Is a Baseball Fan's Love Taxable?

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Christian Lopez not only caught Derek Jeter's 3,000 hit, but immediately handed the baseball over to Jeter – a baseball which some have estimated to be worth $200,000. In recognition of Lopez's actions, the Yankees then provided him with four Champion Suite tickets for the rest of the season, three bats, three balls and two jerseys, all signed by Jeter – an estimated value of at least $50,000.

If you're a baseball fan, you might be thinking who just gives the ball back? Baseball is all about memorabilia, and this would be a significant addition to any collection (even the collection of this Mets fan). If you're an attorney, then this fact pattern sounds like a bad law school exam. If you're both, your head is probably spinning.

As for why Lopez just gave the ball back to Jeter, I can't answer that question – he said "Mr. Jeter deserved it. I'm not gonna take it away from him." Laudable, I guess. As for the tax implications, these facts stir up two basic issues. First, what are the tax implications to Lopez for catching the ball? Second, what are the tax implications to Lopez, Jeter and the Yankees for showering Lopez with all of this free stuff?

As to the first question, a strict reading of the Code suggests that the ball represents income to Lopez when he reduces it to his possession; in other words, after he catches it and fights off all of the other fans. For the tax professionals reading, it's an "accession to wealth" or similar to a "treasure trove." Under this reading, Lopez has income in 2011 equal to the fair market value of the baseball. When he files his 2011 return, he will owe taxes on that amount. If he later sells the ball, he will owe a capital gains tax on any appreciation.

The baseball fan friendly interpretation of the law that has been put forth by some tax attorneys (see Zelenak & McMahon, Taxing Baseballs and Other Found Property, 84 Tax Notes 1299 (1999)) goes something like this: the baseball is self-created property similar to a fisherman catching a fish that should be taxed upon sale. Under this analysis, Lopez would not be taxed on the baseball until he sold it. If he never sells it, then he would never owe tax.

Now we have Christian Lopez and the Yankees who add their own twist to the facts. Not only does Christian Lopez give the ball to Jeter, but the Yankees then respond by providing him at least $50,000 worth of memorabilia and tickets. Despite the above discussion of the ball being income to Lopez when he catches it, it seems unlikely to me that the IRS would argue that Lopez giving the ball back to Jeter is subject to the gift tax. In fact, in 1998, before Mark McGwire broke Roger Maris's record, one IRS spokesperson stated that the fan catching the ball would be subject to the gift tax if he or she gave the ball back to the player. The IRS later recanted that statement.

So Lopez seems to be in good shape, that is, until the Yankees shower him with the tickets and memorabilia. The question becomes are these items prizes that would be taxable to Lopez or gifts from the Yankees that would not be taxable to Lopez. Despite the baseball fan in me not wanting to suggest that Lopez owes taxes, these items are most likely taxable. I am reminded of an old tax case, Duberstein, where one businessman gives a car to another businessman to thank him for providing business referral sources. Though the recipient argued that the car was a gift, the Supreme Court disagreed. Because giving the car did not proceed from "detached and disinterested generosity," the car was not a gift; it was income to the recipient. Here, the Yankees also did not give the items to Lopez out of "disinterested generosity." They may have feared public opinion or they may have wanted to reward Lopez for his actions, but whatever the Yankees' motivations I doubt the IRS would see them as proceeding from "detached and disinterested generosity."

In the end, Lopez should see a tax professional. If he owes taxes on the tickets and memorabilia, maybe the Yankees will pay the tax for him. But isn't that income? Let's see what happens.