PERSPECTIVE

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Good News, You Found Something Valuable. Bad News, IRS Will Tax It

By Robert W. Wood

According to the IRS and the California Franchise Tax Board, money or valuables you find are taxable, even if you just happen upon something by pure luck. In fact, you are taxable on the value of the item based on its fair market value even if you don't sell it to turn it into cash. Perhaps that is just one more facet of the seemingly ever-present rule that when it comes right down to it, just about everything is fair game for the IRS.

The item you find could be almost anything, sunken treasure or valuables buried in your back yard. Most people think of sunken treasure like gold coins or bullion. Amazingly, though, all manner of items you find may fall within this rule, and even old whiskey is sometimes recovered. If it is well preserved, it can be invaluable. In 2021, a single bottle of scotch that was salvaged from the SS Politician off the coast of Scotland brought £12,925 at auction.

More recently, 280 barrels of American whiskey could now be salvaged from a 170-year-old shipwreck, the Westmoreland, which sunk in 1854 in Lake Michigan. Forbes calculated that the 280 barrels could produce up to 56,000 bottles. And based on the possible per bottle cost, the sunken whiskey could be worth an eye-popping $871 million. Of course, no one knows for sure how much, if anything, the rare whisky might be worth until it is recovered and tested. Some people may want it, but not to drink.

As first reported by The Mirror, one regional distillery is interested in using the recovered whiskey for scientific research. In any event, permits are required for the removal of any artifacts from Lake Michigan, and the process could take years. Then, if the rare liquid is brought to the surface at last, do they really have to worry about looking over their shoulder for the IRS?

Yes, they do. Whether it is diamonds you find, gold bars or nuggets you discover, or just about anything else, it's taxable according to *Cesarini v. United States*, 296 F. Supp. 3 (N.D. Ohio 1969). That was a tax case involving a man who bought a used piano for $15, and found $5,000 in cash inside. When the IRS said it was taxable income, Mr. Cesarini went to court. He tried to push back on Uncle Sam's cash grab, but in the end, the IRS won.

The IRS calls finds like this "treasure trove" and says you have to value it and declare it as income. So some people even have to sell their discovery to be able to pay the tax.

How about catching a record-setting baseball? You might be surprised at how many academic and not so academic debates there are between tax professors, accountants and tax lawyers about catching a valuable baseball. Most have never caught one, but they (we) sure like to talk about it.

Same rule as the sunken treasure, right? Not so fast, many tax people say. While it is hard to draw principled distinctions between sunken treasure and a rare fly ball, some say the treasure trove rules should not apply to baseballs. They say that an individual who catches a game ball should only be taxed when the ball is sold. Of course, it's clearly taxable then.

Aaron Judge hit a record-setting 62nd homer on October 4, 2022, against the Texas Rangers at Globe Life Field in Arlington, Texas. A lucky Cory Youmans caught the ball in the left-field seats but decided to sell it. He turned down a private offer of $3 million for the ball and put it up for auction by Goldin Auctions. It sold for $1.5M, and there were auction costs of $250,000, making the taxable gain $1.25M.

It makes sense that getting cash is always going to be taxable, but income on catching the ball itself is something that most taxpayers would push back on. In any event, taxes more certainly apply later, depending on what the lucky fan does with the ball. And if the fan sells it, well, cash it taxable. How about keeping it until death?

Over the lifetime exemption amount (which right now is a hefty [$12.92 million] per person), the IRS could get tax on death via the estate tax. In fact, about the only way a recovery is tax-free is if you recover your *own* property, something like art stolen that is later recovered. If you can prove it's yours and you are just getting it back, it should not be taxed.

But even then, under the "tax benefit rule," if you originally claimed a tax deduction for theft or loss of the property, you must include the value of the recovered property in your income when you get it back, at least if you derived a tax benefit from the deduction you claimed. Sometimes, those assessments can be complex.

What if you find something valuable, but then immediately give it to a qualified charity? You might think that would fix the tax problem neatly, but the IRS has an answer there too. In fact, giving to charity can sometimes make the tax problem 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, there are limits. That is, even if you immediately give it to charity, you can generally only claim charitable contributions on your taxes up to 60% of your contribution base, generally your adjusted gross income.

The limit is lower (30%) for gifts to certain private non-operating foundations and certain other kinds of nonprofit organizations. You can carry over excess charitable contribution deductions from one year to the next, and you have five years to use it up. In the meantime, though, it can mean that you are paying some tax on the valuable item you found or the prize money you won, even though you gave the whole thing to a public charity.

These tax rules may sound daunting, but there is still the allure of buried treasure!

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