# AEP ALERT

## No Job (or Tax Deduction) is Complete Until the Paperwork is Finished

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During the past 12 months, the Internal Revenue Service has prevailed against several taxpayers seeking charitable income tax deductions, not on the issue of valuation, but on the issue of unsubstantiated or inadequately substantiated gifts. These cases offer a cautionary tale to attorneys, accountants and other practitioners advising clients as to charitable giving.

In *French v. Commissioner*, T.C. Memo 2016-53 (2016), a Trustee of one of several family trusts granted a conservation easement to a qualified charity. The easement was memorialized in a deed, but the recorded deed did not state the nature or extent of the ownership interests that each of the several trusts had in the property conveyed, or whether the charity had provided goods or services in return for the easement, or whether the deed constituted the entire agreement among the parties. The independent appraiser valued the easement at $1.1 million and the trust claimed a $350,971 deduction which the IRS disallowed entirely on the basis that the trustee failed to prove it had an ownership interest in the property, failed to obtain a contemporaneous written acknowledgement and had failed to prove the value of the easement. The Tax Court held that no deduction was allowed because the trustee failed to obtain a contemporaneous written acknowledgement meeting the requirements of Internal Revenue Code Section 170(f)(8). Section 170(f)(8) requires that the acknowledgement by the charity include the amount of cash and a description of any property other than cash contributed and whether the donee organization provided any goods or services in consideration, in whole or in part, for the transfer. While a deed can be a contemporaneous written acknowledgement that would comply with this code provision, the deed must contain such statements. Failure of the deed to contain the Section 170(f)(8) requirements and the failure of the donor of the easement to obtain a contemporaneous writing from the charity proved fatal to the charitable deduction.

In *Brown v. Commissioner*, T.C. Memo 2016-39 (2016), Charles Brown, a church pastor, claimed almost $20,000 in charitable contribution deductions, contending that such contributions were all made in cash. No receipts acknowledging the cash contributions were provided until after the Internal Revenue Service filed a pretrial memorandum. Many of the receipts reflected amounts in excess of $250, and no acknowledgement satisfying the requirements of Section 170(f)(8) was provided. The Tax Court denied the charitable deduction as the claim by the taxpayer was not supported by contemporaneous receipts or bank records satisfying the rules of Section 170(f)(8).

In *Beaubrun v. Commissioner*, T.C. Memo 2015-217 (2015), the taxpayer was a self-employed nurse who made donations to a church. While the donations were recorded in the church's financial records, and several years after the contributions, sent the taxpayer a letter certifying that she had made contributions to the church, the IRS disallowed the total charitable deductions claimed by the taxpayer for lack of sufficient substantiation. The Tax Court ruled that the taxpayer failed to substantiate all of her contributions, which were over $250, with a contemporaneous written acknowledgement from the charity as provided in Section 170(f)(8).

*Wesley v. Commissioner*, T.C. Memo 2015-200 (2015) also involved a pastor and his wife who claimed to have contributed nearly $4,000 of cash to a charitable program they organized and operated. No contemporaneous supporting document was provided, but the taxpayers did produce documentation (that they themselves had created years later) to identify the gifts. This after made documentation contained many errors. The Tax Court ruled that the documentation was neither contemporaneous, nor reliable, in light of its numerous errors, and did not comply with Section 170(f)(8).

In *Kunkel v. Commissioner*, T.C. Memo 2015-71 (2015), the taxpayers claimed to have made over $37,000 of non-cash contributions to a church and three specific charities in a series of 97 separate gifts, each under $250. The taxpayers did not produce any appraisals, valuations or contemporaneous receipts from any of the donees. The only documentation of the transfers was a spreadsheet created by the taxpayers during the tax audit that itemized various items of clothing and estimated values. The Tax Court not only held for the IRS on the taxpayers failure to file contemporaneous substantiation of the gifts under Section 170(f)(8), but also imposed an accuracy related penalty against the taxpayers.

*Isaacs v. Commissioner*, T.C. Memo 2015-121 (2015) involved the donation of 12 fossils to a charitable organization, and a $600,000 charitable deduction over a period of two years. The taxpayer filed Form 8283, Non-cash Charitable Contributions, with his federal income tax returns and a donee acknowledgment signed on behalf of the charity. None of the documents stated whether the charity had provided goods or services in exchange for the gifts. The IRS initially disallowed the deductions for failure to obtain a qualified appraisal. The Tax Court denied the charitable deduction on the basis that no qualified appraisals were provided and that the taxpayer failed to substantiate the non-cash contributions exceeding $5,000 with a contemporaneous receipt as required under Section 170(f)(8). The Tax Court additionally imposed accuracy related penalties against the taxpayer.

Finally, in the *United States v. Nichols*, 2015 W.L. 3439239, 115 A.F.T.R. 2nd 2015-1971 (E.D. Wash., 2015), the taxpayers filed income tax returns claiming charitable deductions over six taxable years, providing substantiation only for some of the gifts by cash or check and none of the other gifts. The U.S. District Court sustained the charitable deductions only to the extent that they were substantiated. All charitable deductions of $250 or more, not substantiated by a contemporaneous written acknowledgement from the charity, as required by Section 170(f)(8), were disallowed.

The decisions against the taxpayers consistently revolve around a failure to obtain a written acknowledgment from the charity as to the value of the gift, and whether the charity provided goods or services in exchange for the gift. This documentation is not difficult to obtain when charitable donations are made. Arguments structured around the issues of valuation, or appropriate discounts, involve subjective opinions which can vary from person to person, property to property, and case to case. However, whether contemporaneous acknowledgments of charitable gifts are made is a very objective standard, and one in which the Internal Revenue Service is now utilizing with much success.

As to taxpayers and advisors alike: no job is done until the paperwork is completed. The penalties for failing to heed this advice can be quite substantial.

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