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Federal Taxes Weekly Alert,

## **Poor substantiation kills charitable deduction for \$27,000 of household, etc. items**

**Smith , TC Memo 2014 -203**

The Tax Court has ruled, despite its having no doubt that the taxpayer donated property to a charitable organization, that none of taxpayer's contributions were deductible because he failed the charitable contribution substantiation tests.

*Facts.* At his Tax Court trial, Mr. Smith, the taxpayer, testified that, after his mother died, he donated furniture from her house to the American Veterans National Service Foundation (AMVETS), a charitable organization, in 2009. These items included seven sofas, four televisions, five bedroom sets, six mattresses, a kitchen set, a dining room set, a china cabinet, and three rugs. For charitable contribution purposes, Smith placed a value of \$11,730 on these items.

He testified that he also donated to AMVETS during 2009 the following items of clothing belonging to him or his children: 180 shirts, 63 pairs of slacks, 153 pairs of jeans, 173 pairs of shoes, 51 dresses, 35 sweaters, nine overcoats, and seven suits. Smith placed a value of \$14,487 on those items.

And, he testified that he donated to AMVETS during 2009 electronic equipment that included two computer systems, a printer, and a copier. The record did not establish who previously owned this property. Smith placed a value of \$1,550 on those items.

Smith testified that he had visited AMVETS on several occasions earlier in 2009 and had obtained a number of blank "tax receipts" signed by AMVETS representatives. Smith testified that he consolidated all of the contributions described above on two blank receipts. He filled out each receipt by identifying himself as the "donor," inserting Aug. 30, 2009 as the "date," and indicating the donation values mentioned above. The tax receipts informed the donor that it was his responsibility to determine the fair

market values (FMVs) of all items.

Neither tax receipt identified any specific items of donated property. To identify the property he allegedly contributed, Smith prepared a spreadsheet. The record did not establish when this spreadsheet was prepared, and there was no evidence that it was submitted to AMVETS.

In determining that the items listed on his spreadsheet had FMVs of \$27,767, Smith testified that he used a Salvation Army website that lists estimated "low" and "high" values for used property. The record included a guide printed from that website. The values that Smith placed on his spreadsheet for many of the items he allegedly donated in 2009 were considerably higher than the "high" values shown in this guide. Smith offered no explanation for this discrepancy.

Smith did not take photographs of any of the items he allegedly donated, and he introduced no evidence to establish their condition. He did not obtain an appraisal of any item.

*Background.* Charitable contribution deductions are allowable only if the taxpayer satisfies substantiation requirements. ( [Code Sec. 170\(a\)\(1\)](#) ) The nature of the required substantiation depends on the size of the contribution and on whether it is a gift of cash or property. There are separate requirements for all contributions of \$250 or more ( [Code Sec. 170\(f\)\(8\)](#) ), contributions of property with a claimed value exceeding \$500 ( [Code Sec. 170\(f\)\(11\)\(B\)](#) ), and contributions of property with a claimed value exceeding \$5,000. ( [Code Sec. 170\(f\)\(11\)\(C\)](#) )

For contributions exceeding \$500, "similar items of property" are aggregated for purposes of the substantiation rules. ( [Code Sec. 170\(f\)\(11\)\(F\)](#) ; [Reg. § 1.170A-13\(c\)\(1\)\(i\)](#) ) The term "similar items of property" is defined to mean "property of the same generic category or type," such as clothing, jewelry, furniture, electronic equipment, household appliances, or kitchenware. ( [Reg. § 1.170A-13\(c\)\(7\)\(iii\)](#) )

[Code Sec. 170\(f\)\(8\)\(A\)](#) provides that an individual may deduct a gift of \$250 or more only if he substantiates the deduction with "a contemporaneous written acknowledgment of the contribution by the donee organization." This acknowledgment must include a description of any property other than cash contributed. ( [Code Sec. 170\(f\)\(8\)\(B\)](#) )

For noncash contributions in excess of \$500, taxpayers are required to maintain written records with respect to each item of donated property that include, among other things: (1) the approximate date the property was acquired and the manner of its acquisition; (2) a description of the property in detail reasonable under the circumstances; (3) the cost or other basis of the property; (4) the FMV of the property at the time it was contributed; and (5) the method used in determining its FMV. ( [Reg. § 1.170A-13\(b\)\(2\)\(ii\)\(C\)](#) ; [Reg. § 1.170A-13\(b\)\(2\)\(ii\)\(D\)](#) ; [Reg. § 1.170A-13\(b\)\(3\)\(i\)\(A\)](#) ; [Reg. § 1.170A-13\(b\)\(3\)\(i\)\(B\)](#) )

No deduction is allowed for contributions of clothing or "household items" unless such items are "in good used condition or better." ( [Code Sec. 170\(f\)\(16\)\(A\)](#) ) The term "household items" includes furniture, furnishings, electronics, appliances, linens, and other similar items. [Code Sec. 170\(f\)\(16\)\(D\)](#) )

For contributions of property valued in excess of \$5,000, the taxpayer must generally satisfy the substantiation requirements discussed above and must also: (1) obtain a "qualified appraisal" of the items; and (2) attach to his tax return a fully completed appraisal summary. ( [Reg. § 1.170A-13\(c\)\(2\)](#) )

*The Court disallows all of taxpayer's charitable deduction.* The Tax Court found that Smith did not meet the substantiation requirements with respect to any of the contributions and therefore disallowed his entire charitable contribution deduction.

For purposes of [Reg. § 1.170A-13\(c\)\(1\)\(i\)](#) , the Court found that there were three categories of property, i.e., the household items from Mr. Smith's mother's house, the clothing, and the electronic equipment. It said that, for all three categories, Smith had to meet the substantiation requirements imposed by [Code Sec. 170\(f\)\(8\)](#) and [Code Sec. 170\(f\)\(11\)\(B\)](#) . For the first two categories of items, Smith had to also meet the stricter substantiation requirements imposed by [Code Sec. 170\(f\)\(11\)\(C\)](#) .

The Court then analyzed whether taxpayer met those requirements:

*...Requirements for contributions of \$250 or more.* Smith obtained blank signed forms from AMVETS and later filled them out himself by inserting supposed donation values. Because these forms were signed before the property was allegedly donated, the Court questioned whether they constituted an "acknowledgment" by AMVETS that it received anything.

In any event, the Court said, the AMVETS tax receipts do not contain a "description...of any property...contributed." ( [Code Sec. 170\(f\)\(8\)\(B\)\(i\)](#) ) Rather, Smith created, at a time that could not be ascertained, a spreadsheet showing the property he allegedly contributed, and there was no evidence that this spreadsheet was ever provided to or seen by AMVETS. Moreover, the only evidence as to the contemporaneous nature of the acknowledgment was the date-Aug. 30, 2009-which Smith placed on the blank receipts himself.

The Court said that Smith failed to satisfy the substantiation requirements for contributions of \$250 or more.

*...Requirements for contributions exceeding \$500.* Smith allegedly made noncash contributions to AMVETS of clothing, furniture, and electronic equipment, and for each category of items he claimed a value exceeding \$500. But he did not maintain written records establishing when or how these items were acquired or what their cost bases were, nor did he maintain written records establishing the items' FMVs at the time they were donated. He testified that he determined these values using a guide from a Salvation Army website, but the values he used were considerably higher than the "high" values the guide displays. He did not maintain photographs or other records to establish the condition of the donated items, and he thus provided no reason to believe that each donated item should be accorded a "high" rather than a "low" value.

Most of the items Smith allegedly donated consisted of clothing and household items. He presented no evidence that these items were "in good used condition or better" and thus didn't meet the requirements

of **Code Sec. 170(f)(16)(A)** .

...*Requirements for contributions exceeding \$5,000.* Smith acknowledged that he did not obtain a qualified appraisal for any of the items and did not attach a fully completed appraisal summary to his 2009 tax return. He thus failed to satisfy the substantiation requirements for his claimed contributions of clothing (\$14,487) and household furniture (\$11,730).

**References:** For contemporaneous written acknowledgment of charitable contributions, see **FTC 2d/FIN ¶ K-3933** et seq.; **United States Tax Reporter ¶ 1704.50** ; **TaxDesk ¶ 334,019** ; **TG ¶ 19329** .