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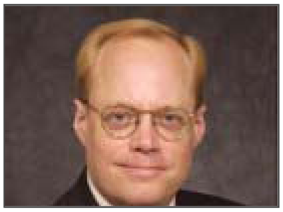

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THE TAX LAWYER

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Couple Finds $10 Million In Gold Coins; Taxes Take Half

An anonymous couple in California's "gold country"—named after the 1849 Gold Rush—found $10 million in rare gold coins buried in cans on their property. Why stay anonymous? They don't want people digging on their property. After all, this is the biggest and best coin discovery in U.S. history. So said Davis Hall of Professional Coin Grading Service which authenticated the find.

Walking their dog as usual, the couple noticed a rusty metal can sticking out of the ground. A little digging revealed over 1,400 rare and perfectly preserved U.S. gold coins dated from 1847 to 1894. Most were minted in nearby San Francisco. In $5, $10 and $20 denominations, they add up to a face value of more than $28,000, but their market value is likely over $10 million.

It makes them the best treasure find ever. Approximately 90% of the coins will go up on Amazon.com's "Collectibles" site, according to Don Kagin, of Kagin's, Inc., who is assisting the anonymous owners. The couple said they plan to keep some of the coins and sell others, donating part of the proceeds to charity.

(AP Photo/Reed Saxon)

But they haven't said anything about the IRS and the hungry state of California. Will the IRS and the state get a piece? You bet. In tax lingo, this is called "treasure trove," a term that actually appears in the tax law.

It is just one example of the astounding breadth of the U.S. concept of what's income for tax purposes. The most famous case on treasure trove is *Cesarini v. United States*. Mr. Cesarini bought a used piano for $15 and found nearly $5,000 in cash inside. Imagine his surprise and delight over such good luck!

But then the IRS said it was taxable income. Mr. Cesarini went to court over it, but the court agreed with the IRS. Mr. Cesarini appealed, but the Sixth Circuit Court of Appeals agreed too. See *Cesarini v. United States*. But does this mean the gold will be taxed? Unfortunately, yes.

Income taxes don't apply to gifts, but this wasn't a gift. And there are few other exclusions from income. Perhaps the couple might argue that they lost and later found the gold? After all, if you get something *back* that was really yours, it generally shouldn't be income. That tax rule is no help here since this is old gold and clearly predated the couple and their ownership of the land.

That makes it different from art stolen by the Nazis and later recovered. There, if you can prove it's yours, it's not taxed. Well, unless you deducted the loss on your taxes. Under the tax benefit rule, if you claimed a tax benefit in the past, you must take the item back into income when you recover it.

So the bottom line for the gold country couple with the big find? The couple will probably have no choice but to report the value of the gold on their taxes. The rules are the same for California taxes, too. And while they still made an astounding find, taxes can be an unpleasant surprise.

Amazingly, giving to charity to make it even worse, as sometimes happens with prize money. You can decline a prize and avoid all taxes. But if you ***accept*** it and ***then*** donate it to charity, you can't.

The tax rules aren't parallel so you end up paying tax on money you gave away. Even if you immediately give it to charity, you can only deduct charitable contributions up to 50% of your "contribution base"—generally your adjusted gross income. Thus, if you win $1 million and have no other income, you can deduct only half even if you give it all away.

The limit is even lower (30%) for gifts to certain private non-operating foundations, veterans organizations, fraternal societies and nonprofit cemeteries. You can carry over excess deductions from one year to the next, and you have five years to use it up. In the meantime, though, you are paying tax on money you've given away.

The fact that you must take the winnings into income means you also may lose other deductions and personal exemptions. Even if you give all the prize money to charity, you end up paying more taxes than if you had never received the cash. It's just another example of our terribly complex–and not very forgiving–tax law.

As for me, I'm off to walk my dog—in the Gold Country.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.