Current Federal Tax Developments

Week of July 5, 2022

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TAXPAYER ADVOCATE SERVICE TO BEGIN ACCEPTING REFERRALS FROM CONGRESSIONAL OFFICES RELATED TO PAPER FILED 2021 ORIGINAL AND AMENDED RETURNS

"Interim Guidance on Changes to TAS Case Acceptance Criteria," Memorandum for Taxpayer Advocate Service Employees, 6/27/22

The National Taxpayer Advocate Service (TAS) has updated its criteria for accepting cases,[1] removing limitations on accepting paper-filed return cases for 2021 referred from Congressional offices.

TAS announced the reason for the change as follows:

> TAS continues to monitor the IRS's processing of returns for the FY 2022 Filing Season. Because of recent IRS progress, TAS is now able to modify the temporary guidance in IGM TAS-13-0522-0007, Sections B1 and C1. The temporary guidance limited acceptance of original and amended return (Issue Codes 310 and 330) cases on 2021 Tax Year returns filed on paper. TAS is now removing all limitations on accepting these cases from congressional offices. TAS will continue to monitor the IRS Surge Team's processing of returns to determine when we can remove the remaining temporary limitation on acceptance of paper original and amended return cases from non-congressional sources. If appropriate, TAS will update this guidance no later than October 15, 2022.[2]

The revisions to accepting referrals of issues with original returns are:

> Beginning on June 27, 2022, TAS will accept cases involving the processing of Tax Year 2021 and prior year individual or business original returns filed **either electronically or on paper** with the IRS.[3]

The memo does suggest that TAS obtain a complete processible copy of the return in question:

> **Note:** It is highly recommended, but not required, that the LTA office obtain a complete ***processible*** copy of the unprocessed return at the time of case intake. This may assist TAS in resolving the taxpayer's issue

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[1] "Interim Guidance on Changes to TAS Case Acceptance Criteria," Memorandum for Taxpayer Advocate Service Employees, June 27, 2022, https://www.taxnotes.com/research/federal/other-documents/other-irs-documents/taxpayer-advocate-service-updates-case-acceptance-criteria/7dm2j (retrieved June 30, 2022)

[2] "Interim Guidance on Changes to TAS Case Acceptance Criteria," Memorandum for Taxpayer Advocate Service Employees, June 27, 2022

[3] "Interim Guidance on Changes to TAS Case Acceptance Criteria," Memorandum for Taxpayer Advocate Service Employees, June 27, 2022

> more quickly. The copy of the return must be signed and dated if the original was not electronically filed. Attach the copy of the return to the case in TAMIS. For additional information, see IGM TAS-13-0222-0004, Interim Guidance on Changes to TAS Case Processing for Fiscal Year (FY) 2022 Filing Season.[4]

A similar revision is made for cases involving amended tax returns:

> Beginning June 27, 2022, TAS will accept cases involving the processing of Tax Year 2021 and prior year individual or business amended returns filed **either electronically or on paper** with the IRS.[5]

Again, the memorandum suggests that TAS employees obtain a processible copy of the return in question.

> **Note:** It is highly recommended, but not required, that the LTA office obtain a complete ***processible*** copy of the unprocessed return at the time of case intake. This may assist TAS in resolving the taxpayer's issue more quickly. The copy of the return must be signed and dated if the original was not electronically filed. Attach the copy of the return to the case in TAMIS. For additional information, see IGM TAS-13-0222-0004, Interim Guidance on Changes to TAS Case Processing for Fiscal Year (FY) 2022 Filing Season.[6]

Although the discussion of why the employees should obtain a fully processible copy of the tax returns is not commented upon in detail, presumably the agency suspects IRS employees will not be able to easily locate the paper returns in question, so they would presumably attempt to have the agency process the copy TAS has obtained from the taxpayer.

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[4] "Interim Guidance on Changes to TAS Case Acceptance Criteria," Memorandum for Taxpayer Advocate Service Employees, June 27, 2022

[5] "Interim Guidance on Changes to TAS Case Acceptance Criteria," Memorandum for Taxpayer Advocate Service Employees, June 27, 2022

[6] "Interim Guidance on Changes to TAS Case Acceptance Criteria," Memorandum for Taxpayer Advocate Service Employees, June 27, 2022

TAXPAYER HAD ENOUGH OF A GUARANTEE BUSINESS WOULD BE ABLE TO KEEP FUNDS RECEIVED THAT THE AMOUNTS IMMEDIATELY CONSTITUTED INCOME

United States v. VanDemark, CA6, Docket No. 21-3470, 6/30/22

We don't often write about criminal tax cases here on this site, but the case of *United States v. VanDemark*[7] discusses a taxpayer who, per the beginning of the Sixth Circuit opinion "tried to hoodwink the IRS."[8] Of interest outside the criminal tax controversy context, he attempted to argue in his defense that he did not have to report cash deposits he received as income due to lack of "some guarantee" the business would keep the funds, an argument the appellate panel did not find persuasive given the facts of his case.

The opinion continues with the following broad summary:

> Gregory VanDemark owns the Used Car Supermarket, which sells cars from two lots in Amelia, Ohio. In 2013 and 2014, VanDemark funneled away his customers' down payments and left them off his tax returns. He used this stashed-away cash to finance the mortgage on his mansion. The IRS caught wind soon enough. The government charged VanDemark with crimes related to his scheme, and a jury convicted him of six counts. VanDemark moved for an acquittal on three of these counts and a new trial on all six. The district court denied both motions.[9]

The opinion has more details on the structure of Mr. VanDemark's businesses:

> Gregory VanDemark made his fortune selling cars. He's built something of a mini-business empire in Amelia, Ohio. At the center of it all is the Used Car Supermarket, a C-corporation owned solely by VanDemark. Flanking the Supermarket are VanDemark's three S-corporations: the VanDemark Group, the VanDemark Corporation, and Gregory Properties. Each supports the Supermarket in its own way.1 And because these are S-corporations, VanDemark must report flow-through income and deductions on his personal returns.
>
> The Supermarket's clientele is by and large low-income and low-credit. Customers typically finance their cars by entering into lease-to-buy agreements. The process kicks off with a large down payment. These

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[7] *United States v. VanDemark*, CA6, Docket No. 21-3470, June 30, 2022, https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/car-salesman%e2%80%99s-tax-fraud-conviction-upheld/7dm34 (retrieved July 1, 2022)

[8] *United States v. VanDemark*, CA6, Docket No. 21-3470, June 30, 2022

[9] *United States v. VanDemark*, CA6, Docket No. 21-3470, June 30, 2022

> down payments, and VanDemark's efforts to hide them, are at the heart of this appeal.[10]

The Court than outlines the actions that eventually led to the taxpayer's issues with the IRS:

> Before 2013, everything was above board at the Supermarket on the tax front. The Supermarket's protocols ensured all the down payments remained within the IRS's view. To begin with, VanDemark kept a handwritten ledger at each of the two lots. Every time a customer made a down payment, his employees recorded it in one of these ledger books. They made sure to deposit every payment into the Supermarket's bank account as well. Afterward, employees entered the bank receipts into an accounting software called QuickBooks. And as a final step, VanDemark's tax preparer used the QuickBooks files to complete the necessary tax returns.
>
> But in 2013, VanDemark began to short-circuit this process. He instructed an employee named Christopher McAfee to start stashing this cash in a safe at the main office. McAfee did as he was told. And, not surprisingly, the amount of cash deposited into the Supermarket's bank account plunged in 2013 and 2014. In 2012, VanDemark deposited $265,499.25 in cash into the account. But in 2013 and 2014, that number was much reduced to $12,194.63 and $71,150.86, respectively. Because the stashed-away cash never reached the bank account, it never made it into VanDemark's QuickBooks files. And because VanDemark's tax preparer relied on those QuickBooks files, he failed to report the cash on VanDemark's tax returns.[11]

Not surprisingly, Mr. VanDemark had a use in mind for this cash. The opinion notes that "VanDemark used most of this cash to pay the mortgage on his multimillion-dollar mansion."[12]

However, he was aware that the bank that held the mortgage faced requirements to report certain cash transactions, but he was unsure of the details. So, he decided to ask a bank employee about the issue:

> Wary of attracting the IRS's attention, VanDemark asked an employee at his bank to confirm the IRS reporting threshold. She told VanDemark that the bank had to report "[a]nything over 10,000 in cash" to the IRS. (R. 73, Trial Tr. (Luck), PageID 1086-87.) So with this information in hand, VanDemark began to make cash payments toward his mortgage several times a month, keeping each payment below $10,000.[13]

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[10] *United States v. VanDemark*, CA6, Docket No. 21-3470, June 30, 2022

[11] *United States v. VanDemark*, CA6, Docket No. 21-3470, June 30, 2022

[12] *United States v. VanDemark*, CA6, Docket No. 21-3470, June 30, 2022

[13] *United States v. VanDemark*, CA6, Docket No. 21-3470, June 30, 2022

But his attempts to reduce his taxes did not stop with the cash from deposits being diverted to pay the mortgage. The opinion notes:

> But VanDemark's tax evasion didn't stop there. He overreported deductions on his personal returns as well. Aside from his Ohio mansion, VanDemark owned two other residences: a novelty house built in the shape of a paddleboat and an oceanfront property in Florida. VanDemark claimed construction, maintenance, and insurance expenses on these properties as business expenses for his S-corporations. He pulled this off by telling the IRS that he was building the paddleboat house as a bed and breakfast, the Florida residence was his business headquarters, and his Ohio mansion was a rental property. Thanks to these efforts, VanDemark and the Supermarket paid no federal income tax in 2013 and 2014.[14]

However, it turned out that inquiring of the bank employee about how much he could pay in cash before the bank had to notify the IRS was going to lead to the exact type of IRS attention he appeared to be attempting to avoid. Apparently, he didn't realize that the employee might consider the very act of asking such a question and then making cash payments just below those levels would look suspicious to the bank employee:

> His enquiries at the bank had raised some eyebrows. The bank employee reported her conversation with VanDemark to her Bank Secrecy Act officer. This information made its way to the IRS, which deployed a special agent to investigate.[15]

An IRS special agent approached Mr. VanDemark posing as a businessman interested in buying his business. Not surprisingly, Mr. VanDemark felt he needed to tell the potential buyer that there was a bit of "off book" activity and this business was truly more profitable than it would appear from the tax returns and his *Quickbooks* ledger:

> In December 2014, an IRS special agent contacted VanDemark. Posing undercover as a businessman, he expressed an interest in buying VanDemark's businesses. The pair spoke over the phone several times. In one of these calls, VanDemark spilled the beans. He boasted that he had about "$16 million in assets" and his businesses "net over $1 million a year." (R. 90, Gov't Ex. 2, PageID 1524-25, 1546.) VanDemark all but admitted to tax evasion by explaining that he "pulled out . . . 25% of that big figure" "in the last couple of years [2013 and 2014]." (Id. at PageID 1549-50.) What's more, he kept track of the stashed-away 25% "just in case." (Id. at PageID 1551.) VanDemark let slip about his deductions as well. He admitted that he "shoved all expenses on the company" so that he wouldn't "end up paying a bunch of dang taxes." (Id. at PageID 1527.) And to top it all off, VanDemark confessed he was "kind of . . . giving [the agent]

[14] *United States v. VanDemark*, CA6, Docket No. 21-3470, June 30, 2022

[15] *United States v. VanDemark*, CA6, Docket No. 21-3470, June 30, 2022

> information [he] shouldn't even be talking about." (Id. at PageID 1550.)[16]

At this point, the IRS decided now was the time to obtain search warrants, seize records and begin questioning Mr. VanDemark. Apparently not realizing that his "buyer" was using his conversations to obtain incriminating information that the IRS agents now questioning him were aware of, Mr. VanDemark was, shall we say, not entirely truthful with the agents per the Court's description of the events.

> The IRS had heard enough. In July 2016, it executed search warrants at VanDemark's three residential properties and the two Supermarket lots. Agents recovered the handwritten ledgers from the two lots. They found VanDemark at his paddleboat-shaped house and interviewed him for over three hours. He told the agents that his QuickBooks files contained all of his business records. At no point did he mention the ledger books. Asked whether he had skimmed cash from his dealership, VanDemark claimed that his employees deposited everything into the Supermarket's bank account.[17]

As you have probably surmised, the IRS now had enough material to obtain an indictment against Mr. VanDemark:

> Fast forward a year and a half, and a grand jury indicted VanDemark on six counts. The first four charged VanDemark with helping prepare false tax returns, in violation of 26 U.S.C. § 7206(2). Counts One and Two dealt with the Supermarket's 2013 and 2014 corporate returns. Counts Three and Four concerned VanDemark's 2013 and 2014 personal returns. Count Five charged VanDemark with structuring payments, in violation of 31 U.S.C. § 5324(a)(3). And Count Six charged VanDemark with making false statements to federal agents, in violation of 18 U.S.C. § 1001.[18]

At his trial things did not go well for Mr. VanDemark:

> The trial began in March 2020. After the government rested, VanDemark made a Rule 29(a) motion for acquittal on Counts One, Two, and Three. The district court denied the motion. But VanDemark renewed it twice before the jury reached its verdict: once at the end of his case and again after the district court instructed the jury. The district court denied the motion twice more.
>
> The trial lasted six days. In the end, the jury found VanDemark guilty on all counts. VanDemark renewed his motion for acquittal under Rule 29(c). He also moved for a new trial on all six of his counts under Rule 33. In a 17-page written order, the district court denied both

[16] *United States v. VanDemark*, CA6, Docket No. 21-3470, June 30, 2022

[17] *United States v. VanDemark*, CA6, Docket No. 21-3470, June 30, 2022

[18] *United States v. VanDemark*, CA6, Docket No. 21-3470, June 30, 2022

> motions. In May 2021, the district court entered judgment. And now, VanDemark appeals.[19]

Mr. VanDemark appealed this result, arguing that the trial court improperly denied his motion to acquit. Key to this is his argument that, in fact, those deposits were properly not reported as income. As the opinion describes his argument:

> The first two counts charged VanDemark with assisting in the preparation of false corporate returns for 2013 and 2014. VanDemark's argument begins and ends with *Commissioner v. Indianapolis Power & Light Co*., which says that a deposit isn't taxable income unless "the taxpayer has ***some guarantee*** that he will be allowed to keep the money."3 493 U.S. 203, 210 (1990) (emphasis added). VanDemark claims that the lease agreements tied the Supermarket's hands. If a customer decides not to purchase the car at the lease's end, says VanDemark, the customer can demand a refund of the down payment under the contract. And so, the argument goes, the Supermarket lacked the necessary "guarantee," and the down payments were never taxable as a threshold matter.[20]

This issue is more in line with what we usually discuss in these articles. So, did the appeals court agree with Mr. VanDemark's argument that the deposits were not taxable and therefore he could not have been guilty of assisting in the preparation of false income tax returns?

Well, not quite. First, the panel did not agree Mr. VanDemark did not have some guarantee he would be allowed to keep the money:

> …[T]he Supermarket issued virtually no refunds across decades. The Supermarket found ways to keep these down payments at its discretion, the contract notwithstanding. And that means the down payments were taxable upon receipt consistent with Indianapolis Power.[21]

The panel noted a number of reasons why the corporation was virtually assured that it would keep the deposits it received:

> We begin with the Supermarket's track record on refunds. Christopher McAfee worked at the Supermarket for no fewer than 30 years. And he testified that, in those 30 years, he saw the down payment refunded "maybe, one, two, three" times total. (R. 72, Trial Tr. (McAfee), PageID 1470.) The record contains additional corroboration as well. A special agent reviewed VanDemark's ledger books from 2012 to 2014 and found only one refund. What's more, that single refund wasn't even issued at the end of the lease under the contract. Instead, VanDemark refunded the deposit the same day the customer paid it. Perhaps the customer changed his or her mind before finalizing the

[19] *United States v. VanDemark*, CA6, Docket No. 21-3470, June 30, 2022

[20] *United States v. VanDemark*, CA6, Docket No. 21-3470, June 30, 2022

[21] *United States v. VanDemark*, CA6, Docket No. 21-3470, June 30, 2022

> lease, and the Supermarket issued a refund at its discretion. In any event, that single refund had nothing to do with the contract. This means that the contract terms forced VanDemark's hand a grand total of zero times from 2012 to 2014 (and maybe "one, two, three" times in 30 years).
>
> Simply put, these numbers belie VanDemark's Indianapolis Power argument. One way or another, the Supermarket engineered for itself "some guarantee" of keeping the down payments — that much is clear enough. Certainly, this conclusion is within a rational jury's reach. VanDemark's control is shown in the contract itself and in how VanDemark applied that language. True, the contract requires the Supermarket to refund the down payment if the customer returns the car at the end of the lease. But that's only if the excess mileage fee and the cost of damages to the car do not exceed the down payment amount.
>
> And as the district court emphasized, these variables are couched in significant ambiguities. The Supermarket exploited them to maintain control over the down payments. On excessive mileage, the contract imposes a fee "equal to $.50 per mile for miles to be computed at the end of the lease and balance due." (R. 59, July, 17, 2020 Op. & Order, PageID 247.) But importantly, the contract fails to specify a base mileage. As a practical matter, this allows VanDemark to define the number of excess miles after the lease ends. This theme continues with the second variable. The contract says that damages beyond "ordinary wear and tear" come out of the deposit. (Id.) As for calculating those costs, however, the contract places everything in VanDemark's hands. It specifies that "a representative from VANDEMARK . . . shall be the sole judge and arbiter as to whether or not any disputed damage is due to ordinary wear and tear or due to some other cause." (Id. at PageID 247 (emphasis added).) These ambiguities enable the Supermarket to jack up both variables on the back end to prevent a refund if it wishes.[22]

But the panel notes that even if Mr. VanDemark was correct in his view under these facts that the deposits were not immediately taxable upon receipt, Mr. VanDemark failed to treat them as taxable once any potential risk of having to return the deposits went away:

> The plot thickens even more from here, and not in VanDemark's favor. VanDemark argues that everything rises and falls with the contract's refund language. He doesn't dispute that once a customer converts the lease into a purchase, the refund provision no longer applies. In other words, the down payment is taxable by that point. If only the refund language didn't tie his hands, no doubt VanDemark would have reported everything — that's the implication of his Indianapolis Power argument, anyway. This begs the question: When

[22] *United States v. VanDemark*, CA6, Docket No. 21-3470, June 30, 2022

> those 2013 and 2014 leases were eventually bought out — whether in 2013, 2014, or later — did VanDemark report the down payments?
>
> Not quite. It turns out that at least seven customers (1) began their leases in 2013 or 2014 and (2) bought out their cars within that same window. One of these leases ended in 2013, and the remaining six in 2014. And under VanDemark's own theory, the down payments for these leases should have appeared on the Supermarket's 2013 and 2014 returns. But they did not, which means that VanDemark fails his own test. And VanDemark says nothing about the 2013 and 2014 leases that were bought out after 2014. He could have pointed the IRS to those tax returns where he eventually reported the down payments for these leases. That way, his failure to report those payments in 2013 and 2014 becomes a timing issue that falls short of a criminal prosecution. But VanDemark did no such thing. All of this shows that he never intended to report any of the down payments, with or without Indianapolis Power. The district court properly denied VanDemark's acquittal motion as to Counts One and Two.[23]

The failure to *ever* include such deposits as income could reasonably be interpreted as evidence he acted to avoid paying tax on these funds.

FIFTH CIRCUIT RULES SUBSTANTIAL COMPLIANCE CANNOT EXCUSE FAILURE TO FOLLOW CHARITABLE CONTRIBUTION REQUIREMENTS FOUND IN THE STATUTE

Izen v. Commissioner, CA5, Docket No. 21-60679, 6/29/22

The Fifth Circuit Court of Appeals sustained the Tax Court's decision[24] denying a taxpayer a charitable contribution deduction in the case of *Izen v. Commissioner*[25] finding that a taxpayer must strictly follow the documentation requirements set out by Congress in the statute to obtain a charitable contribution deduction.

This case was covered back when the Tax Court released its decision in 2017 on our tax update webpage[26] and involved a taxpayer's attempt to claim a deduction for a donation for an aircraft on an amended income tax return.

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[23] *United States v. VanDemark*, CA6, Docket No. 21-3470, June 30, 2022

[24] *Izen v. Commissioner*, 145 TC No. 5, March 1, 2017

[25] *Izen v. Commissioner,* CA5, Docket No. 21-60679, June 29, 2022, https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/fifth-circuit-affirms-denial-of-deduction-for-airplane-donation/7dlzl (retrieved June 30, 2022)

[26] Ed Zollars, CPA, "Doctrine of Substantial Compliance Did Not Apply to Taxpayer Who Failed to Meet Documentation Requirements for Donation of Used Airplane," *Current Federal Tax Developments* website, March 2, 2017, https://www.currentfederaltaxdevelopments.com/blog/2017/3/2/doctrine-of-substantial-compliance-did-not-apply-to-taxpayer-who-failed-to-meet-documentation-requirements-for-donation-of-used-airplane (retrieved June 30, 2022)

IRC §170(f)(12) reads:

> (12) Contributions of used motor vehicles, boats, and airplanes.
>
> (A) In general. In the case of a contribution of a qualified vehicle the claimed value of which exceeds $500--
>
> (i) paragraph (8) shall not apply and no deduction shall be allowed under subsection (a) for such contribution unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgement of the contribution by the donee organization that meets the requirements of subparagraph (B) and includes the acknowledgement with the taxpayer's return of tax which includes the deduction, and
>
> (ii) if the organization sells the vehicle without any significant intervening use or material improvement of such vehicle by the organization, the amount of the deduction allowed under subsection (a) shall not exceed the gross proceeds received from such sale.
>
> (B) Content of acknowledgement. An acknowledgement meets the requirements of this subparagraph if it includes the following information:
>
> (i) The name and taxpayer identification number of the donor.
>
> (ii) The vehicle identification number or similar number.
>
> (iii) In the case of a qualified vehicle to which subparagraph (A)(ii) applies--
>
> (I) a certification that the vehicle was sold in an arm's length transaction between unrelated parties,
>
> (II) the gross proceeds from the sale, and
>
> (III) a statement that the deductible amount may not exceed the amount of such gross proceeds.
>
> (iv) In the case of a qualified vehicle to which subparagraph (A)(ii) does not apply--
>
> (I) a certification of the intended use or material improvement of the vehicle and the intended duration of such use, and

> > > (II) a certification that the vehicle would not be transferred in exchange for money, other property, or services before completion of such use or improvement.
>
> > (v) Whether the donee organization provided any goods or services in consideration, in whole or in part, for the qualified vehicle.
>
> > (vi) A description and good faith estimate of the value of any goods or services referred to in clause (v) or, if such goods or services consist solely of intangible religious benefits (as defined in paragraph (8)(B)), a statement to that effect.
>
> (C) Contemporaneous. For purposes of subparagraph (A), an acknowledgement shall be considered to be contemporaneous if the donee organization provides it within 30 days of--
>
> > (i) the sale of the qualified vehicle, or
>
> > (ii) in the case of an acknowledgement including a certification described in subparagraph (B)(iv), the contribution of the qualified vehicle.

The simplest way to satisfy these documentation requirements is for the taxpayer to attach a Form 1098-C provided by the charity for the donation of the covered item to

the tax return. The charity is required to provide this document both to the taxpayer and the IRS.[27]

7878 ☐ VOID ☐ CORRECTED

DONEE'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.	1 Date of contribution	OMB No. 1545-1959 Form **1098-C** (Rev. November 2019) For calendar year 20 ____	**Contributions of Motor Vehicles, Boats, and Airplanes**
	2a Odometer mileage		
	2b Year / 2c Make / 2d Model		
DONEE'S TIN / DONOR'S TIN	3 Vehicle or other identification number		
DONOR'S name	4a ☐ Donee certifies that vehicle was sold in arm's length transaction to unrelated party		
Street address (including apt. no.)	4b Date of sale		
City or town, state or province, country, and ZIP or foreign postal code	4c Gross proceeds from sale (see instructions) $		**Copy A** For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the **current General Instructions for Certain Information Returns.**
5a ☐ Donee certifies that vehicle will not be transferred for money, other property, or services before completion of material improvements or significant intervening use			
5b ☐ Donee certifies that vehicle is to be transferred to a needy individual for significantly below fair market value in furtherance of donee's charitable purpose			
5c Donee certifies the following detailed description of material improvements or significant intervening use and duration of use			
6a Did you provide goods or services in exchange for the vehicle? . . . ▶ Yes ☐ No ☐			
6b Value of goods and services provided in exchange for the vehicle $			
6c Describe the goods and services, if any, that were provided. If this box is checked, donee certifies that the goods and services consisted solely of intangible religious benefits . . . ▶ ☐			
7 Under the law, the donor may not claim a deduction of more than $500 for this vehicle if this box is checked . . . ▶ ☐			

Form **1098-C** (Rev. 11-2019) Cat. No. 39732R www.irs.gov/Form1098C Department of the Treasury - Internal Revenue Service

However, in this case that did not take place, so the question became whether other documents the taxpayer did provide fulfilled these requirements.

The Fifth Circuit panel's decision discussed the documents that Mr. Izen provided, but comes to the same conclusion as the Tax Court that these fell short of meeting the statutory requirements.

> Izen did not provide a satisfactory contemporaneous written acknowledgement with his Form 1040X. Izen included a letter dated December 30, 2010 from the Society discussing the donation of the airplane, but the letter was addressed to Philippe Tanguy, not Izen.

[27] IRC §170(f)(12)(D)

> The letter does not mention Izen and does not provide his taxpayer identification number. The letter cannot substantiate the contribution of the airplane under § 170(f)(12)(B)(i). Izen also included a copy of the donation agreement between him, Tanguy, and the Society, but the agreement fails to satisfy § 170(f)(12)(B)(i) as it lacks Izen's taxpayer identification number. Finally, Izen attached a Form 8283 to his Form 1040X, but the Form 8283 did not include his taxpayer number.[28]

In footnotes to the above paragraph, the court discusses additional problems with the submitted documentation. First, they reject the taxpayer's attempt to have the court look at a different letter that wasn't submitted with the claim for refund on the Form 1040X:

> Izen asks us to also examine a different letter from the Society, addressed to him but not attached to his Form 1040X, the relevant filing for our analysis. Because this alternate letter was not attached to Izen's Form 1040X, we cannot consider it; even if we could, it similarly lacks his taxpayer identification number.[29]

The panel also finds additional faults with the Form 8283 that was submitted with Mr. Izen's Form 1040X:

> Further, Izen's Form 8283 was not a contemporaneous written acknowledgment by the donee organization as it was not signed by the Society until 2016, well past thirty days of the donation. Izen argues that a written acknowledgement is contemporaneous if produced within thirty days of the filing, but this argument conflicts with the clear statutory definition. Under 26 U.S.C. § 170(f)(12)(c), an acknowledgment is contemporaneous if it is provided by the donee organization within thirty days of the contribution. Section 170(f)(12)(c) does not reference the timing of the taxpayer's filing.[30]

The panel agrees with the Tax Court that the doctrine of substantial compliance does not apply in this case, in particular because these requirements were set by Congress in the statute, rather than by Treasury in regulations:

> Izen argues that he substantially complied with the requirements and that the documents he provided should be read together with the return to substantiate his claimed deduction. The doctrine of substantial compliance may support a taxpayer's claim where he or she acted in good faith and exercised due diligence but nevertheless failed to meet a ***regulatory*** requirement. We cannot accept the argument that substantial compliance satisfies ***statutory*** requirements. Congress specifically required the contemporaneous written acknowledgment include the taxpayer identification number, but that is lacking here.[31]

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[28] *Izen v. Commissioner,* CA5, Docket No. 21-60679, June 29, 2022

[29] *Izen v. Commissioner,* CA5, Docket No. 21-60679, June 29, 2022

[30] *Izen v. Commissioner,* CA5, Docket No. 21-60679, June 29, 2022

[31] *Izen v. Commissioner,* CA5, Docket No. 21-60679, June 29, 2022

The opinion, in a footnote, specifically cites a 2004 Ninth Circuit decision to support the proposition that substantial compliance does not apply to requirements found in the statute regarding charitable contributions, no matter how minor the fault might appear (such as failing to show the taxpayer's identification number on the acknowledgement):

> See *Addis v. Comm'r*, 374 F.3d 881, 887 (9th Cir. 2004) (holding that the plain language of 26 U.S.C. § 170(f)(8) required a total denial of a charitable deduction where the taxpayer failed to comply with the statute; § 170(f)(8) is substantially similar to the provisions of § 170(f)(12) at issue here). See also *French v. Comm'r of Internal Revenue*, 111 T.C.M. (CCH) 1241 (2016) ("The doctrine of substantial compliance does not apply to excuse compliance with the strict substantiation requirements of section 170(f)(8)(B).").[32]

[32] *Izen v. Commissioner,* CA5, Docket No. 21-60679, June 29, 2022