***Hewitt v. Commissioner, 109 T. C. 258 (1997)***

A taxpayer must obtain a qualified appraisal for charitable contributions of nonpublicly traded stock exceeding $10,000 to claim a deduction based on fair market value.

**Summary**

In Hewitt v. Commissioner, the Tax Court held that the Hewitts could not claim charitable deductions for their gifts of nonpublicly traded Jackson Hewitt stock beyond their cost basis because they failed to obtain required qualified appraisals. Despite the stock having an active market and the Hewitts using the average per-share price to value their donations, the court ruled that strict compliance with the appraisal requirement was necessary, rejecting the argument of substantial compliance. This case underscores the importance of adhering to statutory appraisal requirements for nonpublicly traded securities to validate charitable deductions.

**Facts**

John T. and Linda L. Hewitt donated nonpublicly traded stock of Jackson Hewitt Tax Service to the Hewitt Foundation and Foundry United Methodist Church in 1990 and 1991. They claimed deductions based on the stock's fair market value, calculated using the average per-share price from recent arm's-length transactions. At the time of the donations, Jackson Hewitt stock was not publicly traded but had an active market among a limited group of shareholders. The Hewitts did not obtain a qualified appraisal before filing their tax returns and did not attach an appraisal summary to their returns.

**Procedural History**

The Commissioner of Internal Revenue disallowed the deductions in excess of the stock's basis and issued a notice of deficiency. The Hewitts petitioned the Tax Court, arguing that they substantially complied with the appraisal requirements. The Tax Court heard the case and ultimately ruled in favor of the Commissioner.

**Issue(s)**

1. Whether the Hewitts, who did not obtain a qualified appraisal for their donations of nonpublicly traded stock, substantially complied with the requirements of section 1. 170A-13 of the Income Tax Regulations, allowing them to claim charitable deductions based on the stock's fair market value.

**Holding**

1. No, because the Hewitts did not obtain a qualified appraisal or attach an appraisal summary to their tax returns as required by the statute and regulations, and thus did not substantially comply with these requirements.

 

## Court’s Reasoning

The court reasoned that the statutory requirement for a qualified appraisal for nonpublicly traded stock donations exceeding $10,000 is mandatory and cannot be satisfied by substantial compliance. The court distinguished the Hewitts’ case from Bond v. Commissioner, where substantial compliance was accepted because the taxpayers had provided most of the required information, including an appraisal summary by a qualified appraiser. Here, the Hewitts provided practically none of the required information. The court also rejected the argument that the stock’s active market obviated the need for a qualified appraisal, as the stock was not considered “publicly traded” under the law. The court emphasized the legislative intent behind the appraisal requirement, which was to provide the IRS with sufficient information to evaluate the valuation of charitable contributions and prevent overvaluations.

## Practical Implications

This decision reinforces the strict requirement for taxpayers to obtain qualified appraisals for charitable contributions of nonpublicly traded stock to claim deductions based on fair market value. It affects legal practice by emphasizing the importance of strict compliance with IRS regulations, even when the property donated may have an active market. Practitioners must ensure clients obtain and attach qualified appraisals for such donations to avoid disallowance of deductions. This ruling may influence business practices by encouraging companies with nonpublicly traded stock to consider the implications of charitable donations of their stock. Subsequent cases, such as D’Arcangelo v. Commissioner, have followed this precedent, further solidifying the requirement for qualified appraisals.