

## Charitable Giving: IRS Enforcement Actions in Normal and Unexpected Areas



EVERSHEDS  
SUTHERLAND



**Hale E. Sheppard**

*Partner*

**T:** +1 404 853 8360

[halesheppard@eversheds-sutherland.com](mailto:halesheppard@eversheds-sutherland.com)

# Mechanics of Charitable Donations



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- General rule about tax deductions
- Tax deduction equals FMV
- Key item – “qualified appraisal”

## Three Categories of Attacks



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- Technical arguments
- Valuation arguments
- Judicial doctrines

## Many Types of Donations Under Fire



# Many Types of Donations Under Fire

- Decade of easement dominance
- Recent Tax Court results
- Tunnel vision

# Charitable Remainder Annuity Trusts



# Charitable Remainder Annuity Trusts

- Introduction
  - Regular pattern of IRS enforcement
  - Focus on Charitable Remainder Annuity Trusts
  - IRS efforts are escalating

# Charitable Remainder Annuity Trusts

- Overview of Tax Rules
  - Donor transfers (appreciated) property to trust
    - Donor does not recognize gain
    - Donor might claim part as charitable deduction
  - CRAT gets carryover basis from donor
  - CRAT sells property and invests proceeds
    - CRAT does not recognize gain
    - Buys single-payment insurance annuity (“SPIA”)

# Charitable Remainder Annuity Trusts

- Overview of Tax Rules (continued)
  - CRAT makes distributions to donor up to 20 years
    - Donor pays income taxes per ordering rules
  - When donor dies or period ends, rest goes to charity
    - At least 10% initial FMV of property

# Charitable Remainder Annuity Trusts

- Overview of Tax Rules (continued)
  - Motivation for forming a CRAT?
    - Defer income taxes on appreciated property
    - Create predictable income stream
    - Obtain some charitable tax deduction
    - Support charitable endeavors

# Charitable Remainder Annuity Trusts

- IRS First Formalizes its Position
  - Why? Taxpayers utilizing “Hoffman Strategy”
  - Legal Advice Memo – IRS mandates
    - Trust does not meet CRAT criteria
      - Thus, no tax benefit available
    - Trust meets CRAT criteria
      - Omitted income
      - Reported only SPIA income
      - Distributions are income, not corpus

# Charitable Remainder Annuity Trusts

- Prevention – Injunction Action
  - Complaint filed about “Hoffman Strategy”
  - Goal – stop marketing
  - Goal – relinquish all prior proceeds

# Charitable Remainder Annuity Trusts

- Recent Tax Court Decision
  - *Furrer v. Commissioner*
  - Main facts of case
  - Analysis by the court
    - Issue - procedural matters
    - Issue – charitable deductions
    - Issue – taxability of distributions

# Charitable Remainder Annuity Trusts

- Another Recent Tax Court Decision
  - *Gerhardt v. Commissioner*
  - Main facts of case
  - Analysis by the court
    - Issue – taxability of distributions
    - Issue – no stepped-up basis
    - Issue - penalties

# Charitable Remainder Annuity Trusts

- Inclusion in Dirty Dozen
  - Identified in 2023
  - Description by IRS

# Charitable Remainder Annuity Trusts

- Listed Transaction Status
  - Proposed regulations – issued April 2024
  - Preamble content
  - Explanation content
  - Urging Qualified Amended Returns

## Art Donations



# Art Donations

- Background
  - Congress encourages donations
  - Key issue is valuation
  - Contents of credible appraisal
  - Three IRS valuation mechanisms
    - Statement of Value
    - Art Appraisal Service
    - Art Advisory Panel

# Art Donations

- Recent IRS Warning about Art Abuse
  - Issued in October 2023
  - Cites “questionable appraisals”
  - Five-step plan by “promoters”
  - Reminder of audits of high-wealth taxpayers

# Art Donations

- IRS attacks on charitable donations
  - Standard four challenges
  - Problems raising “economic substance”
    - Sources saying inapplicable
    - Three sample cases

# Art Donations

- Court Upholds Promoter Penalties
  - 2026 case – Ehrlich v. United States
  - Earlier case – Williams v. Commissioner
    - Key aspects of agreement
    - IRS indirectly attacks valuation
    - Decision by Tax Court

# Art Donations

- Court Upholds Promoter Penalties
  - Back to Ehrlich v. United States
  - Main steps in art donation program
  - IRS dispute begins
  - Three-part court analysis
  - Financial pain

# Easement Donations



# Easement Donations

- Congress Intervenes
  - Secure Act – December 2022
  - Applicable in 2023 forward
  - Added Section 170(h)(7)
  - Created 2.5 Times Disallowance Rule
    - Three express exceptions
    - Two implicit exceptions
  - Created penalty and no defenses

# Easement Donations

- Second IRS Settlement Initiative
  - Started in early 2024
  - Applies only to “docketed” cases
  - Main terms – taxes, penalties, interest
  - Carrots from IRS’s perspective

# Easement Donations

- Third IRS Settlement Initiative
  - Started in mid-2024
  - Applies only to “non-docketed” cases
  - Main terms – taxes, penalties, interest
  - Payment details
  - Ongoing IRS actions

# Charitable LLCs



# Charitable LLCs

- Recent Tax Court Case - Facts
- *Lim and Chu v. Commissioner*
- Tax Court issues
  - Insufficient proof that donation made
  - Lack of Qualified Appraisal
  - Defective Form 8283
  - Invalid CWA
  - Valuation

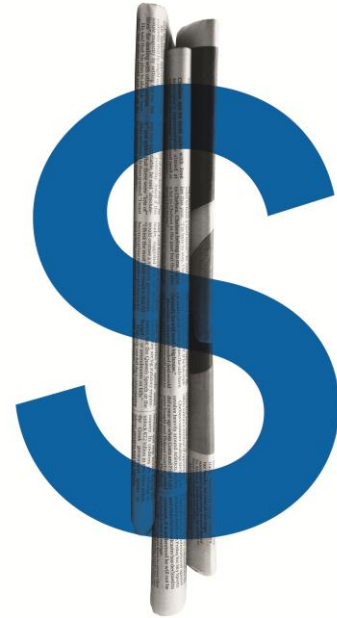
## Partial Business Interests



## Partial Business Interests

- Transaction identified in IRS alert
- Warnings to promoters and participants

## Everyday Generosity



# Everyday Generosity

- Recent Tax Court Case – Facts
- *Bensaw v. Commissioner*
- Positions by the IRS

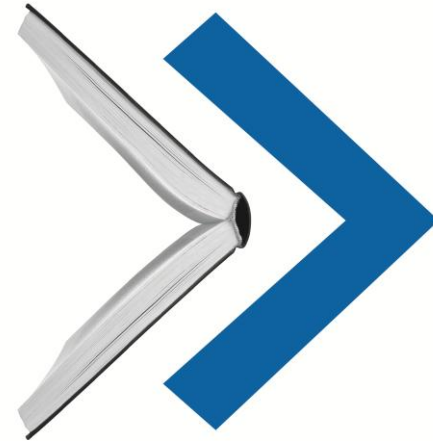
## Bargain Sales to Charities



# Bargain Sales to Charities

- Pending injunction case – Overview
- United States v. Johnson, et al
- Specific allegations
- Partial government victory
- Related yet forgotten issues
  - Taxpayers
  - Appraisers
  - Promoters
  - Charities

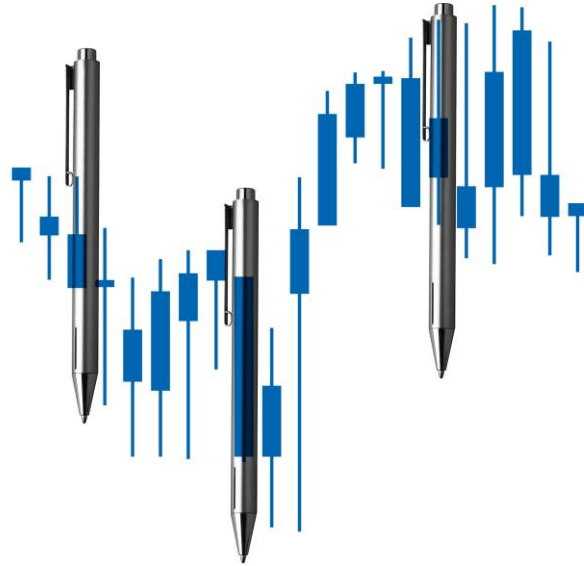
## Educational Facility



# Educational Facility

- Pending Tax Court Case – Facts
- *Wells v. Commissioner*
- Positions by the IRS

# Stock



# Stock

- Pending Tax Court Case – Facts
- *Neumann v. Commissioner*
- Positions by the IRS

## Religious Artefacts



# Religious Artefacts

- Pending Tax Court Case – Facts
- *Green 1993 Dynasty Trust v. Commissioner*
- Positions by the IRS

# Cash Donations



# Cash Donations

- Extra background regarding money
  - Expansive rules for 2020 and 2021
  - Flexible substantiation requirements
  - Multiple items comprising CWA

# Cash Donations

- Pending Tax Court Case
- *Lawrence v. Commissioner*
- Positions by the IRS

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Thank You



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