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## Charitable Deductions Under IRC § 170

## SUMMARY

Subject to certain limitations, taxpayers can take deductions from their adjusted gross incomes for contributions of cash or other property to or for the use of charitable organizations.<sup>1</sup> To take a charitable deduction, taxpayers must contribute to a qualifying organization<sup>2</sup> and substantiate contributions of \$250 or more. Litigation generally arises over one or more of these four issues:

- Whether the donation is made to a charitable organization;
- Whether contributed property qualifies as a charitable contribution;
- Whether the amount taken as a charitable deduction equals the fair market value of the property contributed; and
- Whether the taxpayer has substantiated the contribution.

We reviewed 28 cases decided between June 1, 2014 and May 31, 2015, with charitable deductions as a contested issue. The IRS prevailed in 18 cases, taxpayers in seven cases, and the remaining three cases resulted in split decisions. Taxpayers represented themselves (appearing *pro se*) in 14 of the 28 cases (50 percent), with taxpayers prevailing in four cases, the IRS in nine cases, and the remaining one resulted in a split decision.

TAXPAYER RIGHTS IMPACTED<sup>3</sup>

- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to a Fair and Just Tax System*

## PRESENT LAW

Taxpayers must itemize to claim any charitable contribution deduction and generally are able to take a deduction for charitable contributions made within the taxable year.<sup>4</sup> Transfers to charitable organizations are deductible only if they are contributions or gifts,<sup>5</sup> not payments for goods or services.<sup>6</sup> A contribution or gift will be allowed as a deduction under Internal Revenue Code (IRC) § 170 only if it is made “to” or “for the use of” a qualifying organization.<sup>7</sup>

1 Internal Revenue Code (IRC) § 170.

2 To claim a charitable contribution deduction, a taxpayer must establish that he or she made a gift to a qualified entity organized and operated exclusively for an exempt purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual. IRC § 170(c)(2).

3 See Taxpayer Bill of Rights, available at [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights).

4 IRC §§ 63(d) and (e), 161, and 170(a).

5 The Supreme Court of the United States has defined “gift” as a transfer proceeding from a “detached and disinterested generosity.” *Comm’r v. Duberstein*, 363 U.S. 278, 285 (1960).

6 See also Treas. Reg. § 1.170A-1(g) (no deduction for contribution of services).

7 IRC § 170(c).

For individuals, charitable contribution deductions are generally limited to 50 percent of the taxpayer's contribution base (adjusted gross income computed without regard to any net operating loss carryback to the taxable year under IRC § 172).<sup>8</sup> However, subject to certain limitations, individual taxpayers can carry forward unused charitable contributions in excess of the 50 percent contribution base for up to five years.<sup>9</sup> Corporate charitable deductions are generally limited to ten percent of the taxpayer's taxable income.<sup>10</sup> Taxpayers cannot deduct services that they offer to charitable organizations; however, incidental expenditures incurred while serving a charitable organization and not reimbursed may constitute a deductible contribution.<sup>11</sup>

### Substantiation

For cash contributions, taxpayers must maintain receipts from the charitable organization, copies of cancelled checks, or other reliable records showing the name of the organization, the date, and the amount contributed.<sup>12</sup> Deductions for single charitable contributions of \$250 or more are disallowed in the absence of a contemporaneous written acknowledgment from the charitable organization.<sup>13</sup>

The donor is generally required to obtain the contemporaneous written acknowledgment no later than the date he or she files the return for the year in which the contribution is made, and it must include:

- The name of the charitable organization;
- The amount of any cash contribution;
- A description (but not the value) of any non-cash contribution;
- A statement that no goods or services were provided by the organization in return for the contribution, if that was the case;
- A description and good faith estimate of the value of goods or services, if any, that an organization provided in return for the contribution; and
- A statement that goods or services, if any, that an organization provided in return for the contribution consisted entirely of intangible religious benefits, if that was the case.<sup>14</sup>

For each contribution of property other than money, taxpayers generally must maintain a receipt showing the name of the recipient, the date and location of the contribution, and a description of the property.<sup>15</sup> When taxpayers contribute property other than money, the amount of the allowable deduction is the fair market value of the property at the time of the contribution.<sup>16</sup> This general rule is subject to certain exceptions that in some cases limit the deduction to the taxpayer's cost basis in the property.<sup>17</sup>

8 IRC §§ 170(b)(1)(A) and (G).

9 IRC § 170(d)(1).

10 IRC § 170(b)(2).

11 Treas. Reg. § 1.170A-1(g). Meal expenditures in conjunction with offering services to qualifying organizations are not deductible unless the expenditures are away from the taxpayer's home. *Id.* Likewise, travel expenses associated with contributions are not deductible if there is a significant element of personal pleasure involved with the travel. IRC § 170(j).

12 Treas. Reg. § 1.170A-13(a)(1).

13 IRC § 170(f)(8). See also Treas. Reg. § 1.170A-13(f).

14 IRS Pub. 1771, *Charitable Contributions Substantiation and Disclosure Requirements* (Rev. July 2013).

15 Treas. Reg. §§ 1.170A-13(b)(1)(i) to (iii).

16 Treas. Reg. § 1.170A-1(c)(1).

17 *Id.* Note that the deduction is reduced for certain contributions of ordinary income and capital gain property. See IRC § 170(e).

For claimed contributions exceeding \$5,000, the taxpayer must obtain a qualified appraisal prepared by a qualified appraiser.<sup>18</sup>

## ANALYSIS OF LITIGATED CASES

We reviewed 28 decisions entered between June 1, 2014 and May 31, 2015, involving charitable contribution deductions claimed by taxpayers. Table 8 in Appendix 3 contains a detailed list of those cases. Of the 28 cases, 16 involved the taxpayers' substantiation (or lack thereof) of the claimed contribution, nine cases involved a dispute over the valuation of property contributed, another ten involved the contribution of an easement, and one case involved a trust's payments to a scholarship.<sup>19</sup>

### Qualified Conservation Contribution

For a gift to constitute a qualified contribution under IRC § 170, the donor-taxpayer must possess a transferrable interest in the property and intend to irrevocably relinquish all rights, title, and interest to the property without any expectation of some benefit in return.<sup>20</sup> Taxpayers generally are not permitted to deduct gifts of property consisting of less than the taxpayers' entire interest in that property.<sup>21</sup> Nevertheless, taxpayers may deduct the value of a contribution of a partial interest in property that constitutes a "qualified conservation contribution,"<sup>22</sup> also known as a conservation easement. A contribution will constitute a qualified conservation contribution only if it is of a "qualified real property interest" made to a "qualified organization" "exclusively for conservation purposes."<sup>23</sup>

In *Belk v. Commissioner*, the taxpayers, a married couple who filed a joint return, purchased a large tract of land outside of Charlotte, North Carolina for the development of a residential community.<sup>24</sup> They formed a limited liability company (LLC) to develop the land into a golf course and 402 residential lots and then contributed the property to the LLC.<sup>25</sup> Several years later, the taxpayers executed a conservation easement over 184 acres that contained the golf course and transferred the easement to Smoky Mountain National Land Trust, Inc.<sup>26</sup> Although the easement was "for outdoor recreation" and prohibited further development, the taxpayers had granted the easement in perpetuity, subject to certain "Reserved Rights," including the right for the taxpayers to "substitute an area of land owned by [it] which is contiguous to the Conservation Area for an equal or lesser area of land comprising a portion of the Conservation Area."<sup>27</sup> This "Reserved Right" essentially provided the taxpayers with the ability to "swap land in and

18 IRC § 170(f)(11)(C). "Qualified appraisal" and "qualified appraiser" are defined in IRC §§ 170(f)(11)(E)(i) and (ii), respectively.

19 Cases addressing more than one described issue are counted for each issue. For example, cases addressing the valuation of easements are counted once as a valuation issue case and again as a conservation easement issue case. As a result, the breakdown of case issues above will not add up to the total number of cases reviewed by TAS.

20 IRC § 170(f)(3).

21 *Id.*

22 IRC § 170(b)(1)(E).

23 IRC § 170(h)(1)(A)-(C). IRC § 170(h)(4)(B)(i) provides that, in the case of a contribution that consists of a restriction with respect to the exterior of a certified historic structure, the contribution must satisfy two requirements in order to be considered "exclusively for conservation purposes": 1) the interest must include a restriction which preserves the entire exterior of the building, and 2) the interest must prohibit any change to the exterior of the building that is inconsistent with the historic character of the exterior.

24 774 F.3d 221, 223 (4th Cir. 2014), *aff'g* 140 T.C. 1 (2013).

25 *Id.*

26 *Id.*

27 *Id.* The substitution right is conditional upon the Trust's agreement that the "substitution property is of the same or better ecological stability," the "substitution shall have no adverse effect on the conservation purposes," and that "the fair market value of the substituted property is at least equal to that of the property originally subject to the Easement." *Id.*

out of the Easement” and to shift the use restriction from one parcel of land to another.<sup>28</sup> The taxpayers claimed a deduction of over \$10.5 million for the donation of the easement in 2004, along with carryover in 2005 and 2006, but the IRS disallowed the deduction on the basis that it was not a “qualified conservation contribution.”<sup>29</sup> The Tax Court upheld the IRS’s determination finding that the taxpayers “failed to donate an interest in real property that is subject to a use restriction granted in perpetuity.”<sup>30</sup>

On appeal, the 4th Circuit affirmed the disallowance and ruled that the easement failed to meet the requirements of IRC § 170(h)(2) since it was not subject to a use restriction in perpetuity.<sup>31</sup> The court explained that because the “taxpayer may remove land from the defined parcel and substitute other land,” the restriction on “the real property” is not in perpetuity.<sup>32</sup> The court found that a conservation easement is not a “qualified real property interest,” as described in IRC § 170(h)(2)(C), if the terms of the easement agreement allow the grantor to change which property is subject to the easement.<sup>33</sup>

In *Mitchell v. Commissioner*, the taxpayers, a married couple, purchased land subject to a mortgage.<sup>34</sup> Several years later, the taxpayers contributed the land, subject to the mortgage, to a family limited liability partnership. The partnership then granted a conservation easement of almost 200 acres of unimproved land to the Montezuma Land Conservancy to be used as open space for wildlife and agricultural purposes in 2003.<sup>35</sup> The deed of conservation easement in gross purported to transfer the easement to the Montezuma Land Conservancy in perpetuity; however, at the time of the donation, the taxpayers had not obtained a mortgage subordination agreement from a third party.<sup>36</sup> The taxpayers claimed a deduction for the transfer on their 2003 income tax return, but it was not until 2005 that the third party agreed to subordinate his interest in the property to the easement.

In 2010, the IRS disallowed the deduction due to the fact that Montezuma Land Conservancy’s interest in the property was subject to a third party’s unsubordinated mortgage at the time of donation, thus, the conservation purpose was not protected in perpetuity.<sup>37</sup> Although the IRC does not specifically define “protected in perpetuity,” under IRC § 170(h)(5)(A), the IRS has issued regulations on this subject and has excluded deductions where there is not a mortgage subordination.<sup>38</sup> The taxpayers argued that the regulations did not specify an explicit timeframe for subordinating the mortgage; however, the court rejected this and determined that the plain language of the regulation required the mortgage subordination to have occurred prior to the donation for it to be eligible for a deduction.<sup>39</sup> The 10th Circuit affirmed the Tax Court’s determination that the conservation easement donation failed to comply with

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28 *Belk*, 774 F.3d at 223-24).

29 *Id.* at 224.

30 *Belk v. Comm’r*, 140 T.C. 1, 10-11 (2013).

31 *Belk*, 774 F.3d at 226.

32 *Id.*

33 *Id.* at 227. The Tax Court made a similar determination and cited *Belk v. Comm’r* in *Balsam Mountain Invs., LLC v. Comm’r*, T.C. Memo. 2015-43 (holding that a conservation easement that allows for a future boundary adjustment is not a “qualified real property interest” and thus not eligible for a charitable contribution deduction), *appeal docketed*, No. 15-2010 (4th Cir. Sept. 3, 2015).

34 775 F.3d 1243 (10th Cir. 2015), *aff’g* 138 T.C. 324 (2012).

35 *Id.* at 1245-46.

36 *Id.* at 1246.

37 *Id.*

38 *Id.* See Treas. Reg. § 1.170A-14(g).

39 *Mitchell*, 775 F.3d at 1248, 1250-51.

the mortgage subordination requirements due to the fact that the third party's mortgage encumbering on the land was not subordinated until after the donation.<sup>40</sup>

As both cases illustrate, it is vital for a conservation easement to be protected in perpetuity for it to qualify as a “qualified conservation contribution” pursuant to the IRC and Treasury regulations.<sup>41</sup> To be considered protected in perpetuity, the conservation easement must be limited to a “single, immutable parcel” for the life of the easement,<sup>42</sup> and the property upon which the easement is granted must not be subject to an unsubordinated mortgage.<sup>43</sup>

### Conservation Easement Valuation

To receive a deduction for most contributions of property in excess of \$5,000, taxpayers must provide a qualified appraisal of the property that is donated.<sup>44</sup> In *Scheidelman v. Commissioner*, the taxpayer lived in a townhouse in a historic district.<sup>45</sup> She donated an architectural façade conservation easement to the National Architectural Trust and claimed a charitable deduction for the contribution.<sup>46</sup> The taxpayer retained a real estate appraiser to value the donation,<sup>47</sup> which was found to be \$115,000. The IRS determined the taxpayer had failed to establish a fair market value for the easement, and the Tax Court agreed.<sup>48</sup>

In determining the fair market value of a conservation easement, the “before and after” valuation, which compares the values of the property with and without the easement, is generally accepted.<sup>49</sup> The valuation also takes into consideration “any effect from zoning, conservation, or historic preservation laws that already restrict the property’s potential highest and best use.”<sup>50</sup> Both the taxpayer and the IRS relied heavily on expert opinion testimony as to the pre- and post-contribution values of the property. However, the taxpayers’ experts were found to be flawed and the Tax Court concluded that the evidence presented by the experts was not entitled to any weight.<sup>51</sup> Contrary to the taxpayer’s experts, the IRS’s expert determined that due to the historical nature of the neighborhood, there was no negative impact in valuation due to the restrictions of the easement, and, in fact, the “preservation of historic facades is a benefit, not a detriment, to the value of ... property.”<sup>52</sup> The 2nd Circuit affirmed the Tax Court’s finding that the value of the property was unchanged after the taxpayer granted the easement, and therefore, the court further held that the façade easement had no fair market value when conveyed to the National Architectural Trust.<sup>53</sup>

40 *Mitchell*, 775 F.3d at 1251, 1255.

41 IRC § 170(h)(1); Treas. Reg. § 1.170A-14(g).

42 *Belk*, 774 F.3d at 227.

43 *Mitchell*, 775 F.3d at 1255.

44 IRC § 170(f)(11)(C).

45 755 F.3d 148, 150 (2d Cir. 2014), *aff’g* T.C. Memo. 2013-18.

46 *Id.*

47 The Tax Court initially determined that the appraisal was not a “qualified appraisal” pursuant to Treas. Reg. § 1.170A-13(c)(2)(i)(A), and therefore, the taxpayer was not entitled to a deduction. See *Scheidelman v. Comm’r*, T.C. Memo. 2010-151, *vacated by*, 682 F.3d 189 (2d Cir. 2012), *remanded*, T.C. Memo. 2013-18, *aff’d*, 775 F.3d 148 (2d Cir. 2014).

48 *Scheidelman*, 755 F.3d at 150-51.

49 *Id.* at 152. See also *Hilborn v. Comm’r*, 85 T.C. 677, 688 (1985); Treas. Reg. § 1.170A-14(h)(3)(i).

50 Treas. Reg. § 1.170A-14(h)(3)(ii).

51 *Scheidelman*, 755 F.3d at 152.

52 *Id.* at 153.

53 *Id.* at 153-54.

When using the before and after test to determine the value of an easement placed on property that a taxpayer later claims as a charitable contribution, the property's "highest and best use" is used to determine the property's value before an easement. Many of these "highest and best use" cases, including the U.S. Court of Appeals for the 5th Circuit's decision in *Whitehouse Hotel Limited Partnership v. Commissioner*, involve very complex and specific fact patterns.<sup>54</sup> In *Whitehouse Hotel Limited Partnership*, the taxpayers appealed the Tax Court's conclusion that the "highest and best use" of a historical building was not a luxury hotel or even a non-luxury hotel, but, on the date of the easement, the correct valuation was a "shell building [] ...suitable for conversion to [a] hotel."<sup>55</sup> The "highest and best use" of a property is the "reasonable and probable use that supports the highest present value," and the vital question is "what a hypothetical willing buyer would consider in deciding how much to pay for the property."<sup>56</sup> The 5th Circuit affirmed the Tax Court's determination that the "highest and best use" of the easement could be either a luxury hotel or a non-luxury hotel and that the valuation of the easement would not vary as a result of that determination.<sup>57</sup> The "highest and best use" element for valuation is very fact-specific and due to the lack of clear regulations and bright-line interpretations in the case law, subject to frequent and prolonged litigation.<sup>58</sup>

### Substantiation

Sixteen cases involved the substantiation of deductions for charitable contributions. When determining whether a claimed charitable contribution deduction is adequately substantiated, courts tend to follow a strict interpretation of IRC § 170. Treasury Regulation § 1.170A-13(a)(1) requires the taxpayer to maintain a canceled check or a receipt from the donee organization to substantiate a cash contribution. In the absence of a canceled check or a receipt from the donee organization, the taxpayer must maintain other reliable written records showing the name of the donee and the date and the amount of the contribution.

In *Anyanwu v. Commissioner*, the taxpayer, who had recently divorced, claimed charitable deductions in the amount of \$21,500 for 2006 and \$26,600 for 2007, all of which had been disallowed by the IRS.<sup>59</sup> The taxpayer provided copies of canceled checks payable to her church and an "Individual Tithes and Offerings Summary" for 2006 and 2007, showing \$24,730 and \$26,600 respectively. The summaries stated that the church did not provide any goods or services in exchange for the contributions. Although the summaries did not list the date on which they were prepared, the court found that the summaries were contemporaneous.<sup>60</sup>

Although the taxpayer was divorced in 2005, the summaries of contributions were addressed to both herself and her former husband, Mr. Anyanwu, and the taxpayer admitted to altering the summaries to remove her former husband's name.<sup>61</sup> Despite having altered the summaries, the taxpayer provided canceled checks, which had only the taxpayer's name on them, not her ex-husband, matching the altered summaries.<sup>62</sup> However, the court disallowed five contributions that the taxpayer was not able to substantiate with canceled checks and only allowed \$1,000 for one contribution, which was the amount listed on

54 *Whitehouse Hotel Ltd. P'ship v. Comm'r*, 755 F.3d 236 (5th Cir. 2014), *aff'g in part, vacating in part* 130 T.C. 304.

55 *Id.* at 241 (quoting *Whitehouse Hotel Ltd. P'ship v. Comm'r*, 139 T.C. 304, 337 (2012)).

56 *Id.* (quoting *Whitehouse Hotel Ltd. P'ship v. Comm'r*, 615 F.3d 321, 335 (5th Cir. 2010), *remanded to* 130 T.C. 304 (2012)).

57 *Id.* at 244

58 *See id.*; *Whitehouse Hotel Ltd. P'ship*, 615 F.3d at 340.

59 T.C. Memo. 2014-123.

60 *Id.*

61 *Id.*

62 *Id.*

the summary, even though the taxpayer showed a canceled check for \$2,800. The Tax Court determined that the taxpayer had successfully substantiated the majority of her contributions and allowed a charitable contribution deduction of \$19,700 for 2006 and \$26,600 for 2007.<sup>63</sup>

Gifts of charitable contributions of \$250 or more must be substantiated by a contemporaneous written acknowledgement from the donee organization that must include:

- The amount of cash and a description (but not value) of any property other than cash contributed;
- Whether the donee organization provided any goods or services in consideration, in whole or in part; and
- A description and good faith estimate of the value of any goods or services or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.<sup>64</sup>

For non-cash gifts of charitable contributions exceeding \$500, the taxpayer must also maintain written records that include:

- The approximate date the property was acquired and the manner of its acquisition (*i.e.*, purchase, gift, inheritance, etc.);
- A description of the property in detail reasonable under the circumstances;
- The cost or other basis of the property;
- The fair market value of the property at the time it was contributed; and
- The method used in determining its fair market value.<sup>65</sup>

In *Kunkel v. Commissioner*, the IRS disallowed a charitable contribution deduction of \$37,315 for noncash charitable contributions by the taxpayers.<sup>66</sup> The taxpayers claimed to have donated a variety of property to four charitable organizations: the Upper Dublin Lutheran Church, Goodwill Industries, the Military and Order of the Purple Heart Service Foundation (Purple Heart), and Vietnam Veterans of America.<sup>67</sup> The taxpayers claimed a contribution totaling \$13,115 in noncash items to their church's 2011 annual flea market; however, they did not produce a receipt or acknowledgement from the church of their donations,<sup>68</sup> nor did they provide any evidence that the church actually received delivery of them. The taxpayers also allegedly contributed \$24,200 in noncash donations, including over \$20,000 in clothing, to the three additional charitable organizations. Similar to the church donations, the taxpayers did not provide any documentary evidence and could not remember which items went to which organization and when they had donated them.<sup>69</sup> The only evidence the taxpayers provided, other than their own

63 *Anyanwu*, T.C. Memo. 2014-123.

64 IRC §§ 170(f)(8)(A) and (B). The IRS issued a Notice of Proposed Rulemaking on September 17, 2015, that would implement the exception to the “contemporaneous written acknowledgement” requirement for substantiating charitable contribution deductions of \$250 or more and would provide rules concerning the time and manner for donee organizations to file information returns that report the requirement information about contributions. See Prop. Treas. Reg. § 1.170A-13(f)(18)-(19), 80 Fed. Reg. 55,802 (Sept. 17, 2015).

65 IRC § 170(f)(11)(B); Treas. Reg. §§ 1.170A-13(b)(2)(ii)(C) and (D), (3)(i)(A) and (B).

66 T.C. Memo. 2015-71.

67 *Id.*

68 The taxpayers provided a receipt for their 2012 donations to the flea market; thus, the church was equipped to provide this documentation.

69 *Kunkel*, T.C. Memo. 2015-71.

testimony, was doorknob hangers left by charities stating “thank you for your contribution,” but not listing the date, property, or name of contributor.<sup>70</sup>

The taxpayers, who did not provide a “contemporaneous written acknowledgement” from any of the charities, alleged this acknowledgement was not necessary because all of their contributions were under \$250.<sup>71</sup> The Tax Court did not find the taxpayer’s assertion credible, due to the fact that the taxpayers would have had to make 97 distinct donations all with donations less than \$250, despite the fact that the taxpayers testified to assigning the value of donations while completing their tax returns in 2012.<sup>72</sup> The Tax Court also noted that the taxpayers did not maintain written records establishing when or how they acquired items, their cost bases, their condition, and how the fair market value was calculated, nor did the taxpayers furnish a qualified appraisal, all of which is needed for contributions exceeding \$500.<sup>73</sup> Although the Tax Court acknowledged that the taxpayers did donate some property during the tax year at issue, the lack of a written contemporaneous acknowledgment and failure to provide evidence as to value, date, location, and condition of goods donated did not satisfy the requirements of IRC § 170, and the entire deduction was disallowed.<sup>74</sup>

## CONCLUSION

IRC § 170 and the accompanying Treasury Regulations provide detailed requirements with which taxpayers must strictly comply. The statutory and regulatory requirements to qualify for a deduction become more stringent as deductions increase in size. Most of the charitable contribution cases reviewed this year addressed issues regarding substantiation of contributions or the complex rules governing the donation of a conservation easement. It is vital that taxpayers include all information required by the IRC and regulations to substantiate any charitable contributions and their value. The courts have consistently upheld the regulations and disallowed deductions that do not comply with the statutory and regulatory requirements.

When donating a conservation easement, taxpayers should pay particular attention to the valuation of the easement, ensuring the valuation determination can be adequately supported. Additionally, the cases pertaining to a qualified conservation contribution illustrate the importance of paying close attention to the technicalities of the regulations. Easement deeds should be reviewed for ambiguity, especially as to whether use restrictions have been granted in perpetuity to the donee.

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70 *Kunkel*, T.C. Memo. 2015-71. The taxpayers testified that they created index cards noting the items as they were delivered to Goodwill or left for pickup by Purple Heart of Vietnam Veterans. They aggregated this information into a master list and assigned estimated values to the items at the time they prepared their tax returns. However, the taxpayers did not provide any evidence of the index cards nor did they prepare any other contemporaneous records to support their alleged gifts. They also did not provide any evidence regarding their cost bases in items or how they determined the fair market value.

71 *Id.*

72 *Id.*

73 *Id.*

74 *Id.*