

Deconstruction Tax Deductions— environmentally friendly tax policy



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**ENVIRONMENTAL
POLICY = TAX POLICY**



DECONSTRUCTION = UNBUILDING



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What is Deconstruction?

Salvaging building materials through careful and selective disassembly of an existing structure with the goal of diverting as much materials as possible away from landfills and towards reuse and recycling



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Environmental Necessity

Debris from construction and demolition (C&D waste) makes up approximately 25-30% of solid waste produced in this country, landfill space is at a premium with tons of usable materials being dumped daily. Now that China has cut back on their trash imports and is no longer accepting plastic waste from the United States, we need to be extremely cautious as to what we dump in our ground—emitting carbon dioxide and seeping into our potable water supply.

<https://www.epa.gov/sites/production/files/2015-11/documents/designfordeconstrmanual.pdf>

<https://www.npr.org/sections/goatsandsoda/2019/03/13/702501726/where-will-your-plastic-trash-go-now-that-china-doesnt-want-it>



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A variety of structures can be “deconstructed” and materials and property donated.



Beach houses



Historical structures like schools and churches



Kitchen and bathroom renovations



Barns



Commercial office complexes



Residential tear-downs



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What are examples of materials and property donated?

- Doors of all variety, solid core paneled, exterior, French, sliding glass
- Kitchen cabinetry and appliances
- Bathroom vanities
- Composite decking and other exterior materials
- Air conditioning condensers
- Water softeners
- Sinks
- Masonry—stone, brick, pavers
- Light fixtures
- Conference tables
- Office chairs
- Desks
- Wood flooring

VALUE INDICATORS



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LUMBER

High volume of salvaged wood including structural lumber (joists, beams, girders, framing) along with interior lumber like hardwood flooring currently increase the appraised value considerably due to the extremely high value of lumber on both the primary and secondary market. Additionally, there is a difference in lumber extraction. De-nailed lumber fetches a higher value on the secondary market than lumber produced in a haphazard pile full of existing nails.



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Cabinetry and Built-ins

Cabinetry and built-ins like desks, shelving, butler's pantries, and wet bars. High-valued cabinetry, especially in the transitional or modern style increase the value of a donation compared to older traditionally styled cabinetry.

Modern and *Transitional* are currently in higher demand than traditional. Look for custom made or high-end brands like Bulthaup, Wood-Mode, Snaidero, Porcelanosa, Wellborn, Da-Vinci Designs, Prevo

Look at drawer joinery, dovetails or Euro-style higher value than nailed. Look at interior to see if it is solid wood or particle board.

Appliances



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High-end appliances that are relatively newer (ten years old or less) such as Miele, Wolf, Viking, JennAir, can increase the value compared to a home that has older appliances.

KitchenAid, Bosch, and GE hold value well.
Useful life of appliances tends to be 10 years or less. Some nonprofits will not accept if older than 7 years. However, some high-end like Miele are known to function for 20+ years!



Higher-end modern light fixtures are sometimes of higher value than reproduction crystal chandeliers.

The *Restoration Hardware Phenomenon*—sometimes used fixtures appreciate in value from original price due to high demand!

High-end plumbing fixtures from manufactures like Grohe and Kohler increase appraised value.

The Covid Effect of the demise of the pedestal sink! Everyone stuck at home realized they needed more storage, renovated, donated pedestal sinks and installed vanities.

Watch for blue or blush toilets and pedestal sinks...highly collectible as are Sherle Wagner faucets, hooks, and fixtures.

Just like the current *Curse of the Brown Furniture*, modern rules the day when it comes to lighting and fixtures.





Newer energy efficient windows are of higher value than non-antique. Antique wavy glass or vintage stained-glass windows are of higher value than older standard double-hung windows. Solid core and antique doors, with inclusion of vintage or high-end hardware are of significantly higher value than hollow-core doors.



Barn doors are currently in high demand as they are salvaged from vintage and antique barns and reincorporated into modern decoration.

Masonry, siding, and roofing:



Salvaging masonry is a laborious process. However, structures with high-value stone such as Lannon or Fond du Lac Stone or antique bricks, especially from areas like the Northeast US or Upper Midwest, such as Chicago Brick or Cream City Brick fetch high prices when properly removed and scraped clean.



Cedar siding has a significantly higher value than aluminum. Roofing is typically not salvaged but can be recycled. However, slate roofing has a high value and should always be considered for salvaging and reuse and has a high value on the secondary market.

How does the tax deduction work?

- ▶ Individuals, pass-through entities, and corporations can donate used building materials, furnishings, fixtures, and appliances salvaged from deconstruction and renovation projects.
- ▶ The tax deduction is taken on the IRS Form 1040 Schedule A as an *Itemized Deduction* for individuals and pass-throughs and on the 1120 for corporations.
- ▶ The deduction is a non-cash charitable contribution valued at IRS defined *Fair Market Value*.
- ▶ An IRS Qualified Appraisal is required for donations that exceed \$5,000 in value.



The Finances of Deconstruction

For individuals and pass-through entities, these deductions are taken on the Individual 1040, Schedule A: *Itemized Deductions*:

10 Itemized Deductions		10	
Gifts to Charity	11 Gifts by cash or check. If you made any gift of \$250 or more, see instructions	11	
Caution: If you made a gift and got a benefit for it, see instructions.	12 Other than by cash or check. If you made any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500	12	
	13 Carryover from prior year	13	
	14 Add lines 11 through 13	14	



By necessity, deconstruction typically costs more than demolition due to the additional time needed to carefully take apart a structure with the aim of preserving the salvaged elements—opposed to the break-and-dump processes of demolition. However, these costs can be offset through tax deductions

Tax deduction limitations

Deductions (See instructions for limitations on deductions.)			
12	Compensation of officers (see instructions—attach Form 1125-E)		12
13	Salaries and wages (less employment credits)		13
14	Repairs and maintenance		14
15	Bad debts		15
16	Rents		16
17	Taxes and licenses		17
18	Interest (see instructions)		18
19	Charitable contributions		19
20	Depreciation from Form 4562 not claimed on Form 1125-A or elsewhere on return (attach Form 4562)		20
21	Depletion		21
22	Advertising		22
23	Pension, profit-sharing, etc., plans		23
24	Employee benefit programs		24
25	Energy efficient commercial buildings deduction (attach Form 7205)		25
26	Other deductions (attach statement)		26
27	Total deductions. Add lines 12 through 26		27
28	Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11.		28
29a	Net operating loss deduction (see instructions)	29a	
b	Special deductions (Schedule C, line 24)	29b	
c	Add lines 29a and 29b		29c



This deduction is limited to 50% of Adjusted Gross Income with a 5-year carry-forward.

Corporations may take the deduction on their corporate income tax return, Form 1120 as shown above. This deduction is limited to 10% of net income with the inclusion of specific add-backs, also with a 5-year carry-forward.

The IRS updated Form 8283 for 2023 and DROPPED IT AT THE END OF JANUARY 2023!!!

IRS Counsel Karin Gross suggested an appraiser best practice would be to retroactively remit corrected Form 8283 for all 2023 tax year appraisals!

<https://www.irs.gov/pub/irs-pdf/f8283.pdf>

Form 8283 (Rev. December 2023) Department of the Treasury Internal Revenue Service	Noncash Charitable Contributions Attach one or more Forms 8283 to your tax return if you claimed a total deduction of over \$500 for all contributed property. Go to www.irs.gov/Form8283 for instructions and the latest information.	OMB No. 1545-0074 Attachment Sequence No. 155
Name(s) shown on your income tax return		Identifying number
Enter the entity name and identifying number from the tax return where the noncash charitable contribution was originally reported, if different from above. Name: _____ Identifying number: _____ Check this box if a family pass-through entity made the noncash charitable contribution. See instructions <input type="checkbox"/>		
Note: Figure the amount of your contribution deduction before completing this form. See your tax return instructions.		
Section A. Donated Property of \$5,000 or Less and Publicly Traded Securities —List in this section only an item (or a group of similar items) for which you claimed a deduction of \$5,000 or less. Also list publicly traded securities and certain other property even if the deduction is more than \$5,000. If you need more space, attach a statement. See instructions.		
1	(a) Name and address of the donee organization	(b) If donated property is a vehicle (see instructions), check the box. Also enter the vehicle identification number (unless Form 1098-C is attached).
		(c) Description and condition of donated property (For a vehicle, enter the year, make, model, and mileage. For securities and other property, see instructions.)

What Tax Forms are Necessary?

If the donation of materials is in excess of \$5,000 then the IRS requires an IRS defined *Qualified Appraisal* by an IRS defined *Qualified Appraiser*. The taxpayer must remit IRS Form 8283, which must be filled out by the client in its entirety and signed by both the nonprofit and the appraiser. Please note case *Loube v. Commissioner*, the deduction was disallowed when the taxpayer did not properly fill out the form and the appraiser forgot to sign.



8283 Noncash Charitable Contributions
 (Rev. December 2023)
 Department of the Treasury
 Internal Revenue Service

OMB No. 1545-0074
 Attachment Sequence No. **155**

Go to www.irs.gov/Form8283 for instructions and the latest information.

Name(s) shown on your income tax return _____ Identifying number _____

Enter the entity name and identifying number from the tax return where the noncash charitable contribution was originally reported, if different from above.
 Name: _____ Identifying number: _____

Check this box if a family pass-through entity made the noncash charitable contribution. See instructions

Note: Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

Section A. Donated Property of \$5,000 or Less and Publicly Traded Securities—List in this section **only** an item (or a group of similar items) for which you claimed a deduction of \$5,000 or less. Also list publicly traded securities and certain other property even if the deduction is more than \$5,000. If you need more space, attach a statement. See instructions.

1	(a) Name and address of the donee organization	(b) If donated property is a vehicle (see instructions), check the box. Also enter the vehicle identification number (unless Form 1098-C is attached).	(c) Description and condition of donated property (For a vehicle, enter the year, make, model, and mileage. For securities and other property, see instructions.)
A		<input type="checkbox"/>	
B		<input type="checkbox"/>	
C		<input type="checkbox"/>	
D		<input type="checkbox"/>	

Note: If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (e), (f), and (g).

	(d) Date of the contribution	(e) Date acquired by donor (mo., yr.)	(f) How acquired by donor	(g) Donor's cost or adjusted basis	(h) Fair market value (see instructions)	(i) Method used to determine the fair market value
A						
B						
C						
D						

Section B. Donated Property Over \$5,000 (Except Publicly Traded Securities, Vehicles, Intellectual Property or Inventory Reportable in Section A)—Complete this section for one item (or a group of similar items) for which you claimed a deduction of more than \$5,000 per item or group (except contributions reportable in Section A). Provide a separate form for each item donated unless it is part of a group of similar items. A qualified appraisal is required for items reportable in Section B and in certain cases must be attached. See instructions.

Part I Information on Donated Property

2 Check the box that describes the type of property donated. See instructions for definitions.

a <input type="checkbox"/> Art (contribution of \$20,000 or more)	d <input type="checkbox"/> Other real estate	i <input type="checkbox"/> Vehicles
b <input type="checkbox"/> Qualified conservation contribution	e <input type="checkbox"/> Equipment	j <input type="checkbox"/> Clothing and household items
b(1) <input type="checkbox"/> Certified historic structure NPS # _____	f <input type="checkbox"/> Securities	k <input type="checkbox"/> Digital assets
c <input type="checkbox"/> Art (contribution of less than \$20,000)	g <input type="checkbox"/> Collectibles	l <input type="checkbox"/> Other
	h <input type="checkbox"/> Intellectual property	

3	(a) Description of donated property (if you need more space, attach a separate statement)	(b) If any tangible personal property or real property was donated, give a brief summary of the overall physical condition of the property at the time of the gift.	(c) Appraised fair market value
A			
B			
C			

	(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) For bargain sales, enter amount received	(h) Qualified conservation contribution relevant basis (see instructions)	(i) Amount claimed as a deduction (see instructions)
A						
B						
C						

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 62299J Form **8283** (Rev. 12-2023)

Taxpayer's Responsibility on Form 8283

Part I Information on Donated Property

2 Check the box that describes the type of property donated. See instructions for definitions.

a <input type="checkbox"/> Art (contribution of \$20,000 or more)	d <input type="checkbox"/> Other real estate	i <input type="checkbox"/> Vehicles
b <input type="checkbox"/> Qualified conservation contribution	e <input type="checkbox"/> Equipment	j <input type="checkbox"/> Clothing and household items
b(1) <input type="checkbox"/> Certified historic structure NPS # _____	f <input type="checkbox"/> Securities	k <input type="checkbox"/> Digital assets
c <input type="checkbox"/> Art (contribution of less than \$20,000)	g <input type="checkbox"/> Collectibles	l <input type="checkbox"/> Other
	h <input type="checkbox"/> Intellectual property	

3	(a) Description of donated property (if you need more space, attach a separate statement)	(b) If any tangible personal property or real property was donated, give a brief summary of the overall physical condition of the property at the time of the gift.	(c) Appraised fair market value
A	[Redacted]	[Redacted]	[Redacted]
B			
C			

A	(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) For bargain sales, enter amount received	(h) Qualified conservation contribution relevant basis (see instructions)	(i) Amount claimed as a deduction (see instructions)
A	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
B						
C						

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 62295J Form **8283** (Rev. 12-2023)



Appraiser and Recipient Organization's Section on Form 8283



taxpayer (donor) _____ Date _____

Part IV Declaration of Appraiser—See instructions.

I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, or related to any of the foregoing persons, or married to any person who is related to any of the foregoing persons. And, if regularly used by the donor, donee, or party to the transaction, I performed the majority of my appraisals during my tax year for other persons.

Also, I declare that I perform appraisals on a regular basis; and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based on a percentage of the appraised property value. Furthermore, I understand that a false or fraudulent overstatement of the property value as described in the qualified appraisal or this Form 8283 may subject me to the penalty under section 6701(a) (aiding and abetting the understatement of tax liability). I understand that my appraisal will be used in connection with a return or claim for refund. I also understand that, if there is a substantial or gross valuation misstatement of the value of the property claimed on the return or claim for refund that is based on my appraisal, I may be subject to a penalty under section 6695A of the Internal Revenue Code, as well as other applicable penalties. I affirm that I have not been at any time in the three-year period ending on the date of the appraisal barred from presenting evidence or testimony before the Department of the Treasury or the Internal Revenue Service pursuant to 31 U.S.C. 330(c).

Sign Here	Appraiser signature _____	Date _____	
	Appraiser name _____	Title _____	
Business address (including room or suite no.) _____		Identifying number _____	
City or town, state, and ZIP code _____			

Part V Donee Acknowledgment—See instructions.

This charitable organization acknowledges that it is a qualified organization under section 170(c) and that it received the donated property as described in Section B, Part I, above on the following date _____

Furthermore, this organization affirms that in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part I (or any portion thereof) within 3 years after the date of receipt, it will file **Form 8282**, Donee Information Return, with the IRS and give the donor a copy of that form. This acknowledgment does not represent agreement with the claimed fair market value.

Does the organization intend to use the property for an unrelated use? Yes No

Name of charitable organization (donee) _____	Employer identification number _____	
Address (number, street, and room or suite no.) _____	City or town, state, and ZIP code _____	
Authorized signature _____	Title _____	Date _____

Form **8283** (Rev. 12-2023)



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A look at the numbers



An individual renovates their kitchen and bathrooms and donates cabinetry, appliances, vanities, and light fixtures to a qualified 501(c)(3) organization or governmental entity.

Taxpayer's federal effective (average) tax rate: 30%

Taxpayer's state effective tax rate (for states allowing charitable deductions) 5%

Donation Fair Market Value: \$18,000

Net tax benefit (assuming the taxpayer can itemize deductions): \$6,300

A corporation donates three floors of office furniture during a move-out. Property includes computers, and other office equipment and supplies. The property is a year old and has not depreciated.

Corporate tax rate: 21%

Donation Fair Market Value: \$300,000

Net tax benefit: \$63,000



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Important Tax Considerations

- Ensure the taxpayer has **basis** in the assets and they have not been fully depreciated.
- Ensure the requisite 1-year holding period is accomplished to afford capital gain treatment.
 - Ensure the IRS does not consider the individual or entity a **dealer** vs. an **investor**. Dealers are limited to a deduction in basis not FMV.
- Make sure the client understands the back-end basis adjustment to improvements after donation: no double dipping
- The deduction is limited to 50% of Adjusted Gross Income with a 5-year carryforward for individuals and pass-through entities.
- The deduction is limited to 10% of net income (with specific add-backs) for corporations with a 5-year carryforward.



Appraisals

Critical to the Tax Deduction

The IRS requires an appraisal for a donation of property with a Fair Market Value exceeding \$5,000. Ensuring these appraisals are produced accurately and in line with Internal Revenue Code, relevant case law, personal property organization valuation principles as well as USPAP (the Uniform Standards of Professional Appraisal Practice) is critical to ensure client's deductions can be substantiated and are not disallowed by the IRS



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> \$5,000

Important Appraisal and Appraiser Considerations

- ▶ Ensure your appraiser is qualified. There is **NO LICENSURE** for personal property appraisers. Ask for the following information:
 - ▶ Education level of appraisers and owners of appraisal companies
 - ▶ Ensure accredited membership in one of the three personal property appraisal organizations that sponsor The Appraisal Foundation. The organizations are:
 - ▶ American Society of Appraisers (ASA)
 - ▶ Appraisers Association of America (AAA)
 - ▶ International Society of Appraisers (ISA)
- ▶ Ensure the appraiser is not precluded from practicing under Circular 230

Form 8283 (Rev. November 2022) Department of the Treasury Internal Revenue Service	Noncash Charitable Contributions Attach one or more Forms 8283 to your tax return if you claimed a total deduction of over \$500 for all contributed property. Go to www.irs.gov/Form8283 for instructions and the latest information.	OMB No. 1545-0074 Attachment Sequence No. 155
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What is being valued?

- ▶ Real Estate Improvements?
- ▶ Detached Personal Property?

Detachment Principle: Once real estate improvements are detached from the underlying land, they instantly convert to personal property.

Attachment Principle: A dishwasher installed becomes a real property improvement



Case Study: A CPA contacted us due to an appraisal in Arizona for a deconstructed home valued at \$1.2 million based upon a **real estate** appraisal.

The corrected personal property appraisal had a value of \$250,000.

Case Study: The IRS sought clarification to a taxpayer and nonprofit as to if the materials were valued pre- or post-deconstruction.

Appraisal should include language stating that the property was valued post-deconstruction.

Ensure correct valuation methodology



Property must be valued using actual market data from the secondary retail market. This is termed the *Sales Comparison Approach*.

Utilizing cost estimation software such as R.S. Means and Marshall and Swift is not an acceptable valuation. Some appraisers claim this valuation, *Cost New Less Depreciation*, to be acceptable. The *IRS and appraisal organizations disagree*.

Correct Appraisal Steps

- Literal description of the property along with photographs
- Dimensions
- Condition
- Research comparable sales on the open market, 500+ auction and sale venues
- Present comparable sales. We use 3+ for pieces >\$100
- TGMI created an internal database with thousands of secondary market sales and price points
- Reconcile and conclude final value
- Include comparable sales data
- Most appraisers provide a table with final values and category of material to go with the written narrative



Appraisal Requirements per AAA, ASA, ISA, USPAP IRS

- ▶ **Definitions of value**
- ▶ **Signed USPAP statement**
- ▶ **Macro and micro market analysis**
- ▶ **Presentation of the inventory, including descriptions, condition, and quantity**
- ▶ **Comparable sales data**
- ▶ **Photographic addendum**
- ▶ **Glossary**
- ▶ **CV**
- ▶ **We include a copy of the CWA from the nonprofit**
- ▶ **Knowledge of material type, dimensions and market supply and demand**

Exactly what is a DECONSTRUCTION APPRAISAL?



Comparison to other personal property appraisals

Similarities with Other Personal Property Appraisals

Like other personal property, we look to the correct market or level of trade:

- Reuse retailers
- Auction sites
- Sales platforms with firm offers of sale

We evaluate both the local and national macro and microeconomic market.

We find comparable sales, evaluate the data, compare and contrast to the appraisal subject and make valuation adjustments.

The same valuation methodology is employed:
Primarily Sales Comparison Approach



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Differences

- ▶ Property tends to be more fungible. A hollow core door vs. a Regence commode.
- ▶ We deal with very high volumes of materials. 10,000 square feet of oak hardwood flooring.
- ▶ Condition issues must include consideration of specifics like:
 - ▶ Functionality of appliances
 - ▶ Ensure hardwood is not water damaged or rotten
 - ▶ Ensure the inventory quantity are accurate and not over or understated, like converting lumber from board to linear or square feet.
- ▶ Comparable sales must be studied not only at auction and online sales but in reuse retailers, which are often small organizations without substantial online presence.



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Proper Methodology vs. Plug in Cost Approach

- A proper appraisal of a deconstructed home takes our team approximately 1.5-2 months to complete.
- As will be detailed and occurred in two Tax Court cases, some deconstruction appraisers and in the previous slide, some appraisers are plugging in numbers to Construction Cost Estimation Software, assigning some arbitrary depreciation, and clicking “compute.” Out pops a number that is not tied to underlying asset values on the secondary market.
- Appraisers claim this is the “Cost Approach”, which it is not.
- Furthermore, the software plugging method takes about 30 minutes.

Step One: Literal Description



The first step to be taken is for an appraiser to give a literal description of the donated property. Let's take the example of a donated door. A literal description of the door would be:

Six-panel door, manufactured of pine and painted white, having a solid core with six beveled frames, devoid of hardware and without inclusion of the door jamb. Dimensions: 80"H x 36"W. The door is in overall good condition with noted signs of chipped paint along the bottom.

Step Two: Comparable Sales

The appraiser should present comparable sales to substantiate their concluded value. In this case, a comparable sale could be included with the following description:

*Comparable 1: This is a sale of a similar six-panel door, also in pine but having an unfinished rather than painted exterior. The door has the same dimensions and is in used good condition, with similar wear evident along the interior edges. The sale occurred at **Sample Retail** on 12/31/20 for \$105. The sale included antique style brass hardware including a knob and hinges as well as the door jamb.*



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Step Three: Adjustments to Value

The appraiser then makes adjustment to the comparable sale to conclude final value.

In concluding value, I considered this sale as relevant due to the following factors: The door is of similar dimensions and the lack of paint does not appear to affect value after a review of other comparable sales. The door is in similar condition to the appraised but requires adjustments downward due to the inclusion of hardware, hinges, and a door jamb. The sale occurred within close proximity to the effective valuation date. The appraised value is adjusted downward to \$85.



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CORRECT PRESENTATION



Wolf professional gas-powered cooktop, Model: CG304P/S-LP, manufactured in 2010, stainless-steel composition, with four burners and continuous grates, with red knobs.

Dimensions: 30"W x 21"D

Condition: Good, functions as intended, some cosmetic wear on knobs.

Comparable 1: This is a sale of a comparable model of a Wolf gas-powered cooktop, manufactured in 2011 and in similar condition and finish with some cosmetic wear. The sale occurred on eBay on 2/4/22 for \$1,250.

Comparable 2: This is a sale of a comparable model of a Wolf gas-powered cooktop, manufactured in 2008, in similar finish but with some damage noted including a missing knob. The sale occurred on HiBid Auction on 1/4/22 for \$995.

Comparable 3: This is a sale of a larger model of Wolf cooktop, having five burners, also stainless-steel composition and in similar condition, manufactured in 2013. The sale occurred on K-Bid Auction on 2/25/22 for \$1,800

The concluded value is based upon Comparable 1 as most similar to the appraised in model, condition, and age for a final value of \$1,250.



INCORRECT PRESENTATION

Wolf Cooktop: \$1,900

Relevant Tax Court Cases

- ▶ *Mann v. US, 2019*
- ▶ *Loube v. Commissioner, 2020*
- ▶ *Mann v. US, appeal, 2021*
- ▶ *Albrecht v. Commissioner 2021*—Disallowance based upon a CWA technicality: must include the following

The written acknowledgment required to substantiate a charitable contribution of \$250 or more must contain the following information:

- name of the organization;
- amount of cash contribution;
- description (but not value) of non-cash contribution;
- statement that no goods or services were provided by the organization, if that is the case;
- description and good faith estimate of the value of goods or services, if any, that organization provided in return for the contribution; and
- statement that goods or services, if any, that the organization provided in return for the contribution consisted entirely of intangible religious benefits, if that was the case.

In addition, a donor may claim a deduction for contributions of cash, check, or other monetary gifts only if the donor maintains certain [written records](#).

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T.C. Memo. 2020-3
UNITED STATES TAX COURT
Loube v. Comm'r

Decided Jan 8, 2020

The Tax Adviser, By James A. Beavers, CPA, CGMA, J.D., LL.M.

March 1, 2021



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Writing about the Mann case and appeal

Reflections

The Manns were out more than just the amount of the disallowed deduction for the donation for the house. To get Second Chance to do the deconstruction work, the Manns had to agree to donate \$20,000 in cash (although they eventually only donated \$11,500) and presumably had to pay for the appraisals by NoVaStar. Additionally, they had to take the time, trouble, and expense of challenging the IRS determination administratively and through the court system.

The IRS does not object to a deduction for a charitable donation of building components from a home deconstruction, but, as this case indicates, if it has doubts about the propriety of such a deduction, it will scrutinize it to make sure that its amount is not overstated and it is substantiated as required by the Code and regulations. Thus, taxpayers undertaking such a project should be careful to ensure that they have proper documentation of the components actually donated to charity and a qualified appraisal of their value.

Mann, No. 19-1793 (4th Cir. 1/6/21)

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:ITA
MASP-110174-20

Third Party Communication: None
Date of Communication: Not Applicable

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(CC:SBSE)

from: Theresa Melchiorre
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Loube v. Commissioner

The taxpayer, nonprofit and appraiser made this an easy decision for the IRS. Form 8283 was not filled out in its entirety and the appraiser forgot to sign their portion. However, this memo makes clear that the valuation methodology was incorrect.

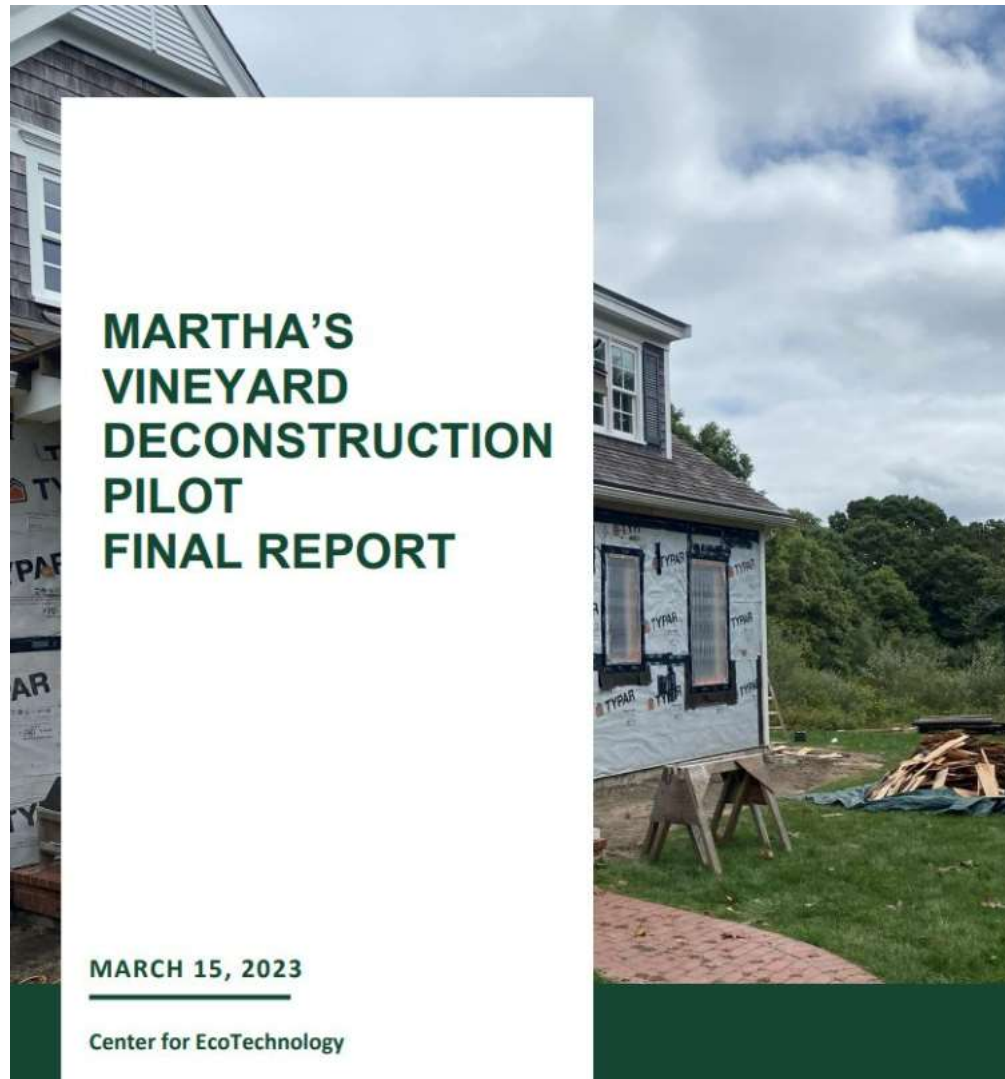
114. Loube v. Commissioner, T.C. Memo. 2020-3 (January 8, 2020)

Facts: Petitioners hired Second Chance (the donee) to deconstruct a single-family home. On their 2013 income tax return, petitioners claimed a charitable contribution deduction for the value of the property salvaged by the donee. Respondent disallowed the deduction.

Respondent argued that petitioners are barred from deducting a charitable contribution deduction because their Form 8283 failed to include the date the donated property was acquired or its cost basis, as well as its purporting to donate the salvaged items yet valuing the entire house.

The Tax Court concluded that petitioners failed to “strictly comply” with DEFRA section 155 and the regulations thereunder because their Form 8283 failed to provide the basis and the acquisition date of the contributed property. Petitioners also failed to attach to the Form 8283 an explanation of reasonable cause for the failure. The court also found that the petitioners did not “substantially comply” with DEFRA’s requirements.

Part 8: Deconstruction Pilot Project



- ▶ Martha's Vineyard Vision Fellowship
- ▶ South Mountain Company
- ▶ WasteNot (The amazing team of Ann Jarosiewicz and Liz Prete!)
- ▶ Recycling Works
- ▶ Carroll's Trucking
- ▶ Center for EcoTechnology
- ▶ The Green Mission Inc

Results?

- ▶ Over 10 tons of materials were diverted from the waste stream
- ▶ The project had a recycling rate of 59%
- ▶ The Fair Market Value of the reclaimed materials paid for more than 3/4 of the costs associated with the reclamation efforts.

2023 Example of Nonprofit and Appraiser Non-compliance with the Internal Revenue Code

Actual Timeline of Events:

CPA reaches out to our team having studied the IRC and found the nonprofit and appraiser's information deficient.

Client received Form 8283 signed by both nonprofit and appraiser including the appraised value.

Client did NOT receive an appraisal.

Nonprofit communicated that no appraisal delivery necessary if value <\$500k (false: appraisal required to be filed with the 1040 if >\$500k but an appraisal should still be delivered.)

Client contracts with us to produce a new appraisal.

Nonprofit finally locates the first appraiser who produces a 5-page report missing approximately 75% of required appraisal report information per the IRS, USPAP, AAA, ASA, and ISA

Our corrected appraisal was over 100 pages and \$20k less value than the original appraisal.

We measured staff hours, and it took a combined four weeks to complete for close to the same cost as the earlier appraiser. Filling in information from the prior appraiser might have taken 4 minutes.

Nonprofit threatened not to sign Form 8283 unless their "approved" appraiser's report was used.

The CPA reminded the nonprofit they are independent from the appraiser and to sign the form.



Key Takeaways

- ▶ Nonprofits must be 100% independent from the appraiser.
- ▶ Some nonprofits require appraisers to pay a commission for appraisal referrals. **Commissions can be paid to for-profit entities and disclosed in the report. Paying a nonprofit hinders independence and is prohibited.**
- ▶ An appraisal must be produced for each project and must include the required elements outlined by the IRS as well as personal property appraisal organizations sponsoring The Appraisal Foundation.
- ▶ The appraisals require time and hard work. Shortcuts only hurt the taxpayers and the deconstruction industry at large.
- ▶ Appraisers must be qualified per the IRS and the personal property appraisal organizations sponsoring The Appraisal Foundation. This appraiser was not accredited.



Additional Audit Issues

- ▶ Our firm has been contracted to assist clients and their CPAs with disallowed deconstruction non-cash donations.
- ▶ Our team belongs to and attends all personal property appraisal organizations annual conferences taking notes from IRS Counsel presenters.
- ▶ Form 8283 and the IRS requirements fall under DEFRA strict compliance. The taxpayer must procure an IRS Qualified Appraisal by an IRS Qualified Appraiser at the time of donation. There are no second shots when audited.
- ▶ Some donations have been disallowed because the CV does not show sufficient appraiser qualifications.
- ▶ Lack of detailed inventory, photographs, condition noted, dimensions, type of material
- ▶ Missing parts of Form 8283 especially the Cost Basis box
- ▶ Wrong valuation methodology
- ▶ Real estate rather than personal property appraisal/appraiser used

More information on Form 8283

- ▶ Appraisers and nonprofits are relegated only to our defined sections on Form 8283 and should not fill out any other portion of the form
- ▶ Our signatures can be affixed before or after the client fills out their portion of the form
- ▶ The IRS confirmed digital signatures on 8283 will continue to be accepted after the 2022 change
- ▶ There are security concerns with third parties (appraisers and nfps) having the taxpayer's SSN or TIN

Conclusion

- ▶ In the enormity of the Internal Revenue Code, non-cash charitable contributions are one of the most impactful tax strategies.
- ▶ With the large donation potential comes large responsibilities.
- ▶ The entire deconstruction industry is harmed if or when appraisers and/or nonprofits do not ensure there is strict compliance to all IRC, USPAP, and personal property appraisal organization guidance.
- ▶ Where to find an appraiser? The following websites include members of their organizations who have completed the education requisite to complete appraisals. Also, ask for the appraiser's CV:
 - ▶ American Society of Appraisers
 - ▶ Appraisers Association of America
 - ▶ International Society of Appraisers
- ▶ Our team works closely with other appraisers from these organizations who are expanding their services to include deconstruction donations. Many find appraising lumber much easier than fine art!

Articles

- ▶ Important updates from IRS Counsel on appraisals for non-cash donations:

<https://www.thegreenmissioninc.com/article/important-appraisal-irs-updates>

- ▶ Article on Appraiser/Nonprofit abuses witnessed in 2023:

<https://www.thegreenmissioninc.com/article/nonprofit-taxpayer-appraiser-understanding-each-role>

- ▶ Important considerations in determining if an appraiser is IRS Qualified:

<https://www.thegreenmissioninc.com/article/form-8283-part-iv-and-part-v-the-appraiser-and-the-nonprofit>

- ▶ Details on tax Form 8283:

<https://www.thegreenmissioninc.com/article/form-8283-part-iv-and-part-v-the-appraiser-and-the-nonprofit>

- ▶ The mechanics of the tax deduction for deconstructed property:

<https://www.thegreenmissioninc.com/article/tax-deductions-for-building-materials-the-ins-and-outs-of-the-process>

Questions?

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