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Beware: Sometimes ‘Bargain Sales’ Are No Bargain

A “[bargain sale](#)” usually means a tax deduction. You sell on the cheap to a charity, and what you don’t get in sales price you get in a [charitable contribution deduction](#). That’s the theory, and often it works just fine, subject to the inevitable technical details.

Often, but not always, and some people get greedy. Some charities may play along. In [Cohan v. Commissioner](#), the Tax Court said no to a deal involving a lovely 220-acre farm on Martha’s Vineyard.

In 1969, the Cohan family sold most of it to the Wallace family, retaining rights of first refusal to preclude development. But times change. By the mid 1990s, the Wallaces wanted a subdivision so the Cohans banded together in the HCAC partnership to hold their rights of first refusal and oppose development.

In 2001, the Wallaces and HCAC heard The Nature Conservancy (“TNC”) was interested in the farm given its unique maritime location. TNC would purchase the property from the Wallaces and the rights of refusal from HCAC. In an October 10, 2000 agreement, TNC promised HCAC 12 types



of payments. The deal was finalized on June 29, 2001, and an appraiser appraised portions of the property at \$8.34 million.

Following additional negotiations, an appraisal valued the rights of first refusal at \$14 million and the TNC consideration at \$11,931,755. That left a bargain sale charitable deduction of \$2,068,245. TNC provided HCAC with a letter in December 2001 saying there were “no goods or services provided” other than the specified consideration.

HCAC claimed its deduction but the IRS audited and denied it. In a bargain sale, the charity **must** disclose the items transferred and must make a “good-faith estimate of the value of the benefit it gave to the taxpayer.” See [IRS Publication 1771 Charitable Contributions – Substantiation and Disclosure Requirements](#). Here, the TNC letter omitted substantial consideration.

Ruling there could be no deduction the court said it looked like TNC and HCAC **consciously** omitted consideration and hoped they would not get caught on audit. In a last ditch effort to avoid penalties, HCAC claimed it should be able to rely on the TNC gift letter. Not with these big omissions, said the court.

These taxpayers did not comply with the rules and failed to disclose the full consideration. Bargain sales involve money plus a charitable element. Valuations are key, as is being above-board. Here, there was no bargain sale deduction and penalties were appropriate.

For more, see:

[Substantiating Charitable Contributions](#)

[IRS Still Fighting Conservation Tax Breaks](#)

[Fancy Appraisals Can Defeat IRS](#)

[Burn Baby Burn \(But Don't Deduct\)](#)

[Getting Taxed Despite Giving To Charity](#)

[Giving To Charity? Great. Staying Off IRS Radar? Priceless](#)

[Is Occupy Wall Street Tax Deductible?](#)

[Conservation Easement Audit Techniques Guide](#)

[An Updated Look At Conservation Easements](#)

[Mortgage Kills Façade Easement Tax Deduction](#)

[Conservation Easements: Quid Pro Quo Revisited](#)

[Conservation Easements, the IRS & Charity](#)

[Courts to IRS: Ease up on Conservation Easement Valuations](#)

[Rich “Conservation Easement” Tax Break Ends](#)

[Secure a Conservation Easement Now!](#)

[Conservation Easements, Valuation, and Substantiation](#)

[Conservation Easements Conserve Taxes and More](#)

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