Charitable Giving:
IRS Enforcement Actions in Normal and Unexpected Areas

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ABOUT THE SPEAKER

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Education. Hale holds five college degrees. At the University of Kansas, he earned a B.S., with distinction, M.A., with honors, and J.D. He later received an LL.M. degree in international law, with highest distinction, from the Universidad de Chile in South America. Finally, he obtained an LL.M. degree in tax from the University of Florida, where he was a graduate tax scholar.

Awards and Recognitions. During his studies, Hale received several awards for academic excellence, including the prestigious Harry S. Truman Foundation Scholarship, Janice Dawson Quinn Tax Scholarship, Tinker Foundation Scholarship, and Senator James B. Pearson International Fellowship. Hale also served as a graduate editor of the Florida Tax Review and member of the Kansas Journal of Law & Public Policy. Chambers USA, Legal 500, Best Lawyers in America, Law 360, and other organizations have recognized Hale as a leader in tax litigation. He has also been inducted into the American College of Tax Counsel.

Publications. Hale is proud to be ranked among the most active tax writers in the country. He has published well over 300 major articles in top tax journals, including Journal of Taxation, International Tax Journal, The Tax Adviser, Journal of International Taxation, Journal of Tax Practice and Procedure, Taxes Magazine, Corporate Taxation, Practical Tax Lawyer, Journal of Passthrough Entities, Tax Management International Journal, Journal of Multistate Tax & Incentives, Tax Notes International, Taxation of Exempts, Practical Tax Strategies, Corporate Business Taxation, Trust and Estates Journal, Journal of Taxation of Financial Products, Real Estate Taxation, and others. He has also published major articles in more than 20 university law reviews, both in the United States and abroad.

Citations. Thanks to his cases and writing, Hale has been cited as a tax authority in hundreds of articles and books, as well as in legal briefs submitted to various District Courts, Courts of Appeal, and even the U.S. Supreme Court.

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SOURCES FOR OUTLINE – AVAILABLE UPON REQUEST

This outline derives from the following articles, all written by Hale. If you would like a copy of any of the articles, please send Hale an e-mail at *halesheppard@eversheds-sutherland.com* or call him at 404-853-8360. He would be glad to send you the articles.

- Promoter Penalties Upheld Against Organizer of Art Donation Program, ___ *TAX NOTES FEDERAL* ___ (2026).

- Taxpayers Get More Than They Bargained for When Making Bargain Sales to Charities, 190(5) *TAX NOTES FEDERAL* 765 (2026).

- Bargain Sales to Charities: Permanent Injunction is Just the Beginning, 190(4) *TAX NOTES FEDERAL* 601 (2026).

- No Good Deed Goes Unpunished: Analyzing Current IRS Attacks on Charitable Donations 143(6) *JOURNAL OF TAXATION* 33 (2025); republished in 115(2) *PRACTICAL TAX STRATEGIES* 10 (2025); republished in 53(1) *ESTATE PLANNING* 24 (2025).

- IRS Attacks Charitable Donations of Closely Held Business and More, 186(4) *TAX NOTES FEDERAL* 717 (2025).

- CRATs as Listed Transactions? Analyzing IRS Actions and Taxpayer Options, 183(8) *TAX NOTES FEDERAL* 1365 (2024).

- IRS Attacks on Art Donations: Old Techniques, New Hurdles, 181(7) *TAX NOTES FEDERAL* 1221 (2023).

- Holy CRAT! Exploring Options for Taxpayers after Early Tax Court Losses 179(9) *TAX NOTES FEDERAL* 1489 (2023).

- Is the "Ultimate Tax Plan" Nearing Ultimate Rejection by the Tax Court? 178(10) *TAX NOTES FEDERAL* 1509 (2023).

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I. Mechanics of Charitable Donations

A. The Basics

1. Taxpayers normally can claim tax deductions for charitable donations they make during a year.[1]

2. If the donations consist of something other than money, then the amount of the deduction is the fair market value ("FMV") of the property.[2]

   a. Ordinarily, FMV means the price on which a willing buyer and willing seller would agree, if neither party was obligated to participate in the transaction, and if both parties had reasonable knowledge of the relevant facts.[3]

3. Where the value of donated property exceeds $500,000, taxpayers cannot claim a deduction unless they obtain a "qualified appraisal" and attach it to the relevant tax return. An appraisal must satisfy a long list of requirements be "qualified" for these purposes.[4]

II. Three Categories of Common Attacks

A. "Technical" arguments

1. Lack of charitable intent because there was some form of quid pro quo between donor and the organization,

2. the donation was conditioned on the donor receiving the full tax deduction,

3. the organization did not issue a contemporaneous written acknowledgement ("CWA"),

4. the appraisal was not a "qualified appraisal,"

5. the appraiser was no a "qualified appraiser,"

6. Form 8283 was missing, incomplete, or inaccurate,

7. not all the appraisers signed the Form 8283,

8. the property donated was somehow encumbered,

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[1] Section 170(a)(1); Treas. Reg. § 1.170A-1(a).
[2] Section 170(a)(1); Treas. Reg. § 1.170A-1(c)(1).
[3] Treas. Reg. § 1.170A-1(c)(2).
[4] Section 170(f)(11); Treas. Reg. § 1.170A–13(c)(3)(i); Notice 2006-96; T.D. 9836, 83 FR 36425 (July 30, 2018); Treas. Reg. § 1.170A-17.

9. the recipient was not a "qualified organization," and

10. the donation was not completed during the year claimed.[5]

11. Why does the IRS love technical arguments?

B. Valuation arguments

1. The tax deduction should be seriously reduced because the taxpayer, through its qualified appraiser, overvalued the property.

2. Challenges to factual inaccuracies in the appraisal, valuation method selected by appraiser, and/or inputs used in applying such method.

C. Judicial doctrines

1. The taxpayer engaged in a "disguised sale" of tax incentives,

2. The results were "too good to be true," or

3. The transactions were "shams," lacked "economic substance," and had no purpose other than tax avoidance.[6]

III. Many Types of Donations Under Fire

A. Dominance of Conservation Easements

1. The focus over the past decade has been on conservation easements.

2. The IRS officially started attacking these in 2016, when it released Notice 2017-10 labeling syndicated conservation easements "listed transactions" and unleashing a compliance campaign.[7]

3. Hundreds of easement cases are backlogged with the Appeals Office and Tax Court.[8]

4. The Tax Court continues to issue decisions regularly, and the IRS has experienced recent success when it comes to valuation.

B. The IRS Attacks Elsewhere

1. Some people, fatigued by the dominance of easement battles for so long, might be pleased by certain IRS victories as of late. That attitude likely will

[5] Internal Revenue Service. Conservation Easement Audit Techniques Guide. (Rev. 2016), pgs. 78-81.
[6] *See, e.g., Champions Retreat Golf Founders, LLC v. Commissioner*, T.C. Memo 2018-146, pg. 21.
[7] Notice 2017-10, Preamble and Section 1.
[8] "Appeals Memo Outlines Steps to Shrink Tax Court Case Backlog," 2022 Tax Practice Expert 22-14 (May 30, 2022); Joel G. Cohen, "IRS Appeals Has a Solution to its Tax Court Backlog," 75 Tax Notes Federal 1587 (June 6, 2022); Nathan J. Richman, "Appeals Learned Some Things While Clearing Docketed Case Backlog," 178 Tax Notes Federal 1805 (March 13, 2023).

change, though, when they realize that the IRS is using the same techniques to attack many other types of charitable donations. Details follow.

IV. CRATS as Listed Transactions

A. Introduction

1. Following a common pattern, the IRS has decided that it dislikes something, and it is taking methodical steps to halt it. The IRS has focused on several different transactions in recent years, but its indignation now centers on certain positions taken by taxpayers in connection with Charitable Remainder Annuity Trusts ("CRATs").

2. There is a growing list of IRS efforts to stop what it deems abusive transactions involving such entities. These include a legal memorandum, an injunction lawsuit, two Tax Court battles, a Dirty Dozen listing, and, regulations proposing to categorize some items as "listed transactions."

B. Overview of Tax Rules

1. A CRAT is one type of charitable remainder trust.[9]

2. A donor transfers cash or other property to an irrevocable trust. This often consists of appreciated property, meaning property whose FMV at the time of the transfer is higher than the basis of the donor in such property.

   a. The donor does recognize gain (and thus is not hit with income taxes) when she transfers appreciated property to the CRAT.[10]

   b. The donor also might be able to claim a charitable tax deduction for part of the property's value.[11]

3. The CRAT gets the same basis in the appreciated property as the donor previously had. This is called a "carryover basis." The CRAT generally does not acquire a "stepped-up" basis in the property, meaning an increased basis equal to the FMV of the property at the time of the transfer.[12] This only occurs in situations where the donor pays gift taxes when transferring property to the CRAT.

4. The CRAT sells the appreciated property and invests the sales proceeds. One option is to buy a financial instrument that will yield a steady stream of payments, such as a single-payment insurance annuity ("SPIA"). Thanks

[9] Treas. Reg. § 1.664-1(a)(1)(iii)(a); Treas. Reg. §1.664-2.
[10] *Buehner v. Commissioner*, 65 T.C. 723 (1976).
[11] Section 664(e); Treas. Reg. §1.664-2(d).
[12] Section 1015.

to its status as a tax-exempt entity, selling the property does not cause an income tax liability for the CRAT.[13]

5. The CRAT then makes distributions to the donor (who essentially becomes both donor and beneficiary) for a specific period up to 20 years.[14] The donor must pay income taxes when she receives such distributions, pursuant to particular ordering rules.[15]

   a. First, payments are considered "ordinary income" to the extent the CRAT had ordinary income for the year of the distribution and ordinary income accumulated from earlier years.

   b. Second, after the ordinary income has been exhausted, payments are treated as "capital gains" from the sale of assets by the CRAT.

   c. Third, once the capital gains have been fully distributed, the payments become "other income."

   d. After all taxable amounts (*i.e.*, ordinary income, capital gains, and other income) have been depleted, the distributions are considered non-taxable returns of corpus.[16]

6. When the donor dies or the distribution-period otherwise ends, the assets remaining in the CRAT pass to one or more qualified U.S. charities. Such assets must constitute at least 10 percent of the initial FMV of the property transferred to the CRAT.[17]

7. Why would someone form a CRAT? Among the benefits for the donor are (i) deferring payment of income taxes on appreciated property, (ii) creating a predictable income stream, (iii) obtaining a limited tax deduction, and (iv) supporting charitable endeavors.

C. <u>IRS First Formalizes its Position</u>

1. Taxpayers started participating in the so-called "Hoffman Strategy" involving CRATs in 2015.[18] Revenue Agents conducting related audits began seeking guidance from the IRS National Office.

[13] Section 664(c)(1); Treas. Reg. § 1.664-1(a)(1)(i).
[14] Section 6664(d)(1)(A); Treas. Reg. §1.664-2(a)(5)(i).
[15] Section 664(b); Section 664(c)(1); *Alpha I, LP v. United States*, 682 F.3d 1009 (Fed. Cir. 2012).
[16] Section 664(b); Treas. Reg. § 1.664-1(d); Treas. Reg. § 1.664-1(e); *Miller v. Commissioner*, T.C. Memo 2009-182.
[17] Section 664(d)(1)(C) and (D).
[18] *United States v. Eickhoff et al*, District Court, WD of Missouri, No: 2:22-cv-04027, Complaint, Feb. 23, 2022, Allegation 52.

2. In 2020, it issued a Generic Legal Advice Memorandum ("GLAM") describing the relevant facts, issues, and positions of the IRS.[19]

   a. The GLAM plodded through the two relevant tax provisions. These consisted of Section 664, containing rules for CRATs and similar trusts, and Section 72, addressing taxation of annuities.

   b. The GLAM explained that the "threshold problem" with the Hoffman Strategy was that the relevant trusts do not meet all the requirements to be considered CRATs under Section 664. It further indicated that, even if the trusts did not suffer any shortcomings, the Hoffman Strategy would still fail because it relies on a misreading of the CRAT rules and their interaction with Section 72.

   c. The GLAM noted that the organizers contended that the transfer by the donor to the alleged CRAT of appreciated assets, by itself, triggered a step-up basis. The GLAM rejected this notion, stating that "[t]here is no technical basis for this assertion."

   d. The GLAM centered on the proper tax treatment of the sale of appreciated property, but it also warned about tax deductions for charitable donations. It underscored that if a trust formed pursuant to the Hoffman Strategy failed to qualify as a CRAT under Section 664, either based on its terms or its operation, then the donors would be unable to claim a partial charitable deduction under Section 170.

   e. The GLAM ended with various instructions for its personnel, including the following.

      i. First, the IRS should challenge the validity of the alleged CRAT based on both its express terms and functioning.

      ii. Second, if the IRS determines that a trust is not a CRAT, then it should treat it as a taxable entity from the outset. This means that the sale by the trust of the appreciated property should immediately trigger taxable gain.

      iii. Third, if the IRS concludes that a trust does not qualify as a CRAT, it also should disallow any tax deduction claimed by the donor for a charitable donation.

      iv. Finally, if the trust meets the CRAT standards, the IRS should contend that the donor drastically understated her income each year by only reporting on Form 1040 the minor

[19] Internal Revenue Service. AM 2020-006; "IRS Challenges Validity of Charitable Trust Structure," 86 Exempt Organization Tax Review 198 (2020).

amount of income generated by the SPIA, while omitting other distributions from the CRAT.[20]

D. An Ounce of Prevention

1. The IRS turned to the Department of Justice ("DOJ") for assistance, with hopes of stopping what it considered abusive behavior before it proliferated.

2. The DOJ filed a Complaint in early 2022, asking the District Court to do two things: Stop organizers from marketing the Hoffman Strategy, and force them to relinquish all money they made from doing so in the past.[21]

3. The DOJ claimed that taxpayers began implementing the Hoffman Strategy in 2015, they used at least 70 different CRATs to avoid reporting a total of $17 million in taxable income, and those actions deprived the IRS of more than $8 million in tax revenue.

E. Recent Tax Court Decision - *Furrer v. Commissioner*[22]

1. Key Facts

a. The taxpayers, husband and wife, were in the farming business during the relevant years. After seeing an advertisement in an industry magazine for the Hoffman Strategy, they formed a CRAT in 2015 ("First CRAT"). They named themselves life beneficiaries, their son as trustee, and several charities as remaindermen. The taxpayers transferred many bushels of crops to the First CRAT, which it sold for approximately $470,000. The trustee distributed 10 percent of this amount to charities. He used the remaining proceeds to buy an SPIA. It made payments of around $85,000 to the taxpayers in 2015, 2016 and 2017.

b. The taxpayers formed another CRAT in 2016 ("Second CRAT"). As before, the taxpayers were life beneficiaries, their son played the role of trustee, and various charities served as remaindermen. The taxpayers transferred bushels of corn and soybeans grown on their farm to the Second CRAT, which it soon sold for about $690,000. The trustee, following the earlier pattern, sent 10 percent to charities and used the remaining 90 percent to buy another SPIA. That financial instrument paid the taxpayers about $125,000 per year in 2016 and 2017.

[20] Internal Revenue Service. AM 2020-006, Recommendation; "IRS Challenges Validity of Charitable Trust Structure," 86 Exempt Organization Tax Review 198 (2020).
[21] *United States v. Eickhoff et al*, District Court, Western District of Missouri, No: 2:22-cv-04027, Complaint, Feb. 23, 2022; *See also* "Government Files Suit Against Promoters of Abusive Tax Scheme," Tax Court Doc. 2022-6092 (Feb. 23, 2022).
[22] *Furrer v. Commissioner*, T.C. Memo 2022-100.

c. The taxpayers reported on their Forms 1040 small amounts of interest income generated by the SPIA. They omitted, however, the larger distributions from the CRAT on grounds that they constituted non-taxable returns of corpus.

d. The taxpayers filed a Form 709 (United States Gift Tax Return) for 2015, indicating that they contributed to the First CRAT crops with a FMV of about $469,000 and a cost basis of $0. Similarly, they filed a Form 709 for 2016 disclosing a contribution to the Second CRAT with a FMV of nearly $667,000 and a cost basis of $0. The taxpayers did not pay any gift taxes, though.

e. The IRS began an audit. Adhering to the earlier GLAM, the IRS determined that the distributions received from the First CRAT and Second CRAT were *not* non-taxable returns of corpus, but rather ordinary income. The IRS, therefore, significantly increased the income of the taxpayers in 2015, 2016 and 2017.

f. The taxpayers raised a new issue amid the audit. Specifically, they claimed that they should get tax deductions in 2015 and 2016 for non-cash charitable contributions to the First CRAT and Second CRAT for the amounts destined for the charitable remaindermen. The taxpayers neither obtained an appraisal nor enclosed a Form 8283 (Noncash Charitable Contribution) with their Forms 1040, however. Despite these critical shortcomings, the Revenue Agent allowed the taxpayers charitable tax deductions roughly equal to 10 percent of the proceeds generated by the sale of the crops.

2. Court Analysis

a. Procedural Matters

i. The IRS ultimately issued a Notice of Deficiency, seeking additional income taxes and penalties. The taxpayers challenged the IRS by filing a Petition with the Tax Court.

ii. After the initial pleadings were completed, the IRS modified its litigating position, filing an Amended Answer with the Tax Court to disallow the charitable tax deductions that the Revenue Agent previously accepted during the audit.

iii. The IRS filed a Motion for Partial Summary Judgment before the case was called for trial. It asked the Tax Court to determine that the taxpayers were not entitled to charitable tax deductions, and all amounts they received from the SPIAs or CRATs should considered ordinary income, taxed at the highest rates.

b. First Issue – Charitable Deductions

i. The Tax Court acknowledged that taxpayers are entitled to a tax deduction for transfers to a CRAT up to the value of the charitable remainder interest. However, as a condition to getting such benefits, taxpayers must meet all applicable substantiation requirements. In the case of property worth more than $5,000, taxpayers normally must obtain a "qualified appraisal," enclose a completed Form 8283 with their tax return, and retain all records proving the donation. The Tax Court held that the taxpayers deserved a tax deduction of $0 because they failed to meet all three of these obligations.

ii. The Tax Court explained that, even if the taxpayers had complied with the substantiation duties, they still could not benefit from a charitable tax deduction. This is because they donated bushels of crops, which were "ordinary income property," not "long-term capital gain property," in their hands as active farmers. The relevant law provides that a deduction for contributing ordinary income property (including inventory) is limited to the donor's basis in such property. The taxpayers in *Furrer v. Commissioner* had a basis of $0 in the donated bushels because they had already expensed the costs of growing the crops on their Forms 1040. Consequently, there tax deduction was also $0.

c. Second Issue – Taxability of CRAT Distributions

i. The Tax Court reiterated that the taxpayers, upon filing their Forms 709 for 2015 and 2016, admitted that their basis in the donated crops was $0.

ii. It then described the rules governing basis calculations. The Tax Court explained that when a taxpayer transfers property by gift, the basis of the recipient in the gifted property will be the same as it was in the hands of the taxpayer, increased by any gift tax paid by the taxpayer. According to the Tax Court, "[t]hese basic tax principles have thus been established for a very long time."

iii. The Tax Court concluded that the taxpayers did not pay any gift taxes when they transferred the crops to the First CRAT and Second CRAT and each CRAT acquired a basis of $0 just as the taxpayers previously had.

iv. The Tax Court then turned to income tax matters. It explained that the First CRAT sold the crops for about $470,000, while the Second CRAT pocketed around $690,000. Given the basis of $0, all the sales proceeds represented profit. Because the taxpayers were active

farmers, the crops in their hands were inventory, a type of ordinary income property. Accordingly, the profit generated by selling the crops was ordinary income, as opposed to capital gain.

v. The Tax Court explained that the specific ordering rules in Section 664 dictate that the distribution to a life beneficiary is first treated as ordinary income. Such rules further state that all ordinary income must be distributed before any other items, including non-taxable corpus, can be released. Therefore, the full payments by the SPIAs or CRATs to the taxpayers should be taxed as ordinary income.

F. Another Recent Tax Court Decision - *Gerhardt v. Commissioner*[23]

1. Key Facts

a. The taxpayers implemented the Hoffman Strategy in 2015. They formed a CRAT, named themselves as beneficiaries, appointed a law firm as trustee, and identified several qualified charities as remaindermen. The taxpayers transferred appreciated real property to the CRAT. Soon thereafter, the trustee sold the property for close to its FMV and used approximately 90 percent of the sales proceeds to purchase an SPIA. The taxpayers were to receive a payment from the SPIA of about $312,000 per year for five years, starting in 2016.

b. The CRAT issued Forms 5227 to the taxpayers characterizing nearly the entire annual distribution as a non-taxable return of corpus, with a small amount shown as interest income. The CRAT also issued Schedules K-1 to the taxpayers reflecting the same.

c. The taxpayers filed a Form 709 reporting the contribution of appreciated real property to the CRAT in 2015 as a gift. Additionally, they filed annual Forms 1040 declaring the interest income from the SPIA, while omitting the remaining distributions from the CRAT.

d. The IRS audited. It determined that the proceeds from selling the appreciated real property constituted ordinary income. Accordingly, all distributions by the CRAT to the taxpayers in 2015 and 2016 should be taxed as ordinary income under Section 664.

e. The IRS issued a Notice of Deficiency to this effect, which the taxpayers disputed by filing a Petition with the Tax Court.

2. Court Analysis

[23] *Gerhardt v. Commissioner*, 160 T.C. No. 9 (April 20, 2023).

a. The Tax Court, much like it did before in *Furrer v. Commissioner*, described the rules concerning transfers of property to a CRAT, the basis in such property, the tax-exempt status of a CRAT, the taxability and character of distributions to the beneficiary, etc.

b. The Tax Court clarified the idea advanced by the taxpayers, which was that all taxable gains from the sale of appreciated property donated to a CRAT somehow "disappear" and become non-taxable corpus. The Tax Court was having none of that, declaring that "the gain-disappearing act the [taxpayers] attribute to the CRATs is worthy of a Penn and Teller magic show . . . but it finds no support in the [Internal Revenue Code], regulations, or caselaw."

c. The Tax Court next turned to basis. It noted that the taxpayers argued that the CRAT's basis in the appreciated property was FMV. However, the plain language of the relevant provision, Section 1015, "flatly contradicts" that position.

d. Finally, the Tax Court upheld penalties against one set of taxpayers. It acknowledged that taxpayers might deserve penalty waiver when they reasonably rely in good faith on qualified, informed, objective, tax or legal professionals. Citing relevant caselaw, the Tax Court clarified that reliance by taxpayers is unreasonable when it is placed on insiders, promoters, or persons with inherent conflicts of interest of which they should have been aware. The Tax Court ultimately blessed the penalties proposed by the IRS because the taxpayers failed to show the qualifications of their advisors, the nature of the communications with them, or the quality and objectivity of the advice they rendered.

G. Inclusion in Dirty Dozen

1. The IRS, still critical of certain uses of CRATs, included them in its Dirty Dozen list for 2023. It described the situation in the following manner:

a. "Charitable Remainder Trusts are irrevocable trusts that let individuals donate assets to charity and draw annual income for life or for a specific time period. The IRS examines charitable remainder trusts to ensure they correctly report trust income and distributions to beneficiaries, file required tax documents and follow applicable laws and rules. A [CRAT] pays a specific dollar amount each year. Unfortunately, these trusts are sometimes misused by promoters, advisors and taxpayers to try to eliminate ordinary income and/or capital gain on the sale of property. In abusive transactions of this type, property with a fair market value in excess of its basis is transferred to a CRAT. Taxpayers may wrongly claim the transfer of the property to the CRAT results in an increase in basis to fair market value as if the property had been sold to the trust. The CRAT then sells the property but does not recognize gain due

to the claimed step-up in basis. Next, the CRAT purchases an [SPIA] with the proceeds from the sale of the property. By misapplying the rules under Sections 72 and 664, the taxpayer, or beneficiary, treats the remaining payment as an excluded portion representing a return of investment for which no tax is due."[24]

H. Listed Transaction Status

1. Introduction

a. The IRS released regulations designed to label certain CRATs listed transactions, with all that entails ("Proposed Regulations").[25]

2. Preamble

a. The Preamble to the Proposed Regulations contains a segment called "tax avoidance transactions using a CRAT."[26]

b. It first describes what the IRS considers the appropriate tax treatment for CRATs receiving appreciated property, selling it, using most of the proceeds to purchase an SPIA, and then making periodic distributions to the donor.

c. The positions in the Proposed Regulations are nothing new; they were previously raised in the GLAM, two Tax Court cases analyzed above, and Dirty Dozen announcement for 2023.

d. The Proposed Regulations then take things a step further, suggesting that certain features of the relevant trusts might cause them not to meet all the eligibility requirements.

i. In other words, the IRS maintains that some entities claiming to be CRATs are not, and this characterization changes everything.

ii. The Proposed Regulations begin by acknowledging that the IRS has previously supplied eight sample CRAT forms in Revenue Procedures.

iii. They further recognize that many of the supposed CRATs "generally resemble" one of the samples. The problem is that they often have one or more "significant modifications," which prove fatal. The IRS offers several illustrations in the Proposed Regulations.

[24] Internal Revenue Service. IR-2023-65. March 31, 2023.
[25] REG-108761-22 (March 25, 2024); Chandra Wallace, "Treasury and IRS Propose Naming CRATs as Listed Transactions," 183 Tax Notes Federral 161 (April 1, 2024).
[26] REG-108761-22 (March 25, 2024), Background, Section V.

3. Explanation of the Provisions

a. The Proposed Regulations broadly define what the IRS will consider a "listed transaction," going beyond the so-called Hoffman Strategy in various ways.

b. The situation under fire by the IRS is comprised of five steps.

i. One, the grantor creates a trust purporting to qualify as a CRAT under Section 664.

ii. Two, the grantor funds the trust with property whose FMV exceeds its tax basis; that is, appreciated property.

iii. Three, the trustee sells the contributed property.

iv. Four, the trustee uses some or all the proceeds from the sale to buy an annuity.

v. Finally, on her Form 1040, the beneficiary of the trust treats the amounts payable from the trust (*i.e.*, the distributions) as if they were, completely or partially, annuity payments subject to the special rules in Section 72, instead of as ordinary income, capital gain, or other income in accordance with Section 664(b).[27]

c. The Proposed Regulations clarify that they might encompass situations that do not strictly meet the five steps described above. They state that rules cover any transaction "that is the same as, or substantially similar to" the relevant CRAT transaction.[28]

i. This phrase generally means any transaction, which is expected to obtain the same or similar tax consequences as a reportable transaction, and which is either factually similar or based on a similar tax strategy.

ii. Taxpayers must broadly construe the concept of "substantially similar" in favor of making disclosures IRS.[29]

4. IRS Encourages Immediate Surrender

a. The Proposed Regulations encourage taxpayers who participated in the pertinent CRAT transactions to pro-actively resolve matters with the IRS by filing a qualified amended return ("QAR"); that is, by

[27] REG-108761-22 (March 25, 2024), Explanation of Provisions, Section I.
[28] REG-108761-22 (March 25, 2024), Explanation of Provisions, Section I.
[29] Treas. Reg. § 301.6011-4(c)(4).

voluntary relinquishing tax benefits in exchange for potential penalty waiver.

b. The Proposed Regulations are both negative and obtuse in their messaging, as seen below:

i. "Because the IRS will take the position that taxpayers are not entitled to the purported tax benefits of the listed transactions described in the Proposed Regulations, taxpayers who have filed tax returns taking the position that they were entitled to the purported tax benefits should consider filing amended returns or otherwise ensure that their transactions are disclosed properly."[30]

V. Art Donations

A. Background

1. Congress encourages taxpayers to donate to charitable causes.[31]

2. Incentivizing taxpayers to act charitably is one thing, figuring out what that benevolent behavior is worth is another. Valuation is a perennial dispute.

3. The IRS takes the position that valuation of art depends heavily on educated opinions, and the weight given to these depends on the knowledge and competence of the experts, as well as the thoroughness with which the opinions are supported.[32]

4. With respect to relevant data, the IRS indicates that a credible valuation will the following, and more: (i) A complete description of the object, including its size, subject matter, artist, and approximate date of creation; (ii) The cost, date and manner by which the donor previously acquired it; (iii) A history of the piece, including proof of authenticity; (iv) A high-quality image; and (v) The facts on which the appraisal was based, such as sales of similar works by the same artist, record of exhibitions at which the art was displayed, economic state of the art market at the time of the donation, and the professional standing of the artist.[33]

5. Cognizant of the challenges in valuing artwork, Congress and the IRS have created various mechanisms to facilitate the process.

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[30] REG-108761-22 (March 25, 2024), Explanation of Provisions, Section IV.
[31] Section 170.
[32] Internal Revenue Service. Determining the Value of Donated Property. Publication 561 (2023), pg. 3.
[33] Internal Revenue Service. Determining the Value of Donated Property. Publication 561 (2023), pg. 10; *See also* Internal Revenue Service. Photographic Requirements for Art, Antiques, Decorative Arts & Other Cultural Properties Reviewed by Art Appraisal Services and the Commissioner's Art Advisory Panel. Publication 5497 (2021).

a. Taxpayers looking to avoid potential squabbles with the IRS can solicit a Statement of Value before filing the relevant tax returns, provided that the value of the item presumably exceeds $50,000.[34]

b. The IRS has also formed Art Appraisal Services, which is comprised of specially-trained appraisers who respond to requests for Statements of Value and support the IRS during audits, administrative appeals, and tax litigation.[35]

c. Finally, the Art Advisory Panel, established more than five decades ago, is a group of up to 25 experts who meet regularly, discuss items submitted to Art Appraisal Services for review, and provide opinions on value.[36]

6. Claiming the tax deduction for an art donation can be complicated. Among other things, taxpayers must obtain a Qualified Appraisal from a Qualified Appraiser, demonstrate that the charity is a Qualified Organization, obtain a contemporaneous written acknowledgement ("CWA") of the donation, complete Form 8283 (Noncash Charitable Contributions), and file a timely tax return with all necessary enclosures and disclosures.[37]

B. IRS Warning about Art Donation Deductions

1. The IRS announced in October 2023 that taxpayers should beware of "promotions involving exaggerated art donation deductions." It also inserted other loaded terms that the IRS has used in other contexts, such as "inflated values" and "questionable appraisals."[38]

2. The IRS explained that certain promoters do the following: They:

a. encourage high-income taxpayers to buy various types of art, usually at a "discounted" price,

b. provide additional services for which they can charge fees, such as shipping, storage and/or appraisal of the art,

c. identify charities willing to accept the art,

[34] Revenue Procedure 96-15.
[35] Internal Revenue Service. Determining the Value of Donated Property. Publication 561 (2023), pg. 11.
[36] Internal Revenue Service. The Art Advisory Panel of the Commissioner of Internal Revenue. Publication 5392 (Rev. 6-2023).
[37] *See* IRS Publication 1771, Charitable Contributions – Substantiation and Disclosure Requirements; IRS Publication 526, Charitable Contributions (2022), pg. 20; Section 170(f)(8); Section 170(f)(11); Treas. Reg. § 1.170A-13; Notice 2006-96; Treas. Reg. § 1.170A-16; Treas. Reg. § 1.170A-17.
[38] Internal Revenue Service. "IRS Warns Taxpayers of Improper Art Donations Deduction Promotions; Highlights Common Red Flags." IR-2-23-18 (Oct. 5, 2023); "IRS Warns Taxpayers of Art Donation Schemes," 2023 Tax Notes Today Federal 192-15 (Oct. 5, 2023); Chandra Wallace, "Beauty Is in the Eye of Auditors for Art Donations, IRS Warns," 181 Tax Notes Federal 333 (Oct. 9, 2023).

d. instruct taxpayers to hold the art for more than one year before donating it, thereby making it long-term capital gain property, and

e. assist taxpayers in claiming tax deductions based on FMVs that far exceed the amount they paid for the art.

3. The IRS then clarified that, thanks to recent legislation authorizing a larger enforcement budget, it plans to focus on high-income and high-wealth individuals. The IRS added that charities need to be careful that they do not "enable these schemes." Finally, the IRS confirmed that it already has dozens of taxpayer examinations and promoter investigations underway.

C. Applying Old Theories to New Context

1. The IRS's playbook in attacking certain donations has been consistent.

a. IRS first challenges technical issues, which deal exclusively with alleged shortcomings in one or more of the many documents that taxpayers must obtain to effectuate a donation.

b. The IRS later cites various judicial theories, such as the transaction was devoid of economic substance solely because the taxpayer primarily cared about the tax deduction.

c. Finally, at the end of the audit, the IRS inevitably asserts that the donated item is worth $0, and the taxpayer should be hit with one of a cascade of alternative penalties.

2. The following segment shows that the IRS might encounter problems if it follows the traditional path in attacking art donations.

D. Economic Substance and Charitable Donations

1. Legislative history, IRS rulings, and case law all support the notion that the economic substance doctrine generally is *not* relevant to transactions designed to qualify for congressional tax incentives.[39]

2. Several cases over the years have held that the economic substance doctrine normally is *not* relevant to charitable donations. A few are explored below.

a. Skripak v. Commissioner[40]

[39] *See*, *e.g.*, U.S. House of Representatives, Committee on the Budget. The Reconciliation Act of 2010. 111th Congress, 2nd Session, Report 111-443, Volume I, Division I, March 17, 2010, pg. 296; U.S. Joint Committee on Taxation. Technical Explanation of the Revenue Provisions of the Reconciliation Act of 2010, as Amended, in Combination with the Patient Protection and Affordable Care Act. JCX-19-10. March 21, 2010, pg. 152, footnote 344; LB&I-040711-015 (July 15, 2011); LB&I-04-0422-0014 (April 22, 2022); *Sacks v. Commissioner*, 69 F.3d 982 (9th Cir. 1995).

[40] *Skripak v. Commissioner*, 84 T.C. 285 (1985).

i. The taxpayers in *Skripak v. Commissioner* participated in a program whereby they executed a series of documents purporting to buy scholarly books for one-third their retail price, held the books long enough to create long-term capital gain property, donated the books to small rural public libraries, and claimed charitable donation deductions based on the *retail* price of the books, which was significantly higher than what the taxpayers had paid a short time earlier.

ii. The IRS audited, fully disallowed the claimed deductions, and imposed penalties. The IRS's primary theory was that the transaction in which the taxpayers engaged lacked economic substance, constituted a sham, and thus should be ignored for tax purposes.

iii. The Tax Court rejected the IRS's argument as follows:

(a) "[The IRS's] seeming obsession with the mechanics of these transactions as shams appears to be caused by the admitted tax-avoidance motivation of [the taxpayers]. *However, as stated above, the deduction for charitable contributions was intended to provide a tax incentive for taxpayers to support charities. Consequently, a taxpayer's desire to avoid or eliminate taxes by contributing cash or property to charities cannot be used as a basis for disallowing the deduction for that charitable contribution*."

b. Hunter v. Commissioner[41]

i. The taxpayers learned of a tax-reduction program, promoted by Mr. Ackerman, involving the purchase of "limited edition prints" and subsequent donation to museums.

ii. Mr. Ackerman, through one of his entities, purchased a large number of prints from a gallery for a low price because the gallery had owned them for a long time, failed to sell them to visitors, and now considered them "excess inventory."

iii. Mr. Ackerman bought the prints for one-sixth of their retail price, sold them to the taxpayers for one-third of their retail price, and later assisted the taxpayers in donating the prints and claiming charitable deductions for their full retail price.

iv. In terms of procedure, Mr. Ackerman displayed on a table the prints for sale, placed the prints selected by the taxpayers in a separate drawer featuring their name, insured the prints,

[41] *Hunter v. Commissioner*, T.C. Memo 1986-308.

paid to have the prints packaged and shipped to museums after safeguarding them for over one year, and had the donations made in the name of the taxpayers.

v. The IRS audited the taxpayers and claimed that they should get a charitable deduction of $0 for a long list of reasons, among them that the transactions were shams and lacked economic substance.

vi. The IRS believed that the taxpayers "merely purchased a tax deduction which promised a three-to-one write-off on their investment."

vii. The Tax Court swiftly rejected the IRS's contention, holding that the "tax-avoidance motive" of the taxpayers in making the charitable donations did not preclude allowance of a deduction.

viii. The Tax Court alluded to what it said earlier, in *Skripak v. Commissioner*, about Congress enacting Section 170 to incentivize taxpayers to support charities and the IRS being unable to use a taxpayer's desire to reduce taxes as grounds for disallowing a deduction.

c. Weitz v. Commissioner[42]

i. The taxpayers participated in a program pursuant to which they pooled funds with other investors, had their agent purchase medical equipment in their names at bankruptcy auctions for low prices from distressed sellers, stored such equipment for more than one year, donated the equipment to hospitals, and claimed charitable deductions based on the retail value of the equipment at that time of the donations.

ii. The taxpayers expected a four-to-one return on their investment, even after paying the agent's commission.

iii. The IRS raised several arguments in an attempt to award the taxpayers a charitable deduction of $0, several of which involved economic substance in one fashion or another.

iv. The Tax Court, after dismissing other IRS arguments, provided additional color regarding the inapplicability of the economic substance doctrine to situations involving charitable donations. It explained the following:

[42] *Weitz v. Commissioner*, T.C. Memo 1989-99.

(a) "Underlying each of [the IRS's] arguments is concern over the significant tax savings [the taxpayers] hoped to obtain as a result of their participation in the plan devised by [their agent and accountant]. [The taxpayers] and the other investors paid a relatively low price for the equipment which, at no cost or inconvenience to themselves, they stored for one year until they could donate it to [the hospital] and claim a charitable contribution deduction in an amount four times greater than their cash outlay. Nonetheless, [the taxpayers'] actions complied in every respect with statutory requirements. *As we recently noted in Skripak v. Commissioner, Section 170 allows a deduction from tax with respect to donations to charitable institutions even when the donation is carefully contrived to comply with the requirements of the applicable rules and regulations. [The taxpayers'] actions have been planned and executed to assure that their donation of medical equipment to [the hospital] would come within the definition of a deductible charitable contribution and all of the steps necessary to accomplish that goal have been effectuated. [The taxpayers] cannot be penalized for being careful*."

E. Court Upholds Promoter Penalties for Art Donations

1. Case from 2026

a. A recent case brings together aggressive art donations and related promoter penalties. It is called *Ehrlich v. United States*.[43]

2. Earlier Related Case

a. *Williams v. Commissioner*, decided by the Tax Court in 2011, involved various charitable tax deductions the taxpayer claimed with the help of Abbey Art Consultants, Inc. ("Abbey Art").[44]

b. The Tax Court described some aspects of the key agreement:

i. The taxpayer expressed an interest in buying art for $72,000 but only committed to paying a deposit equal to five percent;

[43] *Estate of David Ehrlich v. United States*, U.S. District Cout, Western District of Texas, Case No. 1:21-cv-01020, Order Granting Motion for Summary Judgment filed Marc 4, 2026.
[44] *Williams v. Commissioner*, T.C. Memo 2011-89.

ii. Abbey Art promised to get a Qualified Appraisal indicating that the purchase price was no more than 24 percent of the supposed FMV of the artwork for donation purposes;

iii. Abbey Art would select and store the relevant artwork for the taxpayer for just over one year;

iv. The sole remedy that Abbey Art had if the taxpayer later refused to pay the remaining 95 percent of the purchase price was to keep the deposit and repossess the artwork; and

v. Abbey Art had ultimate authority to select the charity. The Tax Court then provided some details about donations the taxpayer made in 1997, 1999, and 2000.

c. The IRS did not *directly* challenge whether the valuations in the supposed Qualified Appraisals were reasonable. It did so *indirectly*

i. The IRS decided to only attack *when* the taxpayer acquired ownership of the artwork because, if he held it for less than one year at the time he made the donation, then his charitable deduction could not exceed his basis in the artwork (*i.e.*, the initial deposit and later purchase price).

d. Decision by the Tax Court

i. The taxpayer's unilateral power to decide whether to pay the remaining purchase price after making the initial deposit meant that he only had an "option" to buy the art.

ii. The taxpayer's holding period for the art he had the option to buy did not start until he exercised the option, committed himself to pay the outstanding balance, and thus acquired a present interest in the art.

iii. That all occurred less than one year before he made the donation to the charity. The result was that the taxpayer did not donate long-term capital gain property, and his charitable tax deduction was thus limited to his basis in the art. In other words, the taxpayer could not derive any tax or financial benefit from the high FMV of the art as determined by the appraisers retained by Abbey Art.

3. Key Facts in Erlich v. United States

a. The Department of Justice ("DOJ") claimed that Ehrlich carried out an improper charitable donation scheme for approximately two decades, which consisted of the following steps.

i. Ehlrich would travel abroad for months each year, the purpose of which was to identify and purchase underpriced art. Most of the pieces they acquired consisted of ceramics from Afghanistan and folk paintings from Ethiopia.

ii. Ehrlich would transport the artwork to a warehouse in New York that he leased and controlled through Abbey Art.

iii. Ehrlich would identify taxpayers interested in obtaining tax savings by participating in his art donation program. The promotional materials, including a slide deck and brochure, featured samples and charts showing "percentage return on donation," "federal tax savings," "after-tax returns," and "federal tax savings from art donations."

iv. Ehrlich would select artwork, usually a group of pieces, whose presumed FMV would perfectly match the maximum amount of charitable tax deductions the taxpayers could claim for a particular year.

v. Ehlrich supposedly offered taxpayers the opportunity to select their own artwork, but many never saw it, never took possession of it, and never knew what it was exactly.

vi. An employee of Abbey Art would estimate the FMV of the artwork, and most taxpayers would make a "deposit" of approximately 10 percent of such amount.

vii. Ehrlich did not obligate the taxpayers to execute a written contract to complete the purchase of the artwork or later donate it to a charity.

viii. Ehlrich would tell the taxpayers that, for purposes of starting the mandatory holding-period of one year before making a charitable donation, the payment of the deposit by the taxpayers, or the mere "setting aside" or "segregating" of certain artwork by Ehlrich in the warehouse, sufficed to give the taxpayers legal ownership in the artwork and get the clock ticking.

ix. Ehrlich would personally hire one of three appraisers to provide an aggregate FMV for several pieces of art and tell taxpayers that such valuations met the IRS standards to be considered Qualified Appraisals.

x. Ehrlich would find a charity willing to accept the art. The DOJ alleged that he was forced to make cash donations to charities as a condition of them accepting the artwork. To

solve this problem, Ehrlich had his wife form a charity that he operated, Help for Orphans International ("HOPI").

xi. Erlich told taxpayers to hold the art for at least one year, which he facilitated by keeping it in the warehouse.

xii. Ehrlich had the taxpayers sign a so-called Deed of Gift, stating that they relinquished all right and title to the artworks to the charity.

xiii. Ehrlich sent an invoice to taxpayers asking them to pay the remaining balance (*i.e.*, approximately 90 percent) for the artwork. Some taxpayers did not do so until long after the supposed donation had already occurred.

xiv. Ehrlich supposedly delivered the art to the charity, though the DOJ questioned whether this took place in all cases.

xv. Ehrlich provided taxpayers the materials necessary to claim the charitable deduction, including the CWA, completed Form 8283, and copy of appraisal.

4. The Dispute Begins

a. The IRS started a promoter investigation under Section 6700, which ultimately resulted in the assessment of penalties in 2020 for multiple years. Ehrlich paid the requisite amount, filed his Form 6118 arguing that he had been wronged by the IRS, he waited more than six months, and then filed his refund suit in District Court.

b. Ehrlich died after the litigation started, but the penalties did not die with him. The DOJ simply shifted its focus to recovering funds from Ehrlich to his estate.

c. The DOJ thought it had such a strong case that it did not need a trial. Therefore, it filed a Motion for Summary Judgment, asking the District Court to rule that Ehrlich violated Section 6700 when he marketed his art donation program.

5. District Court Opinion

a. The District Court explained that the DOJ alleged that Ehrlich made two types of false statements in connection with the art donations.

i. First, he made false statements when he told taxpayers that they acquired ownership in the artwork, for purposes of starting the one-year clock, when they paid a deposit or when Ehrlich "set aside" or "segregated" certain items.

ii. Second, he made false statements when he told taxpayers they could rely on the FMV determined by the appraisers he hired in claiming tax deductions.

b. Making Statements

i. The District Court had no trouble finding that Ehrlich made "statements" regarding when taxpayers supposedly took ownership of the art, the reliability of the appraisals, and the availability of tax benefits.

ii. As evidence, it pointed to e-mails, letters, deposition testimony, and Forms 8283.

c. False or Fraudulent Statements

i. Pointing to the earlier Tax Court case involving art donations orchestrated by Abbey Art, *Williams v. Commissioner*, the District Court said it agreed with its reasoning, even though the underlying facts were slightly different.

ii. The District Court pointed out that Abbey Art did not have written agreements with taxpayers. It also highlighted that some taxpayers made the 90-percent final payments after the donation was made, received partial refunds of their deposits or final payments after the appraisals were issued, never knew what art they were supposedly buying, never took physical possession of the art, and never visited the warehouse or otherwise corroborated the existence of the art. Based on this and more, the District Court concluded that the statements about the timing of ownership were "false."

d. Knew or Should Have Known

i. The District Court explained that it considers various factors, including the extent of reliance on knowledgeable professionals, level of sophistication and education, and familiarity with tax matters.

ii. The District Court found that none of the criteria weighed in favor of Erlich:

(a) He did not consult any tax or legal advisors,

(b) he was "sophisticated businessman" in that he ran all aspects of Abbey Art, and

(c) his use of a grantor trust showed tax knowledge.

iii. The District Court also underscored that Ehrlich admitted reading the prior Tax Court decision in *Williams v. Commissioner*, so he "should have known that his statements regarding ownership were false."

e. Financial Pain

i. The District Court granted the Motion for Summary Judgment filed by the DOJ. Ehrlich, therefore, owed about $1.35 million in promoter penalties.

VI. Easement Donations

A. Congress Intervenes – Secure Act

1. Introduction

a. Congress introducing new easement-related rules in the Secure Act in December 2022, which applies to donations in 2023 forward.[45]

2. General Disallowance Rule

a. The Secure Act added Section 170(h)(7).

b. It generally states that a partnership will *not* be entitled to *any* tax deduction if the amount of the conservation easement donation exceeds 2.5 times the aggregate "relevant basis" of the partners in the partnership ("2.5 Times Disallowance Rule").

c. To be clear, the Secure Act is not imposing a maximum, or limiting a deduction to a certain amount. It serves to *fully disallow* a donation whose value surpasses the threshold.

3. Three Exceptions to the 2.5 Times Disallowance Rule

a. First, historic preservation easements are not covered, provided that taxpayers satisfy special reporting duties ("Historic Preservation Exception").

b. Second, the 2.5 Times Disallowance Rule is inapplicable where all, or substantially all, the interests in the partnership making the donation are held, either directly or indirectly, by "an individual and members of the family of such individual," as this relationship is specifically defined ("Family Limited Partnership Exception").

[45] Public Law 117-328, Division T, Secure 2.0 Act of 2022. The Secure Act is a component of the Consolidated Appropriation Act of 2023.

c. Third, the 2.5 Times Disallowance Rule does not affect any donation that satisfies a complex three-year holding period ("Three-Year Hold Exception").

4. Additional Content

i. The Secure Act creates a penalty, too. It indicates that the IRS can impose a gross valuation misstatement penalty equal to 40 percent of the tax underpayment in situations where a tax deduction triggered by an easement donation is disallowed because of the 2.5 Times Disallowance Rule.

ii. The Secure Act clarifies that taxpayers cannot raise a "reasonable cause" defense, including reasonable reliance on qualified professionals, to fend off this penalty.

B. Two Recent IRS Settlement Initiatives

1. Second Settlement Initiative – Docketed Cases Only

a. Types of Participants

i. The IRS did not broadcast the settlement through news releases, announcements, or the like. Instead, the IRS began sending letters to SCET cases pending with the Tax Court, meaning that the Second Settlement Initiative is limited to partnerships with "docketed" cases.

b. Main Settlement Terms

i. The IRS effectively forces partners to pretend that they donated cash to the Red Cross or another legitimate charity, as opposed to making capital contributions to the SCET partnership. For example, assume that a partner made a capital contribution of $100,000 to a partnership and expected to receive a charitable donation tax deduction of $500,000. Under the Second Settlement Initiative, the partner essentially has to recalculate his or her income tax liability for all relevant years, benefitting from a total deduction of only $100,000. This represents a decrease of $400,000. The decline likely would result in significant federal income taxes for the partner, presumably over multiple years.

ii. The IRS would then impose a penalty equal to 10 percent of the total federal income tax liability after removing $400,000 in deductions, as described above.

iii. Lastly, the IRS would impose interest charges, not only the federal income taxes, but also on the 10 percent penalty.

c. Inducements from the IRS's Perspective

i. First, the Second Settlement Initiative allows partners to claim a tax deduction equal to the capital contributions they made to the partnerships. The capital contributions, made by the partners, tend to be higher than the acquisition price, paid by the partnerships to obtain the land on which they ultimately placed easements. This is because due diligence costs, professional fees, commissions, insurance premiums, and other pre-donation amounts normally get paid out of the capital contributions.

ii. Second, the Second Settlement Initiative does not decrease the overall easement value by applying the "after" value to the analysis.

iii. Third, instead of threating partners with a penalty of 40 percent for a "gross valuation misstatement, or a penalty of 75 percent in instances of fraud, the Second Settlement Initiative features a standard sanction of 10 percent.

2. Third Settlement Initiative – Non-Docketed Cases Only

a. The IRS, in its zeal to dispense with as many SCETs as possible before trial, introduced in late June 2024 yet another possible manner of resolving matters ("Third Settlement Initiative").[46]

b. Types of Participants

i. The IRS letters say that the Third Settlement Initiative "is being offered to the [partnership] listed above and is *not* available to partners on an individual basis."

ii. The earlier IRS announcement stated that the IRS would only direct letters to partnerships with "non-docketed" cases, *i.e.*, those SCETs or substantially-similar transactions that are currently under IRS audit and not yet in Tax Court.

c. Main Settlement Terms

i. The terms of the Third Settlement Initiative resemble those of the Second Settlement Initiative in that the partnerships will get a charitable tax deduction of $0, but will be entitled to claim a deduction for "out-of-pocket costs."

[46] IR-2024-174, IRS Sending Settlement Offer Letters in July to Certain Taxpayers Who Participated in Syndicated Conservation Easement Transactions (June 26, 2024); *See also* Kristen A. Parillo, "IRS Expands Easement Settlements to Nondocketed Cases," 2023 Tax Notes Today 124-2 (June 27, 2024).

ii. The IRS made two changes, though.

(a) First, the IRS will calculate the tax liability, at the partnership level, using a tax rate of just 21 percent. Taxes previously depended on the federal income tax rate to which each individual partner was subject during the relevant years. That was often the maximum of 37 percent.

(b) Second, the IRS will impose a penalty equal to five percent of the resulting federal income tax liability.

iii. The IRS will demand interest on both the taxes and penalties under the Third Settlement Initiative.

d. Payment Details

i. The partnerships that donated the conservation easement, not their direct or indirect partners, are obligated to pay the IRS. The letters clarify that BBA cases cannot try to reduce or jettison the partnership-level liability by applying to modify an "imputed payment" or by making a "push-out election."

ii. The letters demand that the partnerships make a one-time payment of *all* the taxes, penalties and interest due under the Third Settlement Initiative.

e. Continuation of Other IRS Actions

i. The letters clarify that the IRS can still assert promoter penalties under Section 6700, appraiser penalties under Section 6695, return preparer penalties under Section 6694, and/or pursue discipline under the Circle 230 rules enforced by the Office of Professional Responsibility.

ii. The letters further state that the IRS is still free to conduct criminal investigations of entities or individuals that assisted or advised others in participating in SCETs.

iii. On a related note, the letters affirm that participation does *not* mean that the IRS agrees that the deduction allowed under the Third Settlement Initiative (*i.e.*, the out-of-pocket costs by partners) constitutes the true value of the relevant property or easement, or that no civil fraud occurred.

VII. Charitable Limited Liability Companies

A. Recent Tax Court Case - Facts

1. The taxpayers in *Lim and Chu v. Commissioner* were the sole shareholders in Integra Capital Group, Inc. ("Integra") during the relevant years.[47]

2. The taxpayers were the sole shareholders in Integra Capital Group, Inc. ("Integra") during the relevant years.

3. Mr. Meyer made a presentation to the taxpayers in December 2016 regarding what he called The Ultimate Tax, Estate and Charitable Plan ("Ultimate Tax Plan").

4. The taxpayers clearly liked what they heard, as they immediately signed an agreement with Mr. Meyer ("Contract").

5. The Contract indicated that Mr. Meyer would form a special Charitable Limited Liability Company ("CLLC") for the taxpayers, create documents to transfer certain assets from the taxpayers to the CLLC, generate additional documents to memorialize the transfer of "units" in the CLLC to a charity, supply an appraisal to establish the value of the charitable donation, and defend the taxpayers if the IRS were to audit their gift.

6. With the year-end fast approaching, Mr. Meyer quickly formed a CLLC for the taxpayers. It was called ABC Foundation Legacy, LLC ("Legacy").

7. A week later, the taxpayers and their original company, Integra, executed another agreement. It named the taxpayers Managers of Legacy, Integra as the sole owner, and Mr. Meyer as registered agent ("Legacy Agreement"). Attached to the Legacy Agreement were five promissory notes, which obligated Integra to pay Legacy about $2 million over seven years.

8. The documents identified the Indiana Endowment Foundation ("Foundation") as the charitable organization to which Integra would transfer various units in Legacy. The Tax Court noted that Mr. Meyer was involved as this level, too, serving as the Foundation's registered agent.

9. Taxpayers claimed that Integra, as the sole owner of Legacy, donated units of Legacy to the Foundation on the last day of the year, December 31, 2016.

10. The Tax Court observed some problems with the CWA.

    a. First, the CWA was not addressed to the supposed donor, Integra, but rather to the taxpayers individually.

    b. Second, no human being signed the CWA.

    c. Third, based on its format, the Tax Court pondered whether "it may have been prepared by Mr. Meyer, not the by the Foundation."

[47] *Lim and Chu v. Commissioner*, T.C. Memo 2023-11.

d. Fourth, the "most suspect feature" of the CWA was that it did not refer to the property that Integra supposedly donated to the Foundation (*i.e.*, 1,000 units in Legacy), but rather to units in "C&H Family, LLC." To make matters worse, the Tax Court caught onto the fact that C&H Family, LLC did not even exist at the time of the purported donation on December 31, 2016; it was not formed until more than two weeks later, on February 16, 2017.

11. On January 31, 2017, Mr. Meyer issued a document characterized as an appraisal of the fair market value of the units in Legacy that were donated to the Foundation ("Appraisal"). The Appraisal concluded that that the units, and thus the corresponding tax deduction, were worth approximately $1.6 million. Mr. Meyer attached his resume to the Appraisal, indicating that we was an attorney, certified public accountant, and certified valuation analyst. He also attached another document, which claimed, among other things, that he had "no present or prospective bias with respect to the parties involved" and that his fees were "not contingent on any action or event resulting from the analysis, opinions, or conclusions in, or use of, the [Appraisal]."

12. Integra filed a timely Form 1120-S (U.S. Income Tax Return for an S Corporation) for 2016, the year of the donation. It attached a copy of the Appraisal, prepared by Mr. Meyer, and a Form 8283 (Noncash Charitable Contributions), also prepared by Mr. Meyer. The Form 8283 indicated that Integra's basis in the units it donated to the Foundation was about $2 million, while setting the fair market value at $1.6 million. The charitable deductions claimed by Integra flowed-through to the taxpayers as its sole shareholders. They reported the maximum amount possible on their Form 1040 (U.S. Individual Income Tax Return) for 2016 and carried forward the remainder for use in future years.

B. Positions by the IRS

1. The IRS audited Forms 1040 for 2016 and 2017, and eventually concluded that they should get a deduction of $0.

2. The taxpayers disputed this by filing a Petition in Tax Court.

3. At some later point before trial, the IRS filed a Motion for Partial Summary Judgment, asking the Tax Court to rule that the taxpayers deserve deductions of $0 for various reasons.

C. Tax Court Analyzes Three Issues

1. Failure to Prove the Donation Occurred

a. The Tax Court began by explaining that a taxpayer can claim a charitable donation for the year during which it surrenders dominion or control over the relevant property. Accordingly, Integra had to

prove that it adequately transferred units in Legacy to the Foundation in 2016.

b. The taxpayers reluctantly conceded during the pre-trial discovery process that the *only* evidence of the alleged transfer was the CWA from the Foundation, which was problematic in itself.

c. The Tax Court warned that the taxpayers "would face a decidedly uphill task" trying to show that Integra actually transferred anything, much less units in Legacy, to the Foundation in 2016. However, viewing the facts in the manner most favorable to the taxpayers, as the Tax Court must do when ruling on a Motion for Partial Summary Judgment filed by the IRS, the Tax Court declined to rule against the taxpayers before trial on this particular issue.

2. Failure to Obtain a Qualified Appraisal

a. The IRS suggested that Mr. Meyer was not a "qualified appraiser," and thus could not have issued a "qualified appraisal," for a number of reasons. For instance, he was a party to the transaction in which Integra purportedly transferred units in Legacy to the Foundation, he did not disclose the number of units transferred, he misrepresented his qualifications, and he prepared the Appraisal in exchange for a "prohibited appraisal fee."

b. The Tax Court began by citing the regulation establishing that "no part of the fee arrangement for a qualified appraisal can be based, in effect, on a percentage (or set of percentages) of the appraised value of the property."[48] It then pointed out that the Contract between the taxpayers and Mr. Meyer indicated that the latter might get six percent of the "deductible amount" up to $1 million, and four percent thereafter. The Contract further stated that Mr. Meyers would be paid $84,000, which presupposed that the "deductible amount" would be $1.6 million. Accordingly, determined the Tax Court, Mr. Meyer's fee for the Appraisal was based on a percentage of the value of the donated property, in direct violation of the applicable regulation. It stated the following:

i. "In sum, Mr. Meyer's fee was clearly based, directly or indirectly, on the appraised value of the [Legacy] units allegedly donated to the Foundation on December 31, 2016. His agreement with [the taxpayers] thus constituted a prohibited fee arrangement. For that reason alone his purported appraisal was not a qualified appraisal . . . ."

3. Down but Not Altogether Out

[48] Treas. Reg. § 1.170A-13(c)(6)(i).

a. The Tax Court offered the taxpayers a slight reprieve. In particular, it recognized that the failure to meet all the reporting requirements, including the need to attach a qualified appraisal to the relevant tax return, can be excused if the taxpayers are able to show that their shortcomings were "due to reasonable cause and not to willful neglect."[49] In other words, if the taxpayers can establish a "reasonable cause" defense, then they might avoid a deduction of $0 on grounds of no qualified appraisal.[50] Because neither the relevant statute nor regulations provide guidance on what constitutes "reasonable cause" where a qualified appraisal is absent, the Tax Court has relied upon the definition in other situations.[51]

b. The Tax Court acknowledged this reality in *Lim and Chu v. Commissioner*, explaining that the taxpayers asserted that they relied on a certified public accountant, as well as an attorney specializing in tax planning and asset protection, in gauging the appropriateness of the Ultimate Tax Plan. The Tax Court recognized that the taxpayers might "conceivably" show that they received, and reasonably relied upon, acceptable professional advice regarding the Appraisal. However, the issue involves disputes between the taxpayers and the IRS regarding materials facts, such that the Tax Court could not resolve it before a trial by way of a Motion for Partial Summary Judgment. Whether sufficient reasonable cause existed is a question for trial, with the taxpayers having the burden of presenting the evidence.

VIII. Partial Business Interests

A. Transaction Identified in IRS Alert

1. The IRS issued an alert warning taxpayers to avoid persons promoting a tax plan involving donations of interests in closely-held businesses.[52]

2. The IRS says promoters encourage high-income taxpayers to:

   a. create a limited liability company ("LLC"),

   b. contribute cash or other assets to the LLC,

   c. donate a majority of the non-voting and non-managing ownership interests in the LLC to a charity,

   d. claim a charitable tax deduction, and

[49] Section 170(f)(11)(A)(ii)(II).
[50] *See Belair Woods, LLC v. Commissioner*, T.C. 2018-159.
[51] *See Crimi v. Commissioner*, T.C. Memo. 2013-51.
[52] IR-2024-304 (Dec. 4, 2024).

e. still enjoy personal use of the cash or other assets, either directly or indirectly, after the donation.[53]

B. Warnings to Promoters and Participants

1. The IRS augmented its alert with some threats.

a. It indicated that it would use a "variety of compliance tools to combat abusive donations," including audits, promoter investigations, and criminal actions.

b. It has already identified "hundreds of tax returns filed with this abusive charitable contribution scheme," and earlier enforcement efforts have led to convictions and guilty pleas.[54]

c. The IRS reminded taxpayers that while they might be "targets" of "unscrupulous promoters," they are "always responsible for the accuracy of information reported on their returns."[55]

IX. Everyday Generosity

A. Recent Tax Court Case - Facts

1. Attacks by the IRS are not limited to aggressive transactions; they hit commonplace kindness, too.

2. The taxpayer in *Besaw v. Commissioner* filed a timely his Form 1040, claiming a tax deduction of $6,760 for noncash charitable contributions.[56]

3. He attached a Form 8283, wherein he provided the names and addresses of the organizations to which he made the donations, along with a short description of the items donated. Absent from Form 8283, though, were the dates of the donations and their values.

B. Positions by the IRS

1. The IRS audited the taxpayer, who supplied various certain proof.

a. These included incomplete receipts from charitable organizations.

b. The taxpayer also offered a document called "2019 Reconstructed from Form 8283 and Continuation Sheet." That document, which was not provided or created at the time the taxpayer made the

[53] IR-2024-304 (Dec. 4, 2024) (emphasis added).
[54] IR-2024-304 (Dec. 4, 2024) (referencing Department of Justice Tax Division Press Releases 24-427, 24-515, 24-1431, and 19-435).
[55] IR-2024-304 (Dec. 4, 2024).
[56] Besaw v. Commissioner, T.C. Summary Opinion 2025-7.

donations, identified the organizations, dates of donations, descriptions of the relevant items, and their values.

2. The IRS issued a Notice of Deficiency disallowing the tax deductions and proposing a negligence penalty. The taxpayer filed a Petition.

3. The Tax Court believed that the taxpayer made donations in 2019 but recognized that he failed to meet the specific substantiation requirements set forth in Section 170 and the regulations thereunder.

X. Bargain Sales to Charities

A. Pending Injunction Case - Overview

1. The Department of Justice ("DOJ") asked the District Court to enjoin individuals from facilitating "abusive bargain sale real estate transactions that result in inflated and unsupported charitable contribution deductions."

2. In *United States v. Johnson et al*, the DOJ argued that the three individual defendants are targeting owners of commercial or industrial properties, which are usually in disrepair, have significant carrying costs, and/or have been on the market for a long time.[57]

B. Specific Allegations

1. The DOJ alleged the following:

a. The Organizer develops marketing materials. He then finds participants in various ways, such as placing information on his company website, uploading videos to social media, and making presentations to real estate agents and others.

b. The Organizer, personally or through employees and representatives, identifies owners of real properties that are distressed, in disrepair, have significant carrying costs, and/or remain unsold after a long period on the market.

c. The Organizer contacts the owner and proposes a solution; that is, making a bargain sale with a TEO, which promises both cash and tax deductions for the owner.

d. The Organizer supplies the owner a letter of intent, which sets forth the purchase price that the TEO will pay the owner, estimated value of the property, projected tax benefits to the owner, and right of the owner to cancel the transaction if the final appraisal is less than 90

[57] *United States of America v. Johnson et al*, District Court, Middle District of Florida, Case No. 25-2072, Complaint (August 5, 2025).

percent of the estimate. The DOJ suggests that all final appraisals meet or exceed that threshold.

e. The Organizer identifies a TEO that is willing to purchase the property. He makes this appealing by arranging short-term financing for the purchase, such that the TEO does not incur any out-of-pocket expenses to acquire the property.

f. The Organizer preparers a purchase agreement between the owner and TEO.

g. The Defendant Appraisers, who are affiliated with the Organizer, do a valuation of the property, assuring the owner that their work-product meets all the criteria to be a "qualified appraisal." Not true, says the DOJ. According to the Complaint, the Defendant Appraisers furnish "false and inflated real property appraisals," rely on "frivolous interpretations and characterizations of published IRS guidance," and use "spurious methodological techniques," "bogus extraordinary assumptions and hypothetical conditions," and "inappropriate sales-comparison data and analysis."

h. The owner sells the property to the TEO at the bargain price determined by the Organizer.

i. The owner pays for the final appraisal, closing costs, and brokerage fees.

j. The Organizer gets all the relevant parties, including the owner, Defendant Appraisers, and TEO, to execute Form 8283.

k. The Organizer supplies the owner with the documents he needs to take his tax positions regarding the bargain sale and related charitable donation, namely, copies of the purchase agreement, final appraisal, and Form 8283.

l. The TEO often does not take possession of the property.

m. The Organizer identifies another party, often affiliated with the Organizer, which is interested in buying the property from the TEO shortly after the TEO buys it from the owner. The party pays more for the property than the TEO paid just days or weeks earlier, but far less than the value of the property in the final appraisal, which the owner used to claim his charitable tax deduction.

n. The Organizer has engaged in nearly 200 of these transactions and the average tax loss to the IRS is about $500,000 per transaction.

o. Depending on the circumstances, the Organizer might get paid in various ways, including a (i) a portion of the appraisal fee, (ii) a

loan-origination fee from the TEO, (iii) high interest rates from the TEO on the short-term financing, (iv) a commission from the sale of property by the owner to the TEO, (v) a commission from the sale of the property by the TEO to another party, and (v) proceeds from the sale of the property by the party to yet another party.

C. Partial Government Victory

1. The DOJ secured a swift victory with respect to the Defendant Appraisers. They agreed, before trial, to halt all activities.[58]

2. The fate of the Organizer remains undecided.

D. Related Yet Forgotten Issues

1. Taxpayers

a. Federal income taxes

b. Tax-related penalties

c. Extended assessment periods for fraud – *Allen v. Commissioner*

2. Appraisers

a. Office of Professional Responsibility

i. Generally. Punishments vary depending on the conduct, but they include a temporary suspension, permanent disbarment, reprimand, public censure, and/or monetary penalty.[59]

ii. When it comes to appraisers, OPR can essentially "disqualify" them by determining that (i) appraisals by such persons will have zero probative effect in any administrative proceeding with the IRS, and (ii) they will be barred from presenting evidence or testimony in any proceeding.[60]

b. Section 6695A penalties

i. The penalty can be large, reaching 10 percent of the amount of the tax underpayment by the taxpayer, or 125 percent of the gross income received by the appraiser.[61]

[58] *United States v. Johnson et al*, District Court, Middle District of Florida, Case No. 25-2072, Final Judgment of Permanent Injunction Against Christopher Bryant (Dec. 1, 2025); *United States v. Johnson et al*, District Court, Middle District of Florida, Case No. 25-2072, Final Judgment of Permanent Injunction Against Andrew Bryant (Dec. 12, 2025).
[59] 31 U.S.C. § 330(b); 31 C.F.R. § 10.50.
[60] 31 U.S.C. § 330(c); 31 C.F.R. § 10.50(b).
[61] Section 6695A(b).

3. Promoters

a. Penalties under Section 6700 can be huge. Specifically, when matters involve false or fraudulent statements, the sanction equals 50 percent of the income that the promoter already derived, or will derive in the future, from the activity.[62]

b. Time is on the IRS's side when it comes to promoter penalties. The IRS takes the position that the penalty "can be assessed *at any time*," and several courts have agreed.[63]

4. Charities

a. The Complaint explains that the TEOs involved with bargain sales improperly benefited because they either got property for below-market prices or proceeds from the sale of the property to a party shortly after they acquired it.

b. The DOJ might try to portray the TEOs as bad actors, middleman using their tax-exempt status to facilitate improper transactions in return for property or cash.

c. This happened before, when the IRS issued regulations in 2022 to make "syndicated conservation easement transactions" listed transactions.[64] There, the IRS focused on land trusts and their role as recipients of the easements. The Proposed Regulations explained that Section 4965 aims to deter TEOs from enabling certain transactions. They stated that if a transaction is a "tax-shelter transaction" at the time the TEO becomes a "party" to it, then the TEO must pay excise taxes and comply with reporting obligations. They also emphasized that a TEO is considered a "party" to a transaction if it facilitates it by reason of its tax-exempt, tax-indifferent, or tax-favored status.[65]

XI. Educational Facility

A. Pending Tax Court Case – Facts

[62] Section 6700(a) (Flush Language).
[63] Internal Revenue Service. Tax Shelter Promoter Investigations under IRC 6700. LB&I Process Unit, Document Control Number PEN-P-005 (2021), pg. 5 (emphasis added); *See also* Internal Revenue Manual § 4.32.2.12.5.1 (06-08-2012); *Capozzi v. United States*, 980 F.2d 872 (2nd Cir. 1992); *Lamb v. United States*, 977 F.2d 1296 (8th Cir. 1992).
[64] REG-106134-22, Syndicated Conservation Easement Transactions as Listed Transactions, Dec. 8, 2022; IRS Announcement 2022-28.
[65] Treas. Reg. § 53.4965-4(a)(1); REG-106134-22, Dec. 8, 2022, pg. 13.

1. In *Wells v. Commissioner*, the taxpayer owned 50 percent of Holding Company, which, in turn, fully owned Property Company.[66]

2. The Property Company held land consisting of more than 100 acres with buildings totaling more than 100,000 square feet.

3. In December 2016, the Property Company donated the land to a charitable organization via quitclaim deed.

4. That same day, the taxpayer wrote a letter, as managing member of the Holding Company, to the president of the organization. It said that the Property Company had donated the land and buildings worth approximately $4.42 million, according to the appraisal done by a third party.

5. The president of the organization responded with a hand-written letter thanking the taxpayer and the other owner of the Holding Company for their "generous gift of the campus property" worth about $4.42 million. The note did not describe the property further and it was not dated.

6. The Property Company attached a Form 8283 to its tax return for 2016, claiming a non-cash charitable tax deduction of $2.21 million. It carried forward the remainer to 2019, 2020 and 2021.

B. Positions by the IRS

1. The IRS audited and ultimately issued a Notice of Deficiency, disallowing the deductions and asserting substantial tax understatement penalties.

2. The IRS first argued that the taxpayer supposedly failed to meet the substantiation requirements of Section 170. Various Motions for Summary Judgment filed with the Tax Court by both parties reveal that the IRS's contentions that:

   a. the appraisal submitted by the Holding Company was not a "qualified appraisal" because it supposedly lacked the date of contribution, a statement that it was prepared for tax purposes, and the identification number of the appraiser, and

   b. the Holding Company did not obtain an appropriate CWA from the charitable organization.

3. The IRS maintained that, even if the Holding Company met all the substantiation requirements, the valuation was too high.

[66] The information provided in this segment of the article is derived from several documents related to *Wells v. Commissioner*, Tax Court Docket No. 13104-24. *See also* "Tax Court Holds Appraisal is Qualified Despite Clerical Error," 96 Exempt Organization Tax Review 85 (2025).

a. The IRS emphasized that the property could only be used as an institutional facility, and such use was financially unfeasible at the time of the donation,

b. valuation was improperly based on comparable properties located in metropolitan areas instead of rural ones,

c. no studies about the presence of hazardous waste and potential remediation were performed,

d. the costs to make the facility compliant with the American with Disabilities Act were prohibitive, and

e. the value was derived from the price per square foot of the gross building area on the land.[67]

XII. Stock

A. Pending Tax Court Case – Facts

1. Charitable giving by one of the founders of WeWork was recently called into question in *Neumann v. Commissioner.*[68]

2. Documents filed with the Tax Court indicate that WeWork had a capital structure comprised of common stock, which was subdivided into classes, and preferred stock, which was subdivided into series.

3. The documents further show that WeWork raised vast amounts of money, the founders retained control of the company through majority ownership of common stock, and at least one of the founders was charitably inclined.

4. He donated shares of the common stock to a charity in 2016, which the appraiser valued at about $5.96 million. The founder donated more common stock to the same charity in 2017, valued at $38.5 million.

5. The founder hired and relied on several reputable professionals, including an appraisal firm, accountant, and specialized attorney. Together, they prepared, obtained and/or filed various items with the IRS. These included tax returns reporting the donations, appraisals, Forms 8283, and CWAs.

B. Positions by the IRS

1. The issued a Notice of Deficiency fully disallowing the stock donation of $5.96 million in 2016 and of $38.5 million in 2017.

[67] Erin McManus, "IRS Sees White Elephant in Donated Private School," 189 Tax Notes Federal 205 (Oct. 6, 2025).
[68] *Neumann v. Commissioner*, Tax Court Docket No. 13530-25.

2. The Notice of Deficiency merely states the following to justify is multi-million-dollar adjustments:

   a. "It is determined that you are required to substantiate each reported contribution of $500 or more with a qualified appraisal. Since you did not establish that you were entitled to the deduction in both the 2016 and 2017 tax years, your non-cash contribution deductions are not allowed."

3. Even though the IRS reduced the tax deductions to $0 based on technical arguments and did not independently value the stock at issue, it nevertheless proposed the highest penalty, equal to 40 percent of the tax liability, because of a supposed gross valuation misstatement.

XIII. Religious Artefacts

A. Pending Tax Court Case – Facts

1. In *The David and Barbara Green 1993 Dynasty Trust v. Commissioner*, three trusts and two couples owned over 99 percent of Hobby Lobby.[69]

2. During 2011 and 2012, Hobby Lobby, a subchapter S corporation, donated many items to a charity. These included over 1,200 biblical scrolls, biblical manuscripts, and ancient bibles.

3. Hobby Lobby Stores claimed a noncash charitable deduction of $23 million for 2011 and of $61.6 million for 2012, which flowed-through to the trusts and couples.

4. Hobby Lobby Stores, with the assistance of a major tax and advisory firm, attached to the tax returns the appraisal reports and Forms 8283.

   a. For 2011, Form 8283 indicated that the donation consisted of 451 items, purchased between December 2009 and September 2010, with an aggregate basis of about $1.8 million, and an aggregate value of around $23 million.

   b. Similarly, for 2012, Form 8283 said that the donation was comprised of more than 800 items, purchased between December 2008 and August 2011, with an aggregate basis of about $18.7 million, and an aggregate value of $61.6 million.

B. Positions by the IRS

[69] *The David and Barbara Green 1993 Dynasty Trust v. Commissioner*, 165 T.C. No. 7 (Oct. 2, 2025); *The David and Barbara Green 1993 Dynasty Trust v. Commissioner*, T.C. Memo 2025-100.

1. The IRS audited Hobby Lobby, questioned the donations, and eventually issued a Notice of Deficiency allowing charitable deductions of $0 and proposed a penalty for gross valuation misstatements.

2. The only justification by the IRS for its drastic position was the following: "It has not been established that all the requirements of Section 170 . . . have been satisfied."

3. Tax Court litigation ensued, and the parties filed various Motions for Summary Judgment. One focused on substantiation issues.

   a. The IRS argued that charitable deductions of $0 were warranted because the Forms 8283 had several defects. For instance, they did not report the individual basis and date of acquisition for each of the hundreds of items donated; they only supplied aggregate data.

   b. Even though three appraisers supposedly contributed to the appraisals, only one of them signed Forms 8283.

   c. The Tax Court ruled that deciding this issue a Motion for Summary Judgment, without a trial, was inappropriate because there are factual matters in dispute and additional evidence is necessary to determine the applicability of the reasonable cause defense.

XIV. Cash Donations

A. Extra Background

1. Attacking donations of real property and other tangible property is one thing, but challenging gifts of money is another. The IRS is doing both, though. Some additional background is helpful before exploring the case.

2. In the case of charitable donations of money, the amount that a taxpayer generally can take into account for deduction purposes cannot exceed 60 percent of his adjusted gross income for the year.[70] Congress made changes during the COVID pandemic to encourage more gifting by taxpayers. Specifically, it increased the base limitation from 60 percent to 100 percent for 2020 and 2021. Taxpayers, therefore, could claim charitable tax deductions for *all* cash donations they made during those years.[71]

3. The substantiation rules are more flexible when it comes to donations of money, which makes sense. Taxpayers can substantiate a donation in the form of cash, check, or other monetary gift (*e.g.*, payment by credit card,

[70] Section 170(g).
[71] Coronavirus Aid, Relief, and Economic Security Act, Section 2205(a); Consolidated Appropriations Act, Section 213.

electronic funds transfer, online payment service, or payroll deduction) with a "bank record" or "written communication."[72]

a. A bank record includes a statement from a financial institution, an electronic funds transfer receipt, a canceled check, a scanned image of both sides of a canceled check, or a credit card statement.[73]

b. A written communication can be a receipt, letter, e-mail, or other communication in writing, showing the date, amount, and donee.[74]

4. A CWA does not have to take a particular form or contain specific wording, and letters, postcards, computer-generated media, and e-mails might suffice.[75] The Tax Court has also held that a series of documents, viewed together, can constitute a CWA. It ruled in one case that option agreements, Forms 8283, letters from the organization, settlement statements, and deeds of trust sufficed as a whole.[76] In another case, the Tax Court found that multiple documents relating to a cash donation (namely, checks, an agreement, and a letter dated the following year) satisfied the CWA requirement.[77]

B. Pending Tax Court Case – Facts

1. The taxpayers in *Lawrence v. Commissioner*, triggers particular interest made donations to over 50 charitable organizations in 2021, most of them pursuant to "grant agreements" with the organizations. Total donations exceeded $203 million.[78]

C. Positions by the IRS

1. The IRS conducted an audit, concluded that all *non-cash* charitable contributions were fine, but proposed to disallow tax deductions for about $67 million in *cash* deductions.

2. The IRS has *not* challenged that the donations actually occurred, the organizations were proper charities, the taxpayers did not receive any goods or services in exchange for the money, and the donations were made pursuant to grant agreements that specify the cash amount, state that they

[72] Section 170(f)(17); Treas. Reg. § 1.170A–15(b)(1).
[73] Treas. Reg. § 1.170A–15(b)(2).
[74] Section 170(f)(17); Treas. Reg. § 1.170A–15(b)(3).
[75] *See* IRS Publication 1771; House Conference Report. 103–213, at 565 n. 32 (1993); *Big River Development v. Commissioner*, T.C. Memo. 2017-166; *Averyt v. Commissioner*, T.C. Memo. 2012-198; *310 Retail, LLC v. Commissioner*, T.C. Memo. 2017-164.
[76] *Irby v. Commissioner*, 139 T.C. 371 at 11-12 (2012).
[77] *Wachter v. Commissioner*, 142 T.C. 140 (2014).
[78] *Lawrence v. Commissioner*, Tax Court Docket No. 9176-25. The information about this case is derived from the Notice of Deficiency dated March 21, 2025, and the Petition dated June 18, 2025.

constitute the entire agreement with the taxpayers, and contain the signature of appropriate representatives of the charities.

3. When it comes to rationales, the IRS only offers the following explanation in the Notice of Deficiency:

    a. "It is determined that the [$67 million] shown on your return as a deduction for contributions is not allowable because it has not been established that these contributions were completed contributions/gifts in the taxpayer year and/or that they met the [substantiation] requirements of Section 170."

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