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$8.5 Million IRS Penalty Upheld Over Timeshare Donation Tax Shelter

Timeshares have long been controversial, and there have been numerous lawsuits about them. Even getting *out* of timeshare deals has become a kind of industry. But it turns out that one way of getting out of timeshares might even be worse than just riding them out. The Justice Department announced that a federal court in Montana sustained the IRS in slapping almost $8.5 million in penalties on James Tarpey, a Montana-based attorney. The penalty is for promoting a tax shelter involving improper deductions for donating timeshares. The tax case goes back to 2015, when the government initially filed a lawsuit to enjoin Tarpey and others from engaging in a scheme of purportedly donating timeshare interests for large tax deductions. The court permanently barred Tarpey from promoting the timeshare donation scheme. The court also ruled that Tarpey made false statements resulting in tax avoidance.

Tarpey agreed to an injunction in 2016, which is still in effect. According to court documents, Tarpey formed Project Philanthropy Inc. dba Donate for

Cause (DFC) as a non-profit organization in 2006. The idea was to have timeshare owners who faced burdensome timeshare fees and expenses to donate their unwanted timeshares to the “charity” for a tax write-off. The court found that Tarpey and others prepared appraisals for timeshares that were donated to DFC, and that Tarpey promised potential customers generous tax savings from donations of their unwanted timeshares. In a March 2019 order, the court concluded that the Treasury Regulations disqualified Tarpey and his appraisers from conducting timeshare appraisals for DFC because they were not independent. The court also concluded that the false appraisals resulted in tax avoidance, and that Tarpey knew, or had reason to know, that he made false statements.

But the precise penalty Tarpey would face was not clear until December of 2021. In its final order, issued Dec. 16, the court ruled on the amount of the penalty. The court found that the gross income amount that Tarpey derived from the entire scheme was at least $19,623,437, and this would lead to a penalty of over $9.8 million. However, the court agreed with the United States to limit the penalty against Tarpey to $8,465,000 (plus interest).

The fallout from tax shelters can be severe, and not just for the promoters. The victims often have their deductions disallowed, and penalties added that can be large. In the case of charitable contributions, there are some fixed rules. If you make a property contribution worth $250 or more, you must also retain a statement by the charity describing the property and its value. If your noncash contributions for the year total over $500, you must complete IRS Form 8283, Noncash Charitable Contributions, and attach it to your return. See Form 8283, Noncash Charitable Contributions. For the IRS Instructions to Form 8283 click here.

If you donate an item (or a group of similar items) worth more than $5,000, you must also complete Section B of Form 8283, which requires an appraisal by a qualified appraiser. A "qualified appraiser" must meet IRS criteria, so allow time for these formalities. For additional explanation of these and other charitable contribution rules, see IRS Publication 526, Charitable Contributions. If you want the IRS's take on valuation issues and how to value noncash items, see IRS Publication 561, Determining the Value of Donated Property. If you are fighting about value, have some proof. But you'd be surprised how many taxpayers get into tax fisticuffs, whether over income, property, estate, gift or sales tax, without good ammunition.

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