adds 20% penalty.

Ken Berry, JD • Apr. 15, 2015

Court nullifies a taxpayer's $37,000 deduction for donations of used property to charities, then adds 20% penalty.

When it comes to deductions for charitable gifts of property, you must be able to prove it or you could lose it. That's exactly what happened to a taxpayer in a new case who claimed deductions totaling more than $37,000 for donations of used property. Not only did the Tax Court turn down the entire deduction – despite convincing evidence that at least some gifts had actually been made – it tacked on a 20 percent negligence penalty (Kunkel, TC Memo 2015-71, 4/8/15).

The outcome in this case is a powerful reminder of the need to adequately substantiate gifts of property to charity. Pass the word along to your clients if they want to protect their deductions.

Background: Most tax professionals, as well as knowledgeable taxpayers, are familiar with the basic rules for substantiating charitable deductions. Generally, the type of substantiation required depends on the size and nature of the gift. No deduction is allowed for contributions of clothing or household items unless these items are "in good used condition or better."

For donations of less than $250, you must obtain a receipt from the organization, unless it is impractical to do so, such as when you drop off items at an unattended site. In that case, you must maintain reliable records, including the name of the organization, the date and location of the contribution, a description of the property and the method used to determine fair market value (FMV). If the gift is valued at $250 or more, you have to obtain a contemporaneous written acknowledgment from the charity describing the donated property, plus a statement whether any goods or

- The approximate date the property was acquired and the manner of its acquisition;
- A description of the property in reasonable detail under the circumstances;'
- The cost or other basis of the property;
- The FMV of the property at the time it was contributed; and
- The method used in determining the FMV.

Finally, you must obtain an independent appraisal for property valued above $5,000, in addition to the aforementioned requirements.

In the new case, the taxpayer claimed that he donated property to four charitable organizations in 2011, for a grand total of more than $37,000. To help out the annual flea market of the Upper Dublin Lutheran Church, he donated property worth $13,115 consisting of books; household goods; clothing; toys; telescopes; jewelry; and household furniture. He also claimed to have donated $24,200 to Goodwill Industries, the Military Order of the Purple Heart Service Foundation and the Vietnam Veterans of America, consisting of gifts of clothing; furniture; other household items; and toys.

The taxpayer either dropped most of these items off at various times in designated bins at sites or scheduled pickups by truck at his home. Because he said that each separate contribution was valued at less than $250, he testified that he didn't see the need to obtain any receipts.

But the Tax Court saw through this ruse. For instance, to get under the $250 limit for each contribution in conjunction with the church's annual flea market, the taxpayer would have had to make donations on 97 separate occasions. As a result, the Tax

Court determined that the taxpayer was required to meet the additional

In summary: Warn your clients about the potential dire consequences of fudging the truth. They must stick to the strict letter of the law or risk a daunting challenge from the IRS.

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