New York Law Journal

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Time Share Charitable Contribution Scheme: Promoter Penalized $8.4 Million

In his Estate Planning and Philanthropy column, Conrad Teitell offers a summary of 'Tarpey v. United States,' where a Montana-based attorney was held liable for engaging in a scheme of donating timeshare interests for large tax deductions.

By **Conrad Teitell** | June 24, 2022

Conrad Teitell

The difference between a timeshare and tuberculosis: You can get rid of tuberculosis.

Background. The upfront cost of buying a timeshare is just for openers. The annual fees (often, increasing annually) include interest, repairs, and maintenance. Additional assessments are imposed for extraordinary repairs.

Finding a buyer for a no-longer-wanted timeshare is difficult—sometimes impossible. And, if the owner, his estate or heirs can't sell the timeshare, the obligations continue despite attempts to abandon it by leaving the deed on a New York City subway at 3:00 a.m.

Virtually all charities are reluctant to accept timeshare "charitable contributions." Doing so would be a "gift that doesn't keep on giving, but keeps on costing."

In desperation, some timeshare owners turn to companies advertising that, for a fee, the owners can rid themselves of unwanted and unsalable timeshares.

The seed of this tax-shelter scheme bears bitter fruit. A Montana-based attorney is liable for almost $8.5 million in penalties involving a donated-timeshare scheme.

Here's my edited summary of the Justice Department's Dec. 20, 2021 press release (#21-1274) on a U.S. District Court in Montana's 11-page opinion. *Tarpey v. United States,* NO. CV-17-94-BU-BMN (D. Mont. Dec. 16, 2021).

WASHINGTON. Following a bench trial in May 2021, a federal court in the District of Montana ruled that James Tarpey, a Montana-based attorney, is liable for approximately $8,465,000 in penalties for promoting a tax shelter involving improper deductions for donating timeshares.

In 2015, the government initially filed an action 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 remains in full effect.

According to court documents, Tarpey formed Project Philanthropy Inc. dba Donate for Cause (DFC) as a non-profit organization in 2006, and that "DFC allowed timeshare owners who faced burdensome timeshare fees and expenses to donate their unwanted timeshares."

The court found that Tarpey and others prepared appraisals on 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 "lacked sufficient independence."

The court further concluded that these "false appraisals resulted in tax avoidance" and that "Tarpey knew, or had reason to know, that he made false statements." The court's 2019 ruling left open the amount of Tarpey's penalty, however.

In its final order, 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 amount that the government had sought in its counterclaim.

The information about the recent enforcement efforts of the Tax Division against unscrupulous tax-return preparers and tax-fraud promoters is available on the Justice Department's website. An alphabetical listing of persons enjoined from promoting tax schemes and preparing returns can also be found on the department's website.

The foregoing reminds me of an old case that doesn't involve a tax scheme, but involved spouses who arranged to have their house burned down and then claimed a charitable deduction.

James and Lori Hendrix owned their Upper Arlington, Ohio house since 2000. After a number of years, they decided to demolish the house and build a new one. They got two demolition estimates, each for approximately $10,000. They must have wondered—how can we avoid the demolition fee and get a sizable charitable deduction to boot? They retained the accounting firm, Deloitte & Touche about a possible donation of the house to the city, with its demolishing the structure and then returning the real estate to them. **A Deloitte & Touche advisor analyzed the possible transaction and concluded that "[d]onation of property to a fire department is aggressive and not explicitly sanctioned by the Internal Revenue Code."**

The Hendrixes then got an appraisal of the land and the house stating a $520,000 value and their tax-plan really got smoking. Why not give the house to the city's fire department for training and that would include burning down the house.

The next step. They granted the city the right "to use" their land and house for Fire Division training. The contract with the city provided that "the structure is to be burned an/or demolished as seen fit by the Fire Division for said training."

Another contract provision. "The City of Upper Arlington does not express any opinion regarding the tax consequences of this transaction" and advised the Hendrixes "to consult with a tax advisor regarding the availability of and requirements for taking any tax deduction."

The city used the house starting June 29, 2004 and demolished it on Oct. 29, 2004. The Hendrixes then built a new, larger house on their lot. They also took a $287,400 charitable deduction on their 2004 income tax return—the claimed value of the house.

The IRS disallowed the deduction and assessed a $100,590 tax deficiency. And the U.S. District Court sided with the IRS. *Hendrix*, U.S. District Court, Southern District of Ohio, Eastern Division (No. 2:09 CV-132, June 21, 2010).

An Old Story Goes With This Old Case:

Two retired businessmen, strangers, are sunbathing on a beach.

Man 1. My business burned down and with the insurance money I was able to retire.

Man 2. What a coincidence. My business was destroyed in an earthquake and with the insurance money I too was able to retire.

Man 1. So how do you start an earthquake?

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