Some words of caution to those who make charitable contributions with less than selfless motives

Rewarding your **GOOD DEEDS**

BY DANIEL B. GERAGHTY, CPA, JD

Clients should be reminded of the other less familiar maxim that no bad deed goes unrewarded.

Most of us like to do good deeds. While our motives are often altruistic, most of us know the maxim that "no good deed goes unrewarded." For many, making a charitable contribution is a good deed that is rewarded at tax time. Recently, there have been a number of charitable contribution schemes where the altruistic motives of taxpayers have been called into question. This article describes some of those transactions and offers a word of caution.

Donating automobiles is perhaps the most widely known good deed. Not long ago the Rawhide Boys Ranch was perhaps the only place to donate an automobile in the greater Milwaukee area. Over time, more and more organizations sought automobile donations, either directly or through promoters that would help the organization acquire and sell the automobiles. Newspaper advertisements and billboards soliciting automobile donations had become routine. Taxpayers deducted the Bluebook value of the automobile without regard to its actual sales price. For many it was easier and more economical to donate rather than to sell. Citing such abuses, Congress modified the rules in the American Jobs Creation Act of 2004 by generally limiting the deduction to the amount the nonprofit organization realizes on its sale of the automobile.

Contributing a home or building to the local fire department for practice in firefighting techniques is another good deed. A deduction is generally justified under Scharf v. Commissioner, TC Memo 1973-265. The IRS has taken the position (but has not litigated this position) that the Scharf case was effectively overturned by subsequent legislation which prohibits a deduction for contributing the "use of property." The use issue could possibly be overcome if a taxpayer transfers ownership of the structure itself directly to the fire department. Also, it seems counter-intuitive that someone merely uses your property if they take it for the purpose of completely destroying it.

Regardless, another valid question in these cases is the amount of the deduction. Is it the value of the property itself, the value to the fire department or some other value? The Tax Court in the Scharf case found these values to be the same

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under its facts. In informal conversations with the IRS they have indicated that they are looking for a case to take to trial to deal with Scharf. At least two cases were recently docketed in the Tax Court with trial in Milwaukee. Until the Tax Court decides the issue, the IRS will likely continue to question such deductions on audit.

The donation of conservation easements by developers is also popular. The Tax Code allows a deduction for protecting open spaces, wildlife, farmland, forestland, watershed and scenic property. Some developers have recently claimed deductions based on protecting open spaces. If the developer could build 50 homes on a parcel and chooses to build only 25, the thinking is that the developer should be entitled to some form of deduction. While protecting open space is clearly a basis for a deduction, simply reducing the number of homes on a particular parcel may not be enough.

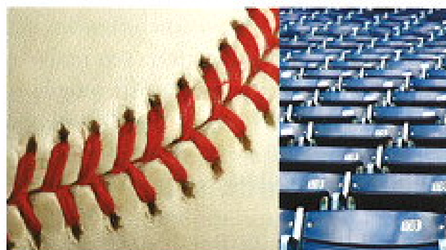
Moreover, there is a host of other issues, including whether the developer holds the property as inventory (thereby limiting the deduction to the developer's basis), whether there was some form of quid pro quo with a governmental unit, and the real value of the deduction, offset by the enhancement to value of any property of the taxpayer as a result of the easement.

In 2004, the IRS issued IRS Notice 2004-41 to deal with certain abusive conservation easements. While Notice 2004-41 focused on a particular form of transaction, it is significant in highlighting the IRS's willingness to implicate appraisers, promoters and even the tax-exempt entities as part of the problem and to consider sanctions against such persons as part of the solution.

A final good deed is the donation of a facade easement. Such donations allow a deduction for placing development restrictions on historically significant buildings. In late December, *The New York Times* ran an article describing large contribution deductions for people in New York's more affluent neighborhoods. Within a week, the IRS announced it was looking into the transactions and warned taxpayers that it would actively pursue abusive transactions. Formal guidance has not yet been issued.

Taxpayers have become more aggressive in claiming questionable deductions. While taxpayers are part of the problem, promoters and others with a monetary interest in such donations also share in the blame. Recent legislation and IRS responses indicate that this area will be more closely scrutinized. Clients who want to take charitable deductions for questionable items should be reminded of the other, less familiar, maxim: "No bad deed goes unrewarded."

DANIEL B. GERAGHTY, CPA, JD *is a member of the tax practice group at Godfrey & Kahn in Milwaukee.*



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