

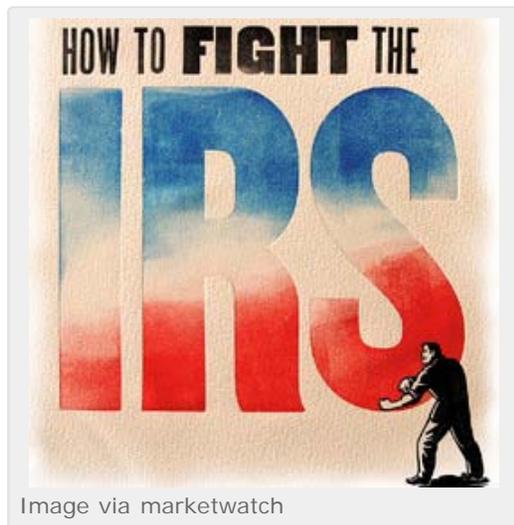


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THE TAX LAWYER

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Fancy Appraisals Can Defeat IRS



If you are fighting about value, have some proof. This sounds like obvious advice, much like putting on shoes before walking through broken glass or not eating food bearing a long past expiration date. But you'd be surprised how many taxpayers get into tax fisticuffs, whether over income, property, estate, gift or sales tax, without good ammunition.

Across the board, valuation matters. Contemporaneous appraisals can be

worth a lot. Retrospective appraisals—done after the fact and purporting to express value as of a date in the past—are never as persuasive as appraisals done contemporaneously. A good reminder of this truism is the big slap-down the IRS got from the Ninth Circuit Court of Appeals in [*Estate of Petter v. Commissioner*](#).

Ms. Petter did some slick estate planning combining appraisals, valuation discounts, and gifts to charity. First she transferred a whopping \$22M of UPS stock to a limited liability company (LLC), giving some units and selling others to her children. Putting assets—including public company stock—into a partnership or LLC is a common way to make ownership and control more diffused.

Key hits to values known as “discounts” are claimed by the donors for lack of marketability, lack of control, etc. By putting the UPS stock in the LLC, Ms. Petter claimed a whopping 51% discount from the market value of the stock. The IRS said that was excessive. Ms. Petter and the IRS eventually settled for a 36% discount.

The question was whether Ms. Petter owed gift tax when her discount dropped from 51% to 36%. No, said the Ninth Circuit, ruling against the IRS. Ms. Petter had specified that if there was a valuation dispute, the extra dollars would **automatically** go to her chosen charity, **not** to the IRS. That meant no gift tax. So when the IRS claimed there was an exaggerated valuation discount, instead of lining the IRS pockets, it just lined the charity’s.

The [Eighth](#) and [Fifth](#) Circuit Courts of Appeals have reached similar conclusions. See [Eighth and Ninth Circuits \(and Tax Court\) Affirm Charitable Lid Estate Planning Technique](#). The IRS still has plenty of incentives to argue about excessive valuation discounts. But where there are charitable provisions similar to Ms. Petter’s, only the charity will benefit.

For more, see:

[IRS Loses a Gift-Tax Battle](#)

[Estate of Petter v. Commissioner: Ninth Circuit Ruling Affirms Use of a “Charitable Lid” Clause](#)

[Claim Your Facade Easement Now \(Just Not With This Promoter\)](#)

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

[Rich “Conservation Easement” Tax Break Ends 12/31/11](#)

[IRS Publication 561, Determining the Value of Donated Property](#)

[An Updated Look At Conservation Easements](#)

[ABCs of Charitable Conservation Easements](#)

[Saving Taxes by Giving to Charity](#)

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