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Subject: Richard L. Fox & Fatima T. Hasan - Recent Case of *Tarpey v. U.S.* Provides Important Reminder to Donors and Appraisers Alike to Ensure that Appraisals of Contributed Property Are Qualified Appraisals Performed by Qualified Appraisers

"This commentary provides a discussion of the recent case of Tarpey v. U.S., where the court determined that the taxpayer, who also served as an appraiser, was subject to the substantial penalty regime under the "Promoting abusive tax shelters" provision of IRC § 6700 as a result of furnishing appraisals to donors of at least 7,600 timeshares to a charity where he knew that statements made on the appraisals were false or fraudulent.

While the Tarpey case is clearly an outlier, because the obligation to obtain a qualified appraisal from a qualified appraiser rests solely on the taxpayer and the failure to obtain such an appraisal results in the denial of a charitable income tax deduction, the case is a strong reminder of the necessity of donors to confirm, with their independent tax advisors, that the appraisal they are provided is indeed a qualified appraisal prepared by a qualified appraiser. The case also highlights the risks to appraisers for providing a purported qualified appraisal that fails to comply with the applicable appraisal requirements under the Internal Revenue Code and regulations and knowingly overstates the value of donated property."

Richard L. Fox and Fatima T. Hasan provide members with their commentary on *Tarpey v. U.S.* and the necessity of donors to ensure compliance with the applicable appraisal requirements so as to avoid denial of a charitable income tax deduction.

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Now, here is Richard and Fatima's commentary:

EXECUTIVE SUMMARY:

Under the statutory regime of IRC § 170, except for certain property, such as marketable securities and qualified vehicles, in the case of a contribution of property for which a charitable income tax deduction of more than $5,000 is claimed, no deduction is allowed unless the taxpayer obtains a "qualified appraisal" by a "qualified appraiser." The failure of a taxpayer to obtain such an appraisal will result in the total denial of a charitable income tax deduction otherwise available, no matter how valuable the property contributed or the sincerity of the charitable intent of the taxpayer, a harsh result intended to ensure compliance with the appraisal requirements and one that has been frequently applied by both the IRS and the courts to deny a charitable income tax deduction where one would otherwise clearly be available to a donor.

While substantial compliance and reasonable cause arguments may be available as a defense for the failure to strictly comply with the appraisal requirements contained in IRC § 170 and the applicable regulations in this area, there is no assurance that a taxpayer will be successful in relying upon these principles. Indeed, ensuring upfront that all of the appraisal requirements are strictly complied with in a timely manner is the only certain way to bar the IRS from seeking to disallow a charitable income tax deduction on the basis of a donor failing to adhere to the appraisal requirements and a possible protracted and expensive legal battle with the IRS.

The potential harsh results in the context of miscues involving qualified

appraisals are not limited to donors. In the recent case of *Tarpey v. U.S.*, for example, the court determined that the taxpayer was subject to the substantial penalty regime under the "Promoting abusive tax shelters" provision of IRC § 6700 as a result of furnishing appraisals to donors of at least 7,600 timeshares to a charity that the taxpayer had formed where he knew that statements made on the appraisals were false or fraudulent, and substantially overstated the value of the donated timeshares. The appraisals provided to donors in *Tarpey* were not qualified appraisals and, under the facts of the case, the appraisers were actually disqualified from "qualified appraiser" status under certain exceptions to the definition of a qualified appraiser provided under the regulations.

While not discussed in the decision, unless the donors in *Tarpey* are able to successfully assert that their failure to obtain a qualified appraisal was "due to reasonable cause and not willful neglect," any claimed charitable income tax deduction would be denied in full under the statutory provisions of IRC § 170 where a donor fails to obtain a qualified appraisal when one is otherwise required. While the *Tarpey* case is clearly an outlier, because the obligation to obtain a qualified appraisal from a qualified appraiser rests solely on the taxpayer, the case is a strong reminder of the need of donors to confirm, using their own independent tax advisors, that an appraisal they have received is indeed a qualified appraisal prepared by a qualified appraiser. The case also highlights the risks to appraisers for providing a purported qualified appraisal that fails to comply with the applicable appraisal requirements under the Internal Revenue Code and regulations and knowingly overstating the value of donated property.

Interestingly, the penalty provisions that may typically be applied against an appraiser involve IRC §§ 6695A (valuation overstatements) and 6701 (aiding and abetting the understatement of tax liability), but the facts of the *Tarpey* case were so egregious that the government chose to assert the even harsher penalty provision of IRC § 6700 applicable to the organization or promotion of abusive tax shelters, despite the fact that the underlying basis for the penalty were false and fraudulent statements contained in purported qualified appraisals provided to donors.

FACTS:

Background on Qualified Appraisals, Appraisers and Appraisal Summaries (Form 8283)

Prior to the American Jobs Creation Act of 2004 (AJCA), the term "qualified appraisal" did not exist in the Internal Revenue Code, as that term was only defined under Reg. § 1.170A-13(c)(3), which was promulgated following the enactment of the Tax Reform Act of 1984. As a result of the AJCA, IRC § 170(f)(11)(E) was added to the Internal Revenue Code to provide a statutory definition of the term "qualified appraisal." Such definition, however, provided only that a "qualified appraisal" means, with respect to contributed property, "an appraisal of such property which is treated... as a qualified appraisal under regulations or other guidance prescribed by the Secretary."

The Pension Protection Act of 2006 amended IRC § 170(f)(11)(E), under which a "qualified appraisal" means an appraisal that (1) is treated as a "qualified appraisal" under regulations or other guidance prescribed by the Secretary, and (2) is conducted by a "qualified appraiser" in accordance with generally accepted appraisal standards and other regulations or guidance prescribed by the Secretary. Pending the issuance of regulations under IRC § 170(f)(11)(E), IRS Notice 2006-96, 2006-2 CB 902, provided that an appraisal would be treated as a "qualified appraisal" if the appraisal complied with all of the existing requirements under Reg. § 1.170A-13(c) (except to the extent such regulations were inconsistent with IRC § 170(f)(11)).

Regulations implementing definitions of a "qualified appraisal" and "qualified appraiser" are set forth in Regulation § 1.170A-17 ("Qualified appraisal and qualified appraiser"), applicable to contributions made on or after January 1, 2019. Consistent with the statute, Reg. § 1.70A-17(a) provides that the term "qualified appraisal" means an appraisal document that is prepared by a "qualified appraiser" in accordance with generally accepted appraisal standards and otherwise complies with the requirements of the regulations.

In addition, under Reg. § 1.170A-16(d)(1)(iii), no deduction is allowed for a contribution of property of more than $5,000 unless a completed

Form 8283 (Section B), generally referred to as an “appraisal summary,” is filed with the income tax return of the donor on which the charitable income tax deduction is claimed.

Failure to Adhere to Appraisal and Appraisal Summary Requirements

Where a qualified appraisal is required for a contribution of property, IRC § 170(f)(11)(A)(i) (“Denial of Deduction”) expressly provides that no deduction shall be allowed unless the appraisal is obtained by the taxpayer. Although IRC § 170(f)(11)(A)(i), which was added to the Internal Revenue Code under the American Jobs Creation Act of 2004, is effective only for contributions made after June 3, 2004, Reg. § 1.170A-13(c)(1)(i), issued under authority granted to the Treasury Department under the Tax Reform Act of 1984, similarly provides that no deduction is allowable where the appraisal requirements under the regulations are not met. Of note, however, is that under IRC § 170(f)(11)(A)(ii), the denial of the deduction for the failure to obtain a qualified appraisal does not apply if it is shown that the failure to meet such requirement “is due to reasonable cause and not willful neglect,” thereby providing an exception to the general rule of nondeductibility in such a case.

In *DeWayne Bond*, 100 TC 32 (1993), the Tax Court addressed whether substantial compliance with the appraisal requirements is sufficient to support a charitable deduction. In that case, the taxpayers donated two blimps to a charitable organization. The blimps were examined and appraised by an independent appraiser who completed the applicable portions of the appraisal summary on Form 8283 (Noncash Charitable Contributions) that was attached to the income tax return claiming the charitable contribution deduction. The appraiser did not prepare a separate appraisal report. The IRS challenged the charitable deduction because of the failure of the taxpayers to obtain a qualified appraisal. The court held that substantiation requirements under IRC § 170 were directory, not mandatory, and therefore, these requirements could be met by substantial, rather than strict compliance. The court found that the taxpayers had the subject property appraised by a qualified appraiser within the specified time frame and that substantially all of the information required under Reg. § 1.170A-13(c)(3)(i) was contained in

the appraisal summary on Form 8283. Accordingly, the court held that the taxpayers had substantially complied with the requirements of IRC § 170 and the regulations promulgated thereunder, even though a separate appraisal had not been obtained. The court stated:

> [T]he essence of section 170 is to allow certain taxpayers a charitable deduction for contributions made to certain organizations. However, the reporting requirements do not relate to the substance or essence of whether or not a charitable contribution was actually made. We therefore conclude that the reporting requirements are directory and not mandatory …. The fact that a Code provision conditions the entitlement of a tax benefit upon compliance with respondent's regulations does not mean that literal as opposed to substantial compliance is mandated.

Nothing in *Bond* relieves a taxpayer of obtaining a qualified appraisal where one is otherwise required. In *John T. Hewitt*, 109 TC 258 (1997), *aff'd, without pub. op*., 166 F3d 332 (4th Cir. 1998), for example, the taxpayers did not obtain a qualified appraisal or submit an appraisal summary with their return for contributions of nonpublicly traded stock to a foundation and a church. The court stated that that "petitioners simply do not fall within the permissible boundaries of *Bond v. Commissioner, supra*, where an appraisal summary, which was completed by a qualified appraiser, contained most of the required information and could therefore be treated as a written appraisal, was attached to the return."

In *Rhett Rance Smith*, TC Memo. 2007-368 , *aff'd*, 104 AFTR2d 2009-7830 (9th Cir. 2009) (unpublished), while most of the required Forms 8283 were completed by the taxpayers' CPA, there were numerous irregularities. A number of Forms 8283 did not include the required signature of the appraiser. In addition, rather than securing an outside independent appraisal, the CPA conducted some of the appraisals. The IRS denied deductions for the contributions because of the failure to comply with the appraisal requirements of IRC § 170. The taxpayers acknowledged that they failed to fully comply with the requirements for noncash charitable contribution deductions, but asserted on the basis of *Bond* that they were nevertheless entitled to the deductions for the

noncash charitable contributions, because they substantially complied with the requirements, and because they had “reasonable cause... for [any] failure to fully comply.”

Although the court in *Rhett Rance Smith* acknowledged that the substantiation requirements were directory, not mandatory, the appraisals and appraisal summaries were so lacking that it found the taxpayers did not substantially comply with the substantiation requirements. The court also noted that for charitable contributions made after June 3, 2004, Congress, in the American Jobs Creation Act, which added IRC § 170(f)(11), specifically codified the substantiation requirements and also provided an exception where there is reasonable cause for failure to comply with the substantiation requirements for noncash charitable contributions. The taxpayers contended that the reasonable cause exception was a codification of preexisting law, whereas the IRS asserted that the reasonable cause exception was not the law before the 2004 enactment. The court agreed with the IRS, as it found “no sound basis for accepting petitioners' contention that a reasonable cause exception existed before the 2004 enactment of that exception.”

In *Scheidelman*, 682 F3d 189 (2012), *vac'd and rem'd,* TC Memo. 2010-151, the Second Circuit Court of Appeals held that the fact that an appraisal based the value of a façade conservation easement on a fixed percentage (11.33%) of the value of the property did not prevent it from being a qualified appraisal for tax purposes. The IRS argued that applying a percentage method to determine the value of the easement was merely a general guideline and not sufficient to meet the requirements for a qualified appraisal, and the Tax Court agreed. The appellate court stated that for purposes of gauging compliance with the qualified appraisal requirements, “it is irrelevant that the IRS believes the method employed was sloppy or inaccurate, or haphazardly applied—it remains a method, and [the appraiser] described it. The regulation requires only that the appraiser identify the valuation method “used”; it does not require that the method adopted be reliable. By providing the information required by the regulation, the [appraiser] enabled the IRS to evaluate his methodology.” Thus, in reversing the Tax Court decision, the Second Circuit found that the taxpayer's use of a percentage-based appraisal of the value of the easement was

sufficiently detailed so as to meet the requirements for a qualified appraisal.

In *Estate of Evenchik*, TC Memo. 2013-34, the taxpayers donated 15,534.67 shares of Chateau Apartments, Inc., common stock, but attached appraisals of the corporation's underlying assets, two apartment buildings, prepared by an independent professional real estate appraiser. The donors deducted 72% of the combined value of the two properties. The IRS disallowed the deduction on the grounds that no qualified appraisal had been submitted. The Tax Court held for the IRS, finding that the donor had submitted an appraisal that did not relate to the property actually contributed, the corporate stock. Because it appraised the wrong asset, the court rejected the taxpayers' argument that the appraisal substantially complied with the qualified appraisal requirements.

In *Belair Woods LLC et al. v. Commissioner*, TC Memo. 2018-159, the Tax Court, in a memorandum opinion, held that a taxpayer who failed to include cost basis information in a qualified appraisal summary (Form 8283, Section B) could not deduct any portion of the value of a charitable contribution of a conservation easement made in 2009, and that the lack of basis information precluded substantial compliance. In this case, Belair contacted a consulting firm about preparing the Form 8283, “Noncash Charitable Contributions,” specifically with reference to reporting its “cost or adjusted basis.” The consulting firm relayed advice that it had previously received from its law firm that concluded that “[i]t should not be necessary to include the basis information … if you attach an explanation to Form 8283 providing a reasonable cause for why it is not included.” The law firm further stated that “a reasonable cause for not including basis information should be that the basis of the property is not taken into consideration when computing the amount of the deduction.”

In the relevant boxes on the Form 8283, Belair wrote “see attached” and appended a two-page letter. The letter stated that: (1) the donated property was a conservation easement, (2) the easement covered 141.15 acres of woodlands, (3) the easement had an appraised fair market value of $4,778,000, and (4) the parcel covered by the easement was acquired on August 1, 2007, by “purchase/exchange.”

With respect to “cost or adjusted basis” the letter stated:

> A declaration of the taxpayer's basis in the property is not included in … the attached Form 8283 because of the fact that the basis of the property is not taken into consideration when computing the amount of the deduction. Furthermore, the taxpayer has a holding period in the property in excess of 12 months and the property further qualifies as “capital gain property.”

The IRS selected Belair's 2009 return for examination and sent the taxpayer an information document request. In December 2012 the IRS issued petitioner a summary report explaining that Belair's claimed deduction would be disallowed because it had not included on its Form 8283 information concerning its “cost or adjusted basis.” About one month later Belair's certified public accountant responded to the summary report and provided cost basis information concerning the easement. The court stated, in sum, that “Belair did not provide cost basis information on its Form 8283, and its attached explanation did not show that it was unable to provide such information. Its appraisal summary therefore did not strictly comply with the regulations.” The court also held that Belair did not substantially comply with the reporting requirements where its failure was the result of a “conscious election not to supply the required information,” as opposed to an “inadvertent omission.”

In connection with the “substantial compliance” issue, the court, citing *Bond,* stated that in appropriate circumstances, the IRS substantiation requirements for charitable contributions “can be satisfied by substantial, rather than by literal, compliance” and that “the doctrine of substantial compliance is designed to avoid hardship in cases where a taxpayer does all that is reasonably possible, but nonetheless fails to comply with the specific requirements of a provision.” Substantial compliance, the court stated, may be shown where the taxpayer “provided most of the information required” or made omissions “solely through inadvertence.”

In assessing whether Belair substantially complied with the regulations in question, the court stated that it should consider whether Belair provided sufficient information to enable the IRS “to evaluate the

reported contributions, as intended by Congress." The court emphasized that the requirement to disclose "cost or adjusted basis," when that information is reasonably obtainable, is necessary to facilitate the IRS's efficient identification of overvalued property, stating:

> The cost of property typically corresponds to its FMV at the time the taxpayer acquired it. When a taxpayer claims a charitable contribution deduction for recently purchased property, a wide gap between cost basis and claimed value raises a red flag suggesting that the return merits examination. Unless the taxpayer complies with the regulatory requirement that he disclose his cost basis and the date and manner of acquiring the property, the Commissioner will be deprived of an essential tool that Congress intended him to have.

The court further noted in this particular case that the value claimed for the charitable deduction substantially exceeded the basis of the property contributed:

> Here, Belair acquired the land in question by contribution from HRH, a related party. HRH had acquired the land in August 2007 for $2,605 per acre. In December 2009 Belair valued the easement at $33,707 per acre and the land covered by the easement at $35,990 per acre (viz., $5,080,000 ÷ 141.15). This valuation presupposed that the 141.15 acres had increased in value by 1,380% during the previous 2-1/2 years, amid the worst real estate crisis since the Great Depression. This is precisely the sort of information that Congress wished the IRS to have, and Belair's refusal to supply this information contravenes "the essential requirements of the governing statute." (Citations omitted.)

Required Representations by Appraisers on Appraisal Summaries and Qualified Appraisals Involving Imposition of Potential Penalties for Overstatement of Value or Aiding and Abetting the Understatement of Tax Liability

The appraiser declaration of the appraisal summary of Form 8283 (Part

III, “Declaration of Appraiser”) includes the following statement, which must be signed by the appraiser:

> I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, or related to any of the foregoing persons, or married to any person who is related to any of the foregoing persons. And, if regularly used by the donor, donee, or party to the transaction, I performed the majority of my appraisals during my tax year for other persons.
>
> Also, I declare that I perform appraisals on a regular basis; and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based on a percentage of the appraised property value. Furthermore, I understand that a false or fraudulent overstatement of the property value as described in the qualified appraisal or this Form 8283 may subject me to the penalty under section 6701(a) (aiding and abetting the understatement of tax liability). In addition, I understand that I may be subject to a penalty under section 6695A if I know, or reasonably should know, that my appraisal is to be used in connection with a return or claim for refund and a substantial or gross valuation misstatement results from my appraisal. I affirm that I have not been barred from presenting evidence or testimony by the Office of Professional Responsibility.

Under Reg. § 1.170A-17(a)(3)(vi), the following declaration must be made as part of the qualified appraisal, which must be signed by the qualified appraiser:

> I understand that my appraisal will be used in connection with a return or claim for refund. I also understand that, if there is a substantial or gross valuation misstatement of the value of the property claimed on the return or claim for refund that is based on my appraisal, I may be subject to a penalty under section 6695A of the Internal Revenue Code, as well as other applicable penalties. I affirm that I have not

been at any time in the three-year period ending on the date of the appraisal barred from presenting evidence or testimony before the Department of the Treasury or the Internal Revenue Service pursuant to 31 U.S.C. 330(c).

Tarpey v. U.S. – Application of Penalty Provision under IRC § 6700(a)(2)(A) for Making False Statements in Promoting Abuse Tax Shelters

A person who organizes or promotes an abusive tax shelter is subject to a penalty equal to the lesser of $1,000 or 100% of the gross income derived or to be derived from the activity. IRC § 6700(a) However, if an activity on which the penalty is imposed involves a false or fraudulent statement as to any material matter, then, under IRC § 6700(a)(2)(A), the penalty equals 50% of the gross income derived (or to be derived) by that person from the activity. To establish a tax penalty under IRC § 6700(a)(2)(A), the IRS must show by a preponderance of the evidence that:

(1) the defendant organized or sold, or participated in the organization or sale of, an entity, plan, or arrangement;

(2) the defendant made or caused to be made, false or fraudulent statements concerning the tax benefits to be derived from the entity, plan, or arrangement;

(3) the defendant knew or had reason to know that the statements were false or fraudulent; and

(4) the defendant's false or fraudulent statements pertained to a material matter.

See U.S. v. Estate Pres. Servs., 202 F.3d 1093, 1098 [85 AFTR 2d 2000-603] (9th Cir. 2000).

In *Tarpey v. U.S.*, 123 AFTR2d 2019-1138 (DC MT, 2019), the district court held that the IRC § 6700(a)(2)(A) penalty provision for promoting abusive tax shelters applied to the taxpayer, James Tarpey (“Tarpey”), who created a tax-exempt organization under IRC § 501(c)(3), formed as Project Philanthropy, Inc. and doing business as Donate for Cause (“DFC”). DFC engaged in activities that facilitated the donation of timeshares and Tarpey, as the sole voting member of DFC, possessed the authority to nominate and remove board members of the organization, effectively giving him control over DFC.

As the court noted in its decision, “Timeshares often involve significant fees and expenses, including membership fees, maintenance fees, and the payment of real estate taxes [and a] timeshare's market value may be significantly less than the timeshare owner's original purchase price.” DFC operated to allow timeshare owners who faced burdensome timeshare fees and expenses and who were apparently unable to sell their timeshares an opportunity to donate their unwanted timeshares to DFC.

Tarpey promised potential donors significant income tax savings from donations of their unwanted timeshares and marketed tax savings of up to $6,000 for the donated timeshares. Tarpey also founded a for-profit timeshare closing service that operated as Resort Closing that handled the real estate closings for the timeshares donated to DFC.

Tarpey, through DFC, arranged to provide donors of timeshares with what he represented would be qualified appraisals by hiring real estate appraisers Ron Broyles and Curt Thor to prepare appraisals for timeshares contributed by donors to DFC. Tarpey and his sister, Suzanne Tarpey, who was also the secretary, treasurer and bookkeeper of DFC, also prepared appraisals for the donors. The government alleged that DFC used conflicted appraisers who overstated the value of the timeshares, that DFC acted merely as a conduit to hold title briefly to timeshares before being sold for a fraction of the appraised amount, and that DFC falsely told donors that they could deduct the full appraised value of the timeshare.

Tarpey conceded that he organized or participated in the organization of an entity, plan, or arrangement and made no argument with regard to whether the alleged false or fraudulent statements pertained to a material matter. Accordingly, the only issues before the court for purposes of IRC § 6700(a)(2)(A) were (1) whether Tarpey made or caused to be made, false or fraudulent statements concerning the tax benefits to be derived from the entity, plan, or arrangement and (2) whether Tarpey knew or had reason to know that the statements were false or fraudulent.

The government asserted that “Tarpey made false statements by preparing appraisals himself” and by causing “others to make or furnish similar appraisals” on the basis that Tarpey and each of the others who prepared appraisals for donors to DFC were not qualified appraisers

and, therefore, could not prepare qualified appraisals, and that the representations by Tarpey and the other individuals Tarpey caused to prepare appraisals contained false declarations regarding their qualification to prepare qualified appraisals.

The court analyzed each appraiser individually and found that, under the facts and circumstances, none of them was a qualified appraiser within the meaning of the applicable regulations. Tarpey could not be a qualified appraiser because of his relationship to DFC and his effective ability to control DFC. He also was disqualified because the only appraisals he performed were for property contributed to DFC, contrary to the requirement that a qualified appraiser must perform the majority of appraisals for other organizations. Tarpey's sister, Suzanne, was also disqualified because of her familial relationship to Tarpey, her role as an employee of DFC, and because she also only prepared appraisals for property contributed to DFC. Broyles and Thor, while performing appraisals for other organizations, performed the majority of their appraisals for DFC, disqualifying them from qualified appraiser status. Therefore, each and every appraisal provided to donors to DFC as part of the program formulated by Tarpey was not prepared by a qualified appraiser and, as a result, were not qualified appraisals. Any statement by Tarpey, Suzanne, Broyles and Thor that they were qualified appraisers or that the appraisals were qualified appraisals were false statements. Further, according to the court, Tarpey knew, or had reason to know, that these statements were false.

In conclusion, the court stated that the "undisputed facts show that all of the appraisers lacked sufficient independence from DFC to be considered "qualified appraisers" under the Treasury Regulations. The false appraisals resulted in tax avoidance. The statements prove material. The United States has met its burden under 26 C.F.R. § 6700(a)(2)(A)."

COMMENT:

The *Tarpey* case brings to mind IRC § 170(e)(1)(B)(iv), enacted under the Pension Protection Act of 2006 and applicable to charitable contributions made after July 25, 2006, that was aimed at preventing inflated charitable income tax deductions taken pursuant to appraisals that substantially overstated the value of taxidermy property.

Under IRC § 170(e)(1)(B)(iv), the amount of the fair market value otherwise allowed as a charitable income tax deduction for contributions of “any taxidermy property which is contributed by the person who prepared, stuffed, or mounted the property or by any person who paid or incurred the cost of such preparation, stuffing, or mounting” must be reduced by the long-term capital gain that would be realized if the property were sold. Accordingly, for the contribution of taxidermy property, the deduction is equal to the lesser of the taxpayer's income tax basis in the property or the fair market value of the property.

This provision was enacted as the result of various abuses that occurred in connection with contributions of taxidermy property, which came to light in an April 14, 2005, front-page expose in the Washington Post, entitled “Big-Game Hunting Brings Big Tax Breaks.” According to the article, wealthy big-game hunters had been donating their trophies to pseudo-museums that agreed to accept the donations, inflating their values and then taking hugely inflated tax deductions for their charitable contributions.

One museum identified in the article as accepting these types of contributions was the Wyobraska Wildlife Museum, located in Gering, Nebraska, a modest and lightly visited facility, far from any population center. Behind the museum were more than 800 big-game and exotic animals piled in an old railroad car, just one of four containers packed with animal mounts and skins – trophies shot on expedition or safari to places such as South Africa, Mongolia and game-hunting parks in Texas.

According to the article, in 2003, the museum sold mounts appraised for $4.2 million for less than $70,000 at true-market auctions. The article further states that “According to critics in Congress, top officials at natural history museums and animal rights advocates, this form of charitable giving allows wealth hunters to go on big-game expeditions essentially at taxpayer's expense – an arrangement so blatant that one animal trophy appraiser advertises his services under the headline: “Hunt for Free.” The taxpayer subsidies also encourage hunters to track down and shoot the largest, fittest and rarest of the world's largest animals, the critics say.”

Congress has also previously passed special legislation under IRC § 170(f)(12)(A) in response to a perceived overstatement of the value of donated cars by donors. For contributions after December 31, 2004, the amount of the deduction available for charitable contributions of vehicles, generally including automobiles, boats, and airplanes for which the claimed value exceeds $500, depends on the use of the vehicle by the donee organization. If the donee organization sells the vehicle without any "significant intervening use or material improvement" of the vehicle, the amount of the deduction allowed under IRC § 170(a) may not exceed the gross proceeds received from such sale. This provision represents a significant change to the historical charitable deduction tax regime, under which contributions of property are generally based on the fair market value of the contributed property.

Under the current regime, regardless of the actual fair market value of the contributed vehicle, the charitable deduction may not exceed the gross proceeds received from the sale of the vehicle. Where there is a significant intervening use or material improvement of the contributed vehicle by the donee charity or the vehicle is sold by the charity to a needy individual in furtherance of its charitable purposes, the donor is not subject to the gross proceeds limitation; but, in such a case, the deduction claimed by the donor may not exceed the fair market value of the vehicle.

Congress could, if it is was so inclined, enact special legislation for contributions of timeshares, as it did for taxidermy property and vehicles, if the abuse in this area was perceived as so egregious so to require such legislation. For now, taxpayers are still eligible for a fair market value charitable income tax deduction for contributions of timeshares provided, however, they obtain a qualified appraisal by a qualified appraiser and comply with all other substantiation requirements, although the IRS may still challenge the fair market value of such an appraisal as being overstated.

Conclusion

While the *Tarpey* case is clearly an outlier, because the obligation to obtain a qualified appraisal from a qualified appraiser rests solely on the taxpayer and the failure to obtain such an appraisal results in the denial

of a charitable income tax deduction, the case is an important reminder of the necessity of donors to confirm, using their own independent tax advisors, that an appraisal they are provided is indeed a qualified appraisal prepared by a qualified appraiser. The case also highlights the risks to appraisers for providing a purported qualified appraisal that fails to comply with the applicable appraisal requirements under the Internal Revenue Code and regulations and knowingly overstates the value of the donated property.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Richard L. Fox

Fatima T. Hasan

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LISI Charitable Planning Newsletter #283 (May 23, 2019) at http://www.leimbergservices.com

CITES:

Tarpey v. U.S., 123 AFTR2d 2019-1138 (DC MT, 2019); IRC §§ 6700, 6700(a)(2)(A), 170(f)(11)(A) and (E), 170(e)(1)(B)(iv); Reg. § 1.170A-17(a); *DeWayne Bond*, 100 TC 32 (1993); *Rhett Rance Smith*, TC Memo. 2007-368 , *aff'd*, 104 AFTR2d 2009-7830 (9th Cir. 2009) (unpublished); *Estate of Evenchik*, TC Memo. 2013-34; *Belair Woods LLC et al. v. Commissioner*, TC Memo. 2018-159; *U.S. v. Estate Pres. Servs*., 202 F.3d 1093, 1098 [85 AFTR 2d 2000-603] (9th Cir. 2000); *Belair Woods LLC et al. v. Commissioner*, TC Memo. 2018-159; IRS

Notice 2006-96, 2006-2 CB 902.