Pension Protection Act

Part III - Administrative, Procedural, and Miscellaneous

Guidance Regarding Appraisal Requirements for Noncash Charitable Contributions

Notice 2006-96

SECTION 1. PURPOSE

This notice provides transitional guidance relating to the new definitions of "qualified appraisal" and "qualified appraiser" in § 170(f)(11) of the Internal Revenue Code, and new § 6695A of the Code regarding substantial or gross valuation misstatements, as added by § 1219 of the Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780 (2006) (the "PPA").

The Service and the Treasury Department expect to issue regulations under § 170(f)(11). Until those regulations are effective, taxpayers may rely on this notice to comply with the new provisions added by § 1219 of the PPA.

SECTION 2. BACKGROUND

A deduction for charitable contributions is generally permitted under § 170(a), subject to certain limitations depending on the type of taxpayer, the nature of the property contributed, and the type of donee organization. Section 170(f)(11), as added by § 883 of the American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418 (2004), contains reporting and substantiation requirements relating to the allowance of deductions for noncash charitable contributions. In particular, under § 170(f)(11)(C), taxpayers are required to obtain a qualified appraisal for donated

property for which a deduction of more than $5,000 is claimed. Under § 170(f)(11)(D), in certain cases the qualified appraisal must be attached to the tax return. For appraisals prepared with respect to returns filed on or before August 17, 2006, existing Treasury Regulations provide a definition of the terms "qualified appraisal" and "qualified appraiser" for purposes of § 170(f)(11).

Section 1219 of the PPA amends § 170(f)(11)(E) and provides statutory definitions of a qualified appraisal and qualified appraiser for appraisals prepared with respect to returns filed after August 17, 2006.

Section 170(f)(11)(E)(i) provides that the term "qualified appraisal" means an appraisal that is (1) treated as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and (2) conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed by the Secretary.

Section 170(f)(11)(E)(ii) provides that the term "qualified appraiser" means an individual who (1) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary, (2) regularly performs appraisals for which the individual receives compensation, and (3) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance. Section 170(f)(11)(E)(iii) further provides that an individual will not be treated as a qualified appraiser unless that individual (1) demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and (2) has not been

prohibited from practicing before the Internal Revenue Service by the Secretary under § 330(c) of Title 31 of the United States Code at any time during the 3-year period ending on the date of the appraisal.

Section 1219 of the PPA also adds a new penalty provision. If the claimed value of property based on an appraisal results in a substantial or gross valuation misstatement under § 6662, a penalty is imposed by new § 6695A on any person who prepared the appraisal and who knew, or reasonably should have known, the appraisal would be used in connection with a return or claim for refund.

SECTION 3. TRANSITIONAL GUIDANCE

.01 *In general*

The Service and the Treasury Department expect to issue regulations under § 170(f)(11), as amended by the PPA. The terms in section 3 of this notice apply to contributions of property (other than readily valued property within the meaning of § 170(f)(11)(A)(ii)(I)) by individuals, partnerships, or corporations for which a deduction of more than $5,000 is claimed on returns filed after August 17, 2006, and before the effective date of the regulations that the Service and the Treasury Department expect to issue. Until regulations are effective under § 170(f)(11), as amended by the PPA, an appraisal that meets the requirements of this notice shall be treated as a qualified appraisal for purposes of § 170(f)(11). The determination of whether an appraiser is qualified under section 3.03 of this notice must be based on the appraiser's qualifications as of the date the appraisal is made.

.02 *Transitional terms-qualified appraisal*

(1) *Qualified appraisal.* An appraisal will be treated as a qualified appraisal within the meaning of § 170(f)(11)(E) if the appraisal complies with all of the requirements of § 1.170A-13(c) of the existing regulations (except to the extent the regulations are inconsistent with § 170(f)(11)), and is conducted by a qualified appraiser in accordance with generally accepted appraisal standards. See sections 3.02(2) and 3.03 of this notice.

(2) *Generally accepted appraisal standards.* An appraisal will be treated as having been conducted in accordance with generally accepted appraisal standards within the meaning of § 170(f)(11)(E)(i)(II) if, for example, the appraisal is consistent with the substance and principles of the Uniform Standards of Professional Appraisal Practice ("USPAP"), as developed by the Appraisal Standards Board of the Appraisal Foundation. Additional information is available at http://www.appraisalfoundation.org.

.03 *Transitional terms – qualified appraiser*

(1) *Appraisal designation.* An appraiser will be treated as having earned an appraisal designation from a recognized professional appraiser organization within the meaning of § 170(f)(11)(E)(ii)(I) if the appraisal designation is awarded on the basis of demonstrated competency in valuing the type of property for which the appraisal is performed.

(2) *Education and experience in valuing the type of property.* An appraiser will be treated as having demonstrated verifiable education and

experience in valuing the type of property subject to the appraisal within the meaning of § 170(f)(11)(E)(iii)(I) if the appraiser makes a declaration in the appraisal that, because of the appraiser's background, experience, education, and membership in professional associations, the appraiser is qualified to make appraisals of the type of property being valued. See also § 1.170A-13(c)(5).

(3) *Minimum education and experience.* An appraiser will be treated as having met minimum education and experience requirements within the meaning of § 170(f)(11)(E)(ii)(I) if –

(a) *For real property*

(i) For returns filed on or before October 19, 2006, the appraiser is qualified as a "qualified appraiser" within the meaning of § 1.170A-13(c)(5) to make appraisals of the type of property being valued.

(ii) For returns filed after October 19, 2006, the appraiser is licensed or certified for the type of property being appraised in the state in which the appraised real property is located.

(b) *For property other than real property* –

(i) For returns filed on or before February 16, 2007, the appraiser is qualified as a "qualified appraiser" within the meaning of § 1.170A-13(c)(5) to make appraisals of the type

of property being valued.

(ii) For returns filed after February 16, 2007, the appraiser has (A) successfully completed college or professional-level coursework that is relevant to the property being valued, (B) obtained at least two years of experience in the trade or business of buying, selling, or valuing the type of property being valued, and (C) fully described in the appraisal the appraiser's education and experience that qualify the appraiser to value the type of property being valued.

.04 *Applicability of reporting and substantiation regulations*

(1) *In general*

The requirements of § 1.170A-13(c) of the existing regulations concerning qualified appraisals and qualified appraisers continue to apply to all taxpayers, including those to whom the transitional guidance in this section may apply, except to the extent the regulations are inconsistent with the provisions of § 170(f)(11). In particular, all taxpayers are required to comply with §§ 1.170A-13(c)(3), (c)(5), (c)(6) and (c)(7).

(2) *Revision to appraiser declaration*

For returns filed after February 16, 2007, the declaration required under § 1.170A-13(c)(5)(i) must include an additional statement that the appraiser understands that a substantial or gross valuation misstatement resulting from an appraisal of the value of property that the appraiser knows, or reasonably should have

known, would be used in connection with a return or claim for refund, may subject the appraiser to a civil penalty under § 6695A. See also § 1.170A-13(c)(3)(iii).

SECTION 4. REQUEST FOR COMMENTS

The Service and the Treasury Department invite comments containing suggestions for future guidance under § 170(f)(11), including regulations. In particular, comments are requested concerning the definition of the following terms: (1) "generally accepted appraisal standards" in § 170(f)(11)(E)(i)(II); (2) "appraisal designation from a recognized professional appraisal organization" in § 170(f)(11)(E)(ii)(I); (3) "minimum education and experience requirements" in § 170(f)(11)(E)(ii)(I); and (4) "verifiable education and experience in valuing the type of property subject to the appraisal" in § 170(f)(11)(E)(iii)(I). Comments also are requested on the potential impact any guidance under § 170(f)(11) may have on small businesses. Comments should refer to Notice 2006-96 and be submitted by January 17, 2007, to:

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044
Attn: CC:PA:LPD:PR
Room 5203

Alternatively, comments may be submitted electronically via e-mail to the following address: Notice.Comments@irscounsel.treas.gov. All comments will be available for public inspection and copying.

SECTION 5. PAPERWORK REDUCTION ACT

The collections of information in this notice have been reviewed and approved by

the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1953.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are in section 3 of this notice. The collections of information are required from donors to satisfy the substantiation requirements of § 170(f)(11). The collections of information are required from donors to obtain a benefit. The likely respondents are individuals, partnerships, and corporations.

The estimated total annual reporting burden is 161,571 hours.

The estimated annual burden per respondent varies from 5 minutes to 5 hours, with an estimated average of approximately 3.5 hours. The estimated number of respondents is 46,285.

The estimated annual frequency of responses (used for reporting requirements only) is once per year.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by § 6103.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Susan J. Kassell of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice

APPRAISERS ASSOCIATION of AMERICA

H-10

CONGRESS AND THE IRS SET THEIR SIGHTS ON "HIRED GUNS"

By Moira Sullivan Crabtree

SUMMARY

Prior to August 17, 2006, penalties for overstating the value of charitable deduction property were aimed at taxpayers and tax preparers who either knew or should have known that incorrect valuations were being used in tax returns. However, in 2006, Congress passed legislation, the Pension Protection Act of 2006, P.L. No. 109-280, 120 Stat. 708 (2006), ("the Pension Protection Act" or "the PPA"), that amended the Internal Revenue Code ("the Code"). Sec. 1219 of the PPA amended four sections of the Code (§§ 170, 6662, 6664 and 6696) and added a penalty specifically targeted at appraisers who prepare appraisals that aid and abet taxpayers in underpaying their taxes (I.R.C. §6695A). The PPA enacted new statutory definitions for "qualified appraisal" and "qualified appraisers". The PPA also reduced the threshold for substantial and gross valuation misstatements for taxpayers who include on their tax returns any valuation misstatements of property, both real and personal, that result in underpayments of income tax and changed the threshold for valuation understatements of items reported on estate and gift tax returns.

The Internal Revenue Service ("IRS" or "the Service") and the Treasury Department expect to issue new permanent regulations under § 170(f)(11) of the Code. Until those regulations are issued, however, taxpayers and appraisers must use the Treasury Regulations issued before August 17, 2006, as amended by the November 13, 2006 Internal Revenue Bulletin, Notice 2006-46 to comply with the new Code provisions added by the PPA. A copy of this Notice appears at the end of this section.

BACKGROUND

I.R.C. §170(a) generally permits charitable contributions deductions, subject to certain limitations depending on the type of taxpayer, the nature of the property contributed, and the type of donee organization. Section 170(f)(11) contains reporting and substantiation requirements for allowable deductions for noncash charitable contributions. In particular, if a taxpayer claims a deduction of more than $5,000 for donated property, he must obtain a qualified appraisal and attach the appraisal **summary** to his tax return. If the contributed

property is art valued at more than $20,000 or other property worth more than $500,000, he must attach the qualified appraisal to the tax return.

Please Note: For appraisals prepared for returns filed on or before August 17, 2006, **existing** Treasury Regulations provide a definition of the terms "qualified appraisal" and "qualified appraiser" for purposes of §170(f)(11). For all tax returns filed after August 17, 2006, the definitions in the Pension Protection Act apply.

The PPA was enacted on August 17, 2006. While the majority of the bill addressed pension issues, tucked at the end under Title XII, are charitable giving incentives, provisions aimed at reforming exempt organizations' practices, increased penalties on taxpayers who make valuation misstatements on their income, estate and gift tax returns and a new penalty on appraisers who submit appraisals that result in substantial and gross valuation misstatements. The penalty provisions address the situation in which an appraiser knew or should have known that the taxpayer would use the appraisal in connection with his tax return. The PPA provisions apply to all tax returns filed after August 17, 2006 and the appraisals attached to those tax returns.

HOW CONGRESS TIGHTENED RESTRICTIONS ON APPRAISERS AND THEIR PRACTICES

QUALIFIED APPRAISALS

If a taxpayer donates tangible personal property worth more than $500, he must include a description of that property with his tax return. Attaching IRS Form 8283 to the tax return satisfies this requirement. A taxpayer must obtain a qualified appraisal for donated property worth more than $5,000, and attach the summary of that appraisal to the tax return. If the donated property is art valued at more than $20,000 or other property worth more than $500,000, the taxpayer must attach the complete appraisal to the return.

Treasury Regulations issued **before** August 17, 2006 define a qualified appraisal. A qualified appraisal complies with §170(f)(11) and Treas. Reg. §1.170A-13(c) if it:

(1) relates to an appraisal made within 60 days prior to the date of contribution and not later than the due date (including extensions) of the return on which the deduction is claimed;

(2) Is prepared, signed, and dated by a qualified appraiser;

(3) Includes:

(a) A description of the property appraised;

(b) The fair market value of the property on the date of contribution;

(c) The specific basis for the valuation;

(d) A statement that the appraisal was prepared for income tax purposes;

(e) The qualifications of the qualified appraiser; and

(f) The appraiser's signature and taxpayer identification number; and

(4) Does not involve an appraisal fee that violates certain prescribed rules.

The post-August 17, 2006 transitional definition of "qualified appraisal" expands the definition of "qualified appraisal" in the existing regulation by requiring that the appraisal be prepared by a qualified appraiser according to generally accepted appraisal standards. Consequently, after August 17, 2006 an appraisal will be treated as a qualified appraisal under § 170(f)(11)(E) if:

1) the appraisal complies with all the requirements of § 1.170A-13(c) of the existing regulations [those listed above]; and
2) is prepared by a qualified appraiser in accordance with generally accepted appraisal standards.

The Uniform Standards of Professional Appraisal Practice ("USPAP"), developed by the Appraisal Standards Board of the Appraisal Foundation, is cited as an example of generally accepted appraisal standards that will satisfy § 170(f)(11)(E)(i)(II).

QUALIFIED APPRAISER

Treas. Reg. §1.170A-13(c)(5)(i) defines a qualified appraiser as a person who:

1) Holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis;

2) Is qualified to make appraisals of the type of property being valued (as determined by the appraiser's background, experience, education and membership, if any, in professional appraisal associations);

3) Is independent; and

4) Understands that an intentionally false or fraudulent overstatement of the value of the appraised property may subject the appraiser to civil penalties.

I.R.C. §170(f)(11)(E)(ii)(I) requires an appraiser have earned an appraisal designation from a recognized professional appraiser organization, based on demonstrated competence valuing the type of property in the appraisal. Furthermore, the appraiser must declare in the

appraisal that he is qualified to appraise this property because of his background, experience, education, and membership in professional associations. *See also* § 1.170A-13(c)(5).

The transitional definition of a qualified appraiser in Notice 2006-46 is more stringent than the definition in the existing Treasury Regulation; Notice 2006-46 must be followed for all appraisals prepared for a tax return filed after August 17, 2006.

The minimum education requirements for an appraiser valuing personal property differ for tax returns filed before and after February 16, 2007. Before February 16, 2007, an appraiser meets minimum education and experience requirements to appraise the type of property being valued if he satisfies the requirements of § 1.170A-13(c)(5) as listed above. For tax returns filed thereafter, the appraiser must satisfy the new definition in §170. He must, with regard to the property being valued ("the subject property"):

> (1) have successfully completed college or professional-level coursework relevant to the subject property;
>
> (2) have at least two years' experience in the trade or business of buying, selling, or valuing property like the subject property; **and**
>
> (3) fully describe in the appraisal his education and experience that qualify him to value property like the subject property.

APPRAISER PENALTIES AND OVERSIGHT

There is well-established authority for the Secretary of the Treasury to impose penalties on persons aiding and abetting the understatement of tax. Historically these provisions were aimed at unscrupulous tax preparers.

A penalty can be imposed on a person who:

> (1) aids, assists in or advises with respect to a tax return or other document;
>
> (2) knows (or has reason to believe) that such document will be used in connection with a material tax matter; and
>
> (3) Knows that this would result in an understatement of tax of another person.

The penalty for submitting an unrealistic opinion is $250; and for willful and reckless

conduct, the penalty is $1,000. If the document relates to the tax return of a corporation, the amount of the penalty is $10,000. These penalties remain in effect for tax preparers.

New Appraiser Penalty

The new section in the Code, § 6695A, "Substantial and Gross Valuation Misstatements Attributable to Incorrect Appraisals," imposes civil penalties on any appraiser who prepares an appraisal used to support a tax position that results in a substantial or gross valuation misstatement. Computing this new appraiser's penalty is a two-step process:

1) take the greater of:

   a. $l,000 or

   b. 10% of the understatement of tax resulting from a substantial or gross valuation misstatement.

2) Then take the lesser of:

   a. the result in step 1 or

   b. A maximum of 125 percent of the gross income derived from the appraisal.

For example, assume that the understatement in tax is $50,000 and that the appraiser earned $20,000 for preparing the appraisal. Under step 1, the $5,000 (or 10% of the $50,000 understatement in tax) is greater than $1,000. Under step 2, $24,000 is 125% of the appraisal fee ($20,000 X 1.25 = $24,000). Because $5,000 is less than $24,000, the appraiser's penalty is $5,000. The penalty will not apply if the appraiser establishes that it was "more likely than not" that the appraisal value was correct.

New Appraiser's Declaration on Form 8283

When a person donates property and claims a deduction of more than $5,000 per item or group of items, art valued at $20,000 or more, and any property for which a $500,000 deduction is claimed, he must obtain a written appraisal and fill out Section B of the Form 8283. Part I contains information on the donated property itself:

- description of type of donated property (art worth less than $20,000, art worth more than $20,000, collectibles, and other types of property)
- description of the donated property;
- brief summary of the property's overall condition when donated;
- appraisal fair market value;
- date of the contribution;

- date donor acquired the property;
- how donor acquired the property;
- donor's cost or adjusted basis;
- amount received if a bargain sale
- amount claimed as a deduction.

In Part II, the donor is required to sign a declaration that identifies all donated items that have an appraised value of not more than $500 per item.

Part III contains the appraiser's binding declaration that reflects all changes in the PPA:

> "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 hold myself out to the public as an appraiser or 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 appraisal property value. Furthermore, I understand that a false and fraudulent overstatement of the property 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). In addition, I understand that a substantial or gross misstatement resulting from the appraisal of the value of the property that I know, or reasonably should know, would be used in connection with a return or claim for refund, may subject me to other penalty under section 6695A. I affirm that I have not been barred from presenting evidence or testimony by the Office of Professional Responsibility."

Part IV is the acknowledgment that the donee must complete.

When a taxpayer claims a deduction of more than $5,000 for donated property, he must attach the summary of the qualified appraisal to his tax return. If the contributed property is art valued at more than $20,000 or other property worth more than $500,000, he must attach the complete qualified appraisal to the tax return.

Disciplinary proceedings for taxpayer's representatives:

The Secretary is also authorized to regulate the practice of any taxpayer representatives (e.g. accountants and attorneys) before the Department of the Treasury ("Department"). After notice and hearing, the Secretary is authorized to suspend or disbar from practice before the Department or the Internal Revenue Service ("IRS") any representative who:

1) is incompetent or disreputable;

2) violates the rules regulating practice before the Department or the IRS; or

3) willfully and knowingly (with intent to defraud) misleads or threatens the person being represented.

If any individual has had a civil penalty assessed against him for aiding and abetting the understatement of tax, the Secretary can also prevent him from appearing before the Department or the IRS to offer opinion evidence on the value of any property.

Disciplinary proceedings against appraisers: Section 1219 of the PPA extends these sanctions to appraisers after notice and a hearing but **before** a civil penalty is assessed against the appraiser. Disciplinary action may include:

1) suspending or barring an appraiser from:

   a. preparing or presenting appraisals on the value of any property to the Department or the IRS;

   b. appearing before the Department or the IRS to offer opinion evidence on the value of any property; and

2) Providing that the appraisals of any appraiser who has been disciplined have no probative effect in any administrative proceeding before the Department or the IRS.

TAXPAYER PENALTIES FOR USING AN IMPROPER APPRAISAL

Income tax returns: Accuracy-related penalties

Accuracy-related penalties are imposed on any taxpayer who underpays his income taxes because of either:

1) Substantial valuation misstatement; or
2) Gross valuation misstatement.

For an accuracy-related penalty to be imposed, the understatement in income tax must be at least $5,000 for an individual or $10,000 for a corporation.

A **substantial** valuation misstatement is any value that is at least 150% or more of the correct value. I.R.C. §6662(e)(1)(A). The penalty for a substantial valuation misstatement is 20% of the underpayment of tax. Assuming that the reported value is at least 150% or more than the correct value, the 20% penalty is applied thusly:

Correct tax liability as determined by the IRS
- Tax liability originally reported by the taxpayer
= Underpayment of tax X 20% = substantial misstatement penalty

Or,

$350,000 correct tax liability
- 200,000 tax liability reported
$ 150,000 understated tax liability
X 20%
$ 30,000 substantial misstatement penalty

The taxpayer's deficiency is now $180,000 ($150,000 understated liability plus $30,000 substantial misstatement penalty).

A **gross** valuation misstatement penalty is applied if the misstatement is at least 200% or more of the correct value. The penalty for a gross valuation misstatement is 40% of the underpayment of tax. Assuming that the claimed value is at least 200% or more of the correct value, the 40% penalty is applied exactly like the 20% penalty:

Correct tax liability as determined by the IRS
- Tax liability originally reported by the taxpayer
= Understated tax liability X 40% = gross misstatement penalty

Or,

$450,000 correct tax liability
- 200,000 tax liability reported
$ 250,000 understated tax liability
X 40%
$ 100,000 gross misstatement penalty

The taxpayer's deficiency is now $350,000 ($250,000 understated tax liability plus $100,000 substantial misstatement penalty).

Warning for the unwary: Whether the penalty is 20% for the substantial valuation misstatement or 40% for the gross valuation misstatement, interest is compounded **daily** on both the

deficiency and penalty and is charged from the due date of the return. In some cases, by the time the taxpayer is assessed, his final bill could be as high as three times the original liability.

Estate and gift tax returns: Accuracy-related penalties

Accuracy-related penalties are also imposed on estate and gift tax returns that contain either substantial or gross valuation understatements. If the value of any property claimed on the return is determined to be no greater than 65% of the correct value, there is a **substantial** estate or gift tax understatement. A **gross** understatement on a gift or estate tax return is one that is no greater than 40% of the correct value. As with the income tax returns, for an accuracy-related penalty to be imposed, the understatement in tax must be at least $5,000 for an individual or $10,000 for a corporation. Similarly, the penalty for a substantial valuation misstatement is 20% of the understatement in tax and for a gross valuation misstatement, the penalty is 40%.

Exceptions to applications of the accuracy-related penalties

Under prior law, no accuracy-related penalty could be imposed if there was a reasonable cause for an underpayment and the taxpayer acted in good faith. Under present law, there is no longer any "reasonable cause" exception to the valuation understatement of charitable contribution property. Now, the only circumstance in which no penalty is imposed on the substantial understatement attributable to the value of any charitable contribution property is if:

1) the claimed value is based on a qualified appraisal made by a qualified appraiser; and
2) the taxpayer made a good faith investigation of the property's value.

CONCLUSION

These provisions have a dramatic impact on appraisers and their professional practices. Not only will the appraiser and his appraisal come under increased IRS scrutiny, any appraiser who acts as a "hired gun" (giving the taxpayer whatever value he requests) risks losing the ability to practice before the IRS for 3 years and paying a penalty that can be as much as 125% of the appraiser's income earned preparing the appraisal.

In addition, these tightened restrictions on taxpayers and the appraisals used to support the claimed tax deductions can also expose an appraiser to a lawsuit by the taxpayer who can then claim "I relied on your appraisal and now the IRS has disallowed the value of the items you appraised." So, not only can the appraiser lose the income earned (+ an additional 25%), the taxpayer could possibly sue to force the appraiser to pay his client's additional tax, the penalties

and interest on the taxpayer's deficiency (and perhaps the attorneys' fees and court costs). These potential consequences hardly make it worthwhile to be a "hired gun."