



## **Robert W. Wood** THE TAX LAWYER

---

Nov. 15 2010 — 9:33 am

### Fire Department Donation Nixed

You get a tax deduction when you contribute money or property to a qualified charity. Property is valued at fair market value. But what if the charity gives you something in return, like a fancy dinner? In that case, you can deduct only the amount by which your contribution exceeds the fair market value of the benefit you receive ([Treas. Reg. § 1.170A-1\(h\)](#)).

If you pay \$500 for a charity dinner, the ticket may say your dinner costs \$100 so your donation is \$400. That makes perfect sense, but what if it isn't so clear? Sometimes something you get back is hard to identify or value.

Given human nature, sometimes we may get greedy, claiming a big deduction when something smaller would have been eminently defensible. Sometimes when we're too greedy we end up getting nothing. Pigs sometimes get slaughtered.

For a useful reminder of this universal rule and its operation in charitable give-backs, take Ted and Julia's Excellent Adventure in Tax Court. See [Rolf and Gallagher v. Commissioner](#). They claimed a \$76,000 tax deduction for donating their lake house (but not their land) to the local fire department for training and demolition. That was its fair market value, they claimed.

With considerable chutzpah, they later increased their deduction to a whopping \$235,350, the claimed cost of rebuilding the house. The IRS

countered that all Ted and Julia wanted was to have the house knocked down. That meant no deduction at all, said the IRS.

When Ted and Julia faced off with the IRS in Tax Court, the question was by how much the value of the lake house exceeded the demolition costs. Ted and Julia didn't have good evidence of the \$76,000 value. Ted and Julia didn't want to give an inch and kept arguing demolition costs were irrelevant, even though the IRS estimated the cost of demolition at \$10,000 to \$12,000.

The Tax Court ultimately ruled that Ted and Julia failed to prove their lake house had **any** value beyond demolition cost. That meant no deduction! Ted and Julia **should have** had a good appraisal, and **should have** happily agreed to subtract \$12,000 for demolition. Most charitable contribution cases come down to good documentation, and that means rock solid appraisals.

**Where There's Smoke.** Speaking of fire departments, this strategy has become popular, especially where you want to raze your old house to erect a new McMansion. The classic fire department donation case is [Scharf v. Commissioner](#), where the Tax Court allowed a deduction since clearing the land was worth much less than training benefits to the fire department. But in [Hendrix v. United States](#), the court denied any deduction since appraisal requirements weren't met.

An additional ground of IRS attack in these cases is the rule that you normally must donate your entire interest in property to claim a deduction. Even here, the nuances are important. There is a difference between donating the house itself and merely giving the fire department the right to use it for training. The tax code says "a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property." [IRC Section 170\(f\)\(3\)\(A\)](#). Since virtually no one wants to give the fire department the land too, there's a debate. Some practitioners believe you shouldn't get a deduction unless you donate the land, but most seem to disagree and some taxpayers have been successful if they dot their i's and cross their t's. Practitioners debate these issues. See [Discussion: Donation of House to Fire Department](#).

Start by relying on reasonable valuations, by admitting that demolition has a value and on quantifying it. You don't want to get slaughtered, and you don't want to get burned.

For more on house donations to fire departments, see:

- [IRS Burns Kirk Herbstreit's Donation of Home to Fire Department](#)
- [IRS Denies Deduction for Homes Donated to Fire Departments and Burned Down](#)
- [Court Denies Charitable Deduction for Donation of Home to Fire Department](#)
- [Oregon Gubernatorial Race Roiled by Candidate's Charitable Deduction for Donation of Home to Fire Department](#)

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