation requirements are important, indeed essential, to the review of charitable contribution deductions and the reliability of corresponding appraisal. Neither is the requirement in any way confusing. There is really no excuse for the [taxpayer]'s failure to comply strictly with its terms.

²⁶*Id.* In support of its position that the Seventh Circuit did not accept the doctrine of substantial compliance, the district court cited *Prussner v. United States*, 896 F.2d 218 (7th Cir. 1990) and *Tanulis v. Commissioner*, 509 F.3d 343 (7th Cir. 2007), *Doc 2007-26343*, 2007 TNT 231-10. Neither of those cases, however, applied to reg. section 1.170A-13.

²⁷*Id.* at 1204.

²⁸*Id.*

²⁹*Id.* at 1205.

³⁰*Id.* at 1204.

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That being said, *however*, if that was the only flaw in the [taxpayer]'s claim, this Court would be loath to disqualify the claimed deduction on that basis alone. Here the [actions] would, in this Court's view, *qualify that defect for substantial compliance treatment*.³¹

Thus, the district court seemed to imply that the doctrine of substantial compliance was still applicable in some circumstances, even within the Seventh Circuit.

1. *Simmons v. Commissioner.* In *Simmons v. Commissioner*,³² the Tax Court clarified that the doctrine of substantial compliance is applicable in the context of conservation easement contributions.

Simmons involved a taxpayer who had made a contribution of a facade easement to a qualified donee, but failed, according to the IRS, to comply with several of the substantiation regulations. The IRS alleged³³ that the taxpayer had failed to obtain a contemporaneous acknowledgement letter from the donee that was in compliance with the regulations, and failed to obtain a qualified appraisal of the property because the appraisal provided by the taxpayer did not contain a statement that it was prepared for income tax purposes.

The Tax Court addressed the noncompliance issue by discussing the history of the substantial compliance doctrine as it had been formulated in *Bond*, *Hewitt*, and *Smith*.³⁴ The Tax Court noted that in *Bond* it found the regulations to be directory, and not mandatory, and that, taken together, the Tax Court's prior jurisprudence provided a framework whereby the court could consider whether a taxpayer "provided sufficient information to permit respondent to evaluate . . . reported contributions, as intended by Congress."³⁵

After unambiguously confirming the application of the substantial compliance doctrine to the contributions of conservation easements, the Tax Court turned to the alleged inadequacies. First, the Tax Court resolved the contemporaneous acknowledgement issue in favor of the taxpayer by finding that the conservation easement deed contained all the information required by section 170(f)(8)(C). Interestingly, the Tax Court did not address

whether the donor received a statement from the donee organization stating whether the donee received something in exchange for the contribution, as is required under the code and regulations.³⁶ Although the facts are not clear, it does not appear that such a statement was provided, and it is unlikely the conservation easement deed would have contained that language.

Next the Tax Court addressed the IRS's allegation that the taxpayer's appraisals were not qualified appraisals because they did not contain a statement that they were prepared for income tax purposes, as required by the regulations.³⁷ The Tax Court recognized that the appraisal did not contain language stating it was prepared for income tax purposes, but noted that the appraisal document contained information clearly indicating the purpose of the appraisal. The Tax Court determined that language was sufficient to meet the requirements of the regulations.

Based on its finding that the taxpayer had substantially complied with the code and regulations, the Tax Court determined that the taxpayer was entitled to a charitable contribution deduction.

C. The Current Status of the Law

The Tax Court's decision in *Bond* — that some of the reporting requirements found in reg. section 1.170A-13 are directory and not mandatory — is good law in the Tax Court and, most likely, in all other courts.

1. Tax Court. The Tax Court in cases since *Bond* has distinguished its holding in *Bond* from the facts at issue in the subsequent cases to find that the substantial compliance standard was not met. Those subsequent cases have, however, generally involved situations in which the taxpayer completely disregarded several regulations. Moreover, the Tax Court never stated that substantial compliance was inapplicable in the cases, but rather that the taxpayers had failed to meet enough of the mandates of the regulations to substantially comply with the regulations. Also, most of the instances in which the court found that substantial compliance was not met involved situations in which a taxpayer completely failed to timely obtain a qualified appraisal or appraisal summary, or to obtain sufficient written acknowledgement of its donation.

Moreover, in *Simmons*, the Tax Court unambiguously confirmed that the regulations governing conservation easement contributions are directory and not mandatory. That *Simmons* involved a taxpayer's noncompliance with several regulations provides a strong indication that the

³¹*Id.* (emphasis added).

³²T.C. Memo. 2009-208, *supra* note 9.

³³The IRS also alleged that the taxpayer failed to meet other requirements, which resulted in an unqualified appraisal. The Tax Court, however, made findings of fact in favor of the taxpayer on these issues.

³⁴The Tax Court also noted that section 170(f)(11) provided a reasonable cause exception for "failure to comply with the substantiation requirements for noncash charitable contributions," but noted that the provision did not apply to the case because the contribution was made before June 3, 2004. See *Simmons*, *supra* note 9, at n.3. Interestingly, the Tax Court did not indicate that the reasonable cause exception would have been limited to the qualified appraiser and qualified appraisal requirements (the provisions it is found under in the code), but rather implied that the provision applies to the substantiation requirements in general (including the contemporaneous acknowledgement requirement that was at issue in the case, which is found in section 170(f)(8)).

³⁵T.C. Memo. 2009-208, *supra* note 9.

³⁶See section 170(f)(8)(B)(ii). This requirement is more explicit in reg. section 1.170A-13(f)(2)(ii), which requires a statement as to whether the donee organization provides any consideration for any of the property transferred to it.

³⁷See reg. section 1.170A-13(c)(3)(ii)(G). The IRS also alleged other deficiencies with the appraisals, but the Tax Court summarily dismissed these allegations by finding facts contrary to those asserted by the IRS.

doctrine of substantial compliance might have a broader application than had been indicated by other decisions of the Tax Court.³⁸

2. The Seventh Circuit. While several courts have distinguished the facts of the cases before them from the facts in *Bond* to hold that a taxpayer did not substantially comply with the regulations, *Bruzewicz* is the only decision in which a court has expressly declined to follow the Tax Court's decision in *Bond*. The *Bruzewicz* decision, however, is not binding on the Tax Court.

The Seventh Circuit decisions cited in the district court's opinion in *Bruzewicz* are binding on the Tax Court for which an appeal would lie in the Seventh Circuit.³⁹ However, the Tax Court would have to determine if the district court correctly interpreted and applied the Seventh Circuit cases to the facts at hand (that is, whether the court of appeals' decisions regarding substantial compliance were applicable to the charitable contribution requirements).⁴⁰

Moreover, despite the district court's seeming rebuke of the decision in *Bond*, it indicated in *Bruzewicz* that there

³⁸*Simmons* has been cited for its substantial compliance holding in a charitable contribution case outside the context of conservation easement contributions. In *Consolidated Investors Group*, *supra* note 9, the Tax Court cited *Simmons* in support of its holding that a taxpayer that failed to comply strictly with the charitable contribution substantiation regulations under regulation 1.170A-13(c) was nonetheless entitled to a charitable contribution for a bargain sale of real property to the Ohio Turnpike Commission, a state agency. Although the charitable contribution did not involve a conservation easement contribution, the substantiation regulations discussed in the opinion (regarding which the taxpayer failed to strictly comply) are also applicable to conservation easement contributions. In *Consolidated Investors Group*, the Tax Court cited *Simmons* (and the substantial compliance cases before it) to hold that the taxpayer was entitled to a charitable contribution despite its failure to comply with the following requirements in the regulations: (1) the obligation to obtain a timely appraisal (the appraisal was performed more than 60 days before the contribution), (2) the requirement that a taxpayer provide the date that a contribution is made, and (3) the requirement that a taxpayer obtain a statement from the appraiser that the appraisal was prepared for income tax purposes.

³⁹See *Golsen v. Commissioner*, 54 T.C. 742 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971).

⁴⁰The district court cited *Tamulis*, *supra* note 26, and *Prussner*, *supra* note 26, for the proposition that the Seventh Circuit disapproved of the doctrine of substantial compliance. *Tamulis* addressed whether a trustee's intentional disregard of the requirement that a trust must be reformed to comply with the charitable remainder trust rules could be disregarded. The court in *Tamulis* determined that, because the trustee at issue failed to comply with a "clear," "unambiguous," and "important" rule of which the trustee was aware, substantial compliance was inapplicable. *Tamulis v. Commissioner*, 509 F.3d 343 at 346. *Prussner* involved a situation in which an executor made "no effort" to comply with the requirement that he file a recapture agreement with his estate tax return, as is required by section 2032A(d)(3). *Prussner v. United States*, 896 F.2d 218 at 224-225. The Seventh Circuit Court of Appeals did not state in either of these cases that the doctrine of substantial compliance was inapplicable in the Seventh Circuit. Moreover, neither of the cases addressed the charitable contribution regulations.

were at least three instances in which the doctrine of substantial compliance might apply in the context of the charitable contribution regulations. First, the district court implied that in instances in which a regulation was deemed to be unimportant, the doctrine of substantial compliance might apply. Second, the court implied that in instances in which a regulation was unclear or confusingly stated, the doctrine of substantial compliance might apply.

Finally, despite its rhetoric, the district court seemed to imply that the doctrine of substantial compliance might be appropriate in instances in which a taxpayer complies with almost all of the applicable regulations. As noted above, after stating that the taxpayer in the case had violated the regulations by failing to sufficiently describe the portions of the eased property, the district court in *Bruzewicz* acknowledged that it would have been loath to disqualify the claim based on that single flaw and that the taxpayer's actions would have qualified that defect for substantial compliance treatment.⁴¹

Thus, despite the district court's apparent disapproval of the doctrine of substantial compliance, it seemed to confirm that the doctrine is appropriately applied in some situations. To some extent, the district court reiterated what the Tax Court has found in many prior cases pertaining to the application of the substantial compliance doctrine: In situations when a regulation is unimportant, confusing, or unclear — or in situations in which a taxpayer has complied with most of the requirements of a regulation — a taxpayer should not be denied a deduction for a charitable contribution.

Finally, *Bruzewicz* was decided before the Tax Court's recent decision in *Simmons*, and at a time when the state of the substantial compliance doctrine was arguably ambiguous. Although the Tax Court's decision in *Simmons* is not binding on the district court (and clearly not on the court of appeals), it is conceivable that the Tax Court's unambiguous confirmation of the doctrine of substantial compliance in *Simmons* would be influential on those courts.

D. Conclusion

Although the Tax Court has distinguished its holding in *Bond* from several cases that have come before the court, the doctrine of substantial compliance is still clearly applicable in charitable contribution situations. Moreover, despite the district court's opinion in *Bruzewicz*, the doctrine of substantial compliance appears to continue to be applicable to some extent even within the Seventh Circuit.

It remains to be seen whether the IRS will, as a result of *Simmons*, finally reform its position and acknowledge that strict compliance is not required in the context of conservation easements. It has been the author's experience that, at least at examination, the IRS continues to assert that strict compliance is required, alleging that any minor deviation from the conservation easement contribution regulations results in a total disallowance of a deduction.

⁴¹604 F. Supp.2d. 1197, *supra* note 25.