

Office of Chief Counsel
Internal Revenue Service
Memorandum

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date: June 05, 2023

to:

()

from: Associate Area Counsel (Cincinnati, Group 1)
(Large Business & International)

subject: Disallowance of non-cash charitable deduction

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

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Z =

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Counsel 1 =

Build =

Department 1 =

Bank 1 =

Transaction =

Payment =

Entity Type 1 =

Entity Type 2 =

Attorney =

PROPOSED ADJUSTMENT

Several years of federal income tax returns of X (also “Taxpayer”) were examined, resulting in adjustments including the instant proposed adjustment with respect to a \$n1 deduction claimed by X on his Year 1 federal income tax return under section 170. The deduction was with respect to a purported bargain sale of Property to Y and comprised the difference between the \$n2 appraised value and the \$n3 Payment paid by the Y. The Form 8283 reflects that X had a \$n4 basis in Property. The sale to Y was by a Entity Type 1 that was ultimately wholly owned by X.

Per Return	Per Exam	Adjustment
<u>\$n1</u>	\$0	<u>\$n1</u>

ISSUE

The issue is whether the difference between the \$n2 appraised value over the \$n3 Payment may be considered a charitable donation.

CONCLUSION

No. For the reasons articulated in the analysis below, no deduction is permitted as there was no intent to make a charitable donation and there was nothing of value to contribute once the Property was acquired by Y for “ .”

FACTS

- 1. On Date 1, X (via) purchased Property from Z for \$n5, following Phase I and II Environmental Site Assessments of the Property that identified several recognized environmental conditions.**

On or around Date 1, X, via a tier disregarded entity, A, closed on his purchase of the Property from the Z for \$n5.¹ At the same time, A assigned the Property to one of X's Entity Type 1, B. B owned the Property from approximately Date 1 to the Year 1 purported contribution.

B is an LLC and was organized on Date 2 in State 1.² X directly owns n6% of B and C directly owns n7% of B. B is treated as a partnership for federal income tax purposes.

C is an LLC and was organized on Date 3 in State 1.³ Taxpayer states that two of X's Entity Type 2s directly own an aggregate n8% interest in C. D, a S-Corporation organized on Date 4 in State 1 and wholly owned by two of X's Entity Type 2s, owns the remaining n9% of C. C is treated as a partnership for federal income tax purposes.

A is an LLC and was organized on Date 5 in State 2.⁴ A is directly wholly owned by C. C is treated as a disregarded entity for federal income tax purposes.

The purchase was part of a Transaction.⁵ At purchase, Property comprised approximately _____ improved with _____. Prior to selling Property to A, Z had used Property as a Business. X planned to build _____ on Property.

Generally, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), a buyer may be held responsible for remediation of hazardous substance residues, even if a prior owner caused the contamination. Because of Property's historical use as a Business and in consideration of plans to build _____ on Property, prior to closing B hired E and subcontractors of E or other contractors to conduct Phase I and II Environmental Site Assessments of Property, which E issued dated Date 6 and Date 7 respectively. E and subcontractors of E or other contractors performed _____ containing materials surveys and geotechnical borings as part of or separate from the Phase I and Phase II Environmental Site Assessments. In its Phase I and Phase II Environmental Site Assessments, E identified recognized environmental conditions,

_____ .⁶ Also, E or other contractors or subcontractors performed a _____ study and determined that the existing fill material was generally loose and unsuitable for footing support for the proposed project. Furthermore, because of the likelihood of _____ contamination, the excavated material would need to be disposed of in a Subtitle D disposal site and then backfilled with structural material in order to install the proposed footing supports for the building project.⁷

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Despite these concerns, A purchased Property
⁸ Z expressly disclaimed Property's compliance with applicable laws, regulations, or codes, or the presence or suspected presence of

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¹⁰ However, the Z provided to B a purchase price credit in the amount of \$n10. The Agreement of Purchase and Sale states as follows:

Buyer shall receive a credit toward the payment of the Purchase Price in the amount of \$n10, for Due Diligence Hazardous Substances which will be reflected on the final closing statement.

2. Starting on Date 8, X's counsel met several times with F of City 1 re Status of Property.

A Date 9, legal bill sent by X's counsel G of Firm 1 to X reflects that G had an "office conference" with F of City 1¹¹ re Status. On the same day and in the same line item of the bill, G met with X "re same."¹² On Date 10, G met again with F "re status of Build and next steps re Property." On Date 11, G had an office conference with X "re response to F's request for environmental studies." On Date 12, G had an "office conference with Counsel 1 re status of efforts to acquire site."

All of these meetings are documented in invoices for legal fees from Firm 1 to X, which G provided to Y's counsel H of Firm 2 via G's Date 13 email (). In the body of the email, G states that he is providing copies of invoices evidencing costs incurred by the owner of Property.

3. On Date 14, X (through counsel) provided Y a Letter of Intent to sell the Property to Y for \$n11.

On Date 15, X's counsel G emailed Y's counsel H (Subject " ") to follow up regarding whether "our parcel" was discussed at Y's Date 16 Meeting." On the same day, H responded that "the designation was postponed until the Date 20 meeting." On Date 18, G responded to H requesting an update. On Date 17, H responded that:

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On Date 14, G responded attaching to his email a Letter of Intent, the terms of which he stated were intended to “give guidance to whatever offer [Y] is willing to make, assuming authority is granted, after the meeting.”

The attached Letter of Intent, dated Date 17, stated:

The Letter had a signature block for X on behalf of B and a signature block for Y.

The Date 14 Letter of Intent is referred to at page 8 of the Date 19 Market Value Restricted Appraisal Report (“Y Appraisal”) discussed further below.

4. On Date 20, Y passed a resolution to acquire Property.

On Date 20, Y passed a resolution to acquire Property and authorized the Attorney to negotiate on behalf of Y with the owner of the Property for the purchase of the Property.

5. Y and X cooperated in obtaining appraisals and determining demolition and environmental remediation costs prior to Y’s filing of its Date 21

During the period prior to Y’s filing of its Date 21, Y retained environmental engineering firm Firm 3 to review and analyze the E Phase I and Phase II Environmental Site Assessments, dated Date 6 and Date 7 respectively, which X provided to Y. Firm 3 was also to provide a remediation cost estimate. Firm 3 understood that, if Y acquired the Property, it planned to raze the existing buildings and to develop the Property as a Build. On Date 22, Firm 3 provided Y its Preliminary Environmental Review and Cost Estimate, which reflected a cost estimate range of \$n12 to remediate the Property and which summarized E’s Phase I and Phase II

Environmental Site Assessments. The estimates assumed that the remediation would be performed in conjunction with the demolition and construction.

During this period Firm 3 also performed its own Phase I Environmental Site Assessment, which it provided to Y on Date 23. Firm 3's Date 23 Phase I Environmental Site Assessment acknowledged the recognized environmental conditions identified in E's Phase I and Phase II Environmental Site Assessments (i.e.) and noted a few others (i.e.

). As part of its research, Firm 3 submitted a request to the State 2 Environmental Protection Agency ("State 2 EPA") and received documentation that the State 2 EPA was aware that the Property's with as of the early Years. The State 2 EPA placed a publicly-available

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On Date 24, H emailed a copy of Y's the Property to G and advised that the usual process is for Y to make an offer based on an appraisal. H further advised that she was retaining an appraiser and that the appraiser would need to inspect the Property soon. She requested that Y's appraiser be allowed to inspect the Property. On Date 25, G acknowledged that Y would make an offer based on its appraisal. He, therefore, withdrew X's Letter of Intent and further advised that X would also retain his own appraiser to conduct an "updated appraisal."

On Date 26, H requested that X provide a demolition estimate. X, through I employee of Firm 4, emailed his demolition estimate of \$n13 on Date 27 (). On Date 47, X, through G, emailed his "updated" Date 28 demolition estimate of \$n13 to demolish the existing structures and another \$n14 to obtain a No Further Remediation Letter in accordance with State 2 Code of Civil Procedure

On Date 29, H emailed G () confirming scheduling of a Date 30 meeting to include X at Y's offices "regarding the possible sale and donation of the Property site to the [Y] for a new Build." H further advised: "I am also going to send you the [Y's] demolition specifications for the property before the meeting. That will help define the scope of work and the cost estimate." The meeting, however, was postponed due to an attendee's illness. It was rescheduled to Date 31 and postponed again.¹⁴ A telephone conference occurred on Date 32. On Date 33, Y, through H, emailed its demolition specifications to G ().

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On Date 34, the City 1 issued an _____, which stated, at _____ : “
 _____.” The
 reflected that the City 1 desired to allocate \$n15 to this _____, demolition,
 remediation, and construction of the new Build. Exhibit G to the _____ reflected
 that the City1 budgeted \$n16 million of the \$n15 for land acquisition. As of Date 35, G
 acknowledged to H that he was in receipt of the proposed

_____ activities with
 respect to the redevelopment of the Property as a Build, including a proposed budget.

As mentioned above, on Date 13, G sent H X's receipts evidencing costs
 (including law firm invoices) that he had incurred with respect to the Property (
 _____).

On Date 36, H and G worked together to come to agreement to changes to the
 draft Right of Entry and Testing form granting Y's consultants Firm 3 access for
 environmental and geotechnical testing. On Date 37, Taxpayer and Y executed the
 Right of Entry and Testing form. **By executing the Right of Entry, Y agreed, among
 other things, to furnish a copy of the survey and Testing results to the Grantor
 promptly after receipt thereof.**¹⁵ On Date 38, pursuant to the Right of Entry, H
 emailed G insurance certificates covering Firm 3's access to test the Property, which
 occurred on Date 39. On Date 40, H requested that Taxpayer authorize his consultant
Firm 5 (which tested Property in Year 3) to release its geotechnical report for Property
 to Y's consultant Firm 3.

On Date 61, G declined to fill out the Interview Form for Firm 3's Environmental
 Site Assessment, which Y had requested Taxpayer fill out. G advised H that Y should
 fill it out itself based on the information that Taxpayer had already provided in E's Phase
 I and II Environmental Site Assessment. Also, on Date 61, G emailed Taxpayer's
 Materials Survey to H.

On Date 42, Y, through H, emailed G its Date 43 _____ Survey by Firm 3, its
Date 44 Hazardous Material Survey Report by Firm 3, its Date 39 Utility Locate and
 Ground Penetrating Radar Survey Field Report by Firm 6 and requested that X provide
 a bid for performing the demolition as part of the _____. On Date
45, H emailed to G Y's Firm 7 survey for the Property. In response to Y's demolition
 specifications, on Date 46, X (through G) emailed a demolition proposal to Y for \$n17
 (beyond the original scope of \$n13 and not to include a No Further Remediation letter).

In his Date 47 email, G asked: “Also, when we spoke last week, you had said you
 thought your appraisal would be ready in about two weeks. Can you give me an update

on timing?" (). On Date 48, G asked H when Y needed an executive summary of Taxpayer's appraisal. On Date 49, H requested the appraisal executive summary by Date 50 (). She also asked who Taxpayer's new appraiser was. On Date 46, G provided Taxpayer's appraisal to H (). On Date 51, G furnished Taxpayer's draft appraisal and Form 8283 to H.

On Date 52, H advised G that Y had selected engineers for the Build project and provided the engineering firm's certificate of insurance. She also asked whether Taxpayer would extend the Right of Entry and Testing to allow the engineering firm to complete its testing. On Date 53, G provided Taxpayer's signed extension of the Right of Entry and Testing.

6. On Date 19, Firm 8 issued its Y Appraisal stating that Property has a \$n18 fair market value range as of Date 54.

On Date 19, Firm 8 issued its Y Appraisal stating that Property has a \$n18 fair market value range as of Date 54, with the fair market value range conditioned on the Property having no environmental issues or insufficient soil conditions that would negatively impact future development.¹⁶ Y Appraisal cites B's \$n5 purchase price, the of the purchase, the \$n10 purchase price credit that B received for Due Diligence Hazardous Substances, and B's Date 17 Letter of Intent in support for its \$n18 fair market value range.¹⁷

Y Appraisal states:

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(The reference to Date 55 is most likely a mistake based on the Date 28 date of an estimate that Taxpayer, through G provided Y's counsel H via G's Date 47 email (). The Date 28 estimate

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generally stated \$n13 to demolish the existing structures and another \$n14 to obtain a No Further Remediation Letter.)

Y Appraisal was “restricted,” which means that, while compliant with Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice for a Restricted Appraisal Report, it presents no discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser’s range of value. Supporting documentation is retained in the Appraiser’s file.¹⁹ Despite the general dearth of discussion, Y Appraisal states that the Sales Comparison Approach was used in valuing the Property and that the appraiser concluded that the highest and best use of the site was determined to be for _____ as demand warrants.²⁰ Y Appraisal concluded an \$n19 per square foot value range, subject to the above-mentioned condition.²¹

7. On Date 56, Y sent a letter to X offering to purchase fee simple title to the Property for \$n20.

On Date 56, Y sent a letter to X offering to purchase fee simple title to the Property for \$n20, contingent upon Y’s determination that the Property is in satisfactory environmental and geotechnical condition for the construction of a new Build. The offer enclosed a Right of Entry and Testing Agreement form and requested that X execute the form allowing Y to enter Property for due diligence purposes. On Date 57, X (by G) rejected Y’s offer but provided Y with an executed Right of Entry and Testing Agreement form (with different conditions from the form sent by Y) allowing Y to investigate and to test the Property.

8. On Date 21, Y filed its with respect to Property.

On Date 21, because of inability to agree as to compensation to be paid to B for title to Property, Y filed its _____ with respect to Property. The _____ further states that Y was unable to acquire Property by gift.²² In the _____, in addition to obtaining fee simple title to the Property and determination of _____, Y sought process against the parties named as defendants and that due notice according to law may be given to the owners of Property.²³ On Date 58, Y _____ with respect to Property in order to add mortgagee Bank 1 as a defendant to obtain clear title.

On Date 40, G sent H a draft section 170(f)(8) Acknowledgement Letter for Y to review and to consider executing. The letter stated:

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A cash payment in the amount of \$[X] was paid by us to you on the conveyance date and any remaining value of the property (above the \$[X] cash payment) is acknowledged by us as a contribution. Except for the cash payment described above, no other monies, goods or services were provided in exchange for your contribution of the property to us.

On Date 59, G requested Y's EIN, which H provided on Date 60 ().

On Date 61, G's co-counsel J emailed H and advised that he would be unable to attend the first status call set by the Court. He requested that H agree to reschedule the first status call. H declined to reschedule the first status call but advised that she would request a continuance "because we are working towards a settlement." On Date 61, J acknowledged her proposed continuance date (). On Date 43, G provided H the following language that he wanted in the Stipulation (): "

" On Date 44, Taxpayer entered his appearance through counsel.

9. X engaged K who issued a draft appraisal advising that Property had a \$n21 fair market value as of Date 62.

On Date 60, K issued an unsigned Appraisal Report ("K Draft Appraisal") with a draft water mark to Firm 4. The K Draft Appraisal states that Property had a \$n21 fair market value effective as of Date 62 with an "as is" valuation premise.²⁴ The K Draft Appraisal states, at p. 3, that it will be used to establish a valuation basis for a charitable contribution.

The K Draft Appraisal used the Sales Comparison Approach to determine its conclusion of a \$n21 fair market value with residential use as the highest and best use of the Property.²⁵ The K Draft Appraisal concluded that the fair market value of the Property was \$n22 (\$n23 per square foot), but reduced this amount to \$n21 based on demolition costs, rezoning and any needed remediation costs.²⁶

The K Draft Appraisal is based on the underlying assumption that a change would be allowed to support residential development
.²⁷ The K Draft Appraisal states:

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The K Draft Appraisal supports its assumption that _____ change would have been granted _____, by alleging that, prior to Z placing the Property on the market in Year 3, Z met with F and that F “expressed an openness to a change to allow residential use.”²⁹ Although the fact of the meeting is corroborated by an email chain forwarded by the Z’s selling agents L to X in Date 59,³⁰ the K Draft Appraisal acknowledges that F failed to confirm her openness to a change when K telephoned F’s office. The K Draft Appraisal further noted that it would likely take up to a year to receive _____ change approval.³¹

The K Draft Appraisal is also based on the underlying assumption that there is no hazardous material on or in the Property.³² The K Draft Appraisal states at p. 20: “**This report is made without consideration of any adverse environmental conditions.**” (Emphasis in the original.)

On Date 60, X engaged Firm 9 due to K’s withdrawal. He considered K to have a conflict of interest due to her previous work for City 1 and provided Firm 9 K’s draft appraisal.³³ In the initial contact email to Firm 9, taxpayer stated: “It turns out that she is too conflicted given she often does work for City 1 (as well as for us) and City 1 has _____.”³⁴ The K Draft Appraisal states that K had previously inspected the Property in Year 4 for an unrelated assignment.³⁵

10. On Date 45, Firm 9 issued its dual purpose Restricted Appraisal Report (“1st X Appraisal”) to B advising that Property had a \$n22 fair market value (for _____) and a \$n2 fair market value (for use as a non-cash charitable donation) as of Date 21 (for _____) and as of Date 63 (for use as a non-cash charitable donation).

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On Date 45, Firm 9 issued its dual purpose³⁶ 1st X Appraisal to B advising that the 1st X Appraisal would be followed by a detailed appraisal report by the end of Month. B provided the 1st X Appraisal to Y in the course of negotiations with respect to Property. On Date 64, Firm 9 issued its dual purpose³⁷ Appraisal Report (“2nd X Appraisal”) to B. X provided the 2nd Appraisal to the Exam Team in the course of its exam of his Year 3-Year 5 federal income tax returns. The Exam Team obtained the 1st X Appraisal from Y through its section 7602 third party contact with Y in the course of its exam of X’s returns. Except for the effective dates of the 1st and 2nd Appraisals, the 1st and 2nd X Appraisals arrive at the same conclusions with mere editorial differences and are described together in the paragraphs directly following this paragraph.

Both the 1st and the 2nd X Appraisals state that Property had a \$n22 fair market value and a \$n2 fair market value (for use as a non-cash charitable donation). Both the 1st and the 2nd X Appraisals are effective as of Date 21. The 1st X Appraisal is effective as of Date 63 (for use as a non-cash charitable donation). The 2nd X Appraisal is effective as of Date 65 (for use as a non-cash charitable donation). Both the 1st and the 2nd X Appraisals elaborated that Date 21 was the date of and that the expected date of donation would be within 60 days of the effective date of the appraisal.³⁸ **Both the 1st and the 2nd X Appraisals explained the \$n24 difference between the Date 21 and Date 63/Date 65 fair market values was based on the history of recent appreciation and anticipated continued appreciation through Date 63/Date 65, although the both the 1st and the 2nd X Appraisals acknowledged, at p. 8, that “the degree of appreciation between Month 2 and [Date 66] is not precisely quantifiable at this time, and is considered to be nominal and within the range of rounding that has been applied in this valuation.”** (Emphasis added.)

Both the 1st and the 2nd X Appraisals used the Sales Comparison Approach to determine its conclusion of a \$n22 fair market value and a \$n2 fair market value (for use as a non-cash charitable donation). Both the 1st and the 2nd X Appraisals concluded that the fair market value of the Property was as follows:

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See 1st X Appraisal, at p. 6, 40, and 65; 2nd X Appraisal, at p. 6, 40, and 66. The n25% discount was to allow for “the minor risk and time delay of _____.”³⁹ The 1st and 2nd X Appraisals’ valuation was based on the conclusion that the highest and best use of Property would be for _____.

_____ . The 1st and 2nd X Appraisals acknowledged that current _____ precluded _____ but opined that there was a reasonable probability of _____ to allow for _____.⁴⁰

In applying the Sales Comparison Approach, the 1st and 2nd X Appraisals concluded that X’s Date 1 \$n5 purchase price paid for Property was an aberration “a bargain sale ... not indicative of the market value of the [Property] as of the date of sale”⁴¹ stating with respect to the Date 1 purchase:

It is assumed that there was a _____ to dispose of the property by a certain date as excess real estate, which would be more indicative of a “disposition value” or perhaps liquidation pricing influence.⁴²

Both the 1st and 2nd X Appraisals also mistakenly explain the Date 1 \$n5 purchase price as in the context of an “auction.”⁴³

Finally, both the 1st and 2nd X Appraisals state under “Contingent and Limiting Conditions,” at p. 70:

No value impact consideration or analyses of environmental impairment or contamination will be or have been undertaken by the Appraiser unless specifically engaged to consider other expert opinions as part of the Agreement. ... In addition, no analyses have been made regarding any presence of toxic or hazardous waste, radon gas, the presence of Underground Storage Tanks (UST) or the possible environmental impact due to the leakage and/or soil contamination, noise impacts from other land uses, etc.

On Date 67, Firm 9 executed Part III, Declaration of Appraiser, of B’s Form 8283. Part 1, Information on Donated Property, of the Form 8283 reflects that B acquired Property on Date 64 in a Transaction, that he has a \$n4 basis in Property, that the amount received in the bargain sale was \$n3, and that Property’s appraised fair market value was \$n26 million.

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11. On Date 68, Taxpayer**the Property and**

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On Date 68, Taxpayer the Property Including all proceeds hereafter made resulting from proceeds to Bank 1 as pursuant to an Date 69 Loan Agreement between Bank 1 and Firm 4. Taxpayer . The Date 69 Loan Agreement allowed Bank 1 to make multiple Term Loans from time to time up to \$n27, although the on the Property stated that Bank 1's was limited to \$n22. Through the , Taxpayer added the Property to the collateral pool that secured the indebtedness under the Date 69 Loan Agreement. Section 5 of the

stated:

If all or any part of the [Property] are damaged, taken, or acquired, either temporarily or permanently, in any proceeding, , the amount of any award or other payment for such thereof, to the extent of the full amount of the remaining unpaid Indebtedness, is hereby assigned to the Lender... Such award or monies shall be applied on account of the Indebtedness, irrespective of whether such Indebtedness is then due and payable...

Taxpayer stated in his Date 70 response to IDR TEFRA-3, Question No. 4 that Bank 1 received the approximately \$n3 Payment with respect to the Property.

13. On Date 79, Y approved a Report to authorize settlement of the
in the amount of a \$n3 Payment.

On Date 79, Y approved a Report to authorize settlement of the
of Property in the amount of a \$n3 Payment. The
Report reflects that it authorizes the Attorney to execute documents to
, issue a check to the Treasurer of County, and to “sign tax forms to
acknowledge donation of property.”

On Date 80, J circulated Taxpayer's

. On Date 81, Y paid \$n3 to the County Treasurer by its check per the
and, on Date 82. H emailed a copy of the deposit slip for Taxpayer to attach
to his and indicated her agreement to it.

Also on Date 82, she transmitted to G Form 8283, Donee Acknowledgement,
executed by M on Date 82. By executing the Form 8283, Y acknowledged that Y
received "donated property" but did not acknowledging the claimed fair market value of
the "donated property." The form specifically states: "This acknowledgement does not
represent agreement with the claimed fair market value."

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ANALYSIS

1. **Once B and Y agreed to _____, B retained no further rights in Property and B should not be allowed to attribute additional value Property by way of a tax deduction on top of what has already been deemed _____.**

In the instant case, the difference between the \$n2 appraised value over the \$n3 Payment may not be considered a charitable donation.

The Date 21 _____ with respect to Property did not terminate X's property rights in Property. Under State 2 law, the _____ merely placed potential subsequent transferees on notice of the _____ with respect to Property.

The _____ case supports that the Service may assert that X lacked property rights in Property as of the Date 80 execution of the Stipulation. The Stipulation resolved arm's length negotiations

and initiated by Y's Date 56 offer to purchase Property for \$n20. The Stipulation reflects that the parties disagreed as to the fair market value of the Property and that the \$n3 Payment fell between Y's \$n18 fair market value appraisal of Property and X's \$n22 appraisal of Property. See Stipulation, at ¶¶ 9-11. In the Stipulation, B and Y settled their disagreement by agreeing that the _____ to be paid for B's transfer of Property to Y is \$n3. See Stipulation, at ¶ 12.

In State 2, _____ .” Such compensation shall be determined by a jury as provided by law. _____ The _____ Court of County is a court of competent jurisdiction over the _____ proceedings with respect to Property. Once B and Y agreed to _____, B retained no further rights in Property and B should not be allowed to attribute additional value to Property by way of a tax deduction on top of what has already been deemed _____ .

2. **Because the facts support that Y acted in good faith in the _____ with respect to Property, there is no reason for a court to look beyond the parties' Stipulation as to _____.**

The _____ case was a one-off opinion decided on the basis of the unique facts of the _____ bad faith in negotiations and the partnership's documented support for the _____ and intent to make a gift. In the instant case, the facts

support that Y acted in good faith in the Property.

with respect to

Notwithstanding disagreement as to the fair market value of the Property,⁶³ the relationship between Y's counsel (H) and X's counsel (G) was professional and cordial. H and G joked around, exchanged holiday greetings, and mutual statements that they had enjoyed working together and hoped to work together again after entry of the Order.⁶⁴ H regularly shared her knowledge of Y's internal meetings and plans for moving forward. The only instance of adversarial behavior occurred on Date 61 when G declined to fill out the Interview Form for Firm 3's Environmental Site Assessment, which Y had requested Taxpayer fill out.

Y exhibited transparency and cooperation in providing G advance notice that Y would consider _____ at its Date 20 meeting. This advance notice allowed G to prepare his Date 17 Letter of Intent to sell the Property for \$n11. Y also emailed a copy of Y's _____ to G and advised him that the usual process is for Y to make an offer based on an appraisal. Also, Y cooperated with X in obtaining appraisals and determining demolition and environmental remediation costs prior to Y's filing of its Date 21. Y accepted X's conditions in X's modified Right of Entry and Testing form. Y shared its research on demolition and environmental remediation costs⁶⁵ with X and requested that X provide a bid for performing the demolition as part of the _____ settlement. Y provided X Y's Firm 7 survey for the Property. Following _____, H cooperated with X's counsel to obtain mutually satisfactory continuance dates on behalf of the parties and her continuance requests reflected that Y's and X's counsel were working together toward settlement. She also incorporated changes that X wanted into her court filings.

Abundant evidence supports that Y did transmit its Environmental Site Assessment to X. Furthermore, abundant evidence supports a transparent and cooperative relationship between Y and X during the course of the _____ with respect to the Property.

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3. Because the facts support that X did not intend to make a gift, there is no reason for a court to look beyond the parties' Stipulation as to

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A. X cannot credibly argue for a \$n2 potential fair market value (on which to base a gift to Y) as of his Date 1 purchase of the Property.

The facts support that X did not intend to make a gift to Y.

X's Date 1 purchase of the Property for \$n5 coupled with direct evidence of F's support for "moving forward with Build use" of the Property as of Date 8 casts doubt on X's ability to argue for a \$n2 potential fair market value (on which to base a gift to Y) as of his Date 1 purchase of the Property. Taxpayer's legal bills reflect that Taxpayer was aware as of Date 8 that F was considering "moving forward with Build use" of the Property. Circumstantial evidence indicates that X bought the Property with full awareness of _____ of the Property and an intended use of the Property to support a section 170 deduction.

The K Draft Appraisal alleges that, prior to Z placing the Property on the market in Year 3, Z met with F and that F "expressed an openness to a _____." As an attempt to corroborate the fact of the meeting, X provided an email chain forwarded by the Z's selling agents L to X in Date 59.⁶⁶ In the email, L states:

Meeting with F went well. She is open minded and flexible on a _____ to mix the uses including _____ depending on the buyer. She will also give us a contact at _____ to discuss the project.

The email does not plainly state F's views on _____ the Property. The K Draft Appraisal acknowledges that F failed to confirm her openness to a _____ when K telephoned F's office. (The K Draft Appraisal reports that when K telephoned F's office, she was informed by N, an assistant to F, that "this F listens, she considers and she makes the best choice." N did not confirm F's Year 3 views on _____ the Property.) The 1st and 2nd X Appraisals do not allege that F ever supported a _____ change. The K Draft Appraisal's account of K's conversation with F's assistant indicates that it is doubtful that F would verify that she ever supported a _____. While not instructive as to F's Year 3 views on _____ the Property, a Date 84 news article yields some insight into F's views of the Build to be built on the Property and states the following:

Taxpayer's ability to support a \$n2 potential fair market value is also undermined by the Date 60 K Draft Appraisal, which concluded that the fair market value of the Property was \$n22 (\$n23 per square foot), but reduced this amount to \$n21 based on demolition costs, and any needed remediation costs.

The credibility of the \$n24 difference between the valuation of the Property for use versus for use as a non-cash charitable donation in the 1st and the 2nd X Appraisals is also doubtful. The \$n24 difference is explained by an expectation of appreciation between the Date 21 date of valuation for use and the Date 63/Date 65 dates of valuation for use as a non-cash charitable donation, although the both the 1st and the 2nd X Appraisals acknowledged, at p. 8, that "the degree of appreciation between Month 2 and [Date 66] is not precisely quantifiable at this time, and is considered to be nominal and within the range of rounding that has been applied in this valuation." The Date 66 reissuance of the X Appraisals reflects Taxpayer's attempt to comply with Treas. Reg. § 1.170A-13(c)(3)(i)(A), which generally required that an appraisal be made not earlier than 60 days prior to the date of contribution of the appraised property.

The Form 8283, Donee Acknowledgement, also fails to support a \$n2 potential fair market value. By executing the Form 8283, Y acknowledged that Y received "donated property" but did not acknowledge the claimed fair market value of the "donated property." The form specifically states: "This acknowledgement does not represent agreement with the claimed fair market value." Y has never acknowledged that Property has any value above \$n3 million.

Also, the \$n22 recovery limit in the Date 68 does not support the 1st and 2nd X Appraisals' \$n2 valuation of the Property. The underlying indebtedness originated in the Date 69 Loan Agreement, which allowed Bank 1 to make multiple Term Loans up to \$n27. The Date 68 merely allowed the debtor, Firm 4, to add the Property to the with respect to the Date 69 Loan Agreement. Furthermore, the Date 68 makes no statement as to the value of the Property, but rather states that Bank 1's recovery under the Date 68 is limited to \$n22. In fact, Bank 1's recovery under the Date 68 only amounted to only the \$n3 Payment.

B. X documented intent to sell the Property for \$n30 million as of Date 17 and failure to accept Y's offer to purchase the Property for \$n20 indicates an intent to hold out for \$n30 million and not to make a gift of a lower amount.

Taxpayer's Date 17 Letter of Intent to sell the Property for \$n11 reflects the price that X wanted and held out for throughout the . On Date 56, Y sent a letter to X offering to purchase the Property for \$n20. X's Date 57, flat rejection of Y's Date 56, offer reflects no intent to make a gift to Y. On Date 21, because of inability to agree

to be paid for the Property and that Y was unable to acquire Property by gift. The Stipulation reflects that, to the end, B and Y were at odds over the fair market value of Property. See Stipulation, at ¶ 11.

4. The Service's position that X lacked property rights in Property as of the Date 80 execution of the Stipulation is substantially justified.

Moreover supports that the Service would be in no danger of losing in a section 7430 motion for administrative and litigation costs. The Service's position that X lacked property rights in Property as of the Date 80 execution of the Stipulation is substantially justified based on the case and on the facts of the instant case that distinguish it from the case. In his Date 80 execution of the Stipulation, X agreed to of \$n3 for Property and was left with no further property rights in Property. The with respect to Property afforded B .” The case is distinguishable because Y acted in good faith in the with respect to Property.

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(Large Business & International)

By: _____
Kelly M. Davidson
Attorney
(Large Business & International)

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Please call if you have any further questions.