Art Law Lunch Talk: Covering Your Basis (CLE)

Basics of Appraisal and Taxes for Works of Art

Wednesday, March 3, 2021
12 PM EST
Online (Zoom)

1.0 CLE credit (NY and NJ)
areas of professional practice
What is "legacy" in the context of estate planning? When art becomes an asset, what should the owner consider when planning to transfer this asset to another owner? Legacy and estate planning where art is concerned raise many questions and call upon many experts, including a tax lawyer and an appraiser, to provide expertise.

This event is co-sponsored by the **Fordham Art Law Society**.

This program is approved for **1.0 CLE credit**, in accordance with the requirements of the New York State and New Jersey State CLE Boards, in the **Areas of Professional Practice** category, for both transitional and non-transitional attorneys, provided by the Fordham University School of Law.

**Timed Agenda:**

- 12:00 PM – 12:05 PM: welcome remarks and substantive introductions by Irina Tarsis
- 12:05 PM – 12:20 PM: presentation by Evie T. Joselow
- 12:20 PM – 12:35 PM: presentation by Pamela L. Grutman
- 12:35 PM – 1:00 PM: Q&A moderated by Irina Tarsis

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The **Center for Art Law** is a New York-based research and education nonprofit that offers resources and programming for the advancement of a vibrant arts and law community. Through its website and monthly Art Law Blast newsletter, the Center disseminates information and keeps readers updated on art law-related news, events, cases, and publications. The Center facilitates conversations by hosting and participating in programs including conferences, workshops, clinics, film screenings, and more. Today a world-renowned asset to the art law field, the Center serves artists, attorneys, students and scholars of both disciplines, art market professionals and members of the general public. [Further information at www.itsartlaw.org](http://www.itsartlaw.org)

Founded in 2012, the **Fordham Art Law Society** (FALS) is a student-run organization that promotes an understanding of the intersection between the arts and the law, both at Fordham and in the larger legal community. FALS hosts a number of events throughout the year dedicated to exploring current issues in art law and furthering career development for Fordham Students. [Further information at www.fordhamartlawsociety.com](http://www.fordhamartlawsociety.com)
Pamela L. Grutman is a Partner at Olsoff | Cahill | Cossu LLP where she advises high net-worth individuals, small businesses, and fiduciaries in the arts community on sophisticated trust and estate planning, estate administration, and succession planning for the long-term preservation of artistic and philanthropic legacies utilizing trusts, family partnerships, and nonprofit organizations. She counsels artworld clients on all types of art transactions, with a focus on sales and income tax consequences. She has worked with living artists and collectors to form nonprofit organizations as part of ongoing estate planning processes, including filing the necessary tax-exempt paperwork with the Internal Revenue Services and appropriate state agencies and advising executors and boards of directors on changes in corporate structure, board composition, and governance issues. Pamela is admitted to practice law in New York, New Jersey, and Florida, with a LL.M. in Taxation from NYU School of Law and a J.D. from the Benjamin N. Cardozo School of Law.

Dr. Evie T. Joselow, Appraiser at The Art of the Appraisal, has spent her entire career working in various capacities in the art world. She has acquired, curated and managed art collections, most notably the Forbes Magazine Collection, and has advised on a variety of art-related projects, including artists' estates and provenance research. As the Chief of Research at the Commission for Art Recovery, she took a leading role in the restitution and recovery of art looted by the Nazis, successfully locating more than 90 works of art. Dr. Joselow has taught on the faculties of New York University, Pratt Institute, the New York School of Interior Design and the Sotheby's Institute of Art, and maintains a full roster of writing, teaching and lecturing on appraisal practice and the history of art, architecture and design. Dr. Joselow holds a PhD in Art History from The Graduate Center, City University of New York, a Masters of Public Administration from Baruch College, and a B.A. from Vassar College. She is a Certified Member of the Appraisers Association of America, a member of ArtTable, the American Association of Museums, and serves on various community service organizations and art-related advisory boards.

Irina Tarsis, Esq., Founder and Managing Director of the Center for Art Law, is an art historian and a practicing attorney admitted to the bar in New York State. Ms. Tarsis launched the Center for Art Law as a blog in 2008/2009, and under her leadership, the Center became a non-profit organization in 2017. Ms. Tarsis has served on the faculty of the Teachers College/Columbia University (2020), Benjamin N. Cardozo School of Law (2012, 2017-2018) and the European Shoah Legacy Institute/Provenance Research Training Workshops in Lithuania, Greece, and Italy. Her publications include articles in the IFAR Journal; Entertainment, Arts and Sports Law Journal; Cultural Heritage & Arts Review; Library and The Cultural Record; the ArtWatch UK Journal and the Institute of Art & Law’s journal, Art Antiquity and Law. She earned her Masters Degree in Art History from Harvard University and her J.D. from the Benjamin N. Cardozo School of Law.
Laws:

- 26 U.S.C.
  - § 1 - Tax imposed
  - § 61 - Gross income defined
  - § 64 - Ordinary income defined
  - § 67 - 2-percent floor on miscellaneous itemized deductions
  - § 102(a) - Gifts and inheritances
  - § 162 - Trade of business expenses
  - § 170(a, c) - Charitable, etc., contributions and gifts
  - § 263A - Capitalization and inclusion in inventory costs of certain expenses
  - § 664 - Charitable remainder trusts
  - § 671-679 - Deduction for estates and trusts accumulating income or distributing corpus; definitions and rules; reversionary interests; power to control beneficial enjoyment; administrative powers; power to revoke; income for benefit of grantor
  - § 1001 - determination of amount of and recognition of gain or loss
  - § 1012 - Basis of property-cost
  - § 1014 - Basis of property acquired from a decedent
  - § 1015 - Basis of property acquired by gifts and transfers in trust
  - § 1221 - Capital asset defined
  - § 1222 - Other terms relating to capital gains and losses
  - § 1223 - Holding period of property
  - § 2001 - Imposition and rate of tax
  - § 2031 - Definition of gross estate
  - § 2033 - Property in which the decedent had an interest
  - § 2053 - Expenses, indebtedness, and taxes
  - § 2055 - Transfers for public, charitable, and religious uses
  - § 2501 - Imposition of tax
  - § 2512(a) - Valuation of gifts
  - § 4947 - Application of taxes to certain nonexempt trusts
- Internal Revenue Manual § 4.25.12 - Valuation Assistance

Cases:

- Estate of O'Keeffe v. Comm'r, 63 T.C.M. (CCH) 2699 (U.S.T.C. 1992)
- Estate of Kollsman v. Comm'r, 113 T.C.M. (CCH) 1172 (U.S.T.C. 2017), aff’d 777 F. App’x 870 (9th Cir. 2019).
Books and Articles:

- Dawn Doebler, How to Include Valuable Art and Collectibles in Your Estate Plan, WTOP (May 30, 2018).
- Alan L. Feld, Who are the Beneficiaries of Fisk University’s Stieglitz Collection?, 91 B.U.L. Rev. 873 (2011).
- Jeffrey Fuller et al., Preserving the Artist’s Heritage, Senior Artists Initiative (2012).
- Carsten Hoffmann, The Elusive Art Of Valuing An Estate’s Co-Owned Artwork, Law360 (May 9, 2019).
- Emily Lanza, In the Eye of the Beholder: Appraisals of Art for Estate Tax Liability, Center for Art Law (May 19, 2017).
- Jennie Nadel, Tax Season: From Gray Zone to Opportunity Zones, and Other Tax Developments for Art, Center for Art Law (Apr. 4, 2019).
- Rica Zeitoune, Spotlight: IRS Art Advisory Panel, Center for Art Law (June 6, 2019).
Key Terms:

- **Art appraisers**: The IRS has specified that "an individual specializing in the kind and price range of the art being appraised" will be given more weight than appraisals from generalized art dealers or appraisers. See *Determining the Value of Donated Property*, Publication 561, Dep’t of the Treasury Internal Revenue Services. Rev. Feb. 2020.

- **Capital asset**: A taxpayer’s personal property or property connected with a trade or business, but not a copyright, a literary, musical, or artistic composition held and created by the taxpayer. See 26 U.S.C. § 1221(a)(3)(A).

- **Capital gains tax**: A maximum special tax rate instead of a percent reduction in the tax rate on ordinary income. See 26 U.S.C. § 1(h); 26 U.S.C. § 1222.

- **Valuation**: An estimation of something’s worth. Approaches include: the fair market value of the item, appraisal by an expert, or the sale price of the item in an arm's length transaction.

Forms and Official Publications:

- N.Y. Dep’t. Of Tax & Finance, *Form ST-120* (Resale certificate form for art purchasers who operate businesses buying art for resale, exempting them from sales tax and use tax).
- Form 8283 Noncash Charitable Contributions
- Form 8282 Donee Information Return