TAX ASPECTS OF CONTRIBUTING A HOUSE TO A FIRE DEPARTMENT

Local fire departments often deliberately burn existing structures as a training exercise. New fire fighters can practice their skills and techniques, knowing in advance that the structure is uninhabited. Often individuals will donate an old property, possibly even a former residence, to the local fire department. Obviously, where possible, taxpayers would like to take a charitable contribution deduction for their donation.

The first and most important point to note is that there is a significant difference between donating the house itself to the fire department and giving the fire department the right to use the house for training purposes. In the latter case, Sec. 170(f)(3)(A) specifically states that "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". As a result, no charitable contribution is allowed. (See also Regs. Sec. 1.170A-7(a)(1).)

To get a charitable contribution deduction for the fair market value of the property, the taxpayer must contribute the house itself to the fire department. (This item does not discuss the substantiation and documentation rules required by Sec. 170(f)(11).) In most situations taxpayers want to contribute only the property and not the underlying land. They are also concerned about deeding the property to the fire department and the related costs of doing so.

The regulations and IRS Pub. 526, Charitable Contributions, contain no requirement for an actual transfer of a deed. In fact, a Tax Court decision supports this position: Scharf, T.C. Memo, 1973-265, concerned tax years 1968 and 1969, and although it predates Sec. 170(f)(3) (which was added to the Code by the Tax Reform Act of 1969, P.L. 91-72, effective for contributions after July 31, 1969), in the right circumstances it is still good law.

The case dealt with a "building…given by the [taxpayer] to the fire department partly for the purpose of having it burned down. The transfer was not evidenced by any deed or other formal conveyance." The underlying land was not contributed.

The Tax Court agreed with the IRS that after the house was contributed and burned down, the taxpayer ended up with a more valuable tract of clear land than he had before the donation. The court nevertheless concluded that the benefit the taxpayer received was far less than the benefit the fire department received. As a result, the taxpayer was allowed a charitable contribution deduction equal to the house's fair market value.

Conclusion:
Taxpayers can obtain a charitable contribution deduction for the fair market value of property (i.e., land improvements) donated to a fire department to be burned down. The deduction is allowed even when there is no formal deed recording the transfer and even when the underlying land is not transferred. The taxpayer needs to properly structure the transaction so that the property, and not just the right to use the property, is being donated.

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