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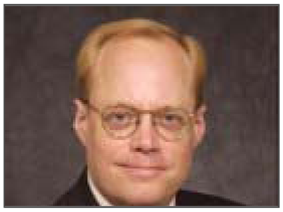

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Deductible? Really? Most Taxpayers Flub Donation Reporting

You can donate to charity in cash or in kind and either way claim a tax deduction. Many taxpayers prefer giving in kind since the deduction is based on the market value of the item. If the property is appreciated—say stock or real estate—you never have to pay tax on your gain. See Zuckerberg's Facebook Stock Donations. But you might be surprised to learn that most taxpayers fail to report their non-cash contributions correctly.

So says a report here by the Treasury Inspector General for Tax Administration (TIGTA). It contains some shocking numbers, especially when you consider that many of these donations are big. Approximately 60 percent of taxpayers who claim large-dollar non-cash charitable contributions mess them up. See IRS Failing to Enforce Reporting Requirements for Charitable Contributions.

It's not clear if the fault lies with taxpayers, advisers or the IRS. But the report says about 273,000 taxpayers claimed approximately $3.8 billion in potentially erroneous non-cash charitable contributions in 2010 resulting in about $1.1 billion in tax benefits. The report even suggests that the IRS isn't policing the rules as well as it should. And that may lead to even greater abuses of the tax system by would-be Santas making gifts. See Bad Santa? Taxpayers Overestimate Charitable Giving, Get Undeserved Tax Refunds.

Plainly, some taxpayers are getting tax benefits they shouldn't. See Donors Claim $1.1 Billion Skirting Tax Laws, Audit Says. Yet in some notable cases, taxpayers end up losing large deductions entirely. That's what occurred in *Mohamed v. Commissioner*, where Mr. Mohamed failed to follow the instructions to Form 8283 that accompanied his tax return. He donated property worth more than $18 million.

Yet the IRS said Mr. Mohamed failed to comply with the appraisal and substantiation rules and the Tax Court had to agree. That was a big error, yet taxes are technical and the rules are the rules. The Tax Court even went so far as to acknowledge that the property was quite likely even ***more*** valuable than the Mohameds reported on their tax returns!

Nevertheless, the Tax Court denied the claimed charitable deduction ***completely***. See CA Couple Loses $18.5M Charitable Deduction on Technicality. That's not exactly a rounding error. See No Appraisal No $18.5M Deduction, Says Tax Court.

The TIGTA report notes that donations of motor vehicles are commonly messed up. Donors must attach a Form 1098-C, Contributions of Motor Vehicles, Boats, and Airplanes, to their tax returns. The report says the IRS is not effectively identifying taxpayers who fail to comply with reporting requirements for donations of motor vehicles. For more about car donations, see Key Facts About Donating Cars To Charity.

Donations are great, but make yours count! See 10 Simple Rules For Tax-Wise Gifts To Charity.

Robert W. Wood practices law with Wood LLP, in San Francisco. The author of more than 30 books, including Taxation of Damage Awards & Settlement Payments (4th Ed. 2009 with 2012 Supplement, Tax Institute), he can be reached at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.