EVERSHEDS SUTHERLAND

Will the IRS Deny Your Donor's Charitable Contributions?

Current IRS Attacks on All Types of Charitable Donations, and More



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Hale E. Sheppard
Partner

T: +1 404 853 8360
halesheppard@eversheds-sutherland.com

Art Donations



Art Donations

- Early Concerns
  - 1983 – Treasury Department
  - 1983 – IRS Commissioner
  - 1984 – Congress

Art Donations

- Warning to Public by IRS
  - Issued October 2023
  - Inflated values / questionable appraisals
  - Five actions by promoters
  - Audits underway
  - TEO should not be “enablers”

Art Donations

- Inapplicability of Economic Substance Doctrine
  - Legislative history, IRS rulings, and cases
  - Three examples
    - Skripak – books to rural libraries
    - Hunter – prints to museums
    - Weitz – equipment to hospitals

Art Donations

- Case Focused on Taxpayer
  - Williams v. Commissioner
  - Key facts
  - Indirect valuation challenge
  - Decision by Tax Court

Art Donations

- Case Focused on Promoter
  - Ehrlich v. United States – 2026
  - Steps in scheme
  - Dispute begins
  - District Court opinion
    - Made statements
    - False or fraudulent
    - Knew or should have

Art Donations

- Pending Tax Court Cases
  - Stubblefield v. Commissioner
    - Donation of fine art prints
    - $17,000 vs. $652,000
  - Smith v. Commissioner
    - Famous artist
    - Donation of inherited sculpture

Art Donations

- Dirty Dozen List
  - Added in 2026

Conservation Easement Donations



Conservation Easement Donations

- Summary of Five Past Settlement Programs
  - Individuals and QARs
  - Two categories of partners
  - Docketed settlement offer
  - Non-docketed settlement offer
  - Global settlement offer

Conservation Easement Donations

- Important Victory for Taxpayers
  - Malibu Valley Land v. Commissioner
  - Main facts
  - Key Tax Court holdings
    - HBU of residential development
    - Consider experience of partners
    - Income method and vacant land
    - Disregard two transactions
    - Reasonable cause for no penalties

Conservation Easement Donations

- IRS Changes Course
  - First – terminates Global Settlement Offer
  - Second – creates specialized CE office
  - Reasons for change
  - Transition rules
  - Speculation about future

Partial Business Interests



Partial Business Interests

- IRS Alert Issued
  - Promotions to closely-held business (see below)
  - IRS using multiple compliance tools
  - Already audited hundreds of returns
  - Targeting promoters, too

Partial Business Interests

- Newest IRS Guidance – FAA in 2026
  - Description of the "strategy"
  - Six theories for IRS to deny benefits
    - Economic substance
    - Not a bona fide partner
    - Not a partner under Section 704(e)
    - Assignment-of-income doctrine
    - Lack of charitable intent
    - Technical flaws – QA, CWA, etc.

Partial Business Interests

- Current Tax Court Cases
  - Park v. Commissioner
    - Donated minority interest in LP
  - Acts 88, LLC v. Commissioner
    - Donated 15% non-voting interest

Everyday Generosity



Everyday Generosity

- Recent Case – Besaw v. Commissioner
  - Main facts
    - $6,760 tax deduction
    - Incomplete Form 8283
    - Audit starts
    - Supply “reconstructed continuation sheet”
  - IRS positions
  - Tax Court ruling

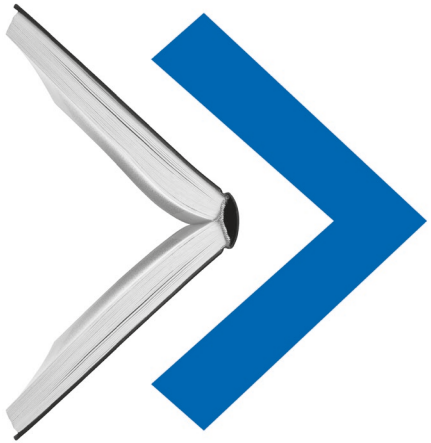
Bargain Sales to Charities



Bargain Sales to Charities

- Injunction Case
  - United States v. Johnson
  - Long list of allegations by DOJ
  - Partial victory – appraisers concede

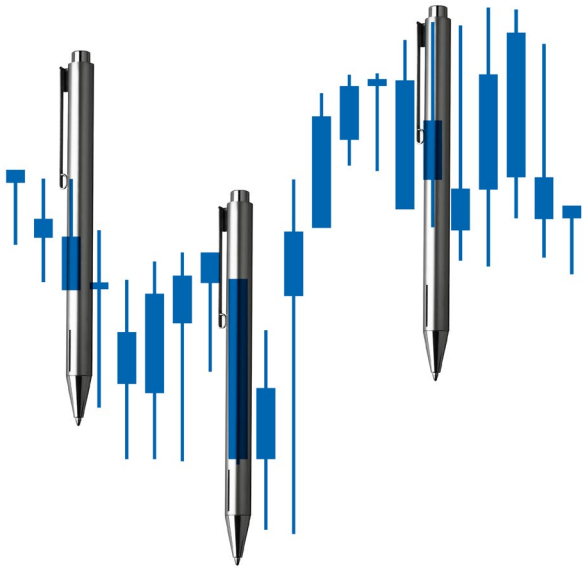
Educational Facility



Educational Facility

- Recent Case – Wells v. Commissioner
  - Main facts
    - 100 acres with buildings donated
    - Handwritten gift and CWA
    - Form 8283 attached
  - Positions by IRS
    - No QA
    - Improper CWA
    - Value wrong for many reasons

Stock



Stock

- Pending case – Neumann v. Commissioner
  - Main facts
    - One founder of WeWork
    - Donated common stock
    - Claimed value of about $44 million
  - IRS claims tax deduction of $0
  - Why? Generic half-page Notice of Deficiency

Religious Artefacts



Religious Artefacts

- Pending Case – Green v. Commissioner
  - Main facts
    - Many religious items donated
    - Tax deduction of about $84 million
    - Form 8283 – aggregate basis and value
  - Positions by IRS
    - Tax deduction of $0

Cash Donations



Cash Donations

- Background
  - Noncash (okay), cash (huh?)
  - 2020 and 2021, limit increased to 100% of AGI
  - Flexible substantiation rules for money gift
- Pending case – Lawrence v. Commissioner
  - Approximately $140 million noncash – no change
  - Approximately $70 million cash – disallowed
  - IRS theory – grant agreement / incomplete gift

Charitable Remainder Annuity Trusts



Charitable Remainder Annuity Trusts

- General overview of CRAT tax rules
  - Donor transfers appreciated property
  - Donor does not recognize gain
  - CRAT gets carryover basis
  - CRAT sells property and invests proceeds
    - 10 percent to charity, triggering deduction
    - 90 percent to SPIA
  - CRAT makes distributions – taxed per ordering rules

Charitable Remainder Annuity Trusts

- Motivations for CRAT transaction
  - Deferring taxes on appreciated property
  - Created predictable income stream
  - Get limited charitable deduction
  - Support charities – warm and fuzzy

Charitable Remainder Annuity Trusts

- Enforcement Actions
  - IRS Generic Legal Advice Memo
  - DOJ Injunction lawsuit – Hoffman Strategy
  - Tax Court litigation – Furrer v. Commissioner
    - Main facts
    - IRS challenges
      - Technical flaws
      - Inventory issue
      - Taxability of CRAT distributions

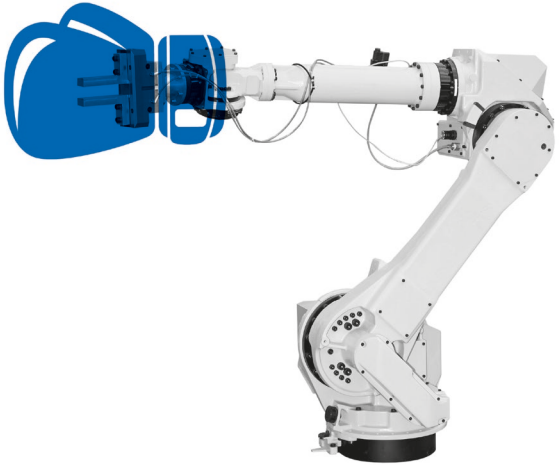
Charitable Remainder Annuity Trusts

- Dirty Dozen List
  - Included in 2023

Charitable Remainder Annuity Trusts

- Regulations Classifying as Listed Transactions
  - Proposed regulations – 2024
  - Final regulations - 2026

Related Attacks on Appraisers



Attacks on IRS Appraisers

- IRS Issues Interim Guidance Memo in 2022
  - Deprives appraisers of safeguards
  - IRM procedures BEFORE Memo
  - IRM procedures AFTER Memo
  - “Eliminating multi-tier review process”
  - Going from five to one decision-maker

Attacks on IRS Appraisers

- IRS Issues Chief Counsel Advisory in 2021
  - Revenue Agent can assess Section 6695A penalties w/o:
    - Notifying appraiser of examination
    - Requesting any data from appraiser
    - Interviewing appraiser
  - MLTN exception is a post-assessment defense

Emerging Areas of Tax Controversy



Emerging Areas of Tax Controversy

- Conservation easement disputes
- Fee simple donation disputes
- Donation of intellectual property disputes
- Employee Retention Credit disputes
- Paycheck Protection Program loan disputes
- Limited partner exception to SECA tax disputes

Emerging Areas of Tax Controversy

- Interest abatement disputes under Section 7508A
- Tribal tax credit disputes
- Convertible tax bond disputes
- Tiny House transaction disputes
- Bonus depreciation disputes
- Volcanic ash donation disputes

Emerging Areas of Tax Controversy

- Tax-advantaged corporation disputes
- Charitable LLC disputes
- Art donation disputes
- Private placement life insurance disputes
- Charitable Remainder Annuity Trust disputes
- Charitable gift financing transaction
- Opportunity Zone tax disputes

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Thank You

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