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Federal income tax charitable deductions: property fair-market-value determinations

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I. Preliminary Matters

§ 1[a] Introduction—Scope

This annotation collects and analyzes the federal cases and selected Internal Revenue Service rulings discussing proper methods for the determination of the fair market value of property or interests in property donated by a taxpayer to a qualified charitable organization and claimed as a charitable deduction under 26 U.S.C.A. § 170[1]

§ 1[b] Introduction—Related matters

Related Annotations are located under the Research References heading of this Annotation.

§ 2[a] Summary and comment—Generally

When a charitable contribution is made in property other than money, the deduction from the donor's gross income allowed under 26 U.S.C.A. § 170 is the fair market value of the donated property at the time of the donation. The fair market value is the price which a willing buyer would pay a willing seller for the property where neither is under any compulsion to buy or sell and each person is in possession of the relevant facts.[2] Often stating that valuation is a question of fact not susceptible to application of hard and fast rules, courts attempting to resolve valuation disputes have employed a variety of criteria and methods for different kinds of property. Courts valuing real estate for the purposes of 26 U.S.C.A. § 170 have taken into account such matters as sale prices of the donated land (§ 3[a]) or similar property (§ 3[b]), the highest and best use of the land (§ 8), its tax-assessed value (§ 4), the value of any easements or appurtenances to the property (§ 5), the existence of any encumbrance or use restriction pertaining to the property (§ 6), and the present value of income generated by the property (§ 7).

In valuing easements donated to charitable organizations, courts have generally adopted an approach termed the "before and after" method, under which the value of the servient estate at its highest and best use after the donation of the easement is subtracted from the estate's value at its highest and best use before the donation to arrive at the fair market value of the donated easement (§ 10). It has been held that where an undivided fractional interest in land was donated to a charitable organization, the value per acre of the donors' remaining interest was thereby reduced for the purpose of subsequent donations of that interest (§ 12). In at least one case, donated real estate has been valued according to the estimated replacement cost of the improvements situated thereon, although this method has been rejected where the improvements were damaged by fire at the time of the donation (§ 9). Where oil, mineral, or gas interests have been donated, courts have considered the prior purchase price of the interests (§ 11[b]), and have discounted taxpayer appraisals to reflect the risk of investment in such property (§ 11[c]). Courts have refused to allow valuation of mining claims on the basis of consolidation of the value of noncontiguous claims (§ 11[a]).

In cases involving donation of paintings, courts have deemed relevant such matters as doubt regarding the attribution of a painting, the cost of the painting to the donee, the prices at which other works by the same artist have been sold, characteristics of the painting such as its subject, size, date, medium, and degree of restoration, the market in which the painting would probably have been sold had it not been donated, restrictions placed on the donee's use of the painting, and whether the donor insured the painting during his ownership (§ 13[a]). In valuing art objects other than paintings, courts have relied on such criteria as the condition of the objects, expert testimony as to their worth, and the circumstances surrounding their donation or acquisition by the donor (§ 13[b]).

The courts valuing antiques donated to charitable organizations have relied upon such evidence as the cost of the donated item to the donor, expert appraisal (where the subsequent sale of the donated property was deemed a forced sale by the court), and replacement cost (§ 14). In the category of artifacts and collector's items, replacement cost, costs of acquisition, and the reputation of an artist have been deemed relevant considerations (§ 15). Gems and jewelry donated to a charitable organization have frequently been valued by courts at or near the prices paid for them by the donors (§ 16[a]), although in some cases it has been held that the fair market value of such items was less than the prices paid by the donor (§ 16[b]). It has been held that the determination of the fair market value of books and magazines donated to charitable organizations should be made with reference to what would be paid for them by an ultimate consumer rather than a dealer intending to resell them (§ 17[a]). In valuing donated letters, manuscripts, or personal papers, the courts have held relevant the demand (or lack of demand) for such items while rejecting criteria such as copying and storage costs (§ 17[b]). The valuation of musical manuscripts has been held to encompass a variety of elements including the composer's standing in his field and the popularity of his works in general, the critical and popular reception of the works contained in the donated material, and its relative importance to the composer's career (§ 17[c]). Where a taxpayer donated essays he had written to a charitable organization, the court refused to value them on the basis of the alleged value of the donor-author's services as a consultant (§ 17[d]).

The fair market value of a donated life insurance policy was held in one case to be the policy's cash surrender value rather than its replacement cost, in view of the fact that the donee had no interest in holding the policy as an investment (§ 19). In another case, it was held that the donor of annuities could deduct as their fair market value the full value of the payments over the 25-year period in which they were to be made, rather then merely the amount of payments received by the donee in the year of donation (§ 19). In valuing used clothing, furniture, and personal items donated to charitable organizations, courts have on several occasions held that the prices for which such items were subsequently sold by the donee were the best evidence of their fair market value, although in at least one case this evidence was disregarded (§ 20).

Promissory notes assigned by taxpayers to a charitable organization have been valued for the purposes of 26 U.S.C.A. § 170 at their full face value plus accrued interest in view of the general reputation of the obligor and its ability to pay the notes (§ 24[b]). The valuation of unlisted corporate securities has been held to be subject to numerous considerations, including recent sales, corporate assets and earnings, and corporate control before and after the donation (§ 18[a], [b]).

Donations of machinery and equipment have in some cases been valued at the price paid for them by the donor, although in other cases the courts have based their valuations on expert appraisals or subsequent sale prices of the donated or similar property (§ 21). Donated property in the nature of merchandise or stock in trade to the donor has generally been valued at the donor's cost basis in the property (§ 22). Where a taxpayer donated tape-recorded copies of opera recordings to colleges, the court valuing the donation took into account to the extent possible the prices the taxpayer had paid for the recordings copied (§ 24[a]). Medical supplies donated to charitable institutions have been valued in one case on the basis of a comparable sale of identical property, although in another case a charitable contribution was disallowed entirely where the donor failed to show that the donated property had any fair market value (§ 23). In a case involving used eyeglasses, frames, and lenses donated by an optometrist for the use of indigent persons, the court held that, although the donor had failed to show any market value for the property, it could be valued on the basis of the alleged gold content of the frames (§ 23). Where a patent was donated to charity, the court valued it on the basis of expected future sales of the patented item in view of the fact that patents are rarely sold outright for cash (§ 24[e]). Rare coins have been valued on the basis of sales of similar property, condition, and doubt as to their authenticity (§ 24[c]). In a case involving donation of photographic negatives of aerial photographs, the court refused

to allow valuation based on replacement cost due to the limited market for the property, the relatively low cost the taxpayer had paid to acquire it, and the fact that considerable indexing would be required to put the property in usable condition (§ 24[d]).

§ 2[b] Summary and comment—Practice pointers

Where a charitable contribution is made in property, appraisal fees paid by the donor to determine the value of the contribution and the consequent amount of the charitable deduction are deductible as an expense of determining income tax liability.[3]

Under 26 U.S.C.A. § 170(e)(1)(A), the amount of a charitable deduction allowed for a charitable contribution of property is reduced by the amount of gain other than long-term capital gain which the donor would have received had he sold the property at its fair market value rather than donated it. A person contemplating a donation of appreciated capital assets held for less than the time required to establish long-term capital gain may wish to postpone the donation to increase the amount of his charitable deduction.

There is a split of authority as to whether a taxpayer who makes a charitable donation of real estate may include in his charitable deduction severance damages, or a decrease in value of his remaining adjacent land due to his donation.[4]

II. Factors Considered in Determination of Fair Market Value of Real Property Donated to Charitable Organization

§ 3[a] Sale price of donated or similar property—Donated property

[Cumulative Supplement]

In the following cases, it was held or recognized by courts that the price for which donated real property was or could have been sold before or after the donation (including the price which the donors paid to acquire the property) was a relevant factor to be considered in determining the fair market value of the property for the purposes of 26 U.S.C.A. § 170

Stating that little evidence could be more probative on the issue of fair market value of property than the sale price of the property, the court in Estate of Kaplin v Commissioner (1984, CA6) 748 F2d 1109, 85-1 USTC ¶ 9127, 55 AFTR 2d 85-311, 90 ALR Fed 395, later app (CA6) 815 F2d 32, 87-1 USTC ¶ 9258, 59 AFTR 2d 87-916, on remand (1987) TC Memo 1987-337, 53 TCM 1323, reversed the tax court's determination that the fair market value of land and six improvements donated to a city was $22,000 and remanded the case so that the subsequent sale of the property to a developer 2 years later for consideration of at least $175,000 could be taken into account in valuation of the property. The property had not been improved since its donation to the city, said the court, and so could not have appreciated in value in the period between the donation and the sale. Evidence that the city had not tried to sell the property for fair market value but had only attempted to recoup its holding costs was not a justification for ignoring the sale, said the court, inasmuch as it suggested that the fair market value of the property was even greater than the $175,000 sale price.

Where a 10-acre parcel of land donated by the taxpayers to the local board of education had been sold 9 months earlier for approximately $5,130 per acre to a partnership of which the taxpayers were members as part of a larger tract, the court in Scheffres v Commissioner (1969) TC Memo 1969-41, 28 TCM 234, held the prior sale to be the best evidence of the fair market value of the donated land and valued it at $51,300 for the purposes of 26 U.S.C.A. § 170 The sale, noted the court, was an arm's-length transaction, and there was nothing to suggest that anything had happened since then to affect the value of the property.

In Grossman v Commissioner (1973) TC Memo 1973-219, 32 TCM 1013, the court, in sustaining the taxpayers' claimed valuation of $262,500 for land donated to a charitable trust, noted that among the evidence supporting the taxpayers' valuation was the sale of the donated property by the trust 6 months after the donation for a price of $375,000. Even discounting the sale price to reflect the exceptionally favorable financing given to the purchaser, the court deemed the price to be strong evidence in the taxpayers' favor, particularly because there was no evidence in the record that real-estate prices in the area had risen

during the time the trust had held the land and there was nothing to show that the trust had made any capital improvements to the property.

Holding that taxpayers who donated land to a public school district had established the probability that the district would have paid them $19,500 for the land had they not donated it, the court in Gilmartin v Commissioner (1973) TC Memo 1973-247, 32 TCM 1158, found the fair market value of the land to be $19,500. The court noted that the district's own appraiser had valued the land at that figure, and that the district had purchased adjoining land at almost exactly the value given to it by the same appraiser. The district's legal counsel had expressed his belief that the taxpayers would receive more than $19,500 for the land if it were condemned by the district. However, the fact that the district believed the land to be essential to the development of an adjoining property acquired by the district would not have forced the district to pay more than the land was worth, said the court, because through its power of condemnation it could have obtained the land at a judicially determined fair market price if it found the owner's asking price unreasonable.

In Robinson v Commissioner (1974) TC Memo 1974-257, 33 TCM 1140, the court, in valuing approximately 25 acres of cemetery land condemned by a county for a water-control project, upheld the commissioner's valuation of the land at the price paid for it by the county which had condemned it. The condemnation of the land had been accomplished pursuant to a consent order in which the parties agreed that the land's fair market value was $101,800, that the county would pay $45,035 for it, and that the taxpayers would make a charitable gift to the county of the $56,765 difference. Refusing to be bound by the consent order, the court noted that the taxpayers' experts, in valuing the property on the basis of capitalization of income, had failed to defer the estimated income from the property, which in view of the condemnation would not be used for grave sites for an estimated 70 years, and had employed too low a rate of return on the property. The court held that the taxpayer had failed to show that the property was worth more than the $45,035 conceded by the Commissioner.

A 15-acre tract of land which a taxpayer had sold and offered to sell at $15,000 per acre was valued by the court for the purposes of 26 U.S.C.A. § 170 at $15,000 per acre in Nicewander v Commissioner (1975) TC Memo 1975-234, 34 TCM 1011. The taxpayer had given the eventual donee an option to purchase the land at $15,000 per acre. Ten acres of the land were sold to the donee at that price the following year; the remaining five acres of the parcel were donated by the taxpayer several months later. In rejecting the taxpayer's claim that the entire 15-acre parcel was actually worth $422,000 and that the 10-acre sale had been a bargain sale, the court noted that there was no evidence that the 10-acre sale had been intended as a gift or bargain sale, and there was nothing to show that the donated 5-acre tract had increased in value from the $15,000-per-acre price specified in the option that had been given to the donee 18 months before the donation.

Where land donated by taxpayers to a church and asserted by the taxpayers to be worth $150,000 at that time was sold 3 weeks later for $20,000, the court in Royster v Commissioner (1985) TC Memo 1985-258, 49 TCM 1594, affd (CA11) 820 F2d 1156, 87-2 USTC ¶ 9398, 60 AFTR 2d 87-5255, disregarded testimony of the taxpayers' experts in finding the fair market value of the land to be $20,000 for the purposes of 26 U.S.C.A. § 170 Although the Commissioner offered no expert testimony as to value, relying only on the sale price of the land, the court found the expert testimony offered by the taxpayers to be of doubtful value in view of the subsequent sale of the property for $130,000 less than its claimed value. In the absence of any explanation as to how the value of the property could have declined so greatly in so short a time, the court sustained the Commissioner's valuation of the donated land.

See also Garrison v Commissioner (1986) TC Memo 1986-251, 51 TCM 1273, in which the court, in valuing two unimproved parcels of land donated by taxpayers to a municipality at $17,000, observed that they had paid $6,500 5 years before for one parcel and that the other had been offered for sale 4 years before by the previous owner at $5,000 with no takers.

Holding that taxpayers who donated 186 grave sites to two churches had failed to show what a willing buyer would have paid for the sites, the court in Broad v Commissioner (1986) TC Memo 1986-340, 52 TCM 12, resorted to the taxpayers' purchase price of the sites for the purpose of valuing the donation under 26 U.S.C.A. § 170 Although the cemetery's selling price for the sites at the time of their donation was $300 each, there was no evidence, said the court, that anyone had ever bought one of the

sites at that price, and such a valuation was difficult to reconcile with the much lower prices for which some of the sites had been sold or transferred before and after their donation.

CUMULATIVE SUPPLEMENT

Cases:

Price at which taxpayers purchased medical equipment at bankruptcy sale could not be used to determine fair market value of equipment, for purposes of calculating proper amount of taxpayers' charitable deduction upon their contribution of equipment to hospital; bankruptcy court was not willing seller, but rather was compelled to sell equipment, and bankruptcy sale of equipment was made in haste, without objection from creditors and without valuation hearing. 26 U.S.C.A. § 170. Herman v. U.S., 73 F. Supp. 2d 912, 99-2 U.S. Tax Cas. (CCH) ¶ 50899, 84 A.F.T.R.2d (P-H) ¶ 99-6561 (E.D. Tenn. 1999).

See Van Zelst v Commissioner (1996, CA7) 100 F3d 1259, 96-2 USTC ¶ 50626, 78 AFTR 2d 96-7106 and petition for certiorari filed (Apr 14, 1997), § 3[b].

United States Tax Court did not clearly err in valuing easement for purposes of assessing accuracy-related penalties according to opinion of expert for Internal Revenue Service (IRS) that easement had value of $496,000 before donation as qualified conservation contribution, it was worth $1,128,000 with highest and best use as investment property held for recreation and timber revenue, and it was worth $632,000 after donation, concluding highest and best use was recreation and timber, where sale price indicated that property was worth about $1,049,703 just short time before easement's donation, and 98.99% of taxpayer, a limited liability company (LLC) and its tax matters partner, was purchased for $1,039,200 about two weeks before donation. 26 C.F.R. § 1.170A-14(g)(6)(ii). TOT Property Holdings, LLC v. Commissioner of Internal Revenue, 1 F.4th 1354, 127 A.F.T.R.2d 2021-2420 (11th Cir. 2021).

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[END OF SUPPLEMENT]

§ 3[b] Sale price of donated or similar property—Similar property

[Cumulative Supplement]

In the following cases, it was held or recognized that the price at which property similar to donated property had been sold was a relevant factor to be considered in determining the fair market value of the property for the purposes of 26 U.S.C.A. § 170

Holding that two tracts of land donated by taxpayers to a city for use in widening streets and extending sewer lines constituted charitable donations despite the fact that the donations might have coincidentally benfited the taxpayers, the court in Toole v Tomlinson (1963, MD Fla) 63-1 USTC ¶ 9267, 11 AFTR 2d 847, proceeded to value the donated property at $.15 per square foot, the same value as that paid for a comparable property the previous year. Although the donated land had been appraised by the donee at $.20 per square foot shortly before the donation, the court, in noting the prior sale of nearby land at $.15 per square foot, stated that land values in the area had been relatively stable and there was no evidence of a marked increase in property values during the year preceding the donation.

In Morrison v Commissioner (1977, MD Tenn) 77-2 USTC ¶ 9561, 40 AFTR 2d 77-5572, the court, in valuing 41 acres of real estate donated to charitable organizations, did so largely on the basis of sales of comparable property. The court rejected some sales as not comparable by reason of differences in location, topography, or potential use between the properties. In particular, the court relied on the donated property's proximity to an industrial park as a basis for distinguishing the various comparable sales offered in evidence.

In Seldin v Commissioner (1969) TC Memo 1969-233, 28 TCM 1215, the court, in valuing three tracts of land donated to school districts, adjusted the values given by the taxpayer's appraisal to take into account comparable sales. Although agreeing that the parcels, though unimproved, were to be valued as improved land in view of the rapid development of the area, the court found that the taxpayer's appraiser had not made appropriate discounts for the use of cash and, more importantly, had failed to give adequate consideration to comparable sales, which necessitated a downward adjustment of his figures to arrive at fair market value.

In Lloyd A. Fry Roofing Co. v Commissioner (1970) TC Memo 1970-298, 29 TCM 1382, the court, in valuing an 80-year-old felt and paper mill and the land surrounding it, which had been donated to a charitable organization, based its holding upon sales of comparable property rather than the price at which the donee later sold the property. The subsequent sale by the donee, said the court, was in the nature of a forced sale inasmuch as the donee was under at least an economic compulsion to dispose of the property expeditiously. On the basis of sales of comparable mill property for $15,000, $19,000, and $22,500, the court valued the donated property at $25,000.

The court in Silberman v Commissioner (1973) TC Memo 1973-48, 32 TCM 212, in valuing several parcels of real estate donated to charitable organizations, relied on comparable sales, particularly where the property in question, though purportedly residential rental property, was not rentable due to its poor condition and so could not be valued on a capitalization-of-income basis. With regard to a parcel of industrial property, the court also relied on information concerning comparable sales, although stating that substantial adjustments to those prices were necessary to reflect the differences between the donated property and the comparable properties.

In valuing lakefront property donated to a charitable organization, the court in Scheidelman v Commissioner (1975) TC Memo 1975-227, 34 TCM 993, found only the evidence as to comparable sales to be of assistance. Although these sales involved property which was similar to the donated property in geography and development, the properties were somewhat smaller, contained substantially more lake frontage, and were differently zoned. The court observed that the sales had been through an auction, but noted that no evidence had been presented as to how that fact affected the prices paid, which ranged from $29.75 to $39.75 per front foot. On the basis of the record, the court valued the donated property at $41 per front foot.

Where a taxpayer sold land for less than its fair market value to the Boy Scouts of America for use as a campground, the court in Judge v Commissioner (1976) TC Memo 1976-283, 35 TCM 1264, in determining the fair market value of the property, relied on evidence of sale prices of more or less comparable property. The court rejected outright certain sales as involving property which was more extensively developed, or which was suitable for more extensive development, than the donated property. Other sale prices, while deemed sufficiently comparable to be of assistance in valuing the donated property, were adjusted to reflect differences in, inter alia, use, topography, and accessibility.

The court in Clark v Commissioner (1978) TC Memo 1978-402, 37 TCM 1667, in determining the fair market value of donated real estate for the purposes of 26 U.S.C.A. § 170, relied upon a sale of roughly comparable property shortly after the donation. The court observed that the mansion standing on the property was functionally obsolescent due to its size and character, and that this made replacement cost an unreliable indicator of its fair market value, inasmuch as it was unlikely that an obsolete property would be rebuilt in an obsolete form. The sale of a mansion and its real estate located in a nearby town was deemed by the court to furnish a useful guide to valuing the donated property, because the other property was more like the donated property than that involved in other allegedly comparable sales relied upon by the taxpayers in their valuations.

In Madison Gas & Electric Co. v Commissioner (1979) 72 TC 521, affd (CA7) 633 F2d 512, 80-2 USTC ¶ 9754, 46 AFTR 2d 80-5955, the court, in valuing land donated to a charitable corporation took into account sales of comparable properties intended for apartment buildings and sales of comparable properties intended for industrial and commercial development. After discounting the prices received in such sales due to the fact that the donated land would require soil preparation before building, the court arrived at a value of $417,600 if the highest and best use of the land was for apartments and $417,000 if its highest and

best use was industrial development. These figures, said the court, were corroborated to some extent by an offer of $420,000 the donee had received for the property shortly after its donation. On the basis of all the evidence, the court accepted the $425,000 valuation given to the land by the taxpayer.

Comment

In Madison Gas & Electric Co. v Commissioner, above, the charitable donee sold the donated property for $468,300 approximately 4 years after the donation. The Internal Revenue Service contended that the value of the property at the time of its donation was its subsequent sale price discounted at eight percent annually for a period of 4 years. This approach was rejected by the court.

Finding the taxpayer's valuation of land donated to a city based on sales of comparable properties to be more convincing than that arrived at by the Commissioner's expert, the court in Kewaunee Engineering Corp. v Commissioner (1979) TC Memo 1979-154, 38 TCM 672, accepted generally the taxpayer's valuation, adjusting the figure to reflect the land's lack of direct access to a highway and its need for fill in order to be improved. The Commissioner's valuation, said the court, was based on sale of property which was not comparable to the donated land in that it was farmland, whereas the donated property had been zoned for industrial use. Furthermore, noted the court, the donated property was near a harbor while the "comparable" property had no such access to the harbor. Finally, said the court, the Commissioner's expert had overestimated the cost of fill for the property.

Where a taxpayer donated 2.86 acres of undeveloped low-lying marshland to a church and valued the contribution at $75,000 for the purposes of 26 U.S.C.A. § 170, the court in Demery v Commissioner (1981) TC Memo 1981-412, 42 TCM 598, found this value to be inflated and gave more weight to evidence of sales of comparable property as provided by the Commissioner's expert. The taxpayer's valuation, said the court, was based on the assumption that the lot and the entire 208-acre tract of which it was a part had been dredged, filled, and used for canals and single-dwelling residential construction. This was not in fact the condition of the property at the time of its donation, said the court, and it was doubtful that such development would ever be feasible. Based on evidence of a comparable sale of land at $2,494 per acre and the fact that the donated land, though undeveloped, fronted on a road and was close to developed properties, the court valued the land at $7,000.

Recognizing that the sale price of comparable property is an appropriate method of valuation of real estate, the court in Imbesi v Commissioner (1981) TC Memo 1981-484, 42 TCM 977, valued donated real estate for the purposes of 26 U.S.C.A. § 170 on the basis of sales of property which it deemed most comparable to the donated land. The taxpayer relied primarily on sales of lots in a nearby residential subdivision, which the court found unconvincing evidence because they were made before a zoning ordinance requiring a minimum 3-acre lot size was enacted. The taxpayer's valuation based on those sales also incorporated various assumptions as to the likelihood and expense of development of the donated property. The court expressed its preference for certain other sales documented by the taxpayer, adjusting their per-acre value to reflect the donated property's lack of improvements, its better location, and its frontage on an improved road.

In Connell v Commissioner (1986) TC Memo 1986-333, 51 TCM 1657, affd (CA11) 842 F2d 285, 88-1 USTC ¶ 9280, 61 AFTR 2d 88-1095, the court, in valuing a 5.605-acre tract of land donated to the state of Florida, relied on sale prices of comparable properties. Although the Commissioner's expert had used comparable sales to value the property, he made downward adjustments to the sale prices to reflect the existence of a 150-foot transmission line easement over the donated land and the supposedly limited access of the land to the state highway on which it fronted. The court used the expert's valuation as the starting point for its valuation, but agreed with the taxpayer that the downward adjustments were excessive, inasmuch as the

transmission line easement did not unduly hamper development of the land and access to the state highway could be achieved by a relatively simple grading of an entrance up to the level of the highway.

Although recognizing that a sheriff's sale is a distress sale and as such generally not a reliable indicator of the fair market value of land, the court in Bramson v Commissioner (1986) TC Memo 1986-273, 51 TCM 1343, took such sales into consideration for the purposes of valuing two parcels of unimproved land each measuring 40' by 125' which a taxpayer had donated to a cemetery organization where sheriff's sales were the only sales of comparable property in the area. Rejecting the contention that the donated land, which was unimproved, had no value because the cost of improving it exceeded the prices obtained at sheriff's sales for improved properties in the same area, the court valued the property at $10.

Where a taxpayer who donated land to a charitable organization attempted to value it at $375,000 on the basis of a recent sale by him of allegedly comparable property, the court in Serdar v Commissioner (1986) TC Memo 1986-504, 52 TCM 750, rejected the taxpayer's argument on the grounds that the property he had sold was in fact not comparable to the donated property. The taxpayer's valuation, said the court, was based on the premise that the donated land was comparable to a nearby property of similar size which he had recently sold for $250,000. This premise, the court said, was invalid for the reason that the nearby property was uniquely valuable to its buyer as a means of giving his adjoining land access to a road and a railroad sidetrack. Because no such special consideration applied to the valuation of the donated land, the Commissioner's valuation of $5,000 was upheld.

In Alpern Trust v Commissioner (1988) TC Memo 1988-200, 55 TCM 793, the court, in valuing a parcel of land donated to a charitable organization, relied on the recent sale price of a comparable parcel, making adjustments to reflect the differing characteristics of the donated land. The sale price of the comparable parcel, the court ruled, was to be reduced to reflect the donated parcel's lack of ocean frontage, its size, and the costs of subdividing it for residential development, which was its highest and best use.

CUMULATIVE SUPPLEMENT

Cases:

Use of non-local comparable sales was unnecessary, in action over charitable-contribution deduction based on donation of historic-preservation facade easement, also known as conservation easement, to nonprofit historical preservation society, where there were enough local comparable sales. Whitehouse Hotel Ltd. Partnership v. C.I.R., 755 F.3d 236, 2014-1 U.S. Tax Cas. (CCH) P 50316, 113 A.F.T.R.2d 2014-2489 (5th Cir. 2014).

Real property donated to United States by taxpayer was properly valued at $38,999, despite taxpayer's claim that property was worth $2.75 million, where taxpayer purchased property for $30,000, and real estate appraiser testified that, based on $300 per acre, property's value was $28,000. Van Zelst v Commissioner (1996, CA7) 100 F3d 1259, 96-2 USTC ¶ 50626, 78 AFTR 2d 96-7106 and petition for certiorari filed (Apr 14, 1997).

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[END OF SUPPLEMENT]

§ 4. Tax-assessed value of donated property

[Cumulative Supplement]

In the following case, it was held that the tax-assessed value of donated real estate was a relevant factor to be considered in determining its fair market value for the purposes of 26 U.S.C.A. § 170

In Estate of Kaplin v Commissioner (1987, CA6) 815 F2d 32, 87-1 USTC ¶ 9258, 59 AFTR 2d 87-916, on remand TC Memo 1987-337, 53 TCM 1323, the court reversed and remanded a determination by the tax court under 26 U.S.C.A. § 170 of the fair market value of real estate donated to a city so that the tax-assessed value of the property could be considered in assessing its fair market value. In holding the tax court's valuation of the property at $175,000 to be clearly erroneous, the Court of Appeals pointed out that the tax-assessed value of the property had been set at $864,300 3 months after its donation, and that under state law, the tax-assessed value was intended to represent fair market value. Although the city's increase of the assessed value shortly after obtaining the property gave some cause for skepticism, said the court, the contention of the tax court that the buildings on the property were of no value because they were fully depreciated was extreme.

On the other hand, in the following case, the court, in valuing donated real estate for the purposes of 26 U.S.C.A. § 170, disregarded the tax-assessed value of the property.

Stating that the use of tax-assessment figures in the valuation of a bank building donated to a county was inappropriate under the circumstances of the case, the court in First Wisconsin Bankshares Corp. v United States (1973, ED Wis) 369 F Supp 1034, 74-1 USTC ¶ 9164, 33 AFTR 2d 74-535, accepted the taxpayer's valuation based on replacement cost of the building less depreciation. The tax assessment of the building, said the court, had been made when the building was losing value as a bank building due to the deterioration of the neighborhood and the bank's loss of customers. However, the taxpayer's gift was deemed by the court not a gift of a bank building as such but of a special-use property, the highest and best use of which was as a public or institutional building. The taxpayer's valuation method, the court observed, had been used in the valuation of other unique properties in the area, and was proper in view of the unusual nature of the donated property.

CUMULATIVE SUPPLEMENT

Cases:

Value of a charitable contribution of property, and thus the value that can be deducted from an income-tax return, is reduced by the amount of gain which would not have been long-term capital gain if the property had been sold by the taxpayer at its fair market value. 26 U.S.C.A. § 170(e)(1)(A). Riether v. U.S., 919 F. Supp. 2d 1140 (D.N.M. 2012).

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[END OF SUPPLEMENT]

§ 5. Value of easements and appurtenances to donated land

[Cumulative Supplement]

In the following cases, it was held that easements or other appurtenances to donated land were to be considered in valuing the land for the purposes of a charitable deduction.

Where a tract of land on the Gulf of Mexico had acquired by accretion over a period of nearly a century some 75 acres of land beyond the mean high tide line which could be filled and developed, the court in Williams v Commissioner (1973) TC Memo 1973-67, 32 TCM 291, affd (CA5) 73-2 USTC ¶ 9765, 32 AFTR 2d 73-6075, held that the accrued land was to be taken into account in valuing the tract for the purposes of a charitable deduction under 26 U.S.C.A. § 170 Although only the above-water portion of the tract had been donated, and although title to the accrued land beyond the mean high tide line was statutorily vested in the state, the court noted that under state law that land could be sold only to the owner of the above-water portion of the tract, and was therefore a valuable appurtenance to the donated land.

Where taxpayers donated land to a city for the purpose of drilling wells for drinking water and claimed a charitable deduction for the donation, the court in Morton v Commissioner (1979) TC Memo 1979-484, 39 TCM 621, stated that the value of the subsurface water rights, although not precisely ascertainable, were to be considered in determining the fair market value of the donated property. An appraiser who did not treat separately the value of the water rights valued the donated land at $12,500. Another appraiser stated that although he could not say what was the fair market value of the land and all the rights appurtenant to it, he would have paid $12,500 for it, including the water rights. Expressing its belief that the water rights had a value, however ephemeral, to be taken into account, the court found that the value of those rights was offset by the city's commitment (required as a condition of the donation) to supply the taxpayers' land with water at favorable rates, and valued the donated property at $12,500.

In Alioto v Commissioner (1980) TC Memo 1980-360, 40 TCM 1147, the court, in valuing two tracts of land donated to a charitable organization, stated that easements simultaneously granted to the donee across other contiguous property of the donor to a nearby country club increased the fair market value of the donated land. With respect to another parcel of donated land, however, the court found that an agreement between the donor and the donee to have the donor manage the property and initially pay any taxes and development costs did not increase the fair market value of the land. This benefit, said the court, was merely a personal arrangement between the parties; because it did not run with the land, it merited no consideration in the determination of fair market value.

CUMULATIVE SUPPLEMENT

Cases:

Unlike the qualified appraisal of an architectural facade conservation easement that is required for a taxpayer to claim a deduction for the donation of the easement to a preservation organization, the summary appraisal form that must be attached to the taxpayer's income-tax return requires no information about how the fair market value of the donated property was determined, only a description of the property, the estimated fair market value, and information about the appraiser's qualifications and compensation. 26 U.S.C.A. § 170(f)(3)(B)(iii), (f)(11)(C); 26 C.F.R. § 1.170A–13(c)(2)(i), (c)(4)(ii). Scheidelman v. C.I.R., 682 F.3d 189, 2012-1 U.S. Tax Cas. (CCH) P 50402, 109 A.F.T.R.2d 2012-2536 (2d Cir. 2012).

On review of IRS's disallowance of charitable contribution deduction claimed by partnership for conservation easement granted to a conservation organization, tax court was required to evaluate the fair market value of the conservation restriction at the time of the contribution using the standards set forth in the governing regulations. 26 U.S.C.A. § 170. Pine Moutain Preserve, LLLP v. Commissioner of Internal Revenue, 978 F.3d 1200 (11th Cir. 2020).

Tax Court's highest and best reasonably probable use determination with respect to subject property was sufficient without further accommodation to development risk, in determining value of corporate taxpayer's claimed charitable contribution deduction, as related to conservation easement donation, where Tax Court undertook thorough analysis of property's rezoning history before concluding that it was reasonably probable for county's board of commissioners to approve development at moderate density, which evidence showed that market was poised to demand. 26 U.S.C.A. § 170. Palmer Ranch Holdings Ltd v. C.I.R., 812 F.3d 982, 2016-1 U.S. Tax Cas. (CCH) P 50176, 117 A.F.T.R.2d 2016-614 (11th Cir. 2016).

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[END OF SUPPLEMENT]

§ 6. Encumbrances or restrictions on use of donated land

[Cumulative Supplement]

In the following cases, courts determining the fair market value of land donated for charitable purposes took into account encumbrances or restrictions which the donor or others imposed or attempted to impose on the use of the land.

Where a taxpayer suing for a refund of income tax had donated undeveloped land to the state of Maine and valued it at $1 million based on its use as a potential hydroelectric power site, the fact that the Federal Government had previously selected the land as a possible part of a national wildlife and scenic river system led the court in Great Northern Nekoosa Corp. v United States (1983, CA1 Me) 711 F2d 473, 83-2 USTC ¶ 9476, 52 AFTR 2d 83-5563, to discount the taxpayer's valuation and affirm the judgment of the District Court accepting the Internal Revenue Service's valuation based principally on the value of the timber on the land. The court noted that the taxpayer's valuation did not take into account the possibility that hydroelectric development of the land would be precluded if the governor of Maine requested and the Federal Government approved its inclusion in the wildlife and scenic river system. This possibility, said the court, necessarily affected the price that a willing buyer of the land would pay for it. Because the taxpayer had not demonstrated a fair market value of the land higher than that given by the Internal Revenue Service, the judgment of the District Court accepting the IRS valuation was upheld.

Where a taxpayer who had donated land to a school sued for a refund of tax paid after being disallowed a charitable deduction based on the fair market value of the land, the court in Cummings v United States (1976, MD NC) 409 F Supp 1064, 76-2 USTC ¶ 9655, 38 AFTR 2d 76-5653, held in denying partial summary judgment to the government that the fair market value of the land, rather than the cost of the land to the taxpayer, would be allowed as a charitable deduction. The deed under which the taxpayer had taken the land contained language intended to prevent him from conveying it to any person other than the school to which he subsequently donated it. The government contended that this language was a restriction on the use of the property preventing the taxpayer from claiming its full fair market value as a charitable contribution. The court disagreed, stating that the language in the deed was void under state law as an unlawful restraint upon alienation, and therefore could not have affected the fair market value of the property.

CUMULATIVE SUPPLEMENT

Cases:

When property is donated to a charity on the condition that it be destroyed, that condition must be taken into account when valuing the gift. 26 U.S.C.A. § 170; 26 C.F.R. § 1.170A–1(c). Rolfs v. C.I.R., 668 F.3d 888, 2012-1 U.S. Tax Cas. (CCH) P 50186, 109 A.F.T.R.2d 2012-828 (7th Cir. 2012).

Tax Court did not clearly err in concluding agreements governing remainder interest in parcel of commercial real property did not adequately protect it, such that its fair market value could not be determined by actuarial tables, in limited liability company's (LLC's) action for review of final partnership administrative adjustment (FPAA), which imposed gross valuation misstatement penalty with respect to LLC's charitable contribution deduction for remainder interest, for which LLC had claimed value of $33,019,000, but which had true value of $3,462,886 according to Tax Court; in event of waste or other harm to property by holder of term-of-years interest, only recourse for holder of remainder interest was to take early possession of damaged property, with no right to sue for damages. 26 U.S.C.A. §§ 6662(a), 6662(h)(1), 6662(h)(2)(A), 7520(a); 26 C.F.R. § 1.7520-3(b)(2)(iii). Blau v. Commissioner of Internal Revenue Service, 924 F.3d 1261, 123 A.F.T.R.2d 2019-1960 (D.C. Cir. 2019).

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[END OF SUPPLEMENT]

§ 7. Capitalization of income

In the following cases, the courts determining the fair market value of real property donated to a charitable organization recognized that capitalization of the income the property could be expected to generate was a relevant consideration in its valuation.

In valuing several improved parcels of real property donated to charitable organizations, the court in Silberman v Commissioner (1973) TC Memo 1973-48, 32 TCM 212, relied in part on capitalization of income as a valuation method where the property was in fact producing rental income. Some of the property, noted the court, was not rentable due to its poor condition and so could not be valued on the basis of capitalization of income. Where this basis was appropriate, the court accepted the calculations of the Commissioner's expert with an adjustment to reflect the court's judgment that he had overstated the cost of insurance.

Where a taxpayer donated the use and income of buildings slated for demolition under an urban renewal plan, the court in Pearsall v Commissioner (1977) TC Memo 1977-230, 36 TCM 956, although recognizing that the income generated by the property was a relevant factor in its valuation under 26 U.S.C.A. § 170, found the taxpayer's valuation of approximately $60,000 based on this method to be excessively high and determined the fair market value of the donation to be $25,000. The taxpayer based his valuation on a 4-year interest in the gross rents. The court found this unrealistic in view of the fact that the property was scheduled for demolition, and under the terms of the gift, the donee's interest was to terminate at the shorter of 3 years or the commencement of eminent domain proceedings. Moreover, said the court, the taxpayer had not considered the obligation assumed by the donee to demolish the buildings at the end of the term of the gift, nor had he taken into account loss of rents due to vacancies, or expenses for repairs or taxes.

Finding a taxpayer's valuation of commercial real estate donated to a charitable organization based on sales of comparable properties to be unconvincing, the court in Rice v Commissioner (1979) TC Memo 1979-249, 38 TCM 990, found credible the approach of the Commissioner's expert based on capitalization of the earnings of the property. The facts involved in the supposedly comparable sales relied upon by the taxpayer, said the court, were so different from the facts of the case as to make the valuation reached by this method unreliable. The taxpayer had also undertaken an alternative valuation based on capitalization of earnings, but the court found his figures for capitalization rate and amount of earnings to be unrealistic, preferring the calculations of the Commissioner's expert.

Selecting capitalization of income as the best approach to the valuation of a 10-story warehouse donated to a charitable organization, the court in Interco Inc. v United States (1980, Cl Ct Tr Div) 80-1 USTC ¶ 9346, 45 AFTR 2d 80-1375, affd (Ct Cl) 81-1 USTC ¶ 9396, rejected valuations based on comparable sales and on reproduction cost. The court explained that there were no truly comparable sales available for comparison purposes. The court also noted that reproduction cost valuation was inappropriate because there was no evidence that such a structure would have been reproduced in its location at the time it was donated; moreover, there was sharp dispute as to the proper extent of the depreciation to be applied. Because the income derived from renting the building's office, manufacturing, and warehouse space could be readily ascertained, the court determined the property's value on the basis of capitalization of income.

However, in the following cases, the court, in valuing income-producing real estate for the purposes of 26 U.S.C.A. § 170, found capitalization of the income produced by the property to be an unsuitable method for determining the fair market value of the property.

In valuing for the purposes of 26 U.S.C.A. § 170 a baseball stadium which a taxpayer had donated to a city while selling the land on which the stadium stood to the city for $1.15 million, the court in Rainier Cos. v Commissioner (1977) TC Memo 1977-351, 36 TCM 1404, rejected the taxpayer's proposed use of capitalization of the stadium's income as a method of valuation. The court observed that the parties agreed that the highest and best use of the land was as a shopping center, and that the city's purchase price was based on that use. To value the stadium by capitalization of its earnings, the court said, would mean that even though the taxpayer received a purchase price for the land based on its highest and best use, he would be allowed to value the stadium on a basis other than the land's highest and best use, an inconsistency the court refused to permit. Finding the fair market value of the land and the stadium, for the purposes of the highest and best use of the land, to be $1.25 million, the court subtracted

the $1.15 million realized by the taxpayer on the sale of the land and arrived at a value of $100,000 for the taxpayer's charitable deduction for its donation of the stadium. The court did not deduct from this figure the cost of demolishing the stadium, saying that this cost would be offset by the city's interim use of the stadium prior to its demolition.

In Guest v Commissioner (1981) 77 TC 9 (Acq), the court, in valuing several commercial rental properties donated by a taxpayer to a charitable organization, discounted the valuation of the taxpayer's expert of approximately $143,000 based on the present value of the future income stream from the properties plus the present value of the reversionary interest in them. This valuation, said the court, failed to take into account the sizable transfer taxes to be paid in connection with the gift of the properties, as well as other tax aspects of ownership which could affect their value. The court also noted that the taxpayer's expert had made no attempt to determine the properties' value unencumbered by the large mortgages to which they were subject, nor had he taken into account potential legal problems arising from purchase options clauses in the leases to which the properties were subject. Taking into consideration the price for which the donee sold one of the properties after its donation and the income that the other had generated since then, the court valued the properties at $30,000.

§ 8. Highest and best use of donated land

[Cumulative Supplement]

In the following cases, courts determining the value of land donated to a charitable organization by a taxpayer have taken into account the highest and best use of the land.

Affirming the tax court's valuation of a portion of land donated to a charitable organization based on the conclusion that its highest and best use was for agricultural purposes, the court in Ebben v Commissioner (1986, CA9) 783 F2d 906, 86-1 USTC ¶ 9250, 57 AFTR 2d 86-901, nonetheless reversed and remanded the case in view of the tax court's erroneous assignment of the same per-acre value to differently zoned land. At the time of the donation, most of the land had been zoned in an interim classification permitting agricultural or residential use, while a small portion had been zoned for industrial use. Although there was a possibility that the larger portion might have been rezoned to allow its industrial use as well, the Commissioner's evidence that a surplus of undeveloped industrial land existed at the time of the donation and that two similar tracts had been sold at a price reflecting agricultural use was deemed sufficient to support the tax court's valuation of the larger portion of land based on agricultural use. The case was remanded, however, to correct the tax court's error of assigning the same per-acre value to the smaller portion, which had been zoned for industrial use at the time of the donation.

Where taxpayers acquired through a tax delinquency sale a parcel of real estate upon which a building constructed by an adjoining church encroached, the court in Edwards v Commissioner (1973) TC Memo 1973-252, 32 TCM 1186, in valuing the real estate for the purposes of its subsequent donation to the church by the taxpayers, stated that the fair market value of the property was affected by the fact that the most economical use of the property was as a part of the church building which had already been constructed. In any negotiations between the taxpayers and the church for the sale of the property, said the court, the taxpayers would have been aware of the considerable expense required to convert the encroaching part of the building to commercial use, and the rentability of the commercial space thus created would almost certainly have been adversely affected by the community's response to such an action. The church as a prospective buyer, said the court, would have been conscious of the replacement cost of the encroaching part of its building and the problems created by commercial occupancy of a wing of the church building.

Where a taxpayer sold land to a city for $1.15 million and donated to the city the baseball stadium which stood on the land, the court in Rainier Cos. v Commissioner (1977) TC Memo 1977-351, 36 TCM 1404, in valuing the stadium for the purposes of 26 U.S.C.A. § 170, rejected various methods of valuation in favor of one which it deemed consistent with the highest and best use of the property. The court found replacement cost of the stadium to be an improper method of valuing it, noting that this method assumed that the property in question was worth replacing. The court also rejected capitalization of the stadium's earnings as inconsistent with the highest and best use of the land as a shopping center. Finding the fair market value of the land

and the stadium for the purposes of its highest and best use to be $1.25 million, the court subtracted the $1.15 million realized by the taxpayer on the sale of the land and arrived at a value of $100,000 for the taxpayer's charitable deduction for its donation of the stadium. The court did not deduct from this figure the cost of demolishing the stadium, saying that this cost would be offset by the city's interim use of the stadium prior to its demolition.

Where taxpayers donated three adjoining tracts of land to a university for use as a research center, the court in Ivey v Commissioner (1983) TC Memo 1983-273, 46 TCM 172, held that the donated land was to be valued as a unit for the purposes of the highest and best use to which it would be put, rather than as three separate tracts. The court explained that fair market value assumed a sale in which both parties had reasonable knowledge of all relevant facts. Both the donors and the donee, said the court, were aware of the highly relevant fact that all three tracts would be jointly donated to the university for the express purpose of constructing a research center. This, said the court, would have affected the price the university would have paid for the land and the price the donors would have accepted, and so was a relevant consideration in its valuation.

In Fiske v Commissioner (1984) TC Memo 1984-494, 48 TCM 1128, the court, in valuing undeveloped woodland donated to a charitable organization, took into account the fact that different portions of the property were suitable for different uses. The court noted that due to lack of access, the highest and best use of the greater part of the donated land was recreation and timber production, which justified valuation at $225 per acre. The remaining land was capable of development beyond those uses and was valued at $400 per acre.

In Garrison v Commissioner (1986) TC Memo 1986-251, 51 TCM 1273, the court valued two unimproved parcels of land donated by taxpayers to a municipality at $17,000 after rejecting testimony offered by the taxpayers that the highest and best use of the land was residential development and that it was therefore worth over $300,000. The court relied on opposing testimony to the effect that the property was situated in a wetlands and flood-plain area which could not be developed. The court also observed that although the land had been zoned for residential development since 1888, no one had ever attempted to build on it, even though there were very few vacant building lots left in the city.

CUMULATIVE SUPPLEMENT

Cases:

Tax Court properly upheld determination by Commissioner of Internal Revenue of fair market value of donated property where Tax Court's endorsement of Commissioner's reliance upon appraisals based upon comparable sales of similar property was eminently supportable. McMurray v Commissioner (1993, CA1) 985 F2d 36, 93-1 USTC ¶ 50107, 71 AFTR 2d 93-954.

Even if taxpayers had properly severed their interest in real property from their interest in house and had properly donated the house to charitable organization, they could not claim charitable deduction based on appraisal that calculated the value of the house at its highest and best use, i.e., intact and relocated to another site for use as a residence; valuation methodology used in appraisal was invalid because taxpayers donated house for express purpose of having the organization engage in deconstruction and workforce training, and the appraisal did not take into consideration the condition on the conveyance that necessarily reduced the value of the donation. 26 U.S.C.A. § 170(f)(11). Mann v. United States, 364 F. Supp. 3d 553, 2019-1 U.S. Tax Cas. (CCH) P 50145, 123 A.F.T.R.2d 2019-599 (D. Md. 2019).

Fair market value of property before taxpayer's donation of it to a land trust as a conservation easement, based on highest-and-best use, was IRS expert's estimate of $2,400,000, rather than taxpayer's expert's estimate of $15,680,000, and therefore, after subtracting the post-easement highest-and-best of $2,300,000, total amount that could be claimed as a charitable contribution deduction was $100,000, instead of the $15,160,000 that taxpayer claimed on its tax return; taxpayer's expert relied on assumption that the property could have been developed prior to the easement, but because development was unlikely due to uncertainties that any owner would have gotten necessary permission from the county, the property's highest-and-best use was for a golf course or other recreational purpose. 26 U.S.C.A. § 170(h); 26 C.F.R. § 1.170A-14(h)(3)(i). PBBM-Rose Hill,

Limited v. Commissioner of Internal Revenue, 900 F.3d 193, 2018-2 U.S. Tax Cas. (CCH) P 50376, 122 A.F.T.R.2d 2018-5471 (5th Cir. 2018).

Objective assessment of likelihood that properties would be developed into gravel mine was proper valuation methodology for purpose of determining fair market value of properties as part of establishing amount of charitable contribution deduction stemming from donations of qualified conservation easements. 26 U.S.C.A. § 170(f)(3)(B)(iii), (h); 26 C.F.R. § 1.170A–14. Esgar Corp. v. C.I.R., 744 F.3d 648, 2014-1 U.S. Tax Cas. (CCH) P 50207, 113 A.F.T.R.2d 2014-1210 (10th Cir. 2014).

United States Tax Court did not clearly err in its conclusion that property's highest and best use before easement's donation was as investment property held for recreation and timber revenue, rather than low density destination mountain resort residential development, in making determination of fair market value to assess accuracy-related penalty, since arm's-length sale of property at issue occurred mere 17 days before conservation easement deed at price that was slightly less than independent valuation, existing developments were in mountainous areas with scenic views or views of large bodies of water such as lakes that did not apply to property at issue, and related low density destination mountain resort residential development had failed. 26 U.S.C.A. §§ 6662, 6751(b); 26 C.F.R. § 1.170A-14(h)(3). TOT Property Holdings, LLC v. Commissioner of Internal Revenue, 1 F.4th 1354, 127 A.F.T.R.2d 2021-2420 (11th Cir. 2021).

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[END OF SUPPLEMENT]

§ 9. Replacement cost of improvements

[Cumulative Supplement]

In the following cases, courts held or stated that replacement cost of improvements on real property donated to a charitable organization was a relevant factor in valuing the property for the purposes of 26 U.S.C.A. § 170

The court in First Wisconsin Bankshares Corp. v United States (1973, ED Wis) 369 F Supp 1034, 74-1 USTC ¶ 9164, 33 AFTR 2d 74-535, accepted the taxpayer's valuation of a bank building donated to a county based on replacement cost of the building less depreciation. The court rejected tax-assessment figures as a basis for valuation, stating that the assessment had been made when the building was losing value as a bank building due to the deterioration of the neighborhood and the bank's loss of customers. The court viewed the donation as not a gift of a bank building as such but of a special-use property of a unique nature. Replacement cost valuation, the court observed, had been used in the valuation of other unique properties in the area, and was proper in view of the unusual nature of the donated property.

The court in Estate of Palmer v Commissioner (1988, CA8) 839 F2d 420, 88-1 USTC ¶ 9174, 61 AFTR 2d 88-607, held that the estimated cost of reproducing a Victorian mansion situated on land donated to a charitable organization was a relevant factor in valuation of the property. Because the mansion had not been used as a single-family residence for a long time prior to its donation, and probably would never again be so used, the court held that the tax court's valuation based on sales of single-family Victorian houses was erroneous inasmuch as such properties were not comparable to the donated property. Reproduction cost, said the court, is a relevant measure of fair market value where the property in question is unique, its market is limited, and there is no evidence of comparable sales. The case was remanded so that the tax court could hear evidence as to reproduction cost.

On the other hand, in the following case, a court valuing a building donated to a fire department refused to accept as its fair market value the cost of replacing it.

Where a taxpayer who donated a fire-damaged building to a local fire department for the purposes of conducting fire drills and testing new equipment attempted to value the donation on the basis of the replacement cost of the building, the court in Scharf

v Commissioner (1973) TC Memo 1973-265, 32 TCM 1247, found this method to be unsuitable for the determination of the building's value. The court agreed with the Commissioner that replacement cost bore little relation to the fair market value of the property in view of the fact that it was poorly maintained and fire damaged when it was donated. The court valued the building at its value for insurance loss purposes less the value of the insurance proceeds recovered by the taxpayer.

CUMULATIVE SUPPLEMENT

Cases:

Even if taxpayers had properly severed their interest in real property from their interest in house and had properly donated the house to charitable organization, they could not claim a charitable deduction based on appraisal that calculated the value of the house determining fair market value of house's used building components when sold on the second-hand market by taking value of new versions of the building materials comprising the house and depreciating those materials based on the age of the house; condition of conveyance was that house would be used for organization's training program, under which some parts of the structure would be deliberately destroyed, which necessarily prevented all such materials from being salvaged, and thus valuation based on the resale value of all building materials overstated the value of the house. 26 U.S.C.A. § 170(f)(11). Mann v. United States, 364 F. Supp. 3d 553, 2019-1 U.S. Tax Cas. (CCH) P 50145, 123 A.F.T.R.2d 2019-599 (D. Md. 2019).

Reproduction cost was not appropriate means for determining fair market value of real property, for purposes of taxpayer's claimed charitable-contribution deduction based on its donation of historic-preservation facade easement; although easement required taxpayer to "repair, renovate, or reconstruct the damaged or destroyed parts" of facade and reproduction cost of facade, as opposed to entire building, might have been relevant in valuing easement, tax court did not think anyone would reproduce old building in its original form. Whitehouse Hotel Ltd. Partnership v. C.I.R., 755 F.3d 236, 2014-1 U.S. Tax Cas. (CCH) P 50316, 113 A.F.T.R.2d 2014-2489 (5th Cir. 2014).

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[END OF SUPPLEMENT]

§ 10. Donation of easements; "before and after" valuation

[Cumulative Supplement]

In the following cases, courts valuing easements donated to charitable organizations have determined the fair market value of the donation by determining the value of the servient estate before the donation and subtracting therefrom its value after the donation.

In Todd v United States (1985, WD Pa) 617 F Supp 253, 85-2 USTC ¶ 9508, 56 AFTR 2d 85-5501, the court, in denying the taxpayer's refund claim based on the Commissioner's alleged undervaluation of a scenic easement donated by them to a charitable organization, accepted the Commissioner's contention that the highest and best use of the property to which the easement pertained, both before and after the donation, was as a country estate, and that subtracting the value of the property after the donation of the easement from its value before the donation yielded a value of $20,800 for the easement. Although the taxpayer argued for a higher predonation valuation of the land on the basis of its potential for subdivision, the court noted that the surrounding area consisted of estate-type property with few subdivisions and concluded that the government's view as to the highest and best use of the land before the donation of the easement was probably correct.

Where a taxpayer who had donated a scenic easement on approximately 1,340 acres of land to a charitable organization sought to establish the pre-easement value of the land based on sale prices of nearby 50-acre lots, the court in Akers v Commissioner (1986, CA6) 799 F2d 243, 86-2 USTC ¶ 9635, 58 AFTR 2d 86-5638, cert den (US) 94 L Ed 2d 147, 107 S Ct 1290, in affirming

the tax court's determination of the easement's value based on subtracting the value of the servient estate after the donation from its value before the donation, held that even though the taxpayer's land could be subdivided into 2 dozen 50-acre lots, the sale price of other 50-acre lots, multiplied by 2 dozen, was not a proper measure of the fair market value of his land before granting the easement. This approach, said the court, did not take into account the considerable time and effort required to subdivide and market 2 dozen tracts of land; the correct method, as employed by the tax court, was to consider sale prices of land tracts approximately the size of the taxpayer's.

Where the parties agreed that the highest and best use of servient property after the donation of a scenic easement to a charitable organization was a country estate, but disagreed as to the highest and best use of the property before the donation, the court in Thayer v Commissioner (1977) TC Memo 1977-370, 36 TCM 1504, found that the highest and best use before the donation of the easement was development of luxury homesites and valued the servient property accordingly in determining the fair market value of the easement. The land, observed the court, could have been used for single-family dwellings but for zoning requirements, access problems, and inadequate water and sewage facilities. Under the circumstances, the court found that two to four luxury homesites could have been constructed on the property before the donation of the scenic easement and on the basis of this conclusion valued the property before the donation at $342,500. Finding that the value of the property after the donation was $229,500, the court concluded that the fair market value of the donated easement was $113,000.

Stating that the proper method of determining the fair market value of an easement in the facade of a building in the French Quarter of New Orleans donated to a charitable organization was to consider the value of the servient property at its highest and best use before and after the donation, the court in Hilborn v Commissioner (1985) 85 TC 677, valued the easement at a figure between those arrived at by the parties' experts. The court ruled that in determining the predonation value of the servient property, it was necessary to take into account the value of the property itself and the value of the donors' financial commitment to rehabilitate and renovate the property (required by the donee as a condition of acceptance of the easement). The court found that the donation of the easement had lowered the value of the property by 10 percent, or $55,278, which figure was the value of the easement.

Where the highest and best use of a corporate taxpayer's land before the donation of a conservation easement to a charitable organization was the construction of a hydroelectric powerplant, the court in Stanley Works v Commissioner (1986) 87 TC 389, valued the land before the donation at that use and deducted the value of the land after the donation to value the easement for the purposes of 26 U.S.C.A. § 170 The court rejected the Commissioner's contention that the land was unlikely to have been used for a powerplant, stating that the topography of the land was suitable for such development and that construction of a powerplant would probably not have been blocked for environmental reasons. The court valued the land before the donation of the easement at $6.65 million based on the average price per acre of land purchased in the area for use as a hydroelectric powerplant. Deducting $1.68 million as the value of the land at its highest and best use after the donation (which the parties agreed was farmland), the court arrived at a value of $4.97 million for the donated easement.

Where a taxpayer installed drainage facilities on his land and donated them to the city along with easements to facilitate their repair and maintenance, the court in Osborne v Commissioner (1986) 87 TC 575, relied on expert testimony regarding the value of the land before and after the donation of the easement to value the donation of the facilities and the easement. The parties' experts each valued the land at approximately $5 per square foot before the donation. The court found that the Commissioner's expert had understated the decrease in value resulting from the donation of the easement, pointing out that the donation rendered construction on the affected land impracticable if not impossible. The court held that a postdonation value of $3 per square foot, as asserted by the taxpayer, most accurately reflected the property's value. The court also considered the increase in value to the taxpayer's property by virtue of installation of the drainage facilities and the expenses incurred by the taxpayer in their installation in valuing the contribution of the facilities and the easement at $45,000.

Finding that the highest and best use of the taxpayer's land before it was burdened with an open-space easement donated by the taxpayer to a charitable organization was as a subdivided property for residential construction, the court in Symington v Commissioner (1986) 87 TC 892, valued the land based on that use and then subtracted its value based on its highest and best

use after the donation of the easement to arrive at the easement's fair market value for the purposes of 26 U.S.C.A. § 170 The parties agreed that the highest and best use of the land after the donation was as a country estate, inasmuch as the easement precluded subdivision of the land. The Commissioner contended that this had also been the highest and best use of the property before the donation, but in view of the evidence that the relevant zoning and subdivision ordinances in effect at the time of the donation would have permitted subdivision, and that there was considerable demand in the area for individual lots, the court held that the land's highest and best use was subdivision for residential construction. Valuing the land at this use based on sale prices of comparable properties and adjusting for appreciation over time, costs of development, and the value of money during the time estimated necessary to sell all the subdivided lots, the court subtracted the postdonation value of the land and valued the easement at approximately $92,000.

In Nicoladis v Commissioner (1988) TC Memo 1988-163, 55 TCM 624, the court, in valuing for the purposes of 26 U.S.C.A. § 170 a facade servitude donated to a charitable organization which obligated the donors to preserve the exterior of their building and make no changes to it without the express permission of the donee, calculated the fair market value of the donation by determining the value of the property before the donation and subtracting therefrom its value after the donation. In arguing that the donation had relatively little effect on the value of the servient property, the Commissioner asserted that the designation of the property as a historic landmark, which occurred prior to the donation, had substantially restricted its development and that the donation of the facade servitude did not restrict future development any more than it had already been restricted. While rejecting this contention, the court went on to say that the donation did not impede development to the extent claimed by the donors. Finding that the predonation value of the property (set by the court at $1,187,000) had been reduced by 10 percent by the donation, and further that the loss of development rights was worth $50,000, the court accordingly valued the donation at $168,700.

Comment

Although in Nicoladis v Commissioner, above, and in Hilborn v Commissioner, discussed elsewhere in this section, the tax court found that the donation of a scenic easement reduced the value of the servient property by 10 percent, the court in Nicoladis specifically disclaimed adoption of a "10 percent rule" with respect to such donations, stating that valuation is a question of the facts and circumstances of a particular case.

CUMULATIVE SUPPLEMENT

Cases:

The "before and after" valuation method is generally applied to charitable contribution deductions for a donation of architectural facade conservation easement to a preservation organization, which considers the difference, if any, in the value of the property with and without the easement. 26 U.S.C.A. § 170(f)(3)(B)(iii). Scheidelman v. C.I.R., 755 F.3d 148, 2014-1 U.S. Tax Cas. (CCH) P 50324, 113 A.F.T.R.2d 2014-2591 (2d Cir. 2014).

When valuing qualified conservation easements for purposes of charitable-contribution deduction to income taxes, the before and after valuation approach is to be employed where there is no substantial record of sales of easements comparable to the donated easement. 26 C.F.R. § 1.170A–14(h). Whitehouse Hotel Ltd. Partnership v. C.I.R., 615 F.3d 321, 2010-2 U.S. Tax Cas. (CCH) P 50564, 106 A.F.T.R.2d 2010-5759 (5th Cir. 2010).

In valuing conservation easement for purposes of claimed charitable deduction for donation of the conservation easement, expert appraisers properly overlooked comparable sales and based their finding on the difference in the fair market value of the property before and after the easement was donated. 26 U.S.C.A. § 170(f)(3); Tax Court Rule 143(a), 26 U.S.C.A. foll. § 7453. Trout Ranch, LLC v. C.I.R., 493 Fed. Appx. 944, 2012-2 U.S. Tax Cas. (CCH) P 50524, 110 A.F.T.R.2d 2012-5621 (10th Cir. 2012).

Court granted taxpayer refund of $153,260.28 for overpayment of taxes where, as charitable deduction, taxpayer had granted to charitable organization scenic easement valued at $223,260.28, measured by difference between fair market value of property at its highest and best use before and after grant of easement, and IRS had disallowed all but $70,000 of charitable deduction. McLennan v United States (1991) 24 Cl Ct 102, 91-2 USTC ¶ 50447, 68 AFTR 2d 91-5572.

[Top of Section]

[END OF SUPPLEMENT]

§ 11[a] Factors considered in valuation of donated oil, mineral, or gas interests—Consolidation of noncontiguous mining claims

In the following cases, the courts, in finding mining claims donated to charitable organizations to have no value for the purposes of 26 U.S.C.A. § 170, have rejected a theory of valuation based on combining the value of other mining claims on noncontiguous land.

To the same effect, see Parker v Commissioner (1986) 86 TC 547.

Where a taxpayer hired a geologist to explore and stake mining claims for him and subsequently donated one of the claims to a charitable organization, the court in Snyder v Commissioner (1986) 86 TC 567, in finding that the claim had no value for the purposes of 26 U.S.C.A. § 170, rejected the taxpayer's attempt to value the claim by consolidating the value of all claims of investors in other projects undertaken by his geologist, regardless of the location of those claims. The court noted that although consolidation of adjoining claims is sometimes undertaken to avoid litigation over the right to follow a vein of ore below ground or to facilitate recovery of ore by conducting recovery operations jointly, there was no evidence that the taxpayer's theory of consolidation, involving areas selected solely by his geologist which were not necessarily contiguous or even near each other, was recognized as a proper valuation method in commercial mining. The theory made no sense, said the court, in the absence of an explanation as to why an investor with a valuable claim would agree to share its value with an investor holding a worthless claim.

§ 11[b] Factors considered in valuation of donated oil, mineral, or gas interests—Prior purchase price of interest

In the following case, the court, in valuing a coal lease donated to a charitable organization, found its value to be the price at which it had previously been purchased.

Finding that the best evidence as to the fair market value of a coal lease donated to a charitable organization was the fact that the partnership to which the taxpayers belonged had paid $50,000 for the lease 2 years before its donation, the court in Butler v Commissioner (1985) TC Memo 1985-613, 51 TCM 126, valued the lease at $50,000 for the purposes of 26 U.S.C.A. § 170 Although both parties attempted to value the lease by showing the sale prices of allegedly comparable properties, the court found that insufficient evidence had been presented to justify the conclusion that the properties in question were actually comparable to the donated property. The court observed that nothing had happened, such as the drilling of a test shaft, to change the value of the lease since the taxpayers had acquired it, and any increase in value due to inflation was offset by the fact that at the time of donation, the lease had 2 years less to run than when the taxpayers had first acquired it.

§ 11[c] Factors considered in valuation of donated oil, mineral, or gas interests—Discount for risk

In the following case, the court, in valuing interests in oil and gas leases donated to a charitable organization, applied a discount to expert valuations to take into account the risk of investment in such property.

Where taxpayers donated their fractional interests in oil and gas leases to charitable organizations, the court in Stanton v Commissioner (1967) TC Memo 1967-39, 26 TCM 191, 26 OGR 120, in valuing the property for the purposes of 26 U.S.C.A. § 170, adjusted the value given by the taxpayer's expert to allow for the risk inherent in oil and gas investments. In view of the uncertainties involved in the recovery of oil and gas, said the court, the fair market value of such property could not be deemed identical to the present value of estimated future net revenues; a buyer would seek profit on such an investment commensurate with his risk. Because the taxpayers had not shown that their expert had made any allowance for risk, and because such allowance appeared to the court to be a standard industry practice, the court stated that the values stated by the expert should be reduced by one-third to reflect a risk allowance. Making a further allowance to correct what the court viewed as generosity on the expert's part, the court discounted his appraisal by a total of 40 percent.

§ 12. Donation of undivided fractional interest in land as reducing unit value of land retained and subsequently donated

In the following case, it was held that the donation of an undivided fractional interest in land to a charitable organization reduced the per-acre fair market value of the remaining land for the purposes of subsequent donations of interests in the land.

Where two brothers who were tenants in common of a parcel of land each donated a percentage of their respective undivided interests in the land to a charitable organization over a period of years, the court in Knapp v Commissioner (1977) TC Memo 1977-389, 36 TCM 1576, found in valuing the property thus donated that the fair market value of the land initially retained by the donors but later donated to the same organization decreased by virtue of the initial gift of fractional interests. The court accepted the Commissioner's contention that in the years following the brothers' first gift of 11.75 percent of their interest in the land, the remaining land's fair market value per acre was to be discounted to reflect the fact that the brothers no longer owned the entire interest in the property and that a prospective purchaser could only become a cotenant with the charitable organization.

III. Determination of Fair Market Value of Personal Property

§ 13[a] Works of art—Paintings or limited-edition prints or lithographs

The determination under 26 U.S.C.A. § 170 of the fair market value of a painting or limited-edition print or lithograph donated to a charitable organization is subject to a number of considerations, depending on the circumstances of the case. Courts in resolving this issue have deemed relevant such factors as—

—the cost of a painting or lithograph to the taxpayer. Orth v Commissioner (1987, CA7) 813 F2d 837, 87-1 USTC ¶ 9215, 59 AFTR 2d 87-758; Silverman v Commissioner (1968) TC Memo 1968-216, 27 TCM 1066; Rupke v Commissioner (1973) TC Memo 1973-234, 32 TCM 1098; Farber v Commissioner (1974) TC Memo 1974-155, 33 TCM 673, affd (CA2) 76-1 USTC ¶ 9118, 37 AFTR 2d 76-346 and affd without op (CA2) 535 F2d 1241; Peters v Commissioner (1977) TC Memo 1977-128, 36 TCM 552; Lio v Commissioner (1985) 85 TC 56, affd (CA7) 813 F2d 837, 87-1 USTC ¶ 9215, 59 AFTR 2d 87-758; Lightman v Commissioner (1985) TC Memo 1985-315, 50 TCM 266; Harken v Commissioner (1985) TC Memo 1985-468, 50 TCM 994; Hunter v Commissioner (1986) TC Memo 1986-308, 51 TCM 1533; Goldstein v Commissioner (1987) 89 TC 535.

—the market in which the painting or lithograph could likely have been sold by the taxpayer. Orth v Commissioner (1987, CA7) 813 F2d 837, 87-1 USTC ¶ 9215, 59 AFTR 2d 87-758; May v Commissioner (1965) TC Memo 1965-38, 24 TCM 205; Silverman v Commissioner (1968) TC Memo 1968-216, 27 TCM 1066.

—the degree to which the painting has been restored. Furstenberg v United States (1979) 219 Ct Cl 473, 595 F2d 603; Posner v Commissioner (1976) TC Memo 1976-216, 35 TCM 943; Monaghan v Commissioner (1981) TC Memo 1981-280, 42 TCM 27.

—prices paid by the general public for other paintings by the same artist. Furstenberg v United States (1979) 219 Ct Cl 473, 595 F2d 603, 79-1 USTC ¶ 9280, 43 AFTR 2d 79-908; Hartwell v Commissioner (1965) TC Memo 1965-49, 24 TCM 278; Mathias v Commissioner (1968) 50 TC 994 (Acq); Silverman v Commissioner (1968) TC Memo 1968-216, 27 TCM 1066; Posner v Commissioner (1976) TC Memo 1976-216, 35 TCM 943; Peters v Commissioner (1977) TC Memo 1977-128, 36 TCM 552; Lightman v Commissioner (1985) TC Memo 1985-315, 50 TCM 266; Harken v Commissioner (1985) TC Memo 1985-468, 50 TCM 994; Shein v Commissioner (1987) TC Memo 1987-329, 53 TCM 1292; Winokur v Commissioner (1988) 90 TC No. 47.

—the size of the painting. Mathias v Commissioner (1968) 50 TC 994 (Acq); May v Commissioner (1965) TC Memo 1965-205, 24 TCM 205; Cukor v Commissioner (1968) TC Memo 1968-17, 27 TCM 89; Cambridge Hotels, Inc. v Commissioner (1968) TC Memo 1968-263, 27 TCM 1411; Winokur v Commissioner (1988) 90 TC No. 47.

—the date of the painting. Mathias v Commissioner (1968) 50 TC 994 (Acq); Cukor v Commissioner (1968) TC Memo 1968-17, 27 TCM 89; Winokur v Commissioner (1988) 90 TC No. 47.

—the identity of the subject of a portrait painting. Mathias v Commissioner (1968) 50 TC 994 (Acq).

—doubt as to whether a painting is actually the work of a particular artist. Mathias v Commissioner (1968) 50 TC 994 (Acq); Farber v Commissioner (1974) TC Memo 1974-155, 33 TCM 673, affd (CA2) 76-1 USTC ¶ 9118, 37 AFTR 2d 76-346 and affd without op (CA2) 535 F2d 1241; Gordon v Commissioner (1976) TC Memo 1976-274, 35 TCM 1227; Peters v Commissioner (1977) TC Memo 1977-128, 36 TCM 552; Vander Hook v Commissioner (1977) TC Memo 1977-347, 36 TCM 1394; Monaghan v Commissioner (1981) TC Memo 1981-280, 42 TCM 27; Angell v Commissioner (1986) TC Memo 1986-528, 52 TCM 939.

—the medium in which the work was executed. Cukor v Commissioner (1968) TC Memo 1968-17, 27 TCM 89; Harken v Commissioner (1985) TC Memo 1985-468, 50 TCM 994.

—the taxpayer's requirement that the donee not sell or dispose of a painting for 3 years after its donation. Silverman v Commissioner (1968) TC Memo 1968-216, 27 TCM 1066.

—whether the painting was insured by the taxpayer during his ownership. Farber v Commissioner (1974) TC Memo 1974-155, 33 TCM 673, affd (CA2) 76-1 USTC ¶ 9118, 37 AFTR 2d 76-346 and affd without op (CA2) 535 F2d 1241; Vander Hook v Commissioner (1977) TC Memo 1977-347, 36 TCM 1394.

Taxpayers claiming charitable deductions for the donation of paintings to charitable organizations have in some cases offered evidence as to value based on transfer of the painting in satisfaction of a debt, valuation based on the total square area of the painting, and the amounts for which the paintings were insured by the donee. In the following cases, courts, in arriving at fair market values for paintings donated to charitable organizations, have stated that one or more of these factors or considerations had little or no bearing on fair market value.

In Mathias v Commissioner (1968) 50 TC 994 (Acq), the court, in setting the fair market value of a painting for the purposes of 26 U.S.C.A. § 170 to be $8,000, observed that the fact that the taxpayer had taken the painting in satisfaction of a debt of $9,000 had at best marginal probative value on the issue of its fair market value. Because the exchange had been conducted at arm's length, said the court, the amount of the debt thereby discharged might well indicate the maximum value of the painting. However, the court deemed the issue to be not maximum value but actual value. The taxpayer, said the court, by agreeing to the exchange, might simply have been trying to get the most he could out of the debtors with the result that the amount of the debt canceled could not be equated with the actual value of the painting.

In Cukor v Commissioner (1968) TC Memo 1968-17, 27 TCM 89, the court, in setting the fair market value of a painting by Georges Braque known as "Still Life," expressed its disapproval of valuation based on what it termed a "square inch" method and on a subjective reaction to the painting. Although the size of the painting was relevant to its valuation, said the court, size could not be employed to determine value with mathematical certainty based on the number of square inches of canvas used.

In Lightman v Commissioner (1985) TC Memo 1985-315, 50 TCM 266, the court stated that the values for which paintings donated by taxpayers to an art museum were insured by the museum were not probative of their fair market value for the purposes of 26 U.S.C.A. § 170 The court observed that the taxpayers themselves determined the amounts for which the paintings were insured and that consequently such information was irrelevant to the issue of valuation.

To the same effect, see Harken v Commissioner (1985) TC Memo 1985-468, 50 TCM 994.

§ 13[b] Works of art—Other art objects

It appears that no precise formulas or criteria exist for the determination of the fair market value of an art object donated by a taxpayer to a charitable organization. The circumstances extant, the nature of the gift, the testimony presented, and the credentials and credibility of expert witnesses may be considered by the court. The following cases illustrate approaches taken by courts in valuing various donated art objects.

Where a taxpayer's expert testified that a mosaic tabletop similar to the one purchased by the taxpayer for $12,500 and donated to a Roman Catholic Diocese 14 months later would have brought $25,000 to $28,000 if sold by an art gallery, but only $14,000 to $15,000 if sold at auction, the court in Hawkins v Commissioner (1982) TC Memo 1982-451, 44 TCM 715, affd (CA8) 713 F2d 347, 83-2 USTC ¶ 9475, 52 AFTR 2d 83-5616, valued the donated property at $26,500 for the purposes of 26 U.S.C.A. § 170 The taxpayer's witness, who expressed the opinion that the retail gallery price and not the auction price was the proper measure of the replacement cost of the donated property, was deemed by the court to be the only witness with the experience necessary to offer reliable opinion evidence on the issue. The court observed that, due to the closing of the studio which had produced the donated property, similar works were no longer available on the world market, which made valuation on the basis of comparable sales difficult.

Where the parties' experts differed dramatically in their valuation of five ivory carvings and a painted porcelain piece donated by a taxpayer to a college, the court in Peterson v Commissioner (1982) TC Memo 1982-438, 44 TCM 650, engaged in a piece-by-piece evaluation of each item based on its quality, age, size, and condition. The valuations by the Commissioner's expert were criticized by the court for the reason that the allegedly comparable items upon which his valuations were based were actually not comparable to the donated items. The court also found relevant the fact that although the works were alleged by the taxpayer to be of great value, they had been acquired by him at a souvenir and antique shop in Bar Harbor, Maine, that he could not establish his purchase price for the items, and that he had apparently not insured them or taken any other precautions concerning their loss due to theft or fire.

Distinguishing between "traditional" African art and that produced specifically for sale to tourists, the court in Neely v Commissioner (1985) 85 TC 934, in valuing several hundred pieces of African art donated to three charitable organizations, for which the taxpayers claimed a charitable deduction of over $1.5 million, found credible the testimony of experts who stated that most of the pieces were not traditional. The court noted that traditional African art, produced for use in tribal rituals and ceremonies, is substantially more valuable than that made for sale to tourists. The court found that most of the donated pieces were not traditional, and accordingly discounted the valuation of one of the taxpayers' experts because it was based on the assumption that all the pieces were traditional. The taxpayers' other expert, an art dealer, testified as to the prices he believed he could obtain for the pieces, but the court found his valuations inconsistent with his failure to acquire more than two of the pieces when they were offered for sale at prices less than 10 percent of that which the expert testified he could obtain for them. The court found that the taxpayers had failed to establish that the Commissioner's valuation of the pieces at $167,855 was erroneous.

Holding that the fair market value of a 72-foot concrete and mosaic statue overlooking the Pacific Ocean which was donated by a taxpayer to the state of California was $600,000, the court in Koftinow v Commissioner (1986) TC Memo 1986-396, 52 TCM 261, approved the valuation approach undertaken by the taxpayer's expert, which utilized three separate methods to value the statue, including the cost of replacing it, an extrapolation based on fair market values of the artist's smaller works, and the amounts that artists of comparable repute would have charged to create a work of similar size. These figures were then weighed to provide a range of values for the statue. The report of the Commissioner's expert as to the statue's value was unreliable, said the court, because it offered no convincing reasons in support of its valuation figure and assumed erroneously that the proper market for valuation was a market for resale.

§ 14. Antiques

In the following cases, the court, in determining the fair market value of antique furniture, china, plateware, glassware, and art objects donated to a charitable organization, relied primarily on expert appraisal and discounted evidence as to the price received by the organization on its resale of the donated property.

Holding that the sale for $8,300 by a charitable organization of antique furniture, china, plateware, glassware, and French art objects donated to it by a taxpayer was a forced sale and as such not indicative of the property's true value, the court in Estate of De Bie v Commissioner (1971) 56 TC 876 (Acq), relied on expert appraisals obtained by the taxpayer to value the property at $58,408 for the purposes of 26 U.S.C.A. § 170 The charitable organization, noted the court, had only a short time in which to sell the property and decided to dispose of it to any available purchaser for the highest price available after learning that an auction could not be arranged. The court also held that the purchasers' subsequent resale of most of the property for about $25,000 was not indicative of its value, inasmuch as the purchasers were not experienced in dealing with such property and quickly disposed of most of it to friends and the taxpayer's children.

Where a taxpayer claimed a charitable deduction of $50,000 for his donation of a ceramic jar produced in China during the Han dynasty, the court in Isbell v Commissioner (1982) TC Memo 1982-534, 44 TCM 1143, valued the jar at $800 on the basis of expert testimony, notwithstanding evidence that the donee had subsequently sold the jar at auction for $360. In disregarding the taxpayer's valuation, the court chose to rely on the testimony of the Commissioner's experts, who stated that the jar was of poor quality because it had few decorative motifs and was badly mutilated and altered.

However, in the following case, the court, in valuing an antique rug donated to a charitable organization, discounted expert testimony as to its value in favor of the taxpayer's purchase price for the property.

Finding unpersuasive testimony by the taxpayer's experts intended to support his valuation of an antique Kuba rug at $13,540, the court in Wiltshire v Commissioner (1980) TC Memo 1980-210, 40 TCM 493, held that for the purposes of 26 U.S.C.A. § 170, the best evidence of the rug's fair market value was the price the taxpayer had paid for it 12 months before donating it to a museum. The court noted that each of the taxpayer's experts had been unsuccessful in attempting to sell the rug near the price he maintained it was worth and that the taxpayer had bought the rug from one of them at a 65-percent discount from his asking price of $10,000. The fact that the seller had a cash flow problem at that time did not make the large discount analogous to a forced sale, said the court, inasmuch as there were other ways, such as short-term bank loans or increased collection efforts, to deal with cash flow problems.

§ 15. Artifacts and collector's items

Valuation of artifacts and collector's items for the purposes of 26 U.S.C.A. § 170 is likely to present virtually unique fact situations offering no general guidelines for the valuation of other such property. In the following cases, the courts valuing such property have given weight to such matters as the estimated replacement cost of the property, its cost to the taxpayer, the ability of interested persons to purchase the property, the historical interest and value of the property, and the credibility of expert witnesses.

The court in Mauldin v Commissioner (1973) 60 TC 749 (Acq), in determining $15,000 to be the fair market value of six cartoons by William Mauldin which he donated to the Smithsonian Institution, relied on the artist's stature and reputation, the ability of collectors to pay for his works, and the fact that the donee itself had solicited the donation and valued it at $15,000 for income tax purposes. Mauldin, the court noted, was perhaps the greatest World War II artist and cartoonist, and at the time of his donation of the cartoons in 1966 the generation most familiar with his works had reached a point in life where many had the money to purchase them. The court also observed that the Institution had actively solicited the donation, offering to value it for income tax purposes, and had valued it at $15,000. Fair play was lacking, said the court, when one government agency solicited a gift, promising an expert valuation, and another agency ignored or attacked that valuation after the gift had been made.

In Rupke v Commissioner (1973) TC Memo 1973-234, 32 TCM 1098, the court, in valuing for the purposes of 26 U.S.C.A. § 170 a large cabinet-like object which was composed of a conglomeration of furniture parts and carved wood fragments, determined its value to be $3,000, the price paid for it by the taxpayer a few months before its donation, rather than the $25,000 asserted by the taxpayer. The court stated that it was not convinced that the price at which the taxpayer had purchased the object represented a $22,000 discount from its true value, or that the object had drastically appreciated in the few months it was in his possession.

Where a race car was donated to an automobile museum as a charitable contribution, the court in Krauskopf v Commissioner (1984) TC Memo 1984-386, 48 TCM 620, in valuing the vehicle above its stipulated value of $25,000 18 months before, specifically relied on the extensive restoration performed on it since that time. Although the Commissioner was willing to concede an additional $10,000 for the cost of restoration expenses, the court found that the restoration increased the car's value by more than that in view of its considerable significance in the history of stock car racing, and set its value at $100,000.

In valuing for the purposes of 26 U.S.C.A. § 170 an amphibious aircraft donated by a taxpayer to a historical aircraft museum, the court in Skala v Commissioner (1985) TC Memo 1985-1, 49 TCM 419, took into account testimony of the Commissioner's expert concerning the aircraft's historical significance and cosmetic condition. Most purchasers of antique aircraft, said the expert, are seeking a plane that can be flown; the donated plane was not in good condition and would have required over $100,000 of restoration to make it airworthy. Although stating that some planes have great value as collector's items even if they cannot be flown, the expert testified that this was not the case with the donated plane, which was not technically innovative and was not known for its exploits in a historical event such as a war. Noting the expert's extensive experience in the purchase, sale, and restoration of aircraft, the court adopted his valuation of the donated plane.

Where an original prototype of an aerial bombsight used by American armed forces in World War II was donated to the Smithsonian Institution, the court in Adams v Commissioner (1985) TC Memo 1985-268, 50 TCM 48, in valuing the property for the purposes of 26 U.S.C.A. § 170, expressed its general approval of an appraisal based on replacement cost. Because the property was unique, observed the court, there was no established market price for it. The donor's expert, basing his appraisal on the estimated cost of re-creating the prototype, stated that its fair market value at the time of its donation was $75,000. The court, while generally approving this figure, reduced it to $65,000 due to the presence of a cloud on the donor's title to the property.

Finding expert testimony offered by both parties as to the value of American Indian artifacts donated to a museum by the taxpayer to be unconvincing, the court in Sammons v Commissioner (1986) TC Memo 1986-316, 51 TCM 1568, revd on other grounds (CA9) 838 F2d 330, 88-1 USTC ¶ 9152, 61 AFTR 2d 88-544, took as the artifacts' fair market value the amount paid for them by the taxpayer several months before their donation. The court expressed doubt as to the objectivity of one of the taxpayer's experts and found the other appraisals, including those offered by the Commissioner, to be unreliable because the appraisers had been forced to a large extent to rely on photographs of the donated items. There was no competent and fully reliable evidence, said the court, as to the artifacts' value except the amount of money the taxpayer had given two art dealers to purchase the artifacts for him ($140,000) and the price the dealers actually paid for them (almost the same amount).

In determining that a taxpayer who donated American Indian artifacts to a museum and valued them at over $85,000 had failed to show that the Commissioner's valuation of approximately $21,000 was incorrect, the court in Williams v Commissioner

(1988) TC Memo 1988-6, 54 TCM 1471, found an appraisal by the taxpayer's expert not credible under the circumstances of the case. The taxpayer's expert, noted the court, had made increasingly higher appraisals of the donated items over a short period of time as ownership of the property passed from the archeologist who first excavated them, to a friend of the expert, and finally to the taxpayer, who was a longtime friend of the expert's friend. Moreover, observed the court, the price guides published by the expert for comparable items offered for sale by him in his retail business were considerably lower than the values assigned by him to the donated property.

§ 16[a] Gems and jewelry—Cost of property to taxpayer held to be its fair market value

In the following cases, courts held that the donor's purchase price of gemstones or jewelry later donated to a qualified charitable organization equaled or approximated the fair market value of the property for the purposes of 26 U.S.C.A. § 170

Seventh Circuit
Tripp v Commissioner (1964, CA7) 337 F2d 432, 64-2 USTC ¶ 9804, 14 AFTR 2d 5810
Eleventh Circuit
Anselmo v Commissioner (1985, CA11) 757 F2d 1208, 85-1 USTC ¶ 9335, 55 AFTR 2d 85-1357
Tax Court
Chiu v Commissioner (1985) 84 TC 722
Talebi v Commissioner (1985) TC Memo 1985-180, 49 TCM 1230; Theodotou v Commissioner (1985) TCM 1985-181, 49 TCM 1233
Lampe v Commissioner (1985) TC Memo 1985-236, 49 TCM 1505
Schachter v Commissioner (1986) TC Memo 1986-292, 51 TCM 1428
Dubin v Commissioner (1986) TC Memo 1986-433, 52 TCM 456
Affirming the tax court's determination that the fair market value of several pieces of ancient jewelry donated to the Oriental Institute of the University of Chicago was the price the donor had paid for the pieces 2 years before, the court in Tripp v Commissioner (1964, CA7) 337 F2d 432, 64-2 USTC ¶ 9804, 14 AFTR 2d 5810, discounted expert testimony to the effect that the jewelry was worth considerably more. Stating that the taxpayer's expert witnesses failed to support their conclusions as to value with probative facts, the court characterized their testimony as almost wholly subjective in nature. Under the circumstances, the court declined to disturb the tax court's conclusion that the best evidence of fair market value was the cost of the jewelry to the taxpayer.

Where a taxpayer attempted to value for the purposes of 26 U.S.C.A. § 170 unset gemstones donated to the Smithsonian Institution on the basis of their value as component pieces of finished jewelry sold at retail, the court in Anselmo v Commissioner (1985, CA11) 757 F2d 1208, 85-1 USTC ¶ 9335, 55 AFTR 2d 85-1357, affirmed the tax court's valuation of the stones based on their cost to the taxpayer. The taxpayer's valuation was based on the estimated retail price of finished pieces of jewelry containing the stones, less the scrap value of the settings. However, the court found that the donated stones were low-quality gems most likely to be sold not to the general public at retail but to jewelry manufacturers or retailers who would mount the stones in rings, pendants, or other settings for resale. This, said the court, was the proper market for determining the stones' fair market value. Although the Commissioner argued that the stones' fair market value was less than the taxpayer's cost, the court rejected this contention, noting that it was based on the improper assumption that the stones would be sold in bulk at a substantial discount to a single jewelry manufacturer. Because neither party had presented evidence as to the fair market value of the stones based on individual sales to jewelry manufacturers, the Commissioner's original valuation based on the taxpayer's cost plus an appraisal fee was upheld.

Finding no credible explanation of how taxpayers who donated gemstones to a charitable organization had been able to buy the stones a year earlier at prices representing a 75-to-90-percent discount from the values the taxpayers subsequently claimed for them, the court in Chiu v Commissioner (1985) 84 TC 722, found that the cost of the stones to the taxpayers was their fair market value for the purposes of 26 U.S.C.A. § 170 The court noted that the taxpayers' experts, who were dealers in gems, were not able to obtain discounts of more than 30 percent even under the most favorable circumstances and the evidence negated

any conclusion that the market for gems had risen to the extent necessary to justify the taxpayers' valuations. Although the taxpayers had bought the stones in bulk, the values given to them by the more credible experts, said the court, did not differ significantly from the bulk price paid.

Where the Commissioner's expert testified that the fair market value of gemstones purchased by the taxpayers and subsequently donated to charitable organizations was less than what the taxpayers had paid for them, the court in Talebi v Commissioner (1985) TC Memo 1985-180, 49 TCM 1230, nonetheless valued the stones at the taxpayers' purchase price for the purposes of 26 U.S.C.A. § 170 The court discounted the testimony of the taxpayers' expert as to the stones' value due to his limited experience, the absence of objective facts supporting his opinions, his failure to consider the taxpayers' purchase prices, and his conclusion that the value of the stones had more than doubled approximately 1 year after their purchase by the taxpayers. Aside from the appraisal of the Commissioner's expert, said the court, there was no evidence to show that the prices paid for the stones by the taxpayers was not their fair market value, and in view of the inexact nature of appraisal techniques and opinion testimony, the court held those prices to be the best evidence of value.

Finding no basis for the taxpayers' claim that opals donated by them to charity had increased in value five times since their acquisition by the taxpayers a little more than a year before their donation, the court in Schachter v Commissioner (1986) TC Memo 1986-292, 51 TCM 1428, found the fair market value of the stones to be the prices paid for them by the taxpayers. The court found the appraisals offered by the taxpayers lacking in objectivity and independence. Finding that the Commissioner's experts failed to establish that the stones were not worth as much as the taxpayers had paid for them, the court observed that it was not bound to embrace expert testimony and found the taxpayers' purchase prices to be the stones' fair market value.

§ 16[b] Gems and jewelry—Fair market value less than taxpayer's cost

In the following cases, the taxpayer's purchase price of gemstones later donated to a charitable organization was held to be more than the fair market value of the stones for the purposes of 26 U.S.C.A. § 170

Holding on the basis of expert testimony that the fair market value of gemstones donated to a charitable organization was less than the taxpayer had originally paid for them, the court in Price v Commissioner (1985) TC Memo 1985-182, 49 TCM 1236, although noting that in such cases the taxpayer's purchase price is often the best evidence of fair market value, observed that the purchase price in this case was likely to have been inflated in view of the taxpayer's apparent lack of knowledge about the property. The court inferred that the stones had been acquired by the taxpayer expressly for the purpose of donating them to charity and claiming a deduction based on an inflated value, and held that under the circumstances of the case, the taxpayer's cost was not the best evidence of value.

Comment

The court's finding in Price v Commissioner, above, that the fair market value of donated gemstones was less than the price paid for them by the taxpayer did not result in a net loss for the taxpayer as a result of his charitable donation, inasmuch as the Commissioner did not seek a finding of tax deficiency greater than that asserted in his statutory notice of deficiency, which was based on valuation of the stones at their cost to the taxpayer.

In Hecker v Commissioner (1987) TC Memo 1987-297, 53 TCM 1128, the court held that the fair market value of tourmalines donated by a taxpayer to a charitable organization was less than the prices he had paid for them the years preceding the donations. The court was unimpressed with the experience and credentials of the taxpayer's expert and the methods he employed to value the stones and declared its preference for the evidence offered by the Commissioner's experts. While noting that cost to a taxpayer is relevant evidence of fair market value, the court observed that it is not unusual for persons with little expertise in a particular market for goods to pay more than fair market price.

To the same effect, see Cunningham v Commissioner (1987) TC Memo 1987-298, 53 TCM 1133; Kerckhoff v Commissioner (1987) TC Memo 1987-299, 53 TCM 1139.

§ 17[a] Written materials—Books or magazines

In the following cases, it was held that the fair market value of books or magazines donated to charitable organizations was to be determined with reference to the price an ultimate consumer of the volumes would pay for them, rather than what a dealer purchasing for the purpose of resale would pay.

Holding that where a deductible charitable contribution is made in property other than money, the fair market value of the property for the purpose of computing the allowable deduction was the price an ultimate consumer would pay for the property rather than the price a dealer buying to resell would pay, the court in Goldman v Commissioner (1967, CA6) 388 F2d 476, 68-1 USTC ¶ 9126, 21 AFTR 2d 301, affirmed the tax court's valuation of bound volumes of medical journals to a hospital. Although the Commissioner's witness as to the value of the volumes stated on cross-examination that his testimony was based on what he as a bookseller would pay for them for the purpose of resale, the court noted that his testimony as to value had been given immediately after the tax court judge had stated that the value was to be given in terms of a sale to a consumer. Under these circumstances, said the court, it could not be said that an improper standard had been used in valuing the volumes.

Where taxpayers bought reprints of scholarly publications at a cost of one-third of the publisher's catalog list prices, then donated them to public libraries and claimed the full catalog prices as their value for the purposes of 26 U.S.C.A. § 170, the court in Skripak v Commissioner (1985) 84 TC 285, in valuing the books, observed that the proper market for the determination of their fair market value was a retail market rather than a wholesale market. Valuation, said the court, was to be made with reference to what an ultimate consumer, rather than a dealer, would pay for the property. The court accordingly rejected the Commissioner's valuation of the books because it was based on what booksellers intending to resell the books would pay for them. The proper market, said the court, was made up of large institutional buyers such as libraries and, to a lesser extent, individuals seeking specific scholarly texts. The court refused to accept the publisher's catalog prices as the fair market value of the donated books because the publisher's actual retail sales of those titles were insignificant compared to the number of books donated. Even if the publisher's catalog prices for the donated books were accepted at face value, said the court, the simultaneous selling of all the books donated would substantially depress the market for each title. The court valued the books at 20 percent of their catalog list prices.

§ 17[b] Written materials—Letters, manuscripts, and personal papers

In the following cases, courts valuing letters and papers donated to charitable organizations have stated that such donations are not to be valued under 26 U.S.C.A. § 170 according to the cost of copying or storing them.

Where the letters and papers of the taxpayer's father, who was a friend and classmate of Woodrow Wilson and had been among the first to assert that Meteor Crater in Arizona was caused by a meteorite impact, were donated to Princeton University by the taxpayer, the court in Barringer v Commissioner (1972) TC Memo 1972-234, 31 TCM 1149, in valuing the donation, rejected the reasoning of the taxpayer's expert to the effect that if another university to which the papers had been sent for appraisal had been willing to expend 50 cents per page copying the papers, then the fair market value of the papers was at least twice that, or $1 per page. Although the fact that the university was willing to expend 50 cents per page for copies had some bearing on

fair market value, said the court, this fact was not controlling. In setting the fair market value of the papers, the court noted that the Commissioner's expert had valued them according to their varied subject matter on the assumption that papers dealing with the origin of Meteor Crater and attempts to mine ore from it would be of more interest and value to a purchaser than papers dealing with other subjects.

The court in Kerner v Commissioner (1976) TC Memo 1976-12, 35 TCM 36, held that valuation of the papers of a former Illinois governor, donated by him to a state library, based on the estimated costs per page of storing and copying them was an improper method of determining their value as a charitable donation for the purposes of 26 U.S.C.A. § 170 The fact that a state library had accepted the donation of the papers and was expending funds to maintain them, said the court, did not establish that the library or anyone else would have been willing to buy the papers, or what a buyer would have paid for them. In reaching its conclusion as to the fair market value of the papers, the court stated that it considered the following factors to be relevant: the governor's accomplishments and general popularity, the significance of specific papers, the importance of the papers relative to his career, the condition and content of the papers, whether they were originals or copies, whether they were typed or written in the governor's own hand, whether they showed the governor's mental processes, the composition of the market for the papers, and the demand for them among potential buyers.

In the following case, the courts valuing interests in manuscripts and personal papers donated to charitable organizations took into consideration the demand or lack of demand for the documents.

In Barrett v Commissioner (1977) TC Memo 1977-96, 36 TCM 437, the court stated that demand in the marketplace was one of several factors to be taken into account in valuing a collection of literary manuscripts and personal papers of an author. Following Jarre v Commissioner (1975) 64 TC 183 (Acq), § 17[c], the court listed as other relevant considerations the author's standing and popularity, the critical and popular response to the particular works represented by the donation, their relative importance to his career, the condition and content of the material, whether it was original or copied, whether it was in the author's own hand, was signed, was in pen, pencil, or typed, length of the works contained in the material and the sizes of the pages, whether the material revealed the author's mental processes, associative character of the material with, e.g., a particular film (three of the author's books had been made into motion pictures), rarity of the material, and length of time necessary to sell it.

Where the widow of a prominent psychoanalyst donated her life estate in the literary rights to his manuscripts and correspondence to the Library of Congress, the court in Strasser v Commissioner (1986) TC Memo 1986-579, 52 TCM 1140, held that the Commissioner's determination that the donated property had no value for the purposes of 26 U.S.C.A. § 170 had not been shown to be erroneous in view of the lack of demand for access to the documents in question. The court observed that the donor's expert had no experience in valuing literary rights to unpublished materials, and in valuing the literary rights had failed to take into account the fact that the donee had only a life interest in the rights, and that in the several years that the documents had been stored in the Library of Congress there had been no inquiries from any person wanting to purchase, publish, or copy them.

§ 17[c] Written materials—Musical manuscripts

In the following case, the court, in valuing musical manuscripts donated by their composer to a university, enumerated various factors to be taken into consideration in determining their fair market value for the purposes of 26 U.S.C.A. § 170

In valuing for the purposes of 26 U.S.C.A. § 170 several thousand pages of music manuscripts and related papers donated to a university by their author, an internationally known composer of film scores and other music, the court in Jarre v Commissioner (1975) 64 TC 183 (Acq), listed numerous factors it deemed relevant to the determination of the fair market value of the property. These included the composer's standing in his field and the popularity of his works in general; the critical and popular reception of the works contained in the donated material; its relative importance to the composer's career; its condition and content; whether it was original or copied; whether it was in the composer's own hand, was signed, was in pen, pencil, or typed; length of the works contained in the material and the sizes of the pages; whether the material revealed the composer's mental processes;

demand in the market for the material; associative character of the material with, e.g., a particular film; rarity of the material; and length of time necessary to sell it. Also relevant, said the court, were sales of comparable material and the fact that selling all of the material the composer had donated would depress to some extent the market for it.

To the same effect, see David v Commissioner (1976) TC Memo 1976-316, 35 TCM 1436.

§ 17[d] Written materials—Essays

In the following case, the court, in valuing essays given to a charitable organization, refused to value the essays for the purposes of 26 U.S.C.A. § 170 on the basis of the alleged value of the taxpayer's services as a consultant.

Where a taxpayer asserted that his consulting fee was $150 per day and that he had worked 15 days on two essays given to a charitable organization, the court in Goss v Commissioner (1973) 59 TC 594 (Acq), refused to allow the taxpayer's figure of $2,250 as the fair market value of the essays for the purposes of claiming a charitable deduction under 26 U.S.C.A. § 170, and determined the fair market value of the essays to be $500. During the year for which the taxpayer claimed the deduction, the court observed, he had reported income of only $150, or 1 day's worth of work, from consulting. This single instance, said the court, was not a proper basis on which to value the taxpayer's services as a consultant. The court went on to say that the taxpayer's testimony, based on his experience in administering technical assistance contracts, as to how high a bid the essays would have produced had they been contracted for in an open market was unpersuasive because he had not had final grant authority with regard to the technical assistance contracts, and had not shown any similarity between the essays and the work product specified in those contracts.

§ 18[a] Unlisted corporate securities—Stock

[Cumulative Supplement]

In the following cases, courts determining the fair market value of charitable contributions of stock not listed on an exchange have taken into account one or more of such factors as recent sales of the stock, corporate assets, earnings per share, book value, nature of the corporation issuing the stock, and corporate control before and after the contribution.[5]

Shares of stock in a closely held corporation which were donated to a charitable organization were valued by the court at $500 per share in Lippman v Commissioner (1965) TC Memo 1965-73, 24 TCM 399, on the basis of evidence regarding, inter alia, the corporation's cash flow and the earnings record of its shares. The taxpayer's valuation of the shares at $1,250 per share on the basis of capitalization of the earnings of the corporation's assets was deemed too optimistic by the court in view of the fact that the corporation had never paid a dividend and that although it had some profitable years, it showed a net loss over its ten-year existence.

Where taxpayers whose family controlled a closely held corporation donated shares of the corporation's stock to a charitable organization also controlled by their family, the court in Makoff v Commissioner (1967) TC Memo 1967-13, 26 TCM 83, held that the fact of the family's control of both the corporation and the charitable organization did not prevent valuation of the stock for the purposes of 26 U.S.C.A. § 170 on the basis of such factors as recent sales, growth and earnings history, and dividends. Rejecting the Commissioner's argument that a charitable deduction should be disallowed because the value of the donation was not ascertainable due to the family's control of the corporation and the charitable organization, the court stated that there was no evidence that the charitable organization might for any reason be unable to receive or keep the donated property, nor was there a reasonable probability that the value of the donated stock would become unascertainable due to siphoning of funds from the corporation by the family or the family's dealings with the donee charitable organization.

Although recognizing that the fair market value of stock is not always directly proportional to the value of underlying corporate assets, in Stratton v Commissioner (1969) TC Memo 1969-50, 28 TCM 284, affd (CA2) 422 F2d 872, 70-1 USTC ¶ 9316, 25

AFTR 2d 70-925, a case involving valuation of stock in a closely held corporation which was donated to a municipality, the court approved valuation of the stock according to the corporation's total equity in its assets divided by the number of shares outstanding. The court rejected the Commissioner's argument that the value thus arrived at should be reduced by one-third due to the poor earnings record of the corporation, the absence of a ready market for sale of the stock, the retention of voting control by the donor, and the fact that the income property which was the corporation's only significant asset had been fully depreciated. The court explained that its valuation of the income property by capitalization of earnings and comparable sales took into account both the earnings record of the property and its marketability. The lack of voting control by the donee was deemed irrelevant due to the donor's grant to the donee of full managerial control of the corporation and his intent to eventually transfer all the corporate stock to the donee. Finally, the court observed that the corporation's prior earnings record did not show a need for tax benefits such as depreciation deductions as an incentive to a buyer, and so concluded that the fact of the property's being fully depreciated did not affect its value.

Holding that the Commissioner had failed to show that the fair market value of stock shares in a closely held corporation which were donated to a charitable organization was less than $863 per share as claimed by the taxpayer in his tax return on the basis of a recent sale by him of the stock, the court in Palmer v Commissioner (1974) 62 TC 684 (Acq & Not Acq), entered judgment of no deficiency for the taxpayer. The Commissioner offered expert testimony valuing the stock on the basis of the corporation's redemption of several hundred shares at $264.74 per share 2 years before the taxpayer's donation. The court, however, held that this sale was not indicative of the shares' fair market value inasmuch as the corporation was obligated under a prior agreement to redeem the stock from this particular owner at a price near that which it actually paid.

Comment

Where the Commissioner values a charitable contribution at a figure less than that claimed by the taxpayer, the burden is ordinarily on the taxpayer to disprove the Commissioner's valuation. However, in Palmer v Commissioner, above, the Commissioner's initial position was that no charitable deduction was allowable for the donation of the stock because the donation was illusory. Because the Commissioner did not raise the issue of fair market value of the stock until filing an amended answer, the burden of proof as to correct valuation was on him. See **Rule 142(a), Tax Court Rules of Practice and Procedure**.

Noting that the valuation of stock not traded on a recognized exchange is subject to consideration of numerous factors, the court in White v Commissioner (1976) TC Memo 1976-382, 35 TCM 1726, valued 4,000 shares of stock in a closely held corporation, donated by the taxpayers to a church, at $3.75 per share rather than $5.35 per share as claimed by the taxpayers or $2.50 per share as asserted by the Commissioner. The court specifically took into consideration various sales of the stock, the net asset value of the corporation, the earnings per share of the stock, the apparent potential of the corporation for increased future earnings, the fact that the gift represented less than 1 percent of the corporation's outstanding stock and did not affect control of the corporation, and statistical data with respect to companies engaged in business similar to that of the corporation.

Where a taxpayer produced evidence that unlisted stock shares donated by him on two occasions to a charitable organization were selling to the general public at $5 per share at the approximate time of his donations, the court in Lackey v Commissioner (1977) TC Memo 1977-213, 36 TCM 890, took such sales into account in valuing his first donation. The sale prices, observed the court, were relevant but not conclusive evidence of fair market value. The evidence showed that in the year of the taxpayer's first donation, 1,000 shares had sold at $5 per share and 16,000 shares had sold for $1 per share. While declining to allow the $5-per-share value claimed by the taxpayer, the court said that the evidence tended to show a value greater than the $1 per share

asserted by the Commissioner, and valued the stock at $3 per share at the time of the first donation. With regard to the second donation the following year, the court observed that only one sale (of 57 shares) had taken place that year, at a price of $4 per share. This, held the court, was insufficient to show that the Commissioner's valuation of $1 per share for that year was incorrect.

Considering, inter alia, the prices at which shares of a closely held corporation were traded among insiders and the nature and history of the corporation, the court in Gatlin v Commissioner (1982) TC Memo 1982-489, 44 TCM 945, affd (1985, CA11) 754 F2d 921, 85-1 USTC ¶ 9237, 55 AFTR 2d 85-1029, valued shares of stock donated to charitable organizations at $1 and $2 per share rather than the $7.50 per share claimed by the taxpayers or the $.49 to $.80 per share urged by the Commissioner. Although the taxpayers' valuation was based on a 1971 offering of the stock at $7.50 per share, the court deemed that figure unrepresentative of its value for 1973 to 1975, the years of the donations. The company was a highly speculative venture, explained the court, and when it was starting out in 1971, its growth potential was substantial. In later years, said the court, the potential for success lessened as a merger failed, competitors emerged, and expansionary plans fell through. The Commissioner's valuation, based on comparison of the company's earnings record with those of other venture capital companies which had gone public around the same time as the taxpayers' company, was also flawed, said the court, in that the other companies were likely to have been in a later stage of development and maturity than the taxpayers' business. During the time in issue, observed the court, the taxpayers' company was sacrificing earnings in order to establish itself in the market and was just beginning to earn a profit; therefore, said the court, capitalization of earnings was not a reliable valuation method. Noting that insiders had, during the years in question, traded the stock at $1 and $2 per share, the court valued the stock at $2 per share in 1973 and 1974 and $1 per share in 1975.

In Kleinman v Commissioner (1984) TC Memo 1984-347, 48 TCM 463, the court, in valuing for the purposes of 26 U.S.C.A. § 170 some 17,000 shares of stock not tradable on a public exchange, stated that the unadjusted book value of the stock at the time of its donation was the best measure of its fair market value. Although the taxpayer asserted that adjustments to the book value were proper in order to determine the shares' fair market value, the court said that there was no evidence that such adjustments would have been made by, or known to, prospective buyers or that such buyers would have paid more than unadjusted book value for the shares.

Finding the taxpayers' expert testimony concerning the assets of a closely held corporation of physicians to be flawed and unsupported, the court in McDougal v Commissioner (1985) TC Memo 1985-64, 49 TCM 731, held that shares in the corporation donated to a charitable organization by the physicians were worth only $25 per share, as the Commissioner had determined, instead of the $15,400 per share asserted by the physicians. The physicians' expert valuation of accounts receivable was unreliable, said the court, because the corporation was bound to pay the physicians a percentage of their patient billings as well as expenses, after which there was no profit left for distribution to shareholders. The court disregarded the expert's valuation of the lease held by the corporation because it had not been made part of the record and the physicians, as both lessors and lessees, could have altered the lease at any time. The expert's valuation of the corporation's machinery, equipment, furniture, and fixtures was not supported in the record and accordingly was rejected by the court.

CUMULATIVE SUPPLEMENT

Cases:

In action in which, after Internal Revenue Service had concluded that taxpayers' charitable donation of corporate stock had no value at time of donation to state university, taxpayers sought refund of deficiencies and interest totaling $211,646.81, trial court erred in holding that 26,000 shares of corporate stock donated to state university had value of $112,840 ($4.34 per share) at time of donation, where claims court's net worth calculations were not supported by evidence of record but were merely rough estimate to support previously found value on 1980 sale to corporation's founder of 338,000 postsplit shares in exchange for doubtful payment of $50,000 in cash and cancellation of corporation's $288,000 debt to founder; amount of reduction in worth of corporation's debt to founder and resulting stock valuation were highly speculative (no one testified in support of either value

of debt cancellation or per share value of stock). Krapf v United States (1992, CA FC) 977 F2d 1454, 93 Daily Journal DAR 797, 92-2 USTC ¶ 50537, 70 AFTR 2d 92-5982.

Fair market value of unlisted stocks can be determined, for purposes of charitable donation tax deduction, by examining actual arms'-length sales in normal course of business; sales must be for reasonable value and within reasonable time before or after donation is made. Where such information is not available, value may be determined from issuer's net worth. Krapf v United States (1996) 35 Fed Cl 286, 96-1 USTC ¶ 50249, 77 AFTR 2d 96-1519.

[Top of Section]

[END OF SUPPLEMENT]

§ 18[b] Unlisted corporate securities—Bonds

In the following case, a court valuing bonds issued by a closely held corporation which were donated to a charitable organization refused to value them at their face value in view of the corporation's financial status and history.

Although a taxpayer, who donated bonds issued by his closely held corporation to charitable organizations, showed that the bonds had later been sold at their face value by the donees, the court in Dillard v Commissioner (1961) TC Memo 1961-30, 20 TCM 137, refused to accept the bonds' face value as their fair market value for the purposes of 26 U.S.C.A. § 170 due to the low assets and poor earnings record of the issuing corporation. Several of the sales relied upon by the taxpayer were deemed by the court not to be arm's-length transactions representative of fair market value. Other sales were discounted by the court in view of evidence that the issuing corporation, at the time of the sales, had lost money for almost 4 consecutive years and had insufficient net tangible assets to cover the bonds' face values.

§ 19. Insurance policies and annuities

In the following case, the court held that the fair market value of a life insurance policy donated to a charitable institution was the cash surrender value of the policy rather than its replacement cost.

In Tuttle v United States (1970, CA2 NY) 436 F2d 69, 71-1 USTC ¶ 9140, 27 AFTR 2d 71-354, the court held that the fair market value of a life insurance policy donated to a church as a charitable contribution was the policy's cash surrender value rather than its replacement cost. The court observed that equating the fair market value of the policy with its replacement value implied that the donee would hold the policy as an investment with the expectation of receiving the death benefit at some future time. This approach was incorrect in the case at bar, said the court, because the donee could not reasonably have been expected to hold the policy as an investment and in fact did surrender it for its cash surrender value shortly after receiving it.

In the following case, it was held that a taxpayer who donated to a charitable organization annuities under which payments were to be made over a 25-year period was entitled to deduct under 26 U.S.C.A. § 170 the value of those payments, discounted to reflect the possibility that the taxpayer might not survive to the end of the payment period.

In Jones v United States (1968, CA6 Ohio) 395 F2d 938, 68-1 USTC ¶ 9397, 21 AFTR 2d 1387, the court held that a taxpayer who donated to a charitable organization her interests in two fully matured annuities, under which payments were to be made over a period of 25 years, would be allowed to value her gift for the purposes of 26 U.S.C.A. § 170 on the basis of value of the payments, discounted to reflect the possibility that she might not survive to the end of the 25-year payment period. The Internal Revenue Service argued that this possibility, which would divest the charitable organization of its interests in the annuities in favor of other beneficiaries, required valuation of the gifts at nothing more than the payments actually received by the organization in the year each annuity was donated. The court disagreed, noting that the possibility of such divestment was less than 10 percent and stating that this percentage was small enough to permit the valuation claimed by the taxpayer.

§ 20. Clothing, furniture, and personal items

In the following cases, courts valuing clothing, furniture, or personal items donated by taxpayers to a charitable organization held the property's subsequent sale price to be equal or approximately equal to its fair market value for the purposes of 26 U.S.C.A. § 170

Where a taxpayer attempted to value at $5,550 for the purposes of 26 U.S.C.A. § 170 various items of used household furnishings and clothing donated to a hospital, the court in Kaplan v Commissioner (1965) 43 TC 663 (Acq), held that the auction sale of most of the property shortly after its donation for a total price of $459.50 justified its valuation at $500. The court characterized the taxpayers' valuation as a sham designed to give legitimacy to their scheme to claim an excessive deduction, and said that the auction sale was the best evidence of value before the court.

To the same effect, see Rivkin v Commissioner (1965) TC Memo 1965-99, 24 TCM 526.

Although the director of a secondhand store affiliated with a medical center found nothing "untoward" in another appraiser's valuation of a seal-lined tweed coat donated by taxpayers to the store at $2,400, the court in Armour v Commissioner (1969) TC Memo 1969-245, 28 TCM 1268, found that the coat's subsequent sale price of $1,875 was the most reliable evidence of its fair market value and valued the coat at that figure for the purposes of 26 U.S.C.A. § 170 Although the court found the director to be a credible witness with respect to other items donated by the taxpayers to the store which she had personally appraised, it found that she had not made an independent appraisal of the tweed coat and had not attempted to assign it a specific value. Since the appraiser who had valued it at $2,400 was not available to testify, the court found the price for which the store subsequently sold the coat to be the best indicator of its value.

However, in the following case, it was held that the subsequent sale price of household items donated to charity was not dispositive as to their value for the purposes of 26 U.S.C.A. § 170

In McGuire v Commissioner (1965) 44 TC 801 (Acq), the court rejected the Commissioner's contention that the fair market value of furniture, books, china, and flatware donated to a hospital was only the price received for the property at a subsequent auction sale. The court distinguished cases in which the only persuasive evidence of fair market value had been auction prices of the donated property. In the instant case, said the court, the taxpayers had offered credible evidence, including the value for which the property had been insured and the cost of the property to them, which showed that in this case auction prices did not reflect the fair market value of the donated property, which was of high quality and in excellent condition.

§ 21. Equipment or machinery

[Cumulative Supplement]

In the following case, it was held that the best evidence of the fair market value of equipment donated by a taxpayer to charitable organizations was its cost to the taxpayer.

Where a taxpayer and his associate paid $10,500 for all the equipment of a dental facility and the taxpayer subsequently donated his interest in the equipment to a university medical school, the court in Brinson v Commissioner (1981) TC Memo 1981-671, 42 TCM 1712, found that the fair market value of the donation for the purposes of 26 U.S.C.A. § 170 was limited to the taxpayer's cost in acquiring his interest, or $5,250. The court observed that the taxpayer bought the equipment approximately 6 months before his donation and had offered no evidence showing that its value had significantly changed in that time.

However, in the following cases, courts valuing equipment and machinery donated to charitable organizations have relied on evidence such as sales of comparable property, subsequent sales of the donated property, and expert appraisals.

In Biggs v Commissioner (1968) TC Memo 1968-240, 27 TCM 1177, affd (CA6) 440 F2d 1, 71-1 USTC ¶ 9306, 27 AFTR 2d 71-952, the court, in valuing a converted PT boat donated to a charitable organization, relied on expert testimony that the boat was worth $11,000 at that time and disregarded the fact that the donee had sold the boat 2 years later for $3,000. The court noted that in the 2 years before selling the boat, the donee had stored rather than used it, and there was no evidence that the boat was maintained in a state of good repair during that time. Furthermore, said the court, the witness who testified as to the sale of the boat had little firsthand knowledge of the efforts the donee had made to sell it.

Rejecting expert testimony as to the value of two items of medical equipment invented by a taxpayer and later donated to charitable organizations which was based largely on the estimated cost of researching and developing similar equipment and bringing it to market, the court in Cupler v Commissioner (1975) 64 TC 946 (Acq), relied on other evidence, including a sale of comparable equipment, to value the property. The taxpayer's valuation method, said the court, was inappropriate because the taxpayer had not donated all that he had acquired by researching and developing the equipment. The most valuable features of an invention, the court explained, are the rights acquired by the inventor through his patent to control the use of the knowledge he has produced. The taxpayer, observed the court, had merely donated two items of equipment without giving the donees any rights in the nature of a patent on either item. After consideration of the sale price of an item of equipment comparable to one of the donated items, and the record as a whole, the court valued the donated equipment at $25,000.

Comment

For a case in which the court valued patent rights donated to a charitable organization, see **§ 24[e]**.

In Waterman v Commissioner (1975) TC Memo 1975-209, 34 TCM 910, the court, in valuing an IBM computer donated to a college, disregarded the price paid for it by the taxpayer 6 months prior to the donation. The taxpayer offered expert testimony that the price he paid ($1,077.77) was not indicative of fair market value because of the restricted market in which the sale occurred. In view of expert testimony that the computer's fair market value was between $35,000 and $50,000 at the time of its donation, the court valued it at $35,000.

Comment

In Waterman v Commissioner, above, both of the taxpayer's experts testified that the computer's components were worth more than the computer itself. They valued the aggregate worth of the components at $42,000 and $44,000 respectively. The court, however, observed that the donee had not accepted the computer for the purpose of selling its components, but rather for use as a computer.

Stating that the best evidence of the value of manufacturing machines donated to the Salvation Army was the price received for the property by a dealer who bought the machines from the donee for resale, the court in Alma Piston Co. v Commissioner (1976) TC Memo 1976-107, 35 TCM 464, affd (CA6) 579 F2d 1000, 78-2 USTC ¶ 9591, 42 AFTR 2d 78-5320, rejected the contention that the donee's sale price of $3,500 to the dealer was indicative of fair market value. The court deemed the sale to the dealer as a forced sale in bulk and as such an unreliable indicator of value. Moreover, said the court, charitable contributions of property are to be valued on the basis of their value to an ultimate consumer rather than a dealer intending to resell. With regard to particular items which had not been resold by the dealer at the time of trial, the court accepted the dealer's estimates as to their value and arrived at a total value of $30,760 for the donated property.

Where a taxpayer bought a forklift, a dump truck, and other items of construction machinery and equipment at a liquidation sale, intending to resell at a profit, but subsequently donated the property to charity, the court in Kaufman v Commissioner (1987) TC Memo 1987-350, 53 TCM 1348, in valuing the property, rejected the Commissioner's contention that the taxpayer's charitable deduction was limited to his cost basis, which was $20,000, and determined the property's value with respect to its likely market price. The court found that the appropriate market for this purpose was that of contractors seeking to buy secondhand equipment, rather than speculators buying such items for bulk resale to a single buyer. However, said the court, the possibility that a contractor might buy more than one item at a time justified a partial discount in value due to the potential of a partial bulk sale. The court also found that some of the unused items would sell for less than the taxpayer's cost due to the absence of warranties or other benefits available to buyers at retail. On the basis of the evidence presented as to market value, and applying the necessary discounts, the court valued the donated property at approximately $64,000.

CUMULATIVE SUPPLEMENT

Cases:

Court dismissed taxpayers' complaint for refund of taxes where taxpayers failed to establish fair market value of donated computer equipment in excess of $40,000 allowed by Internal Revenue Service; $475 of identified equipment was listed at cost rather than fair market value and taxpayer's alleged purchase price for remaining equipment was not convincing evidence of its fair market value inasmuch as it was questionable whether taxpayer had been willing buyer in arm's–length transaction; further, remaining equipment had not been identified as required by 26 CFR § 1.170A–1(a)(2)(ii). Taylor v United States (1991, SD Ohio) 782 F Supp 1207, 92-1 USTC ¶ 50012.

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[END OF SUPPLEMENT]

§ 22. Merchandise or stock in trade

In the following cases, the courts valuing property donated to charitable organizations which was in the nature of merchandise or stock in trade to the donor held that the donor's deduction for his charitable contribution was limited to his cost basis in the donated property.

Where a full-time professional artist donated three of his paintings to charitable organizations and claimed a charitable deduction on the basis of his valuation of them, the court in Maniscalco v Commissioner (1980, CA6) 632 F2d 6, 80-2 USTC ¶ 9717, 46 AFTR 2d 80-5807, affirmed the tax court's refusal to allow a charitable deduction greater than the artist's cost for the materials used in the paintings. The court explained that the paintings, being held by the donor primarily for sale to customers in the ordinary course of trade or business, were ordinary income property rather than capital assets, and that therefore 26 U.S.C.A. § 170(e) expressly limited the charitable deduction allowable for them to the donor's cost basis. The court rejected the artist's

argument that § 170(e) was unconstitutional, stating that income tax deductions were a matter of legislative grace and that the statute did not discriminate against artists.

Comment

Maniscalco v Commissioner, above, was decided on the basis of language added to **26 U.S.C.A. § 170** by the Tax Reform Act of 1969. For cases decided under prior law in which courts, in valuing paintings executed by professional artists and donated by them to charitable organizations, held that the values of the paintings were those claimed by the artists without reference to the artists' cost bases, see **Kuderna v Commissioner (1965) TC Memo 1965-143, 24 TCM 749**, and **Cambridge Hotels, Inc. v Commissioner (1968) TC Memo 1968-263, 27 TCM 1411**.

Where an authorized Chevrolet dealer purchased several Chevrolet sedans directly from General Motors for donation to the United Jewish Appeal for use by disabled veterans, the court in Cooley v Commissioner (1959) 33 TC 223, affd (CA2) 283 F2d 945, 61-1 USTC ¶ 9106, 6 AFTR 2d 5940, held that the dealer's allowable charitable deduction was his cost in acquiring the vehicles rather than their fair market value at retail. The dealer, the court noted, had obtained the cars on the specific condition that they be donated to charity and did not at any time have a right to sell them.

Where a taxpayer produced several thousand posters showing an aerial view of Cleveland and donated them to Goodwill after attempting to sell them at wholesale and retail, the court in Ferrell v Commissioner (1987) TC Memo 1987-102, 53 TCM 209, held that the taxpayer's claimed fair market value of $5.00 per poster for the purposes of 26 U.S.C.A. § 170 was insupportable. The taxpayer, observed the court, had sold no more than a handful of posters at $5.00 each and had failed in his efforts to sell them for $1.50 each at wholesale. The fact that Goodwill had chosen not to try to sell the donated posters and had given them away on street corners was further evidence, said the court, that they had little or no cash value. The court held that the taxpayer was limited to valuing the posters at the figure conceded by the Commissioner (approximately $.73 each), which represented his cost in producing them.

§ 23. Medical supplies

[Cumulative Supplement]

In the following case, it was held that the taxpayers' failure to prove that laxative suppositories, acquired by the taxpayers from a pharmaceutical supply salesman and donated to a home for the aged, had any fair market value required the disallowance of a deduction for a charitable contribution under 26 U.S.C.A. § 170

Where a taxpayer who had come into the possession of a large quantity of laxative suppositories by virtue of the purchase of a house from a pharmaceutical supply salesman who had left them in the basement, the court in Goodman v Commissioner (1970) TC Memo 1970-122, 29 TCM 528, held that because the taxpayer, who had given the suppositories to a home for the aged, was unable to establish that a willing buyer would have paid anything for them, no charitable deduction could be allowed for their donation. The donee, observed the court, did not use the suppositories on the advice of hospital doctors. The hospital similarly refused to use them, and they were ultimately thrown away. Another indication that the suppositories had no value, said the court, was the fact that they were given without charge to the taxpayers by the pharmaceutical salesman, who presumably would have sought consideration for them if they had any value.

In the following case, the deduction a taxpayer was permitted to take for his donation of used eyeglasses, lenses, and frames acquired in the course of his practice of optometry to a charitable organization was limited to the value of the gold alleged to be in the frames, in view of the taxpayer's failure to show that the eyeglasses had any fair market value.

Where an optometrist donated used eyeglasses, lenses, and frames which he had acquired in the course of his practice to a charitable organization for distribution to indigent persons, the court in Holcombe v Commissioner (1979) 73 TC 104, held that because it was clear that there was no market for used eyeglasses, the taxpayer had failed to show that the property he donated had any fair market value. While conceding that the donated items had great value to the persons who received them from the charitable organization, the court pointed out that this had no bearing on their fair market value and observed that the recipients could not have paid for them. A deduction to the extent of the value of the gold determined by the Commissioner to have been contained in the eyeglass frames, however, was allowed by the court.

In the following case, the court, in valuing packages of bandages donated by a taxpayer to the Red Cross, employed as a basis for its valuation what it deemed the most comparable purchase of which it had knowledge in the relevant market.

Where a taxpayer attempted to value 9,600 government surplus bandage packages donated to the Red Cross on the basis of their alleged unit value of $4.75 at retail, the court in Tallal v Commissioner (1986) TC Memo 1986-548, 52 TCM 1017, held that the relevant market for the purposes of determining the fair market value of the donation was composed of institutional buyers purchasing in bulk and valued the property accordingly for the purposes of 26 U.S.C.A. § 170 The court found that 2 years before the taxpayer made his donation, a veterinary school had paid 27.5 cents per package for 10,800 bandage packages identical to those bought by the taxpayer. This price, adjusted for inflation to 33 cents per package, was allowed by the court as the fair market value of the taxpayer's packages at the time of their donation.

CUMULATIVE SUPPLEMENT

Cases:

There was no evidence establishing married taxpayers' adjusted basis in donated medical equipment, and thus taxpayers were precluded from claiming deductions for their charitable contributions of the equipment. 26 U.S.C.A. § 170(e)(1)(A); 26 C.F.R. § 1.170A–1(c)(1). Riether v. U.S., 919 F. Supp. 2d 1140 (D.N.M. 2012).

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[END OF SUPPLEMENT]

§ 24[a] Other personal property—Tape recordings

In the following case, a court valuing tape recordings made by a taxpayer and donated to colleges took into account to the extent possible the prices the taxpayer had paid to acquire the recordings from which the tapes had been copied.

Where a taxpayer made tape recordings of operas from recordings he had purchased, and donated his recorded copies to several colleges and universities, the court in Orchard v Commissioner (1975) TC Memo 1975-31, 34 TCM 205, in valuing the donated recordings for the purposes of 26 U.S.C.A. § 170, made use of the prices the taxpayer had paid at retail for the records and tapes from which the donated recordings had been copied. The taxpayer did not have exact records as to those prices, but was able to show that one group of donated tapes consisted primarily of copies of recordings purchased from one dealer at $25 per recording and from another dealer who charged from $17.50 to $35 per recording. On the basis of this evidence, the court valued the tapes in this group at $22 per tape. With respect to other donated tapes copied at times when the taxpayer was buying

recordings from other dealers whose prices were not in evidence, the court set a value of $12 per tape, taking into account the high quality of the tapes and their limited commercial availability.

§ 24[b] Other personal property—Promissory notes

In the following case, it was held for the purposes of 26 U.S.C.A. § 170 that the fair market value of promissory notes assigned by taxpayers to a charitable organization was the face amount of the notes plus any accrued interest.

Where taxpayers who held promissory notes for loans given by them to a family trust subsequently assigned the notes to a charitable organization which had been organized by their family, the court in Woodward v Commissioner (1978) TC Memo 1978-163, 37 TCM 715, held that the fair market value of the notes thus donated was their face amount plus any interest that had accrued at the time of the donation. The donors' witnesses for the purpose of valuing the notes, observed the court, had taken into account the ability of the obligor to pay and its general reputation and character. The Commissioner's contention that the donee to whom the donors assigned the notes did not qualify as a holder in due course was deemed immaterial by the court, which observed that status as a holder in due course affected only the claims and defenses to which an assignee was subject and not the underlying obligation.

§ 24[c] Other personal property—Rare coins

In the following case, the court valuing ancient Greek coins donated to charitable institutions took into consideration market prices for similar items, the condition of the donated coins, and doubt as to their authenticity.

In Holtzman v Commissioner (1980) TC Memo 1980-174, 40 TCM 350, the court, in valuing ancient Greek coins donated to charitable organizations, considered sale catalogs of similar items, the condition of the donated coins, conflicting views as to their authenticity, and the expertise of the parties' witnesses. Although finding the Commissioner's evidence as to the value of one group of coins to be credible, the court increased the expert's figure in view of the good condition of the coins. With respect to another group, the court valued the coins within the range given by the Commissioner's expert in view of his experience in buying and selling coins of that type. Two of the coins were valued on the basis of sales of similar coins. With respect to two other coins, the genuineness of which was disputed, the court substantially discounted the values asserted by the taxpayers in view of the doubt as to their authenticity. The court pointed out that the taxpayers, even after the issue of genuineness was raised, chose not to disclose when, how, from whom, and for what price they acquired the coins, which information might have helped to resolve the question.

§ 24[d] Other personal property—Photographs and negatives

In the following case, a court valuing negatives of aerial photographs donated to a museum rejected the taxpayer's attempt to value them on the basis of their replacement cost.

Declining, in view of the availability of other evidence, to accept a taxpayer's valuation of 5,000 negatives of aerial photographs of Santa Clara County and other areas of California at $15,000 on the basis of their replacement cost, the court in Raznatovich v Commissioner (1980) TC Memo 1980-436, 41 TCM 79, accepted the valuation set by the Commissioner. The taxpayer's contention that there was no evidence as to the property's fair market value was not correct, said the court, inasmuch as the taxpayer had bought the property for $300 2 years before its donation. Although the United States Geological Survey kept similar negatives on file and sold duplicates or prints to purchasers, this fact was deemed inadequate to establish their commercial value in the absence of evidence as to demand for the negatives or that the Survey made a profit on those sales. In view of the taxpayer's purchase price, the limited market for the negatives, and the fact that several months of indexing would be required to make them useful, the court accepted the Commissioner's valuation of $500.

§ 24[e] Other personal property—Patents

In the following case, the court valuing patent rights in an invention donated to a charitable institution considered evidence concerning future sales of the invention.

A patent on a liquid propulsion system which a taxpayer donated to a university was valued by the court in Smith v Commissioner (1981) TC Memo 1981-219, 41 TCM 1427, on the basis of the projected future sales of the system. The court observed that the parties' experts employed largely similar valuation methods based on the potential market for the product, the anticipated market share of the product, the unit cost, a reasonable royalty rate, and a discount for the value of money. The Commissioner's expert also considered the validity of the patent and the technological feasibility of the invention. While agreeing with the taxpayer that the tax court generally does not review the validity of a patent, the court did not characterize the expert's consideration of patent validity as an attack on the patent but rather as consideration of a factor properly affecting the patent's market value.

Comment

Compare **Cupler v Commissioner (1975) 64 TC 946** (Acq), § 20, in which the taxpayer donated two items of medical equipment which he had invented, but did not donate any rights in the nature of a patent on either item.

§ 24[f] Other personal property—Films

[Cumulative Supplement]

CUMULATIVE SUPPLEMENT

Cases:

Plaintiff seeking income tax refund for news film library donated to university failed to establish market value of film at $62,000,080, rather than $1,874,844 allowed by IRS, where 98 percent of 21.4 million feet of unreleased film in library consisted of cuts edited out of released news stories or of vault material never used in any news story; all film was limited to particular historical news events; organization and storage were haphazard, so that film had no utility without examination, selection, and rearrangement; film could only be used by prospective purchaser as source of footage for particularized selection, regardless of market sought to be exploited; there was no assurance that entire footage could be so used; and it was highly unlikely that any use could be found for all film. Hearst Corp. v United States (1993, Ct Fed Cl) 28 Fed Cl 202, 93-1 USTC ¶ 50303, 71 AFTR 2d 93-1656.

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[END OF SUPPLEMENT]

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Footnotes

1 Cases in which discussion of valuation methods, or the court's application of them to the facts of the case, is absent or minimal are excluded.

2 Income Tax Regs § 1.170(c)(1).

3 Rev Rul 67-461, 1967-2 CB 125.

4 Compare Klopp v Commissioner (1960) TC Memo 1960-185, 19 TCM 973 (severance damages includible in charitable deduction) with Drey v United States (1982, ED Mo) 535 F Supp 287, 82-2 USTC ¶ 9422, 49 AFTR 2d 82-1386, affd (1983, CA8) 705 F2d 965, 83-1 USTC ¶ 9219, 51 AFTR 2d 83-769, cert den 464

US 827, 78 L Ed 104, 104 S Ct 99 (severance damages not includible in charitable deduction; distinguishing Klopp as involving property donated under threat of condemnation).

5 See also the annotation at 22 A.L.R. Fed. 31, Valuation of Closely Held Stock for Federal Estate Tax Purposes under § 203(b) of Internal Revenue Code of 1954 (26 U.S.C.A. § 2031(b)), and Implementing Regulations.

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