**Valuing Assets that are Hard to Value**

**South Puget Sound Estate Planning Council**

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**ROBERT V. BOESHAAR** is committed to helping individuals and small businesses who are facing problems with the Internal Revenue Service. He has a Master of Laws in Taxation degree (LL.M.) from the University of Washington and fourteen years of experience as an attorney with the IRS Office of Chief Counsel. He represented the IRS in over 40 litigated cases in the United States Tax Court. Robert is active in the legal community and has served as President of the Washington State Bar Association Taxation Section. He volunteers with the University of Washington Low-Income Federal Tax Clinic and is an active member of Seattle Rotary #4.

**Valuing Assets that are Hard to Value**

1. Artwork
   1. Internal Revenue Service Art Appraisal Services – IRM 4.48.2.1
      1. The Art Appraisal Services (AAS) provides advice and assistance to the Internal Revenue Service, other Government agencies, and taxpayers on valuation questions arising in connection with personal property and works of art. It also manages the IRS's Art Advisory Panel.
      2. The Art Advisory Panel (AAP) is composed of nationally prominent art museum directors, curators, scholars, art dealers, auction representatives, and appraisers who assist the IRS with cases involving taxpayer valuations of art objects – primarily paintings and sculpture.
      3. The Panel members review photographs or color transparencies, along with relevant documentation provided by the taxpayers and research by the staff appraisers, and make recommendations on the acceptability of the claimed values. They will also make their own value recommendations which, after review by AAS, become the position of the Internal Revenue Service.
      4. A taxpayer may request reconsideration of an adjusted claimed value by the AAS and the Panel if they provide additional evidence such as comparable sales data or other relevant facts to support their fair market value opinion. The taxpayer’s request must respond specifically to the report issued by AAS.
   2. When does the IRS use its Art Appraisal Services?
      1. The appraisers may participate in taxpayer conferences, may prepare a detailed expert report for use in Tax Court trials, and may testify as an expert witness in support of the report
      2. Most often for a single work of art with a claimed value of $50,000 or more, but will review art valued at under $50,000 in special cases and other art not referred to the Art Advisory Panel.
      3. May evaluate paintings, drawings, prints, sculptures, antiques, ceramics, decorative arts, textiles, carpets, silver, rare manuscripts, antiquities, ethnographic art, collectibles, classic automobiles, and historical memorabilia
   3. Copyrighted Art
      1. The donation of a copyrightable work of art to a qualified organization gives rise to an estate or gift tax charitable deduction even if the copyright is not transferred simultaneously to the charity.
      2. But if a copyright has been obtained, the copyright and the work of art are treated as one piece of property for income tax purposes. So, no income tax deduction is available unless both the artwork and the copyright are transferred. No charitable deduction is allowed for gift and estate tax purposes if the copyright is donated to charity and the art work is retained by the taxpayer. IRC §§ 2055(3)(4), 2511(c)(3).
   4. Animal Mounts
      1. Methods of valuation
         1. Market price. The fair market value of donated animal mounts is determined using comparable sales data. This can be used when the item is relatively common and has an established market.
         2. Replacement cost. To use the replacement cost method of valuation a taxpayer must show both that there is no active market for comparable items, and that there is a probative correlation between replacement cost and fair market value. This can be used for items that are rare or are collectibles, such as rare coins.
      2. Gardner v. Commissioner, T.C. Memo. 2017-165
         1. Mr. Gardner contributed 177 hunting specimens to the Dallas Ecological Foundation (DEF), a tax-exempt organization
         2. Relying on an appraisal he claimed a charitable deduction of $1,425,900. The IRS found that the value at most was $163,045.
         3. He contacted an appraiser, Dr. Fullington, who valued the items based on replacement cost. He added up the expected out-of-pocket expenses for
            1. traveling to the hunting site
            2. being on safari for the requisite number of days
            3. killing the animal
            4. removing and preserving the given body part
            5. shipping it back to the United States, and
            6. defraying the taxidermy costs of stuffing, mounting, and preparing the item for display.
         4. Dr. Fullington valued the tanned skin of a Central Asian sheep at $75,600 and a European mount of the horns of a desert bighorn sheep at $56,800. He arrived at a fair-market-value of the 177 specimens of $1,425,900.
         5. The Tax Court found for the IRS because Mr. Gardner did not establish the absence of an active market for comparable items and did not show that there was a probative correlation between replacement cost and fair-market-value.
         6. The Court also stated that Dr. Fullington’s appraisal ignored the personal pleasure Mr. Gardner derived from his safaris and noted that none of the 177 specimens was a world class, or unique, hunting trophy.
2. Conservation Easements
   1. Overview
      1. Allowance of Charitable Contribution Deduction
         1. The Internal Revenue Code, in general, denies a charitable contribution deduction for a contribution of an interest in property that is less than the taxpayer's entire interest in the property. I.R.C. § 170(f)(3). However, the Code makes an exception a qualified conservation contribution. If a taxpayer contributes a qualified real property interest to a qualified organization exclusively for conservation purposes, and the interest in property is conveyed by an easement which is protected in perpetuity, the contribution of the easement will qualify as a qualified conservation contribution. I.R.C. § 170(h), Treas. Reg. § 1.170A-14(b)(2)).
      2. Definition of Conservation Easement from IRS Audit Technique Guide:
         1. Conservation easement” is the generic term for easements granted for preservation of land areas for outdoor recreation, protection of a relatively natural habitat for fish, wildlife, or plants, or a similar ecosystem, preservation of open space for the scenic enjoyment of the public or pursuant to a Federal, State, or local governmental conservation policy, and preservation of a historically important land area or historic building.
         2. Conservation easements permanently restrict how land or buildings are used. The “deed of conservation easement” describes the conservation purpose(s), the restrictions and the permissible uses of the property. The deed must be recorded in the public record and must contain legally binding restrictions enforceable by the donee organization.
         3. The property owner gives up certain rights specified in the Deed of Conservation Easement, but retains ownership of the underlying property. The extent and nature of the donee organization’s control depends on the terms of the conservation easement deed. The organization has an interest in the encumbered property that runs with the land, which means that its restrictions are binding not only on the landowner who grants the easement but also on all future owners of the property. Restrictions in conservation easement deeds that are not binding on future owners of the property are not deductible as charitable contributions.
      3. Internal Revenue Code section 170(h)
         1. A Qualified Conservation Contribution is a contribution of
            1. a qualified real property interest,
            2. to a qualified organization,
            3. exclusively for conservation purposes.
         2. A qualified real property interest can be
            1. The entire interest of the donor other than a qualified mineral interest,
            2. A remainder interest, and
            3. A restriction (granted in perpetuity) on the use which may be made of the real property
         3. A qualified organization is a governmental unit, public charity or an organization controlled by either a governmental unit or a public charity.
         4. Conservation purpose means
            1. the preservation of land areas for outdoor recreation by, or the education of, the general public,
            2. the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
            3. the preservation of open space (including farmland and forest land) where such preservation is—

for the scenic enjoyment of the general public, or

pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or

* + - * 1. the preservation of an historically important land area or a certified historic structure.
    1. To be allowed a charitable contribution deduction for a qualified conservation contribution, the donor must, in the instrument of conveyance, prohibit the donee from transferring either
       1. The easement or
       2. The property, in the case of a remainder interest or a reservation of a qualified mineral interest, unless, as a condition for the later transfer, the donee requires that:
          1. The conservation purposes which the contribution was originally intended to advance will continue to be carried out after the later transfer (but if a later change in circumstances makes it impossible or impractical to continue the property's use for conservation, the property may be sold or exchanged, and the proceeds used by the donee in the manner consistent with the original conservation purpose); and
          2. The organizations that can be donees in the later transfers are limited to organizations that are qualified organizations at the time of the later transfer. (Treas. Reg. § 1.170A-14(c)(2)). Qualified organizations are defined in Code Sec. 170(h)(3).
    2. Conservation Easements can be at least partially excluded from one’s gross estate.
       1. I.R.C. section 2031(c) provides that if land is subject to a qualified conservation easement, and the executor of the estate makes the proper election, then a portion may be excluded from the gross estate.
       2. The portion excluded from the gross estate is the lesser of (a) the applicable percentage of the value of land subject to a qualified conservation easement, reduced by the amount of any deduction under section 2055(f) with respect to such land, or $500,000.
       3. The election is made under I.R.C. section 2031(c)(6) by filing Form 706, Schedule U – Qualified Conservation Easement Exclusion – and excluding any qualifying conservation easements from the gross estate.
  1. Reasons for Conservation Easements
     1. Farmers, ranchers, large timberland owners and other private landowners, businesses, and other land-holding entities can benefit from conservation easements. A landowner has many rights including the right to occupy, lease, sell, develop, construct buildings, farm, restrict access or harvest timber. A landowner can part with one or more of their ownership rights for a purpose such as conservation while retaining ownership of the remainder of the rights.
     2. Clients Who May Benefit from Conservation Easements
        1. Anyone with land they intend to leave undeveloped, such as a cabin or a second home, with property that has been in the family for years, or purchased for recreational uses such as hunting.
        2. The property may continue to be used for ranching or agricultural production.
        3. The property does not have to be unique or spectacular land
     3. Easements conserve wildlife habitat, wetland and streams, working forests and productive farmlands.
  2. Tax Issues
     1. In general, I.R.C. section 170(a) provides that an individual is allowed a deduction for any charitable contribution. Section 170(b)(1)(A) generally limits the amount of the deduction to 50% of the individual's contribution base. Donating taxpayers, in general, may carry forward a suspended donation to each of the five succeeding taxable years, subject to the 50% contribution base limitation. I.R.C. § 170(d)(1).
     2. The rule for a qualified conservation contribution (as defined in I.R.C. § 170(h)(1)) is that it shall be allowed to the extent the aggregate of such contributions does not exceed the excess of 50 percent of the taxpayer's contribution base over the amount of all other allowable charitable contributions. I.R.C. § 170(b)(1)(E)(i). The excess may be carried over to 15 succeeding years. I.R.C. § 170(b)(1)(E)(ii).
     3. If the individual is a qualified farmer or rancher for the taxable year for which the contribution is made, the contribution is allowed up to 100 percent of the taxpayer's contribution base. I.R.C. § 170(b)(1)(E)(iv). A qualified farmer is a taxpayer whose gross income from the trade or business of farming (as defined by I.R.C. sec. 2032A(e)(5)) is greater than 50% of his/her total gross income for the year. I.R.C. § 170(b)(1)(E)(v).
        1. Rutkoske v. Commissioner, 149 T.C. No. 6 (August 7, 2017). The Tax Court agreed with the IRS that the taxpayers were not "qualified farmers" pursuant to I.R.C. § 170(b)(1)(E). They did not make more than 50-percent of their income during the year from the trade or business of farming.
        2. The sale of their land and the sale of the rights to develop the land (i.e., the conservation easement bargain sale) were not activities listed in section 2032A(e)(5) and so did not constitute income from the trade or business of farming for purposes of section 170(b)(1)(E)(v). Therefore, they were limited by I.R.C. § 170(b)(1)(E)(i) to a charitable contribution deduction of 50% of their respective contribution bases with respect to the conveyed conservation easement.
     4. To claim a noncash charitable contribution deduction for the donation of a conservation easement, one must satisfy a number of statutory provisions. Some potential problems, which can cause denial of a conservation easement in an examination include:
        1. Failure to meet charitable contributions rules, for example the easement was granted for a change in zoning by the county, or a quid pro quo.
        2. Noncompliance with substantiation requirements.
        3. Inadequate documentation or lack of conservation purpose.
        4. Lack of perpetuity evidenced by terms in the deeds.
        5. Reserved property rights inconsistent with conservation purpose.
        6. Failure to comply with subordination rules.
        7. Failure to provide the donee organization with a proportionate share of the proceeds in the event of extinguishment.
        8. Use of improper appraisal methodologies and overvalued conservation easements.
        9. The IRS has also identified some promoters and appraisers involved in conservation easement tax schemes.
     5. Qualified Organization
        1. Internal Revenue Code section 170(h)(1) provides that a "qualified conservation contribution" must be a contribution to a "qualified organization."
        2. Treasury Regulation section 1.170A-14(c)(2) states that in the instrument of conveyance the donor must prohibit the donee from subsequently transferring the easement unless the donee organization, as a condition of the subsequent transfer, requires that the conservation purposes which the contribution was originally intended to advance continue to be carried out and subsequent transfers are restricted to organizations qualifying, at the time of the subsequent transfer, as an eligible donee under I.R.C. section 170(1).
        3. Salt Point Timber, LLC v. Commissioner, T.C. Memo. 2017-245 (December 11, 2017). The Internal Revenue Service disallowed a $2,130,000 deduction that Salt Point Timber LLC had reported for the charitable contribution of a conservation easement.
        4. The Tax Court held that a conservation easement wasn't a qualified conservation contribution because a poorly worded clause in the easement agreement allowed a transfer of any part of the property to an owner of an adjacent property, if the adjacent property was encumbered by a "comparable conservation easement", which would be amended to cover the transferred property. The Tax Court held that a “comparable conservation easement” did not necessarily mean an easement held by a "qualified organization".
     6. Conservation Purpose Must be Protected in Perpetuity.
        1. Internal Revenue Code section 170(h)(5)(A) provides that a contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.
        2. Palmolive Bldg. Investors, LLC v. Commissioner, 149 T.C. No. 18 (October 10, 2017). Palmolive acquired the Palmolive Building on North Michigan Avenue in Chicago, Illinois for $58,500,000. It executed an easement deed to preserve the exterior perimeter walls in favor of Landmarks Preservation Council of Illinois and claimed a contribution deduction based on a value of $33,410,000.
        3. The IRS argued, and the Tax Court agreed, that the façade easement deed did not satisfy the perpetuity requirement of I.R.C. section 170(h)(5)(A) because the mortgages on its property were not fully subordinated to the facade easements as required by Treas. Reg. section 1.170A-14(g)(2). Furthermore, the donee was not guaranteed to receive its proportionate share of the proceeds if the easement was extinguished and the property was sold. This violated Treas. Reg. section 1.170A-14(g)(6)(ii).
  3. Current Issues
     1. Façade Easements
        1. Definition – a façade easements is a grant or donation of an easement in a registered historic district or in a certified historic structure to a qualified organization for the purpose of preserving the appearance of the exterior of a building.
        2. Requirements
           1. A “Certified historic structure” is any building, structure, or land area which is listed in the National Register, or any building which is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.
           2. For a building in a registered historic district, a contribution of a conservation easement which is a restriction with respect to the exterior of a building must meet the following criteria in order to be considered to be exclusively for conservation purposes:

Include a restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of the building), and prohibit any change in the exterior of the building which is inconsistent with the historical character of such exterior.

The donor and done must enter into a written agreement certifying, under penalty of perjury, that the donee—(I) is a qualified organization (as defined in paragraph (3)) with a purpose of environmental protection, land conservation, open space preservation, or historic preservation, and (II) has the resources to manage and enforce the restriction and a commitment to do so, and

The taxpayer must include with their tax return for the taxable year of the contribution— (I) a qualified appraisal of the qualified property interest, (II) photographs of the entire exterior of the building, and (III) a description of all restrictions on the development of the building.

* + - * 1. It must meet these conditions either at the time of the transfer or on the due date (including extensions) for filing the transferor’s return under this chapter for the taxable year in which the transfer is made.
      1. Internal Revenue Code section 170(h)(4)(B) sets forth the rules for buildings in registered historic districts
      2. IRS Notice 2017-10 – Syndicated Conservation Easement Transactions
         1. In Notice 2017-10, the IRS has classified “Syndicated Conservation Easement Transactions” as reportable transactions that must be reported to the IRS pursuant to I.R.C. section 6111.
         2. In these transactions, an investor purchases an interest in a pass-through entity that holds real property. The promoters syndicate ownership interests in the pass-through entity that owns the real property. The pass-through entity that holds the real property contributes a conservation easement encumbering the property to a tax-exempt entity and allocates a charitable contribution deduction to the investor.
         3. The promoter of the transaction obtains an appraisal that greatly inflates the value of the conservation easement based on unreasonable conclusions about the development potential of the real property. This may provide a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the investor’s investment.
         4. Persons entering into these transactions on or after January 1, 2010, must disclose the transactions as described in Treas. Reg. section 1.6011-4.
      3. Kaufman v. Commissioner, T.C. Memo 2014-52, aff'd, 784 F.3d 56 (1st Cir. 2015).
         1. If market-place sales are not available to use as a valid comparison, the fair market value of a perpetual conservation restriction is generally equal to the difference between the fair market value of the property it encumbers before the granting of the restriction and the fair market value of the encumbered property after the granting of the restriction. Treas. Reg. § 1.170A-14(h)(3)(i).
         2. the absence of a market for perpetual conservation restrictions, the value (if any) of the taxpayers’ contribution of a facade easement had to be determined by the before-and-after method outlined in 26 C.F.R. §1.170A-14(h)(3)(i);
         3. The IRS argued, through its expert, that a typical buyer would find the restrictions of the preservation agreement no more burdensome than the underlying, existing historic district standards. The Tax Court found that the conservation easement did not reduce the value of the property, and so the façade easement had no fair market value when conveyed and taxpayers were not entitled to a deduction under I.R.C. section § 170.
         4. The Tax Court also found that the taxpayers could not escape the valuation misstatement penalties under I.R.C. sections 6662(a) and (b)(3).
    1. Conservation Easement Incentives Washington State – **Thurston County**
       1. In Thurston County, the assessed value of land may be based on the value of its current use instead of fair market value if the land is used for commercial agriculture, open space, or timber. When the land ceases to be used for these purposes, compensating taxes will be due.
       2. There are four current use classifications in Thurston County
          1. Designated Forest Lands that are devoted primarily to the growth and commercial harvest of forest crops (trees). There must be five or more contiguous acres devoted to the growth and harvest of trees (not including the space occupied by a residence).
          2. Open Space Farm and Agriculture that are devoted primarily to the production of livestock or agricultural commodities for commercial purposes.
          3. Open Space Timber Land that is devoted primarily to the growth and commercial harvest of forest crops (trees). There must be five or more contiguous acres and a Forest Management Plan is required.
          4. Open Space – natural resources and scenic beauty preserved for the public good. If they are inside Thurston County’s Urban Growth Area, you only need one or more acres, but if they are outside the Urban Growth Area there must be five or more acres.
       3. The compensating taxes are calculated as the difference of Current Market Value and the Current Use value times the tax rate times either a maximum of seven or nine years plus the current year.
       4. Compensating taxes will not be imposed if:
          1. The property is taken by Eminent Domain or threat thereof,
          2. The zoning changed so as to prevent continued use, or
          3. The property is transferred to a government entity or organization for open space
       5. See Thurston County Summary of Current Use Classifications at <www.co.thurston.wa.us/assessor/doc/currentuse/classification.matrix.pdf>.
    2. Conservation Easement Incentives Washington State – **King County**
       1. King County has four current use taxation programs. They offer a property tax reduction to landowners to voluntarily preserve open space, farmland or forestland on their property. The assessed value of the land will be based on the value of its current use instead of fair market value based on the “highest and best use.”
       2. King County’s programs are 1) Open Space (Public Benefit Rating System) which encourages voluntary resource conservation on private property, 2) the Timber Land program, 3) the Forestland program, and 4) the Farm and Agricultural land programs.
       3. There are over 1,405 landowners and 14,260 acres participating in the Open Space and Timberland programs.
       4. The Open Space program is designed for landowners wanting to protect or restore open space resources on their property. It is based on a point system. Properties qualify for points based on protecting buffers to streams and wetlands, ground water protection, preserving significant wildlife habitat, conserving farmland and native forestland, preserving historic landmarks, and more.
       5. The Timber Land program focuses on the sustainable management of commercial timber stands. The Timber Land program requires a property to have between five and twenty acres of manageable forestland that is devoted primarily to the growth, harvest, and management of forest crops for commercial purposes and is managed according to an approved forest stewardship plan.
       6. The Farm and Agricultural Lands program is for land used for the production of livestock or agricultural commodities for commercial purposes. To enroll, a landowner must meet financial requirements. See RCW 84.34.020.
       7. The Designated Forest Land Program is for properties that generate substantial revenue such as larger commercial forests. A landowner must have more than twenty acres of eligible forestland. See RCW 84.33.

1. How to Stay Out of Trouble
   1. Get a Qualified Appraiser – I.R.C. section 170(f)(11)(E)
      1. A qualified appraisal must be conducted by a qualified appraiser in accordance with generally accepted appraisal standards and IRS guidance.
      2. A “qualified appraiser” is an individual who has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements (such as by being licensed or certified in the state in which the appraised real property is located), regularly performs appraisals for which the individual receives compensation, and meets such other requirements as may be prescribed by the Secretary in regulations or other guidance.
      3. An individual shall not be treated as a qualified appraiser with respect to any specific appraisal unless the individual demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and the individual has not been prohibited from practicing before the Internal Revenue Service by the Secretary under Title 31, section 330(c) during the three years prior to the date of the appraisal.
      4. To demonstrate that they meet the educational requirements, an appraiser should make a declaration in the appraisal that, because of the appraiser’s background, experience, education, and membership in professional associations, the appraiser is qualified to make appraisals of the type of property being valued.
   2. Get a Qualified Appraisal – I.R.C. section 170(f)(11)(E), Treas. Reg. § 1.170A-13(c)(3). For a “qualified appraisal,” the appraisal document must:
2. Be made no more than 60 days prior to the date of contribution of the appraised property and must be received by the donor before the due date (including extensions) of the return on which a deduction is first claimed
3. Be prepared, signed, and dated by a qualified appraiser (within the meaning of paragraph (c) (5) of this section); and
4. The fee for the appraisal cannot be based on a percentage of the appraised value of the property
5. The appraisal also must include the following information:
   * + 1. A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was (or will be) contributed;
       2. In the case of tangible property, the physical condition of the property;
       3. The date (or expected date) of contribution to the donee;
       4. The terms of any agreement or understanding entered into (or expected to be entered into) by or on behalf of the donor or donee that relates to the use, sale, or other disposition of the property contributed,
       5. The name, address, and identifying number of the qualified appraiser; or, if applicable, the partnership or person employing the appraisal
       6. The qualifications of the qualified appraiser who signs the appraisal, including the appraiser's background, experience, education, and membership, if any, in professional appraisal associations;
       7. A statement that the appraisal was prepared for income tax purposes;
       8. The date (or dates) on which the property was appraised;
       9. The appraised fair market value of the property on the date (or expected date) of contribution;
       10. The method of valuation used to determine the fair market value; and
       11. The specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for, and an explanation of, such method.
6. Potential liability of Appraiser
   1. Any appraiser who falsely or fraudulently overstates the value of the contributed property that the appraiser has signed may be subject to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability and, moreover, may have appraisals disregarded pursuant to 31 U.S.C. 330(c).
   2. The appraisal should include a statement such as this:

“To the best of my knowledge and belief, the statements of fact contained in this report are true and correct. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions. I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest with respect to the parties involved. I have no bias with respect to the subject of this report or to the parties involved with this assignment. Moreover, my compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.”

For an example, see: <https://www.appraisalinstitute.org/assets/1/7/guide-note-13.pdf>.

* 1. Avoid Penalties
     1. I.R.C. Section 6662(e). Valuation Misstatement.
        1. Internal Revenue Code section 6662(a) provides for an accuracy-related penalty in the amount of 20 percent of the portion of any underpayment attributable to, among other things, negligence or intentional disregard of rules or regulations, any substantial understatement of income tax, or any substantial valuation misstatement. A substantial valuation misstatement exists when the claimed value of any property is 150% or more of the amount determined to be the correct value.
        2. Internal Revenue Code section 6662(h) imposes a 40% accuracy-related penalty if the underpayment of income tax is attributable to a gross valuation misstatement. A gross valuation misstatement occurs when the claimed value of any property is 200% or more of the amount determined to be the correct value.
        3. Reasonable Cause Defense. To establish a reasonable cause, good-faith defense to a valuation misstatement penalty, the reported value of the property must be based on a "qualified appraisal" by a "qualified appraiser" and the taxpayer made a good-faith investigation of the value of the contributed property. I.R.C. § 6664(c)(2) and (3).
        4. Appraiser Penalty. Internal Revenue Code Section 6695A. A penalty may be imposed on any person who prepares an appraisal of the value of property that the appraiser knows (or reasonably should have known) is to be used in connection with a return or a claim for refund, and such appraisal results in a substantial or gross valuation misstatement. The amount of the penalty is the lesser of:
           1. The greater of 10% of the amount of the underpayment attributable to the misstatement or $1,000, or
           2. 125% of the gross income received from the preparation of the appraisal.
           3. The penalty does not apply if the appraiser establishes that it was "more likely than not" that the value established in the appraisal was correct. IRC § 6695A(c).

1. Intangible Property
   1. Amount of Deduction for Intangible Property
      1. Generally, the deduction for a contribution of property is its fair market value. However, for intellectual property, such as patents, you must reduce the fair market value by any amount that would have been long-term capital gain if the property had instead been sold. I.R.C. § 170(e)(1).
      2. The fair market value of taxidermy property is also reduced by any amount that would have been long-term capital gain if the property had instead been sold. 170(e)(1)(B).
      3. The reduction of the charitable deduction is designed to approximate a constructive sale of the property followed by a donation of the proceeds of the sale.
      4. This reduction is not required if the taxpayer includes the ordinary or capital gain income in his or her gross income in the same year as the contribution is made. Treas. Reg. § 1.170A-4(a).
      5. Example: A donation of computer software that is worth $500 on the day it is donated, but the donor only paid $300 for it (their basis). Since there is $200 of appreciation, the deduction is limited to $300.
   2. Valuation of Intangible Property – IRM 4.48.5 Intangible Property Valuation Guidelines
      1. The IRM defines intangible property as (but is not limited to) a commercially transferable interest in any items in the following six categories:
         1. Computer software
         2. Patents, inventions, formulae, processes, designs, patterns, trade secrets, or know-how
         3. Copyrights and literary, musical, or artistic compositions
         4. Trademarks, trade names, or brand names
         5. Franchises, licenses, or contracts
         6. Methods, programs, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data
         7. Other similar items
      2. These interests may include contractual/exploitation rights or fractional, geographic, or exclusive/non-exclusive interests.
      3. Patents – the fair market value of a patent depends on whether the patented technology has been made obsolete by other technology, any restrictions on the donee's use of, or ability to transfer, the patented technology; and the length of time remaining before the patent expires.
      4. Note that special scrutiny is given to valuations of assets owned and/or transferred by or between controlled taxpayers (within the meaning of Treasury Regulation section 1.482-1(i)(5)).
   3. Kinds of Intangible Property Susceptible of Valuation – IRM 4.48.5.2.3
      1. Valuators should begin with a general definition and analysis of what constitutes the intangible property because it can assume many forms. To have economic value, intangible property should:
         1. Be subject to specific identification and recognizable description
         2. Be subject to legal existence and protection, which may be incorporated within a larger entity
         3. Be subject to private ownership and be legally transferable
         4. Generate some measurable amount of economic benefit
         5. Potentially enhance the value of other assets with which it is associated
      2. The description of the property should clearly identify the particular intangible property being valued. The description should be unambiguous and provide a complete identification of relevant transactions, and geographic scope of the property, where applicable. It may also specify physical, functional, technical, or economic parameters to identify the particular intangible property.
      3. The valuator should be aware that certain kinds of intangible property are also referred to as intellectual property. Intellectual property is often registered under federal and state statutes for protection. This may create legal and economic attributes that relate to value.
   4. Valuation Analysis for Intangible Property – IRM 4.48.5.2.4
      1. In developing a valuation conclusion, valuators should analyze the relevant information necessary to accomplish the assignment. All factors that affect the value should be considered including:
         1. An in-depth analysis of all rights and risks of ownership
         2. The market conditions near the valuation date
         3. The near-term and long-term market demand for the subject property
         4. Effects of relevant contractual or legal restrictions
         5. Whether the property needs additional development
         6. If the property needs additional development, the length of time required to get the property to market
      2. The specific valuation approach, such as market, cost, or income should be appropriate. Judgment should be used to select the approach(es) ultimately used and the method(s) within such approaches that best indicate the value of the property. The relationship between these approaches and fair market value must be demonstrated.
      3. Some fundamental methods utilized to value intangible property include:
         1. Market based methods rely on identification of similar intangible property sold under similar conditions. This method requires the existence of an active market involving comparable property, e.g., royalty rates in arms-length transactions. The market approach should consider the identification and justification of:
            1. The existence of an active market involving comparable intangibles
            2. Past transactions of comparable intangibles
            3. Price information for comparable transactions
            4. Arm's length transactions between independent parties
2. Cost-based methods estimate the cost to reproduce/replace or to pay to purchase the subject intangible (the "make or buy" decision), using historical costs, or reproduction costs.
   * + - 1. The cost approach begins with an estimate of the cost to reproduce the intangible.
         2. The cost approach for estimating fair market value may be difficult to apply due to quantification problems related to economic obsolescence or future income potential.
3. Income-based methods focus on the income-producing capacity of intangible property. The present value of the net economic benefit to be received over the life of the asset (cash receipts less cash outlays) can estimate the value. The income method relies on estimates, future earnings, the duration of income streams, and risks associated with the realization of the forecasted income. The income approach usually computes the net present value (NPV) of the intangible by use of the discounted cash flow (DCF) method. The income approach considers:
   * + - 1. The income generation capacity of the subject intangible and forecasts the future stream of earnings or cash flow
         2. The expected remaining useful life of the intangible, how long the economic benefit is expected to continue, which may depend on product life cycle: introduction, growth, maturity, and decline
         3. The risk associated with receiving anticipated benefits, as may be measured by the discount rate reflecting the opportunity cost of capital, inflation, liquidity, real interest, and risk premium
4. Monte Carlo (or probabilistic) methods are similar to discounted cash flow methods except that they rely on probability analysis of estimated ranges to produce a statistical prediction of the expected value.
5. Option valuation methods apply to longer term and higher risk intangibles when early expenses are significant, and projected returns are in the distant future.
   * 1. The valuator should identify potential comparable properties.
     2. The final opinion of value should reflect the appropriateness of each method, and the veracity and reliability of the data supporting each method, leading the reader logically to the final opinion of intangible value. It should ensure applied methods' results yield similar levels of value, reconcile the results, and set forth all assumptions and limiting conditions affecting the analyses, opinions, and conclusions.
6. Valuation of Interests in a Business
   1. General Rules
      1. The fair market value of an interest in a business is the amount that a willing buyer would pay for the interest to a willing seller after consideration of all relevant factors. The relevant factors include
         1. the fair market value of the business’ assets
         2. the demonstrated earnings capacity of the business, based on a review of past and current earnings
         3. any other applicable factors used in valuing corporate stock,
         4. the value of the business’ goodwill.
      2. It is important to keep all information on which the valuation is based. This includes copies of reports of examinations of the business made by accountants, engineers, or any technical experts on or close to the valuation date.
   2. IRS Business Valuation Guidelines – IRM 4.48.4.2.3
      1. In developing a valuation conclusion, valuators should analyze the relevant information necessary to accomplish the assignment including:
         1. The nature of the business and the history of the enterprise from its inception
         2. The economic outlook in general and the condition and outlook of the specific industry in particular
         3. The book value of the stock or interest and the financial condition of the business
         4. The earning capacity of the company
         5. The dividend-paying capacity
         6. Existence or non-existence of goodwill or other intangible value
         7. Sales of the stock or interest and the size of the block of stock to be valued
         8. The market price of stocks or interests of corporations or entities engaged in the same or a similar line of business having their stocks or interests actively traded in a free and open market, either on an exchange or over-the-counter
         9. Other relevant information
      2. The three generally accepted valuation approaches are the asset-based approach, the market approach and the income approach. Consideration should be given to all three approaches. Professional judgment should be used to select the approach(es) ultimately used and the method(s) within such approach(es) that best indicate the value of the business interest.
      3. Historical financial statements should be analyzed and, if necessary, adjusted to reflect the appropriate asset value, income, cash flows and/or benefit stream, as applicable, to be consistent with the valuation methodologies selected by the valuator.
      4. The valuator should select the appropriate benefit stream, such as pre-tax or after-tax income and/or cash flows, and select appropriate discount rates, capitalization rates or multiples consistent with the benefit stream selected within the relevant valuation methodology.
      5. The valuator will determine an appropriate discount and/or capitalization rate after taking into consideration all relevant factors such as:
         1. The nature of the business
         2. The risk involved
         3. The stability or irregularity of earnings
         4. Other relevant factors
      6. As appropriate for the assignment, and if not considered in the process of determining and weighing the indications of value provided by other procedures, the valuator should separately consider the following factors in reaching a final conclusion of value:
         1. Marketability, or lack thereof, considering the nature of the business, business ownership interest or security, the effect of relevant contractual and legal restrictions, and the condition of the markets.
         2. Ability of the appraised interest to control the operation, sale, or liquidation of the relevant business.
         3. Other levels of value considerations (consistent with the standard of value in Section 4.48.4.2.2 (1) list item g) such as the impact of strategic or synergistic contributions to value.
         4. Such other factors which, in the opinion of the valuator, that are appropriate for consideration.
      7. IRM 4.48.4.4.3 Statement. Each written valuation report should contain a signed statement that is similar in content to the following: To the best of my knowledge and belief:
         1. The statements of fact contained in this report are true and correct.
         2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions.
         3. have no present or prospective interest in the property that is the subject of this report, and I have no personal interest with respect to the parties involved.
         4. I have no bias with respect to the subject of this report or to the parties involved with this assignment.
         5. My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.
         6. My analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the applicable Internal Revenue Service Valuation Guidelines.