



50 Ways to Lose Your Deduction

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McGUIREWOODS

Challenging a Deduction – Old IRS

When IRS thought a charitable deduction was overstated:

- IRS appraiser came up with a lower value
- Parties negotiated, then ended up in court
- Court “split the baby”
- Parties left unsatisfied and poorer

Challenging a Deduction – New IRS

When IRS thinks a charitable deduction is overstated:

- IRS examines receipt and appraisal
- If defective, no deduction at all
- If sufficient, revert to Old IRS method

Elements of a Receipt (“CWA”)

Tax Code requirements:

- Contemporaneous (in hand when return filed)
- Written (no particular form or format)
- Acknowledgment
 - Charity name
 - Gift date
 - Cash value or property description
 - Goods and services statement
 - Value estimate and deductibility reminder

Elements of a Qualified Appraisal

Treasury Regulations requirements:

- Qualified appraiser
 - Experience and training
 - Not **dis**qualified by prior relations
- Qualified appraisal report
 - Addresses 11 elements listed in regs
 - Fee not contingent
- Completed appraisal summary (Form 8283)

Challenging a Deduction – New IRS

“50 Ways to Lose Your Deduction”

[with apologies to Paul Simon]

A summary of some of the recent
[and perhaps unexpected] ways
donors have lost deductions
for substantial charitable gifts.

Challenging a Deduction – New IRS

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[with apologies to Paul Simon]

The problem is with your
documents
He said to me
I'm gonna audit them
So legalistically
I need to find tax dollars
For my Agency
There must be fifty ways
To lose your deduction

He said I hope you won't
Resent my attitude
Furthermore I hope you realize
The chance of being sued
And I'll repeat myself
At the risk of being crude
There must be fifty ways
To lose deductions

[CHORUS]
Don't get a receipt, Pete
Get your papers too late, Kate
Use a bad form, Norm.
And owe some more tax
Screw up the appraisal, Hazel.
Appraise the wrong thing, Bing.
Try to save a few bucks, Chuck.
And owe some more tax

He said it saddens me
To see you so distraught
Bet you didn't think these
Simple rules could be so very
fraught
I said I appreciate that
But it looks like I am caught
In one of fifty ways

He said why don't we both just
Look back through the Code
And I think you'll quickly
realize
How much you really owed
And I can take cash
Or a promissory note
Since you've clearly underpaid
Your income taxes

[CHORUS]
Get a quid pro quo, Joe.
Give less than your all, Paul.
Give to the wrong type, Mike.
And get a tax bill
If you don't know the Code, Flo
Or ignore the rules, Jules
Either way you lose big-league
And you owe some more tax.

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Don't get a receipt, Pete.

Ohde v. Commissioner, T.C. Memo 2017-137

Donors provided TurboTax spreadsheet but no appraisals or detailed receipts for claimed gifts of clothes and household items

Villareale v. Commissioner, T.C. Memo 2013-74

Founder / sole officer of animal rescue charity failed to write herself a receipt for her gifts; bank statements and checks were insufficient

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Get your papers too late, Kate.

Durden v. Commissioner, TC Memo 2012-140

IRS ignores a corrected receipt obtained after the donor's return was filed.

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Use the wrong form, Norm.

Schrimsher v. Commissioner, TC Memo 2011-71

Gift property was conveyed via a standard deed of bargain and sale that recited “ten dollars plus other good and valuable consideration” for the transfer.

but see Big River Development, TC Memo 2017-166

Gift deed that recited “ten dollars ...” was sufficient receipt because it also said donor received no goods or services

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Screw up the appraisal, Hazel.

Friedberg v. Commissioner, T.C. Memo 2011-238

No qualified appraisal where appraiser did not specify valuation basis or method.

Friedman v. Commissioner, T.C. Memo 2010-45

No qualified appraisal where the report was dated more than 60 days before the gift.

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Appraise the wrong thing, Bing.

Evenchik v. Commissioner, T.C. Memo 2013-34

Alli v. Commissioner, T.C. Memo 2014-15

Donor gave stock of a corporation that owned a building, but the appraisal valued only the building and not the stock

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Try to save a few bucks, Chuck.

Mohamed v. Commissioner, T.C. Memo 2012-152

Appraisal submitted by a licensed appraiser disregarded because the appraiser was also the donor

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Get a quid pro quo, Joe.

Elrod v. Commissioner, 87 T.C. 1046 (1986)

Property given to a government was for a road that would substantially increase value of donor's other property.

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Give to the wrong type, Mike.

Appreciated property gifts to private foundations

Deduction for a gift of anything other than cash or marketable securities is limited to the donor's cost basis.

IRA transfers to supporting orgs, DAFs or foundations

IRA owners aged 70-1/2 and older can make direct tax-free transfers only to publicly-supported charities

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Give less than your all, Paul.

Patel v. Commissioner, 138 T.C. 395 (2012)

Gift of right to use [and destroy] house was a non-deductible partial interest.

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Ignore the rules, Jules.

RERI Holdings v. Commissioner, 249 T.C. No.1 (2017)
Required Form 8283 was insufficient because it failed to disclose the donor's cost basis in the gift property.

Partita Partners v. U.S., 120 AFTR 2d 2017-5147
Valuation misstatement penalty [40%] applied to tax underpayment even though the claimed charitable deduction was disallowed on other grounds.

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Breaking Tax Reform News!

MEMORANDUM

TO: JOINT COMMITTEE ON TAXATION
FROM: CONGRESSIONAL BUDGET COMMITTEE STAFF
DATE: OCTOBER 10, 2017

Smoke

It has come to our attention that recent hearings on the administration's "Unified Framework" for tax reform have substantially depleted your committee's budget for smoke. In light of that situation and in accordance with governmental efforts to create a smoke-free zone on Capitol Hill, please be advised that all future tax reform in this biennium must be accomplished using mirrors only.

Questions? Comments? War Stories?

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