



# 50 Ways to Lose Your Deduction

**National Capital Gift Planning Council**  
**January 10, 2018**  
**Washington, DC**

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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

## “50 Ways to Lose Your Deduction” [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.

# 50 Ways to Lose Your Deduction

## **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



# 50 Ways to Lose Your Deduction

**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.

# 50 Ways to Lose Your Deduction

## 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

# 50 Ways to Lose Your Deduction

**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

# 50 Ways to Lose Your Deduction

**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.

# 50 Ways to Lose Your Deduction

**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

# 50 Ways to Lose Your Deduction

**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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