

**THE EXTREME HOME RENOVATION GIVEAWAY: CONSTRUCTIVE
JUSTIFICATION FOR TAX-FREE HOME IMPROVEMENTS ON ABC'S *EXTREME
MAKEOVER: HOME EDITION***

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I. INTRODUCTION

Tune-in to ABC on Sundays at 8/7 central, and you will see dreams materialize and lives drastically altered in the course of one hour.¹ On *Extreme Makeover: Home Edition* (“EM:HE”), ABC’s Emmy-nominated reality show, families’ homes are turned from humble shanties into sprawling manors, specifically tailored to accommodate the families’ often difficult living situations.² Naturally, this is not just another reality makeover or home improvement show. *Extreme Makeover: Home Edition* picks up where other reality shows leave off by going beyond simply fulfilling the financial goals of a television network to satisfy wanting voids in the lives of struggling families.³

A single episode of *Extreme Makeover: Home Edition* chronicles a week-long renovation of a family’s house by a team of designers, contractors, and hundreds of laborers.⁴ The team shows up early in the morning on the first day as the family is sent off on vacation.⁵ Over the course of the next seven days, the team executes a complete physical renovation and redesign of the house, meeting the unique needs of the family.⁶ The living space is further upgraded with the addition of top-of-the-line appliances, furniture, and electronics.⁷ At the end of the episode, the crew reveals the freshly-renovated home to the family, typically resulting in emotional reactions from the disbelieving family members.⁸

ABC uses a selective screening process of applicants to ensure the families that receive these home renovations are truly deserving.⁹ In fact, ABC suggests that potential applicant families forego submitting an application if the family’s home is over 2,000 square feet or if the

family has simply ‘outgrown’ its home.¹⁰ In the first season of *Extreme Makeover: Home Edition*, the applicants selected by ABC ranged from a single mother forced to raise her nine children by herself after her husband lost his battle with cancer to a family of eight siblings left to care for themselves in a 1,400 square-foot house after the death of their parents.¹¹ Another episode featured a soldier in the California National Guard who, three months after giving his family their first house, a ‘fixer-upper,’ as a Christmas gift, was shipped off to serve a tour of duty in Iraq.¹² One of the prominently-featured families in *EM:HE*’s second season was the Vardon family, a family consisting of two deaf parents raising two children, one of whom is blind and autistic.¹³

These deserving families are given one final surprise on top of the home renovation and redesign, and it is this surprise that very well may garner the attention of the Internal Revenue Service.¹⁴ As if providing free home renovations to these families was not enough, ABC has done so in what it considers to be a tax-free manner.¹⁵ Under section 280(A)(g) of the Internal Revenue Code, if a taxpayer uses a dwelling as a residence and rents that dwelling to a lessee for a period of less than fifteen days, the rental payments are not included as income for tax purposes.¹⁶ It may be stating the obvious to say that giving designers, contractors, and construction workers access to a house for a week to perform home improvement-related tasks does not seem like the typical tenancy. But ABC does actually ‘rent’ each family’s house for the week that its crew is on site.¹⁷ In lieu of making rental payments in cash, ABC pays the \$50,000 rent in appliances, furniture, and electronics, such as television sets and refrigerators.¹⁸ Further, since ABC is the tenant of the property, any improvements made to the home are tax-free to the owner under section 109 of the Internal Revenue Code.¹⁹ Ultimately, the featured families

receive hundreds of thousands of dollars worth of renovations with no tax consequences, which, absent a creative tax strategy, they would otherwise be forced to treat as taxable income.²⁰

Naturally, even to a casual observer, such tactics seem to bend the law beyond its intent. Although the IRS has yet to comment on the strategy,²¹ it seems well within reason to believe it will do so and will be quite unreceptive to ABC's tactics. It is well-settled that windfall gains, including prizes from television shows, are taxed as income.²² Accordingly, taxpayers receiving home improvements from other television shows, such as *This Old House*, are faced with tax liability for their windfall gain.²³ ABC's departure from this longstanding rule by utilizing a loophole in the tax code could therefore create big problems for the families on *Extreme Makeover: Home Edition* if they are audited in the future.

The issues take on additional weight considering the current popularity of home improvement television programs. For example, FOX has a show debuting this fall entitled *Renovate My Family*, in which deserving families are given free home renovations, similar to *Extreme Makeover: Home Edition*.²⁴ It remains to be seen whether FOX will employ the same tax strategy as that of ABC, but if the IRS overlooks ABC's strategy, it certainly stands to reason that FOX will use this 'precedent' to the benefit of the families featured on *Renovate My Family*. Other home improvement shows, such as TLC's *Trading Spaces* and *While You Were Out*, could also foreseeably benefit from ABC's strategy.

In the instant scenario, though, the difficulties raised by *EM:HE*'s strategy are twofold. First, valuation of in-kind prizes, such as home renovations given away on television shows, has always been difficult. Caselaw illustrates how courts have occasionally struggled with using a strictly objective valuation method, and have been willing to use subjective factors, such as a taxpayer's financial situation, to attach a monetary value to such gains.²⁵ Second, by forcing the

issue and requiring the struggling families to pay exorbitant tax bills, the IRS faces a potential public relations nightmare. Recently, the IRS faced a similar dilemma when it implied that the lucky fan who caught Mark McGwire's record-setting home run baseball might face gift tax liability upon returning the baseball to McGwire.²⁶ Americans, including members of Congress, were outraged by the principle of taxing the lucky baseball fan who 'did the right thing' by returning the ball.²⁷ The valuation difficulties and potential for public outrage should weigh heavily on the decision to be made by the IRS, and should ultimately justify the IRS overlooking the questionable strategy used by ABC to preclude dealing a crushing blow to the disadvantaged families.

This comment addresses in detail the valuation difficulties and problems in principle and perception of taxing disadvantaged families, especially as applied to the tax strategy employed by ABC. The second section of this comment presents a basic description of the typical tax treatment of prizes and awards, including those won on television and radio programs. The third section of this comment illustrates how it could be difficult for the *EM:HE* taxpayers to assign a value to their renovations, as subjective factors militate strongly against relying solely on one of the preferred objective methods of determining a fair market value in cases where the asset in question is an in-kind prize or award and the recipient is economically disadvantaged. In the fourth section, this comment presents and analyzes situations in which the IRS has faced problems in principle of levying taxes and was forced to 'back down' in the face of negative publicity. Section five of this comment analyzes the tax strategy used by ABC in light of the valuation issues and issues with levying large tax bills on economically depressed individuals. Finally, this comment concludes in the sixth section that both the difficulty in valuation of in-

kind prizes and the principle of taxing struggling families should lead the IRS to accept the tax strategy employed by ABC and discourage the IRS from pursuing the matter further.

II. TYPICAL TAX TREATMENT OF IN-KIND PRIZES AND AWARDS

It is well-settled that prizes and awards, such as those given away on television or radio programs, are taxable as part of a taxpayer's gross income.²⁸ The federal regulations speak specifically to such prizes or awards, stating that "[p]rizes and awards which are includible in gross income include (but are not limited to) amounts received from radio and television giveaway shows, door prizes, and awards in contests of all types."²⁹ The Internal Revenue Code leaves little to the imagination. If a prize or award is given to a taxpayer, this gain is to be included in the taxpayer's gross income.³⁰ This principle was most recently brought to light in the national media when Oprah Winfrey gave away 276 automobiles as prizes to members of her studio audience.³¹ Since the automobiles were valued at nearly \$30,000, the audience members were each responsible for thousands of dollars worth of tax liability, as the full value of the automobiles must be included in their yearly income.³²

One early case that perfectly illustrates this principle is *Wills v. Commissioner*.³³ This case involved former Major League Baseball star Maury Wills, who was awarded an automobile upon being elected 'Most Popular Dodger' and a valuable "trophy" belt upon being named the outstanding athlete of the year by national sportswriters.³⁴ Since these items were clearly given to Wills as awards, they fell under section 74 of the Internal Revenue Code,³⁵ and were taxable as income unless a statutory exception applied.³⁶ The court held none of these exceptions

applied to the situation, and thus Wills was obligated to pay taxes on his “trophy” belt and automobile.³⁷

While *Wills*³⁸ details awards given for athletic achievement, the same principle governs when applied to prizes or awards given on television and radio programs, such as home renovations given on *Extreme Makeover: Home Edition*. IRS Revenue Ruling 58-235, 1958-1 C.B. 26 details one such case, in which the director of a charitable organization appeared as a contestant on a television quiz show.³⁹ As a contestant, the director won sixty dollars, which he was to pay to the charity.⁴⁰ The IRS ruled, however, that even though the director was playing for his charitable organization, the prize money was paid to him, and therefore created gross income to him rather than to the charity.⁴¹ This ruling again reflects the principle that prizes, such as those won on television shows, are taxable to the person who receives them.

Another revenue ruling that illustrates this principle is IRS Revenue Ruling 58-354, 1953-2 C.B. 36. This ruling involves a family that participated in a public conference designed to find the ‘average American family.’⁴² The family, upon being selected as the ‘average American family,’ was given a number of awards.⁴³ The IRS ruled these awards to be taxable, as they fell under section 74 of the Internal Revenue Code.⁴⁴ This case, as well as the others outlined above, paint a very clear picture. Whether the prize or award is given on a television game show, at a conference designed to search for a typical family, or to a professional baseball player because of his popularity, a prize is still a prize, and must be taxed as income.

Home renovation prizes are no exception to this proposition.⁴⁵ If a television program gives away a home renovation to a taxpayer, the taxpayer is taxed on it as he would be on any other television prize giveaway.⁴⁶ One need look no farther than the tax treatment of the home renovations provided to homeowners on the television program *This Old House* to see that I.R.C.

§ 74 applies in the same manner to home renovation prizes as it does for any other prize.⁴⁷ On this show, similar to *Extreme Makeover: Home Edition*, a crew comes on-site to a home and performs home renovations.⁴⁸ The homeowners are thereafter responsible for the tax liabilities created by the products and services used in the renovation.⁴⁹ In light of the above, it seems reasonably certain that the Internal Revenue Service would be skeptical of any tax strategy designed to circumvent such well-settled and clear-cut principles. However, two issues stand out that help justify a tax strategy in the case of *Extreme Makeover: Home Edition* that does in fact skirt these principles. Namely, these issues are the difficulty of assigning values to in-kind prizes won by economically disadvantaged taxpayers and the difficulty in principle of taxing the disadvantaged on generous prizes.

III. OBJECTIVE METHODS OF DETERMINING THE FAIR MARKET VALUE OF AN ASSET AND SUBJECTIVE ALTERNATIVES

Under section 1.74-1(a)(2) of the Internal Revenue Code Regulations, prizes and awards that are not made in cash are to be valued at their fair market value.⁵⁰ Courts have used several objective methods to compute the fair market value of an asset, including historical cost, subsequent sale price, sales of comparable property, and replacement cost.⁵¹ Under the historical cost method, an asset is simply valued at the cost at which it was previously purchased (i.e., a direct sale of the asset).⁵² While this method allows for a simple determination of value, based upon receipts of purchase, its major downside is that the value of an asset typically changes over time. Thus, the price at which an asset was previously purchased would not be an accurate reflection of the asset's current value.⁵³ Another common method of valuation is the subsequent sales price method.⁵⁴ Under this method, the value of an asset is tied to the purchase price of that

asset *after* the date on which it is to be valued.⁵⁵ A third method commonly used to value assets is the comparable sales method.⁵⁶ Under this approach, an asset's value is determined by comparing it to other similar assets sold in arm's-length transactions at the time of valuation.⁵⁷ Under the replacement cost method, an asset is valued at the price at which it would cost the taxpayer to replace the asset.⁵⁸

Each of the foregoing methods relies strictly upon an objective determination of value.⁵⁹ Subjective criteria, such as the actual value of an asset to the taxpayer himself, are irrelevant.⁶⁰ The reluctance of courts to employ subjective criteria in a calculation of fair market value is reflected in *Eastern Service Corp. v. Comm'r*.⁶¹ In this case, the corporate taxpayer, a "seller-servicer" of mortgages, attempted to deduct as a business expense a portion of the purchase price of stock that it was required to hold because it was a mortgage servicer.⁶² The tax code permitted the taxpayer to deduct only the portion of the purchase price above and beyond the fair market value of the stock at the date of purchase.⁶³ However, the price at which the stock was issued was in fact less than the quoted market price of the stock.⁶⁴ The taxpayer argued that since it was required to hold the stock, the stock was restricted, and the fair market value of the stock was thus less than the quoted market price.⁶⁵ The court held that the stock was not restricted and was freely alienable, since the taxpayer could leave the mortgage service industry and sell the stock, and thus the taxpayer could not take the deduction.⁶⁶ The court supported this holding by stating that the calculation of fair market value "requires an objective as opposed to a subjective or individualized frame of reference."⁶⁷

The primary argument for the use of objective criteria in valuation is that an analysis of subjective criteria would require impractical or impossible investigations into the mindset and circumstances of taxpayers.⁶⁸ This is reflected in *Collins v. Commissioner*,⁶⁹ in which a taxpayer

argued that his entire income from gambling should not be included as income for tax purposes because the value of his gambling opportunities was worth much less than his potential for winning.⁷⁰ The taxpayer, an employee of an off-track betting parlor, utilized his position to make numerous bets and incurred tens of thousands of dollars of debt in one day.⁷¹ Since the taxpayer was betting on his own computer terminal, he was not backing his bets with his own cash.⁷² After being prosecuted for theft, the taxpayer filed a tax return on which he claimed none of the income he received from gambling.⁷³ The taxpayer argued that the value of his gambling opportunity was worth less than the monetary cost of such opportunity, since he structured his bets in such a way that he could only hope to walk away from the gambling scheme with a realized gain of the few thousand dollars he had in his cash register, much less than the amount he staked and lost.⁷⁴ The court found this argument flawed, stating that to conduct such a subjective analysis of an individual's circumstances and intentions would be to "open the Pandora's box of psychic income."⁷⁵

Nevertheless, several courts have explored alternatives to the objective methods of determining the fair market value of assets, indicating that courts are in fact willing to take a look into the subjective circumstances surrounding an individual taxpayer. The preeminent case that details a subjective alternative to the typical objective fair market value approaches is *Turner v. Commissioner*.⁷⁶ In this well-known case, decided in 1954, a local radio station called Turner and offered him the chance to win a prize by correctly answering a question.⁷⁷ The radio station proceeded to play a song, which it asked Turner to name.⁷⁸ After doing so correctly, Turner was given the chance to answer another question, which would give him a chance to win the grand prize.⁷⁹ Upon answering this question correctly, the radio station presented Turner with a number of prizes, including two round trip first-class tickets on a steamship to Buenos Aires.⁸⁰

For a man whose yearly income totaled only slightly greater than \$4,500, this was quite a substantial prize, and was one which otherwise would have probably been beyond his means.⁸¹ Since Turner's wife, Marie, was from Brazil, Turner negotiated with the steamship company and was able to secure, in place of the tickets to Argentina, four tourist-class tickets to Rio de Janeiro, Brazil for himself, his wife, and their two children.⁸²

Turner included income in the amount of \$520 on his tax return related to the tickets, but the Internal Revenue Service felt the value of the tickets was far greater, and should have been stated at the fair market value of \$2,220.⁸³ Rather than accept this objective position, though, the court found it necessary to take into account the actual value to the taxpayer based on subjective, personal circumstances.⁸⁴ The court pointed to two important considerations in making this determination. First, it looked to whether the tickets were something that the Turners would have typically been able to afford.⁸⁵ The tickets were clearly beyond their means, and the court reasoned that the value to them must be much less than the retail price, since they would have been unwilling to pay this price for the tickets.⁸⁶ Second, the court looked to whether the tickets would even be marketable at the high retail price, assuming, of course, the tickets were transferable and had no restrictions.⁸⁷

The court concluded that Turner would not be able to sell the tickets at this steep price, and would probably incur additional selling expenses if he were to try to do so.⁸⁸ Accordingly, the court found that the more objective approaches to determining the fair market value of the steamship tickets were inappropriate for determining the income that Turner needed to include in his taxes.⁸⁹ The court, subjectively taking into account all factors, set the value of the tickets at \$1,400, in between the value asserted by Turner and the value asserted by the IRS.⁹⁰ By utilizing a subjective valuation approach to set a rather arbitrary value for the tickets, the court lent no

help or guidance to future taxpayers in similar situations, but demonstrated that the objective methods of determining the fair market value of in-kind prizes are not always the most effective or appropriate tools for measuring income.

Another well-known case was decided eight years after *Turner* in which the court employed a similar valuation method. In *McCoy v. Commissioner*,⁹¹ the taxpayer, Lawrence McCoy, was awarded a Lincoln automobile as a prize for winning his employer's annual sales contest. McCoy took possession of the car in Jacksonville, drove it to his home in Knoxville, and traded it into a dealer for a less expensive Ford station wagon and \$1,000 cash.⁹² In his tax return for the year, McCoy recorded the amount of \$3,600 related to the entire transaction, equalling the retail price of the Ford plus the additional \$1,000 cash.⁹³ The IRS determined that McCoy's taxable income from the prize should have been equal to the retail price of the Lincoln, which was \$4,452.54.⁹⁴

The court, similar to the court in *Turner*, refused to accept the position of either the taxpayer or the IRS.⁹⁵ Instead, it looked to subjective factors to determine a better measure of McCoy's income from the prize. The court tried to account for the difference between the retail price paid for the Lincoln and the amount McCoy received when he traded it in for the Ford and cash.⁹⁶ One reason for this discrepancy, the court stated, was that McCoy actually used the car for a period of time, driving it between Jacksonville, Florida and Knoxville, Tennessee.⁹⁷ Such a drive could substantially depreciate an automobile.⁹⁸ Another factor to which the court pointed as causing a decline in the market value of the Lincoln was the fact that automobiles immediately depreciate in value after they are sold by dealers.⁹⁹ These two factors, however, could not account for the entire disconnect between the retail price of the car and the amount McCoy received in the transaction. Accordingly, the court set the value of the car at \$3,900.¹⁰⁰ As in

Turner, the court ignored the traditional, objective approaches to determining fair market value of in-kind prizes and based its valuation upon subjective factors.¹⁰¹

It is clear that courts are near unanimous in their use of objective methods when determining the fair market value of assets. While these methods each have their downsides, they are, on the whole, the most practical way to assign value to an asset since they do not require expensive and time-consuming inquiries into the circumstances and mindset of individual taxpayers. However, as several courts have shown, the true value of an asset, and the amount that should be taxed, can sometimes be appropriately determined by utilizing a more subjective method.¹⁰² If nothing else, this lends to the process of valuation a great deal of confusion. This is particularly true when the asset in question is an in-kind prize or award and subjective factors, such as the financial status of the winners, militate strongly against assigning to the winners a heavy tax burden. Such was the case in *Turner*.¹⁰³ Thus, in light of the practicality and certainty of objective methods, the subjective method cannot be discarded altogether, and must bear at least a moment of consideration in certain circumstances.

IV. RECENT SITUATIONS IN WHICH THE IRS HAS GONE AGAINST LONGSTANDING TAX POLICY WHEN JUSTIFIED BY STRONG PUBLIC POLICY REASONS

The Internal Revenue Service's unenviable task of collecting money from taxpayers usually requires it to take a hard-line stance on the various issues of taxation. Many of these stances are quite unpopular, sometimes causing a severe backlash from the public. Generally, such issues are resolved through administrative appeals or in the courts, but it is not at all uncommon for the IRS to simply back down from an issue, giving way to public opinion.¹⁰⁴ In such situations, the IRS will usually rely upon a viable tax reason for doing so, but it is still quite

apparent that it has done so, at least in part, because of harsh public backlash.¹⁰⁵ Recently, the IRS has done so on a number of occasions, on issues ranging from taxation of frequent flier miles to the taxation of baseballs caught by fans.¹⁰⁶

One such situation arose when the IRS was implementing a “Free File” program for certain taxpayers to electronically file their taxes by using a private software company.¹⁰⁷ The IRS initially instructed the software companies to ‘flag’ users of the program to track its effectiveness.¹⁰⁸ This threw taxpayers and some tax preparation companies into a frenzy, since such a process would necessarily make taxpayer’s crucial personal data available for potential misuse by certain tax preparation companies.¹⁰⁹ Soon thereafter, the IRS abandoned its tracking program, giving way to the concerned taxpayers and private companies.¹¹⁰

While the taxpayer ‘flagging’ issue is relatively minor, a more pressing issue arose in 1995, when the IRS announced that personal frequent flyer miles earned by business travelers were to be taxed as income.¹¹¹ This announcement outraged business travelers accustomed to accumulating such points as a fringe benefit of their employment.¹¹² In addition to the economic implications, much of the discontent stemmed from the difficulty in valuing these frequent flyer points, since airlines did not necessarily assign a monetary value to them.¹¹³ The valuation difficulties were at tension with the issue of fairness to all taxpayers, since the business travelers receiving these frequent flyer miles were in fact receiving a non-taxable benefit that would unfairly put them in a better economic position than a taxpayer who was taxed on the benefits he received.¹¹⁴

Seven years later, the IRS bowed out of the fight when it issued Announcement 2002-18.¹¹⁵ This announcement stated that the IRS would “no longer assert that any taxpayer has understated his federal tax liability by reason of the receipt or personal use of frequent flyer

miles or other in-kind promotional benefits attributable to the taxpayer's business or official travel.”¹¹⁶ By issuing this statement and permitting frequent flyer points to be tax-exempt, the IRS not only caved to the pressure from displeased businessmen, but impliedly demonstrated that concerns of fairness were secondary to the taxpayers' concerns with the difficulty of valuation.

Perhaps the most significant public outcry against IRS policy in recent years came in the summer of 1998, during Mark McGwire's and Sammy Sosa's quests to break Roger Maris' single-season Major League Baseball home run record.¹¹⁷ As the sluggers belted home run after home run, it became apparent that the home run balls were of significant value as memorabilia.¹¹⁸ Speculation was rampant that the record-tying and record-setting home runs would fetch bids reaching one million dollars if the lucky fan who caught the ball was to sell it, rather than return it to the batter.¹¹⁹

In the midst of this excitement, an IRS spokesman stated that if the fan who caught the ball did in fact return it to the slugger, rather than keeping or selling the ball, the fan could potentially face hundreds of thousands of dollars worth of gift tax liability.¹²⁰ The underlying premise on which he relied was that the fan had received a windfall gain of a substantial amount of income, since the home run ball had a market value of hundreds of thousands of dollars.¹²¹ By gratuitously giving the ball to another person, in this case the batter, the transaction would be viewed as the conveying of a gift, and thus the donor would incur gift tax liability.¹²²

This notion, of course, angered ordinary fans to politicians in Washington alike.¹²³ White House spokesman Mike McCurry said that such a proposition was “about the dumbest thing I've ever heard in my life.”¹²⁴ Others had similar sentiments, particularly since the fan incurring tax liability would be sacrificing a windfall gain of potentially hundreds of thousands of dollars to altruistically return the ball to the hitter. William Roth, chairman of the Senate Finance

Committee, thought the stance of the IRS “made no sense” and was “un-American,” because “the fan is being generous and still being penalized for it.”¹²⁵ One congressman even threatened to introduce legislation to do away with any potential tax liability a fan might incur in such a situation.¹²⁶ Representative Bill Thomas stated that the legislation he would introduce would “keep the IRS from sticking the fans with the ‘McGwire/Sosa Tax.’”¹²⁷

The IRS seemingly wasted no time in responding to these harsh attacks and mitigating the tumult.¹²⁸ It stated that any fan who caught a ball and immediately returned it to the hitter would not incur gift tax liability.¹²⁹ The IRS found that by returning the ball, the fan would be, in essence, declining a sweepstakes prize or “giv[ing] back unsolicited merchandise.”¹³⁰ The IRS Commissioner, Charles Rossotti, reaffirmed this new interpretation, stating that “the fan who gives back the home run ball deserves a round of applause, not a big tax bill.”¹³¹

The question lingers, though, as to whether a fan would truly be declining a prize or gift by giving a home run ball to the batter.¹³² To decline a gift or sweepstakes prize, the winner would have to return the gift or prize to the person to whom it previously belonged.¹³³ In the case of a baseball used in a Major League Baseball game, the ball does not belong to the player who hits it or throws it.¹³⁴ The ball belongs to the league until it leaves the field of play.¹³⁵ Since the fan who catches the ball is not returning it to the league, but rather gratuitously giving it to the batter to do with it as he pleases, it seems that the fan is, in fact, giving a gift. This indicates the IRS’s position is technically incorrect.

It seems that the IRS, rather than firmly relying on the letter of the tax code to resolve a tax issue, used an irrelevant provision of the tax code to brush aside a particularly provocative issue.¹³⁶ Common sense dictates that a fan who catches a baseball and altruistically gives it away should not be taxed, but the letter of the tax code says otherwise. Without a doubt, this is a

situation in which the IRS looked for any justification to go against the letter of the tax code and with public opinion to protect its name and find a fair and equitable resolution, regardless of whether its justification was technically correct.

It is evident that the IRS is far from oblivious to the tax concerns and issues of the general public.¹³⁷ In fact, the IRS seems to be acutely aware of public perception and is willing to slightly adjust tax policy to cater to major public issues when necessary.¹³⁸ When faced with the issue of taxpayer information security, it demonstrated that, at the very least, it was willing to subordinate its own agenda in favor of taxpayer's privacy concerns.¹³⁹ The IRS showed that certain valuation issues raised by concerned taxpayers were worthy of rendering airline frequent flier points tax-exempt.¹⁴⁰ Finally, it displayed its ability to completely ignore the letter of the tax code in the name of common sense to prevent baseball fans from incurring tax liability on gifted home run balls.¹⁴¹ The Internal Revenue Service is undoubtedly willing and able to defer or ignore its longstanding policies when such actions are justified by strong public policy reasons.

V. THE IRS SHOULD NOT TAKE ISSUE WITH THE TAX STRATEGY EMPLOYED BY ABC AND *EXTREME MAKEOVER: HOME EDITION* IN LIGHT OF VALUATION DIFFICULTIES AND PUBLIC POLICY

The issue faced by the IRS in the situation of *Extreme Makeover: Home Edition* is quite simple. It can either enforce the law as it was intended or enforce the law as it is written. This conflict takes root in the fact that the home renovations and consumer goods provided to the families on *EM:HE* are indeed windfall prizes disguised as lessee improvements and lease payments, respectively.¹⁴² It is clear from the Tax Code and the Code of Federal Regulations that such prizes given away on television programs should be taxed as income.¹⁴³ The IRS,

therefore, faces a difficult decision as to whether it should accept ABC's position that the renovations and products are actually legitimate rental payments and lessee improvements, or reject ABC's position and classify the renovations and products as television giveaway prizes, forcing the recipient families to pay exorbitant tax bills. Two factors weigh heavily in favor of the IRS accepting ABC's position: the difficulty in valuing certain in-kind prizes, particularly when subjective circumstances predominate, and the potential public relations problem the IRS would face should it levy severe tax bills on economically destitute families.

The first major obstacle the IRS would likely face, if it should choose to treat the home renovations as prizes, is the nebulous concept of assigning values to in-kind prizes. Objective methods of valuation alleviate much of the confusion by providing certainty, but can result in stark differences in the results they produce. For example, the preferred method of valuing home renovations sets the value of the renovations at the actual cost of the renovations to the homeowner.¹⁴⁴ However, by employing other objective methods, the value of the renovations could be set at the incremental increase in appraised market value of the home or at the selling price of similar property. The cost of renovating a house does not necessarily correlate to the increase in market value, particularly when a portion of the house is demolished and rebuilt in the process of renovation.¹⁴⁵ Accordingly, these methods can lead to starkly different results. Choosing one particular method over all others lends certainty to the process, but this is seemingly achieved at the expense of accuracy, as evidenced by the disparate results produced by the different methods.

The sacrifice of accuracy is most obvious in situations where subjective factors, such as a taxpayer's economic status, create a great discrepancy between the value of an asset to that particular taxpayer compared to the value of the same asset to the average taxpayer. Such is true

with the families featured on *EM:HE*. Because these families typically have modest incomes, it is quite likely that they are unable to purchase home renovations, new appliances, or high-end electronics by themselves. As they would be unwilling and unable to pay for such assets, the subjective value of these assets to the taxpayers is very little – much less than the value to a taxpayer who is willing and able to pay retail price. This parallels the taxpayer’s situation in *Turner v. Commissioner*.¹⁴⁶ In that case, the court valued the taxpayer’s steamship tickets below the retail price of the tickets because the taxpayer was not financially well-off, and would otherwise have been unwilling to pay retail price for the tickets.¹⁴⁷ In circumstances such as these, in which the financial situations of the taxpayers create such obvious gaps between the true value of the prize to the taxpayer and an objectively-assigned value, the incorporation of subjective factors into an assigned value results in a more accurate and realistic value.

In most situations, objective methods for valuing in-kind prizes are clearly preferable to subjective methods. Objective methods are not only more time-efficient and cost-effective, but also provide a level of certainty that is not afforded by subjective valuation methods.¹⁴⁸ However, in circumstances in which the subjective value of a prize to a taxpayer is so disparate to an objective value, particularly when the taxpayer is financially disadvantaged, subjective value should not be ignored. The families featured on *EM:HE* and the taxpayer in *Turner*¹⁴⁹ exhibit similar qualities that should force the IRS to at least consider subjective factors in such circumstances or abandon any attempt to assign an accurate value to the home improvements.

The second issue facing the IRS, should it refuse to accept ABC’s tax strategy, is the potential for a public relations mess. If the IRS announced that it was taxing the disadvantaged families featured on *EM:HE* tens or even hundreds of thousands of dollars on the improvements made to their homes, the media would almost certainly give this substantial attention. Judging

by the reaction of both the general public and government officials in similar well-publicized tax situations,¹⁵⁰ particularly the situation involving the Mark McGwire home run ball,¹⁵¹ the backlash would be swift and resonant. In the Mark McGwire home run ball situation, Congressmen expressed outrage at the thought that a fan who returned a record-setting home run ball to the batter would be taxed on it as if it was a gift.¹⁵² It stands to reason that a similar reaction could be expected if the IRS forced a family on *EM:HE*, such as the Vardons, the family of two deaf parents raising two children – one of whom is blind and autistic, to pay a tax bill far beyond their means.¹⁵³ While the principle of taxing an honest baseball fan is hard to justify in principle, it is much harder to accept the principle of levying heavy taxes on the poor and physically-disabled.

The IRS has demonstrated that it is indeed conscious of public opinion and will seek creative justifications to appease the public. The IRS has faced several situations recently in which it faced harsh criticism, including its program to flag users of its “Free File” program¹⁵⁴ and its announcement that personal frequent flyer miles earned by business travelers were to be taxed as income.¹⁵⁵ The most important and well-publicized situation, though, in which the IRS sought a creative justification in order to overlook strict interpretation of the Tax Code was the situation involving taxation of home run baseballs returned to the batters.¹⁵⁶ The IRS’s justification for allowing the transfer from the lucky fan to the batter to be tax free was that the transfer was not synonymous with a gift but rather with the declination of a sweepstakes prize.¹⁵⁷ This assertion, though, seems quite weak since the fan would not be returning the ball to its previous owner, Major League Baseball, but rather would be giving it to a third party, the batter.¹⁵⁸ The IRS, by seemingly departing from a strict reading of the tax code to make a special exception, was able to circumvent a sticky situation and appease fans.

The instant situation, with *EM:HE*, provides a similar opportunity for the IRS to appease the public by simply justifying ABC's tax strategy. Nothing more would be required than to announce that ABC followed the letter of the tax code and the families would thus not be forced to pay taxes on their gains. While this would certainly set a questionable precedent and open the door for other television shows to follow suit, the potential for abuse would probably be limited by several factors. First, it seems that the abuse would not migrate to the private sector, since the strategy is based on giving home renovations as prizes at no cost. Such a situation is difficult to imagine outside the entertainment sphere. Second, the strategy does not help the donor of the home renovation; rather, it helps the recipient. Thus, the donor of the home renovations must not only be willing to give the renovations at no cost to homeowners, but must also be willing to undertake the hassle of renting the house and structuring rent payments with appliances, electronics, and furniture. For a television program to be willing to donate the renovations and undertake such measures, it would have to have both the potential to profit from it and a charitable desire to help the featured families. The market for such television programs is finite, and thus, the strategy would be limited to those few home improvement programs able to meet this criteria. Finally, the donor must be able to complete the renovations within the statutory period, which in this case is less than fifteen days.¹⁵⁹

Since these factors limit application of ABC's strategy so drastically, the IRS would see only a negligible difference in total revenue collected. Thus, it seems economically impractical for the IRS to challenge the strategy in light of the valuation difficulties and public outrage that it would face. As the negatives of the IRS taking issue with ABC's strategy are clearly much greater than the benefits, the IRS must endorse ABC's strategy in some fashion. The question is

whether the IRS should address the issue directly by seeking to create a specific provision or exception in the tax code, quietly acquiesce, or seek an alternative solution.

One alternative for the IRS in this situation is to alter the tax code to create a provision for such circumstances. Seeking to alter the tax code, however, seems to be quite a drastic remedy, and may cut too broadly for such a specific situation. A second alternative for the IRS in this situation would be to quietly acquiesce and permit ABC's strategy without comment. Such a solution, however, would not allow for a clear and definitive statement on the issue.

The appropriate response from the IRS in this case is one that resolves the issue definitively but quickly. To achieve this, the IRS should announce that it will not be pursuing the matter, since the tax code technically permits lessee renovations and rental payments for terms less than fifteen days to be made tax-free to the owner of the property. While this justification would technically be based on the tax code, as was the justification in the situation involving the record-setting home run baseball,¹⁶⁰ it would inherently be based on the overriding difficulties in valuation of such prizes when given to needy families and with levying huge tax bills on these needy families. The statement's intentional transparency permits the strong message that although the IRS is outwardly relying on the tax code in its decision, it is actually the underlying policy issues that necessitate such a result.

VI. CONCLUSION

The television show *Extreme Makeover: Home Edition* is a truly remarkable endeavor. It is a perfect exemplification of everything that is right about a free market economy. ABC, the television station that airs the show, generates substantial money from advertising, as the show has tremendous ratings week-in and week-out.¹⁶¹ Advertisers whose products are featured on the

show receive great publicity for sponsoring and helping a charitable cause.¹⁶² Families featured on the show receive home renovations to raise their standard of living to meet their unique needs. And the viewers at home get to watch the delighted faces of the featured family members and feel comforted to know that good things do happen to good people.

Does the Internal Revenue Service really want to tear down something that has become such a success in so many different ways? It remains to be seen. At the very least, though, should the IRS choose to take a closer look at the situation, it would certainly not be forced to do so. The justifications against doing so are strong. Valuation difficulties in situations where great disparities exist between the subjective value of an in-kind prize to an economically-depressed family and the objective value of the same prize create a degree of uncertainty as to the true value on which the prize should be taxed. The difficulty in principle of levying heavy tax burdens on poor and physically-disabled individuals has the potential of creating serious public relations issues for the IRS. Such factors should justify the IRS's acceptance of the tax strategy used by ABC and *Extreme Makeover: Home Edition*, so that all parties can continue to benefit from such a worthy pursuit.

¹ <http://abc.go.com/primetime/xtremehome>

² See <http://abc.go.com/primetime/xtremehome>. *Extreme Makeover: Home Edition* received an Emmy nomination for Outstanding Reality Program following its first season.

³ See Penelope Patsuris, *The Most Profitable Reality TV Shows*, FORBES, September 7, 2004, available at http://www.forbes.com/business/2004/09/07/cx_pp_0907realitytv.html. Among the most lucrative reality shows for networks are *American Idol* (\$260.7 million profit), a talent search show on which contestants audition for the prize of a record contract, *Survivor: Pearl Island* (\$73.1 million profit), a show in which contestants are placed in a remote location and forced to periodically vote off other contestants in an attempt to win a large cash prize, and *The Apprentice* (\$53.945 million profit), a show on which contestants battle for a job with Donald Trump. See <http://idolonfox.com/home.htm>; <http://www.cbs.com/primetime/survivor/>; http://www.nbc.com/The_Apprentice/.

⁴ See <http://abc.go.com/primetime/xtremehome>.

⁵ See *id.*

⁶ See *id.* For example, in one episode, the crew installed an elevator in a house for a wheelchair-bound family member. In another episode, the crew installed padded floors and handrails to accommodate a child suffering from Osteogenesis Imperfecta (OI), a genetic disorder that makes bones susceptible to fracturing.

⁷ See *id.*

⁸ See *id.*

⁹ *Id.*

¹⁰ *Id.*

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- ¹¹ See *id.*
- ¹² See *id.*
- ¹³ See *id.*
- ¹⁴ See Daniel McGinn, *Television: Tax Trouble for ABC's 'Extreme' Winners?*, NEWSWEEK, May 17, 2004, at 12, available at <http://www.msnbc.msn.com/id/4933223/site/newsweek>.
- ¹⁵ See *id.*
- ¹⁶ See 26 U.S.C. § 280(A)(g) (Westlaw current through 2004).
- ¹⁷ See Daniel McGinn, *Television: Tax Trouble for ABC's 'Extreme' Winners?*, NEWSWEEK, May 17, 2004, at 12, available at <http://www.msnbc.msn.com/id/4933223/site/newsweek>.
- ¹⁸ See *id.* Rental payments are typically included in the taxable income of a lessor. See 26 U.S.C. § 61(a)(5) (Westlaw current through 2004).
- ¹⁹ 26 U.S.C. § 109 (Westlaw current through 2004). “Gross income does not include income (other than rent) derived by a lessor . . . representing the value of such property attributable to buildings erected or other improvements made by the lessee.” See also *M.E. Blatt Co. v. U.S.*, 305 US 267 (1938), holding that the value of improvements made by a lessee was not taxable income to the lessor.
- ²⁰ See Daniel McGinn, *Television: Tax Trouble for ABC's 'Extreme' Winners?*, NEWSWEEK, May 17, 2004, at 12, available at <http://www.msnbc.msn.com/id/4933223/site/newsweek>. The value of improvements on the Woslum’s house (a family featured on season one) has been estimated at \$250,000.
- ²¹ See *id.*
- ²² See *id.* See also 26 C.F.R. § 1.74-1 (Westlaw current through 2004), stating that “[p]rizes and awards which are includible in gross income include . . . amounts received from . . . television giveaway shows.”
- ²³ See Daniel McGinn, *Television: Tax Trouble for ABC's 'Extreme' Winners?*, NEWSWEEK, May 17, 2004, at 12, available at <http://www.msnbc.msn.com/id/4933223/site/newsweek>.
- ²⁴ <http://www.fox.com/renovatemyfamily>.
- ²⁵ See *Turner v. Comm’r*, 13 T.C.M. (CCH) 462 (1954), finding subjective factors most helpful in determining the fair market value of steamship tickets won by a taxpayer. See also *McCoy v. Comm’r*, 38 T.C. 841 (1962), finding that prevailing subjective factors mandated that the assigned value of a car won by a taxpayer was less than its objective fair market value.
- ²⁶ Sheldon Richman, *Home Runs and the Capricious Tax Man*, The Future of Freedom Foundation, September 1998, available at <http://www.fff.org/comment/ed0998a.asp>.
- ²⁷ See *id.*
- ²⁸ See 26 U.S.C. § 74(a) (Westlaw current through 2004), stating, “gross income includes amounts received as prizes and awards.”
- ²⁹ 26 C.F.R. § 1.74-1 (Westlaw current through 2004).
- ³⁰ See *id.*
- ³¹ *Oprah Car Winners Hit With Hefty Tax*, CNN/Money, September 22, 2004, available at http://money.cnn.com/2004/09/22/news/newsmakers/oprah_car_tax/
- ³² See *id.*
- ³³ *Wills v. Comm’r*, 411 F.2d 537 (9th Cir. 1969).
- ³⁴ *Id.* at 539.
- ³⁵ 26 U.S.C. § 74 (Westlaw current through 2004).
- ³⁶ *Wills v. Comm’r*, 411 F.2d 537, 541 (9th Cir. 1969); see also 26 U.S.C. § 74(b) (Westlaw current through 2004), which allows prizes and awards to be excluded from gross income if the prize or award is “made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement.”
- ³⁷ *Wills v. Comm’r*, 411 F.2d 537, 542-43 (9th Cir. 1969).
- ³⁸ *Id.*
- ³⁹ See Rev. Rul. 58-235, 1958-1 C.B. 26.
- ⁴⁰ See *id.*
- ⁴¹ See *id.*
- ⁴² See Rev. Rul. 58-354, 1958-2 C.B. 36.
- ⁴³ See *id.*
- ⁴⁴ See *id.*
- ⁴⁵ See Daniel McGinn, *Television: Tax Trouble for ABC's 'Extreme' Winners?*, NEWSWEEK, May 17, 2004, at 12, available at <http://www.msnbc.msn.com/id/4933223/site/newsweek>.

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- ⁴⁶ See *id.* When financed by the homeowner, home improvement costs are typically not deductible. However, the cost of the renovations can be added to the cost basis of the home, creating tax savings upon subsequent sale of the home. When the home is sold, the difference in the sales price of the home and the cost basis is taxable. See I.R.S. Publication 523, available at <http://www.irs.gov/pub/irs-pdf/p523.pdf>. See also *How Home Improvements Affect Your Taxes*, 2004, available at <http://www.turbotax.com/articles/HowHomeImprovementsAffectYourTaxes.html>.
- ⁴⁷ See I.R.S. Publication 523, available at <http://www.irs.gov/pub/irs-pdf/p523.pdf>, stating that the valuation method for home improvements not purchased by the homeowner is fair market value, rather than cost, and that “sales of similar property, on or about the same date, may be helpful in figuring the fair market value of the property.”
- ⁴⁸ See <http://www.thisoldhouse.com/toh>.
- ⁴⁹ See Daniel McGinn, *Television: Tax Trouble for ABC's 'Extreme' Winners?*, NEWSWEEK, May 17, 2004, at 12, available at <http://www.msnbc.msn.com/id/4933223/site/newsweek>.
- ⁵⁰ See 26 C.F.R. § 1.74-1 (Westlaw current through 2004).
- ⁵¹ JOHN A. BOGDANSKI, FEDERAL TAX VALUATION ¶ 3.01 3-3 (2003).
- ⁵² See *id.*
- ⁵³ See *id.* at 3-7.
- ⁵⁴ *Id.* at 3-15.
- ⁵⁵ See *id.* This method presents similar benefits and disadvantages as the historical cost method in that a dollar value can be assigned to an asset with relative ease, but timing differences lead to inaccuracies of the assigned value. See *id.* at 3-19.
- ⁵⁶ See *id.* at 3-23.
- ⁵⁷ See *id.* This is particularly useful with mass-produced products that are essentially identical, such as automobiles. See *id.* This method fails, though, in the absence of a meaningful number of similar transactions involving similar assets. See *id.* at 3-44.
- ⁵⁸ See *id.* at 3-79. This method has a number of shortcomings, such as its failure to take into account inferiority or obsolescence of the asset to be valued and the potential impracticability of replacing or reproducing an asset. See *id.* at 3-88 – 94.
- ⁵⁹ See *id.* at 2-23.
- ⁶⁰ See *id.*
- ⁶¹ *Eastern Service Corp. v. Comm’r*, 650 F.2d 379 (2d Cir. 1981).
- ⁶² See *id.* at 380-81.
- ⁶³ See *id.* at 381.
- ⁶⁴ See *id.*
- ⁶⁵ See *id.* at 383.
- ⁶⁶ See *id.*
- ⁶⁷ *Id.*
- ⁶⁸ See JOHN A. BOGDANSKI, FEDERAL TAX VALUATION ¶ 3.01 2-24 (2003).
- ⁶⁹ *Collins v. Comm’r*, 64 T.C.M. (CCH) 557 (1992).
- ⁷⁰ See *id.*
- ⁷¹ See *id.*
- ⁷² See *id.* Thus, by incurring gambling losses, he was essentially stealing from the betting parlor.
- ⁷³ See *id.*
- ⁷⁴ See *id.*
- ⁷⁵ See *id.*
- ⁷⁶ *Turner v. Comm’r*, 13 T.C.M. (CCH) 462 (1954).
- ⁷⁷ See *id.* Turner’s name had been randomly selected from a phone book.
- ⁷⁸ See *id.*
- ⁷⁹ See *id.*
- ⁸⁰ See *id.*
- ⁸¹ See *id.*
- ⁸² See *id.*
- ⁸³ See *id.* The IRS seemingly based the fair market value it assigned to the tickets on the retail price of similar tickets.
- ⁸⁴ See *id.*
- ⁸⁵ See *id.*
- ⁸⁶ See *id.*

⁸⁷ See *id.*
⁸⁸ See *id.*
⁸⁹ See *id.*
⁹⁰ See *id.*
⁹¹ See *McCoy v. Comm’r*, 38 T.C. 841 (1962).
⁹² See *id.* At the time the Lincoln was given to McCoy, it had a retail price of \$4,452.54. The Ford had a retail price of \$2,600.
⁹³ See *id.*
⁹⁴ See *id.*
⁹⁵ See *id.*
⁹⁶ See *id.*
⁹⁷ See *id.*
⁹⁸ See *id.*
⁹⁹ See *id.*
¹⁰⁰ See *id.*
¹⁰¹ See *id.*
¹⁰² See *id.*, *Turner v. Comm’r*, 13 T.C.M. (CCH) 462 (1954).
¹⁰³ See *id.*
¹⁰⁴ See <http://www.irs.gov/irs/article/0,,id=96750,00.html>.
¹⁰⁵ See, e.g., *Taxman Won’t Go After Fans Who Return Historic Homers*, available at http://sportsillustrated.cnn.com/baseball/mlb/news/1998/09/08/irs_62_update/.
¹⁰⁶ See *id.*; see also *IRS Backs Off Taxing Frequent Flyer Awards*, HR MATTERS, available at <http://www.ppspublishers.com/silo/HRM0402SAMPLE2.pdf>.
¹⁰⁷ See EPIC ALERT: IRS BACKS DOWN ON E-FILER TRACKING, Volume 11.02, January 29, 2004, available at <http://www.iwar.org.uk/pipermail/infocon/2004-January/001021.html>.
¹⁰⁸ See *id.*
¹⁰⁹ See *id.*
¹¹⁰ See *id.*
¹¹¹ *IRS Backs Off Taxing Frequent Flyer Awards*, HR MATTERS, available at <http://www.ppspublishers.com/silo/HRM0402SAMPLE2.pdf>. The IRS issued Technical Advice Memorandum 9547001, a formal opinion issued in response to an individual taxpayer’s query, stating that if frequent flyer points earned during business travel were used for personal reasons, the value of these points were taxable as income.
¹¹² See *id.*
¹¹³ See *id.*
¹¹⁴ See *id.*
¹¹⁵ See *id.*
¹¹⁶ See *id.*
¹¹⁷ See *Taxman Won’t Go After Fans Who Return Historic Homers*, available at http://sportsillustrated.cnn.com/baseball/mlb/news/1998/09/08/irs_62_update/.
¹¹⁸ See *id.*
¹¹⁹ See *id.*
¹²⁰ See *id.*
¹²¹ See *id.*
¹²² See *id.*
¹²³ See *id.*
¹²⁴ See *id.*
¹²⁵ See *id.*
¹²⁶ See *Congressman Says No To ‘Home-Run Tax,’* available at <http://www.cnn.com/ALLPOLITICS/1998/09/08/baseball.tax/>.
¹²⁷ See *id.*
¹²⁸ See *id.*
¹²⁹ See *id.*
¹³⁰ See *Taxman Won’t Go After Fans Who Return Historic Homers*, available at http://sportsillustrated.cnn.com/baseball/mlb/news/1998/09/08/irs_62_update/.
¹³¹ See *id.*

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- ¹³² See *id.*
- ¹³³ See *id.*
- ¹³⁴ See *id.*
- ¹³⁵ See *id.*
- ¹³⁶ See *id.*
- ¹³⁷ See EPIC ALERT: IRS BACKS DOWN ON E-FILER TRACKING, Volume 11.02, January 29, 2004, available at <http://www.iwar.org.uk/pipermail/infocon/2004-January/001021.html>; *IRS Backs Off Taxing Frequent Flyer Awards*, HR MATTERS, available at <http://www.ppspublishers.com/silo/HRM0402SAMPLE2.pdf>; *Taxman Won't Go After Fans Who Return Historic Homers*, available at http://sportsillustrated.cnn.com/baseball/mlb/news/1998/09/08/irs_62_update/.
- ¹³⁸ See *id.*
- ¹³⁹ See EPIC ALERT: IRS BACKS DOWN ON E-FILER TRACKING, Volume 11.02, January 29, 2004, available at <http://www.iwar.org.uk/pipermail/infocon/2004-January/001021.html>.
- ¹⁴⁰ See *IRS Backs Off Taxing Frequent Flyer Awards*, HR MATTERS, available at <http://www.ppspublishers.com/silo/HRM0402SAMPLE2.pdf>.
- ¹⁴¹ See *Taxman Won't Go After Fans Who Return Historic Homers*, available at http://sportsillustrated.cnn.com/baseball/mlb/news/1998/09/08/irs_62_update/.
- ¹⁴² See Rev. Rul. 58-354, 1958-1 C.B. 26 (holding that a television quiz show prize was taxable as income); Rev. Rul. 58-354, 1953-2 C.B. 36 (holding prizes given to a contest-winning family were taxable as income); and *Wills v. Comm'r*, 411 F.2d 537 (9th Cir. 1969) (holding valuable awards given to professional baseball player Maury Wills were taxable as income).
- ¹⁴³ See 26 U.S.C. § 74(a); 26 C.F.R. § 1.74-1.
- ¹⁴⁴ This, of course, applies to home improvements actually purchased by the homeowner, as opposed to home renovations awarded as prizes. See I.R.S. Publication 523, available at <http://www.irs.gov/pub/irs-pdf/p523.pdf>. See also *How Home Improvements Affect Your Taxes*, 2004, available at <http://www.turbotax.com/articles/HowHomeImprovementsAffectYourTaxes.html>.
- ¹⁴⁵ If a home is partly demolished and rebuilt during the course of renovation, it is quite likely that the cost of renovation would exceed the incremental increase in fair market value of the house. Similarly, in the case of *EM:HE*, in which houses are typically completely razed before being 'renovated,' the cost of renovation would seemingly exceed the incremental increase in fair market value of the home.
- ¹⁴⁶ *Turner v. Comm'r*, 15 T.C.M. 462 (1954).
- ¹⁴⁷ See *id.*
- ¹⁴⁸ See JOHN A. BOGDANSKI, FEDERAL TAX VALUATION ¶ 3.01 2-24 (2003). Subjective criteria are not typically considered in valuation because they require impractical or impossible investigations into the mindset and circumstances of taxpayers. Such investigations would undoubtedly be time consuming and costly. See *id.*
- ¹⁴⁹ *Turner v. Comm'r*, 15 T.C.M. 462 (1954).
- ¹⁵⁰ See *supra*, *IRS Backs Off Taxing Frequent Flyer Awards*, HR MATTERS, available at <http://www.ppspublishers.com/silo/HRM0402SAMPLE2.pdf>. In Announcement 2002-18, the IRS declared that frequent flyer points attributable to a taxpayer's business or official travel would be tax-exempt. This announcement came as a response to years of pressure from business travelers. See *id.*
- ¹⁵¹ See *supra*, *Taxman Won't Go After Fans Who Return Historic Homers*, available at http://sportsillustrated.cnn.com/baseball/mlb/news/1998/09/08/irs_62_update/.
- ¹⁵² See *id.*
- ¹⁵³ See <http://abc.go.com/primetime/xtremehome>.
- ¹⁵⁴ See EPIC ALERT: IRS BACKS DOWN ON E-FILER TRACKING, Volume 11.02, January 29, 2004, available at <http://www.iwar.org.uk/pipermail/infocon/2004-January/001021.html>.
- ¹⁵⁵ See *IRS Backs Off Taxing Frequent Flyer Awards*, HR MATTERS, available at <http://www.ppspublishers.com/silo/HRM0402SAMPLE2.pdf>.
- ¹⁵⁶ See *supra*, *Taxman Won't Go After Fans Who Return Historic Homers*, available at http://sportsillustrated.cnn.com/baseball/mlb/news/1998/09/08/irs_62_update/.
- ¹⁵⁷ See *id.*
- ¹⁵⁸ See *id.*
- ¹⁵⁹ See I.R.C. § 280(A)(g) (Westlaw current through 2004).
- ¹⁶⁰ See *supra*, *Taxman Won't Go After Fans Who Return Historic Homers*, available at http://sportsillustrated.cnn.com/baseball/mlb/news/1998/09/08/irs_62_update/.

¹⁶¹ See Steve Rogers, 'Extreme Makeover: Home Edition' Leaps to New Ratings Highs, Ranks Among Week's Top 5 Shows, Nov. 14, 2004, available at <http://www.realitytvworld.com/index/articles/story.php?s=3040>. For the week ending November 7, 2004, *Extreme Makeover: Home Edition* was ranked fifth in the week's overall viewership ratings, and was the second-highest rated reality show.

¹⁶² See <http://abc.go.com/primetime/xtremehome>. Sponsors not only receive substantial air-time during the television program, but also are featured prominently on the show's website. *See id.*