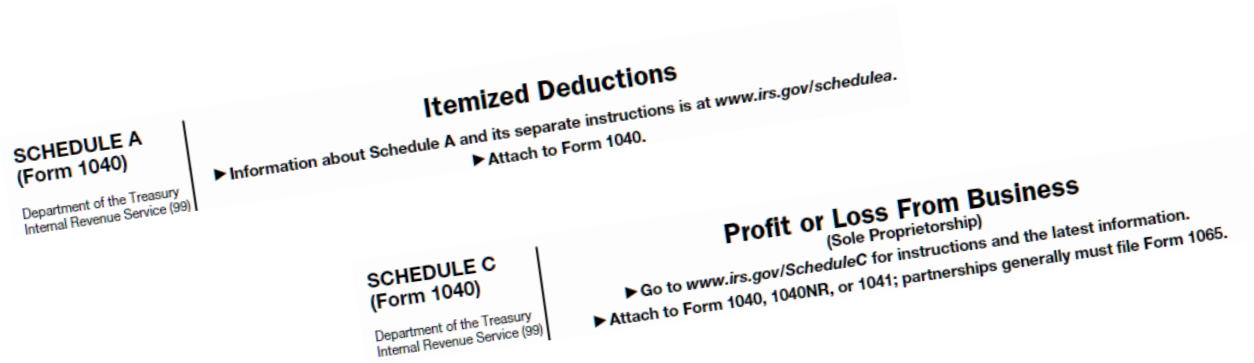


Deductions



IVF for Homosexual Male

- *Morrissey*, No. 8:15-cv-2736-T-26AEP (MD FL, 12/22/16), aff'd No. 17-10685 (11th Cir. 9/25/17)
 - Incurred medical costs for 3rd party egg donor (in vitro fertilization) as M and his male partner could not have child on own.
 - Over \$100,000 but only \$1,500 for M
 - M viewed their medical condition as being infertile.
 - IRS and district court denied expenses:
 - Were not for taxpayer, spouse or dependent.
 - Were not for diagnosis, cure, mitigation or treatment of any disease of taxpayer, spouse or dependent

11th Circuit Agrees

- Looks at terminology in §213 – body, function
- §213 refers to function of body, not bodies
- M's reproductive function works – can produce sperm
- Costs of the egg donor don't affect any function of M's body, not a medical expense for M.

3

Page 4-4

Alternative Treatments and §213

- Malev, Docket No. 1282-16S (3/1/17)
(bench opinion)
 - Judge allowed deduction for alternative medical treatment – “integrative medical care”
 - Even though rec'd in 2012 and only had statement from medical doctor that advisable in 2016

4

Interesting points by judge:

- Treatments were not of type one would get for non-medical purposes.
- Relationship with the 4 practitioners was professional.
- Expenses for “alternative medical” treatments can fall under §213.
- T claimed the treatment helped her.
- “Nothing in statute or underlying regulation requires that treatments received by taxpayer be furnished by individual licensed to practice medicine in any particular discipline, or that services or treatments be provided in person rather than remotely, or that treatment be successful, or that the treatment be universally accepted as effective.”

5

Page 4-5

Mortgage Interest Deduction and Equitable Ownership

- *Wainwright*, TC Memo. 2017-70 (4/25/17)
 - W was co-borrower, but not legal owner of home he lived in with friend
 - Reg. 1.163-1(b) – mtg int deduction ok if legal or equitable owner
 - Look at state law / benefits & burdens of ownership
 - Court uses 7 factors
 - Held – equitable owner:
 - Co-borrower and signed note
 - Made monthly payments
 - 1098 in both names

6

Syndicated Conservation Easement Donations

Notice 2017-10 (12/23/16) + Notice 2017-29 (4/27/17)

- Reminds t/p and reps that these may be tax avoidance transactions reportable on Forms 8886 and 8918
- Gave add'l time for certain reporting
- Concern – overvaluation such as 9x the original investment in the land, including appraisal that “greatly inflates value of the conservation easement based on unreasonable conclusions about the development potential of the real property.
- 7/13/17 – Comm’r Koskinen sent letter to Senator Wyden on reporting results to date
 - Will be pursuing many for examination.

7

Documentation Necessary Despite Information on an Amended Form 990 and §170(f)(8)(D)

15 West 17th Street LLC, 147 T.C. No. 19 (12/22/16)

- **\$64 million donation for conservation easement**
- **LOST deduction**
- §170(f)(8)(D) not operational w/o regulations
- Query – who ends up paying for this missing CWA?
 - Obligation is on donor, not the charity
 - Likely overvalued (per IRS)

8

§170(f)(8)(D)

subparagraph (A) [CWA req] shall not apply to a contribution if the donee org files a return, on such form and in accordance with such regs as the IRS may prescribe, which includes the information in (b) with respect to the contribution.

9

CWA – Need It and More For Airplane Donation

Page 4-9

- *Izen*, 148 TC No. 5 (3/1/17)
 - Court disallowed \$338K deduction for donation of interest in 40-year old airplane
 - §170(f)(12) not followed
 - CWA not attached to retu
 - 1098-C not filed



DONOR'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Date of contribution	OMB No. 1545-1959	Attachment Sequence No. 155A Contributions of Motor Vehicles, Boats, and Airplanes
		2a Odometer mileage	2017	
		2b Year	Form 1098-C	
		2c Make	2d Model	
DONOR'S federal identification number	DONOR'S identification number	3 Vehicle or other identification number		
DONOR'S name		4a <input type="checkbox"/> Donee certifies that vehicle was sold in arm's length transaction to unrelated party		
Street address (including apt. no.)		4b Date of sale		
City or town, state or province, country, and ZIP or foreign postal code		4c Gross proceeds from sale (see instructions)		
5a <input type="checkbox"/> Donee certifies that vehicle will not be transferred for money, other property, or services before completion of material improvements or significant intervening use		\$		
5b <input type="checkbox"/> Donee certifies that vehicle is to be transferred to a needy individual for significantly below fair market value in furtherance of donee's charitable purpose				
5c Donee certifies the following detailed description of material improvements or significant intervening use and duration of use				
6a Did you provide goods or services in exchange for the vehicle?		▶ Yes <input type="checkbox"/> No <input type="checkbox"/>		
6b Value of goods and services provided in exchange for the vehicle		\$		
6c Describe the goods and services, if any, that were provided. If this box is checked, donee certifies that the goods and services consisted solely of intangible religious benefits		▶ <input type="checkbox"/>		
7 Under the law, the donor may not claim a deduction of more than \$500 for this vehicle if this box is checked		▶ <input type="checkbox"/>		

Copy B

For Donor

In order to take a deduction of more than \$500 for this contribution, you must attach this copy to your federal tax return.

Unless box 5a or 5b is checked, your deduction cannot exceed the amount in box 4c.

<https://www.irs.gov/uaac/form-1098-c-contributions-of-motor-vehicles-boats-and-airplanes-1>

Need Proof of Cash Contributions

- *Wainwright, TC Memo. 2017-70 (4/25/17)*
 - 2010, IRS disallowed charitable contributions of \$9,450
 - Court agreed
 - Any cash donation
 - NEED documentation of some sort
 - If \$250 or more, need CWA
 - W produced none for the court



Junk Donation is No Deduction

Ohde, TC Memo 2017-137 (7/10/17)

- No contemporaneous details; spreadsheet for trial (qualify of all items is “high”)
- No CWA
- No details for non-cash over \$500
- No qualified appraisal for grouped items over \$5,000
- No proof that used clothing & HH items in good used condition or better

2011 Alleged Donation of over 20,000 Items to Goodwill

<u>Category</u>	<u>Amount</u>
Clothing and accessories	\$71,434
Books/music	25,026
Furniture	23,370
Toys/gaming	9,719
Bedding/linens	4,840
Kitchen items	3,079
Electronic equipment	2,960
Baby items	2,136
Lawn/patio	1,485
Sporting goods	810
Health/beauty	593
Pet supplies	443
Luggage	378
Tools	189
Musical instruments	149
Total	146,611

All denied other than \$250 + \$6662 penalty assessed.

13

Valuation Challenges for Donations

- *Gardner*, TC Memo 2017-165 (8/24/17)
 - Big game hunter for over 25 years
 - Donated 177 items appraised at \$1,425,900 to Dallas Ecological Foundation (DEF)
 - 3 shoulder mounts and 174 skulls, furs, etc.
 - Not “record book” quality
 - Most lacked provenance
 - Used replacement value approach
 - IRS – only worth \$163,045.

<http://www.ustaxcourt.gov/USTCInOP/OpinionViewer.aspx?ID=11378>

14

Valuation Concerns of Tax Court

- IRS expert valued at \$34,240
 - Mostly scraps and remnants, not in good condition
 - Insufficient details as to where/when obtained
 - Used market data
- Taxpayer 3 experts at trial
 - None were experts on appraisal and items donated
 - Two experts “assumed what he had undertaken to prove” (relied on what T’s appraisal report said, such as assuming all in good condition)
 - One valued as if you took 177 trips to get each item
- Court – go with IRS value at audit

15

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Loss of \$33M Donation – Info Missing on Form 8283

- *RERI Holdings I, LLC*, 149 TC No. 1 (7/3/17)
 - Remainder interest assigned to university
 - LLC claimed \$33 million deduction
 - Form 8283 attached to 1065 had blank space.

16

Form 8283 (Rev. December 2014) Department of the Treasury Internal Revenue Service	Noncash Charitable Contributions ▶ Attach to your tax return if you claimed a total deduction of over \$500 for all contributed property. ▶ Information about Form 8283 and its separate instructions is at www.irs.gov/form8283 .	OMB No. 1545-0908 Attachment Sequence No. 155 Identifying number
Name(s) shown on your income tax return		

Note. Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

Section A. Donated Property of \$5,000 or Less and Publicly Traded Securities—List in this section **only** items (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also list publicly traded securities even if the deduction is more than \$5,000 (see instructions).

Part I Information on Donated Property—If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) If donated property is a vehicle (see instructions), check the box. Also enter the vehicle identification number (unless Form 1098-C is attached).	(c) Description of donated property (For a vehicle, enter the year, make, model, and mileage. For securities, enter the company name and the number of shares.)
A		<input type="checkbox"/>	
B		<input type="checkbox"/>	
C		<input type="checkbox"/>	
D		<input type="checkbox"/>	
E		<input type="checkbox"/>	

Note. If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (e), (f), and (g).

A	(d) Date of the contribution	(e) Date acquired by donor (mo., yr.)	(f) How acquired by donor	(g) Donor's cost or adjusted basis	(h) Fair market value (see instructions)	(i) Method used to determine the fair market value
A						
B						
C						
D						

RERI - Rationale

- 1984 – Congress created strict substantiation requirements
- **If basis is missing, IRS can't readily identify potential overvaluation problem**
 - Need to be alerted to “deter taxpayer from claiming excessive deductions in the hope that they would not be audited” [1984 Bluebook]
- Overvalued too
 - FMV likely only \$3.5 million
 - Penalty applied for gross valuation misstatement

Fake Charities

IR-2017-135 (8/28/17)

- Scammers taking \$ from people thinking they are helping victims of Hurricane Harvey.
- Use IRS website to verify charity's status.
 - <https://www.irs.gov/charities-non-profits/exempt-organizations-select-check>

IRS

Subscriptions ▾

Search

Filing Payments Refunds Credits & Deductions News & Events Forms & Pubs Help &

Charitable Organizations

Churches & Religious Organizations

Political Organizations

Private Foundations

Other Non-Profits

Contributors

Charities & Non-Profits Topics

• A-Z Index

EO Select Check

Exempt Organizations Select Check is an online search tool that allows users to search for and select an exempt organization and check certain information about its federal tax status and filings. consolidates three former search sites into one, providing expanded search capability and a more efficient way to search for organizations that:

- **Are eligible to receive tax-deductible charitable contributions (Publication 78 data).** Users may rely on this list in determining deductibility of their contributions (just as they did when Publication 78 was a separate electronic publication rather than part of *Select Check*).
Updated data posting date: 08-15-2017

Please be aware of the following when searching for organizations in this database:

1. Certain eligible donees (i.e., churches, group ruling subordinates, and governmental

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EMBA Not Deductible

- *Creigh*, TC Summary Opinion 2017-26 (4/27/17)
 - W has BS and MS computer engineering
 - W worked in that areas many years
 - Later started Sch C as consultant
 - For marketing/bus development, decides to get EMBA at UCLA \$59,000 + travel
 - Curriculum much different than SW engineering
 - IRS and TC – NO – prepares W for new position
 - Courses much different from what she did before

§1.162-5 Approach – “Commonsense” One

Look at tasks and activities one performed prior to new degree and what qualified to do afterwards.

- Lots of strategy, marketing, etc. that W didn't do or have skill for before UCLA

21

AND – §6662 penalty!

- W says preparer advised her to take deduction
- But W can't prove preparer's qualifications or the specific advice given.
- W's "general statements that W relied on accountant are not sufficient to prove reasonable cause and good faith for disallowed deductions. W failed to prove acted with reasonable cause and in good faith and therefore liable for an accuracy-related penalty for 2012."

22

Legal Fees and Origin of the Claim

- *Sas*, TC Summary Opinion 2017-2 (1/30/17)
 - S receives bonus from employer
 - ER later wants repayment charging breach fiduciary duty
 - S charges employment discrimination
 - Settled and no funds transferred
 - S deducts legal fees above the line per
 - §62(a)(2) or §162 arguments
 - IRS and Tax Court – no way!
 - Lawsuit resulted in no \$\$
 - Original bonus was tied to earlier employment, not to the lawsuit or her later business pursuits (although *Sas* argued charges hurt her business reputation).

23

Review – Legal fee deduction

- §62(a)(20)
 - Only specific legal fees allowed above the line
 - n/a for fees > income from any judgment or settlement
- §162
 - Look at “origin of the claim” for the fees rather than “its potential consequences upon the fortunes of the taxpayer”
 - Origin of lawsuit was *S*’s prior employment; not her current business.

24

Legal Fees and Origin of the Claim

- *Dulik*, TC Summary Opinion 2017-51 (7/13/17)
 - Legal fees to negotiate severance package that included non-compete.
 - Soon after signing, D creates S corp and deducts legal fees on it. S corp has no revenue.
 - Result – fees is on Sch E rather than A
 - D avoids 2% AGI limit
 - BUT – IRS and court say NO WAY!
 - Origin of the claim is tied to his employment, not his future business

25

“Although the terms of the severance agreement may have prevented Mr. Dulik from operating a consulting business in the pharmaceutical industry, we look to the **origin of the claim, not to the potential consequences** of a win or loss in negotiating the terms of the severance agreement.

Mr. Dulik’s claim arose from his status as a former employee of Nycomed, not from his consulting business. He hired attorneys because he was trying to negotiate the terms of the severance agreement proffered in connection with the termination of his employment.”

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Court waives negligence penalty

- Despite both H&W being CPAs (& W is attorney) ...
- “origin of the claim doctrine, regarding treatment of this particular type of expense for legal fees, is a technical area of law, is fact intensive, and required a reference to and analysis of case law as more fully discussed in this opinion. Under circumstances of this case, we conclude that H&W had reasonable cause and good faith in their treatment of the deduction for legal fees.”

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§280F Limitations for 2017

Rev. Proc. 2017-29 (3/24/17)

Passenger cars	With bonus depreciation	Without bonus depr
1st tax year	\$11,160	\$3,160
2nd tax year	\$5,100	\$5,100
3rd tax year	\$3,050	\$3,050
Each succeeding year	\$1,875	\$1,875

28

Mileage Rates for 2017

Notice 2016-79 (12/13/16)

- **Business - 53.5¢/mile** [down from 54¢]
 - 25¢ represents depreciation
- **Medical and Moving - 17¢/mile** [down from 19¢]
- **Charitable - 14 ¢/mile** [fixed by statute]

Must follow Rev Proc. 2010-51

<https://www.irs.gov/pub/irs-drop/n-16-79.pdf>

29

Ransomware

- Such as a business may have paid for WannaCry or to have other malware released.
- Tax considerations:
 - §162(c)(2) – illegal payment or kickback?
 - IRS has burden of proof
 - 1099-MISC required? Hopefully not.
 - No TIN and backup withholding at 28% would have to come out of payor's pocket.
 - Unlikely IRS will require this; but no comment from IRS on this.
 - Bitcoin gain or loss – it's property per Notice 2014-21



30

Employee Business Expense Reminder

- *Humphrey*, TC Memo 2017-78 (5/11/17)
 - DHS employee
 - Employer policy – cover employee expenses if sought authorization in advance
 - H deducted \$17K unreimbursed expenses
 - IRS and TC disallowed
 - Employee expenses only “necessary” if reimbursement not available. Must show sought reimbursement.
 - H did not seek reimbursement.

31

Credibility Needed for Car Expenses

Taylor, TC Memo 2017-99 (6/1/17)

- Recycling business
- 4 cars + almost \$200K car expense over 3 years
- No contemporaneous records; created spreadsheets for trial
- Judge looks at them!!
- Problems include:
 - 1700 miles in one day on one car = 70 mph for 24 hours.
 - Odometer at end of trip is higher than for start of next trip.
 - Too many miles while also holding down full-time job.
- Denied + negligence penalty assessed.



32

Business Expense Challenges

- *Drah*, TC Summary Opinion 2017-149 (7/31/17)
 - Contract driver for FedEx
 - Also has 100% owned C corp that contracts with FedEx
 - 1120 filed for 2011
 - Extension filed for 1040, but never filed
 - IRS files SFR with 1099-MISC and W-2
 - D says has deductions for:
 - Contract labor
 - 179 and depreciation
 - Repairs and mtc

33

Challenges of arrangement

- Corp – why not an S corp?
- D's records – no good
 - Truck leased to C corp
 - Repair invoices
 - Some appear to be estimates
 - Some for far away cities
 - No record of any contract labor

Takeaway – growing number of new businesses need tax assistance!

34

Hockey Team Away Game Meals are De Minimis Fringe Benefit

- *Jacobs*, 148 TC No. 24 (6/26/17)
 - Owners of Boston Bruins
 - 41 home games + 41 away – NHL requirement
 - Away games
 - Arrive day before
 - Hotel provides meals under BB supervision
 - Employees required to attend breakfast and lunch; late afternoon snack optional
 - IRS – Falls under §274 as associated with active conduct of trade or business, BUT can only deduct 50% of cost

35

Court – 100% deductible

- An exception to the 50% disallowance:
- §274(n)(2)(B) – “in the case of an expense for food or beverages, such expense is excludable from the gross income of the recipient under section 132(e) by reason of subsection (e) thereof (related to de minimis fringes)”.

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§132(e) DE MINIMIS FRINGE DEFINED

- IN GENERAL - “de minimis fringe” means any property or service the value of which is ...so small as to make accounting for it unreasonable or administratively impracticable.
- TREATMENT OF CERTAIN EATING FACILITIES The operation by an employer of any eating facility for employees shall be treated as a de minimis fringe if— (A) such facility is located on or near the business premises of the employer, and
- (B) revenue derived from such facility normally equals or exceeds the direct operating costs of such facility.
 - Non-discrimination provision applies – can’t only provide to highly compensated employees

37

All 132(e) Requirements Met

- Not discriminatory – available to all away game employees
- Eating facility owned or leased by employer – contract with hotel meets this in substance
- Facility operated by employer – ok per per Reg. 1.132-7(a)(3)
- Facility is located on or near employer’s business premises – away game requirement helps meet this
- Meals furnished are provided during, or immediately before or after employee’s work day – IRS agreed
- Annual revenue derived from facility normally equals or exceeds direct operating costs of facility (revenue/operating cost test) - meals were provided “for substantial noncompensatory business reasons” as required under §132 and §119

38

Carrying On vs. Getting Ready

- *Carrick*, TC Summary Opinion 2017-56 (7/20/17)
 - C is electrical engineer working for company that makes underwater equipment
 - Work slowed and he and others try to start 2 businesses
 - Local Bidz - Online matching of customers and repair contractors
 - Stingray Away – Device to help surfers and swimmers avoid stingrays
 - No revenue in 2013 and 2014, but expenses
 - 2013 ~ \$39K
 - 2014 ~ \$51K
 - Offset C's other income

39

IRS and Tax Court – Not in Business Yet!

- Some work done to develop technology, but nothing complete.
 - No customers
- Court – it's "clear" not in business
- "There was neither sales activity nor evidence of the offering of products or services to the public. Petitioner was still in the very early stages of research and development in each of these activities."

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