



# The Art of the Art Deal

*Taxation and Estate Planning for the Artist,  
Dealer, and Art Collector*

**Deutsche Bank @ Frieze LA**

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**Brad Cohen, Partner**

Jeffer Mangels Butler & Mitchell LLP

310.201.3575

BCohen@jmbm.com

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# Recent Transactions

# Record Art Sale

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## Most Expensive Painting Sold At Auction



**Leonardo da Vinci**  
***Salvator Mundi***

Auctioned by Christie's New York

Date: November 15, 2017

Selling price: **\$450.3 million**

The highest amount ever paid for a painting **at auction**

## Most Expense Sculpture Sold At Auction



**Alberto Giacometti**  
***Pointing Man***

Auctioned by Christie's New York

Date: May 11, 2015

Selling price: **\$141.3 million**

The highest amount ever paid for a sculpture **at auction**

# Second Most Expensive Work of Art Ever Sold

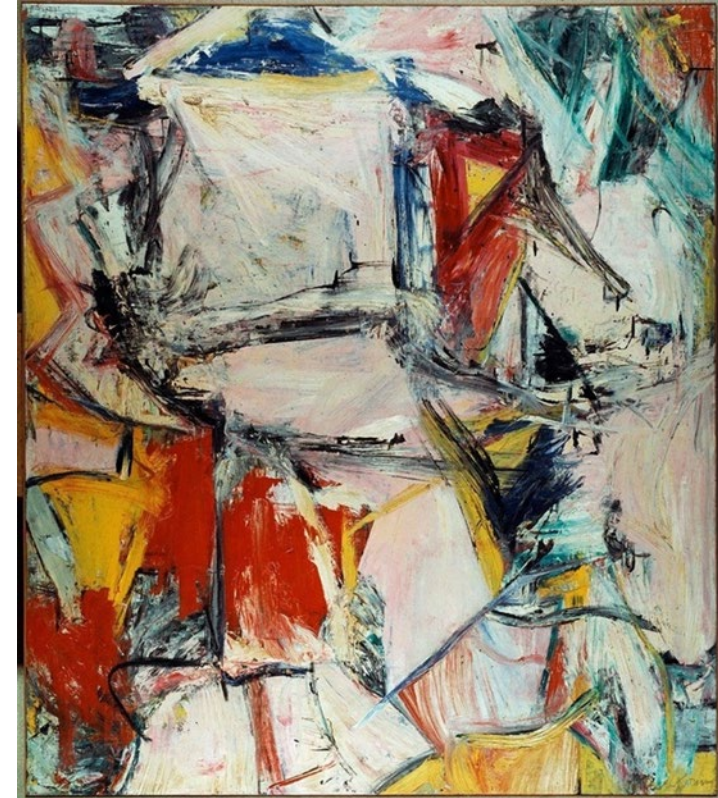
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**Willem de Kooning**

***Interchange***

\$300 million

Completed in 1955, the abstract oil on canvas by Dutch-American painter Willem de Kooning was one of his first abstract landscapes. It was sold by the David Geffen Foundation to Kenneth C. Griffin for \$300 million, and is currently on loan at the Art Institute of Chicago.



# Third Most Expensive Work of Art Ever Sold

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**Paul Cézanne**  
***The Card Players, 1894-95***  
\$250 million

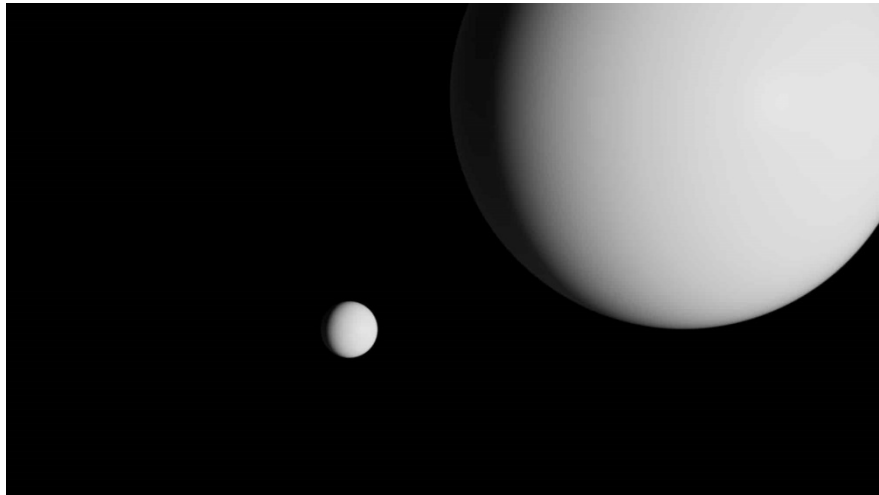
The Card Players is a series of five oil paintings by Cézanne. Painted during Cézanne's final period in the early 1890s, the versions vary in size and in the number of players depicted. One version of The Card Players was sold to the Royal Family of Qatar in 2011 for a price estimated at \$250 million, making it the third most expensive work of art ever sold.



# NFTs Hit Record Sale Numbers

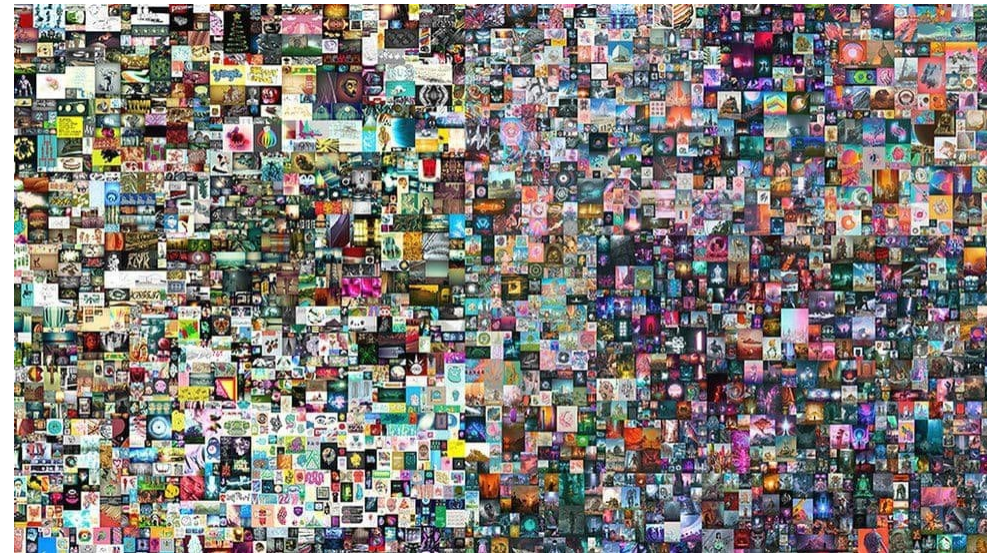
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The Merge  
\$91.8m



**Pak**  
*The Merge*

Everydays: the First 5000 Days \$69.3m



**Beeple**  
*Everydays: the First 5000 Days*

# Record-Setting Private Collection Auction

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- ❑ **There are many private sales that are not publicly recorded**
- ❑ November 2022: Christie's auction of Paul Allen's (co-founder of Microsoft) art collection sold for a record-setting \$1.6+ billion
  - ❑ 150 pieces total, spanning 500 years of art history
  - ❑ All proceeds towards philanthropic organizations
  - ❑ Pieces included a Cézanne that sold for \$137.8 million and a Jasper Johns that sold for \$55.3 million
- ❑ Previous record for largest private art auction was set by Sotheby's in May 2022 – \$922 million



# Duct-taped Banana Sells for \$6.2 Million

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- Estimated at \$150,000, sold for \$6.2 million
- Bought by crypto investor, Justin Sun
  - The banana is regularly replaced before exhibitions and therefore it is not about the “tangible”
  - **It's about the authenticated right to claim ownership of the instructions to display the art**
- Why?
  - Interest rates trending down
  - Trump is crypto friendly
    - Started World Liberty Financial
- Sun compared the artwork and similar abstract pieces to NFTs
- Why?
  - NFTs can be traded on platforms like Sun's Tron blockchain network
- The sale of the banana for \$6.2M highlights confidence in luxury markets under Trump's policies
- A push for U.S. leadership in cryptocurrency may create a less-regulated environment and attract diverse investors



# Digital Assets & NFTs

# What is a Non-Fungible Token?

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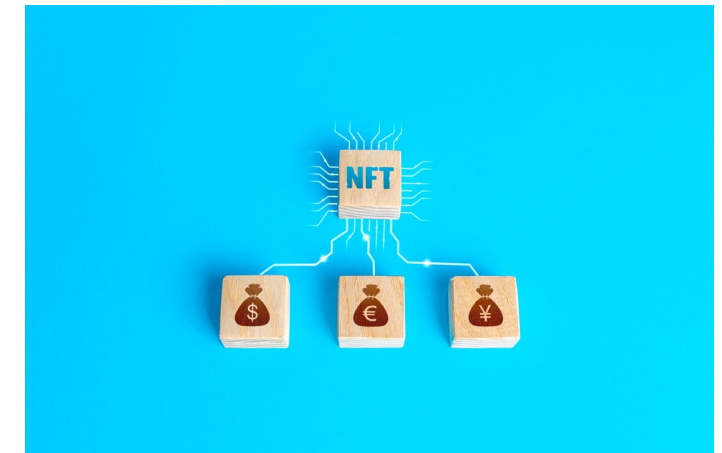


- ❑ Through a process known as “minting,” NFTs are created when a unique cryptographic token is generated and recorded to the underlying blockchain.
- ❑ Once minted, an NFT generally cannot be swapped or edited, thereby creating a permanent record that will follow the asset forward in perpetuity.
- ❑ While creators selling digital assets is nothing new, the immutable nature of NFTs allows a creator to guarantee provenance and provide for verifiable record of ownership.

# NFTs & Enforceable Royalties

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- Smart contract technology used across popular NFT marketplaces can automatically execute secondary sale royalties
- Although a legislative resale right has been enacted in the European Union, the U.S. presently lacks a similar protection under its copyright laws.
  - ▣ American purchasers of original copyright-protected works are free to resell such works without compensating the original artist.
- NFT creators, on the other hand, may monetize their works **beyond the initial sale** by choosing to add an enforceable royalty rate automatically executed upon secondary market sales.



# NFTs and Intellectual Property Rights

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- While NFT ownership is often compared to owning a tangible original work of art, it's more akin to owning a digital reproduction and, therefore, upon transfer, is unlikely to include any immediate rights in the underlying work.
- When entrepreneur Sina Estavi spent \$3 million for an NFT of the first-ever tweet by Twitter founder Jack Dorsey, **Dorsey retained the copyright in the agreement.**
- Consequently, Estavi was unable to print the tweet on T-shirts or otherwise sell merchandise with the Tweet absent express approval from Dorsey.



# Hermes Int'l v. Rothschild (SDNY 2023)

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- On February 3, 2023, a jury in the Southern District of New York ruled that artist Mason Rothschild infringed on the trademark protections of luxury brand Hermes through a collection of 100 “MetaBirkins” NFTs.
- Rothschild asserted that the MetaBirkins NFTs – **the first of which sold on December 3, 2021 for \$42,000** – act as “a commentary on fashion’s history of animal cruelty, and its current embrace of fur-free initiatives and alternative textiles.”
- Hermes argued the NFTs were simply unlicensed digital exploitation of its exclusive trademarks that should be evaluated under the well-known likelihood of confusion standard.
- Rothschild plans to appeal the decision.

# Income Taxes

# Types of Sellers/Buyers/Donors

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- Artists/Content Creators
  - Creates the art
- Dealers
  - Acquires art as inventory and sells art as part of a trade or business
- Collectors
  - Acquires art to hold for investment or personal purposes
- Investors
  - Acquires and sells art with the primary motive of making a profit, but doesn't hold oneself out as a dealer, or engages in so many transactions that they are deemed to be a dealer



# Digital Assets/NFTs/Tax Planning Overview

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- Tax planning ideas:
  - The tax treatment of an NFT on its disposition will depend on whether the NFT holder is:
    - A content creator who produced the NFT as a self-created work or work for hire,
    - A dealer acquiring the NFT as inventory to sell as part of their trade or business, or
    - An investor/collector acquiring/selling the NFT with the primary motive of making a profit, but who is not holding itself out as a dealer
  - The taxpayer may attempt to utilize the deduction for an abandonment loss under IRC Section 165, which can generally be deducted against ordinary income, even with respect to a capital asset
  - Sale to harvest losses—
    - Are they active or passive?
  - Transfer out of estate at low value

# What is a Collectible? 20% vs 28%

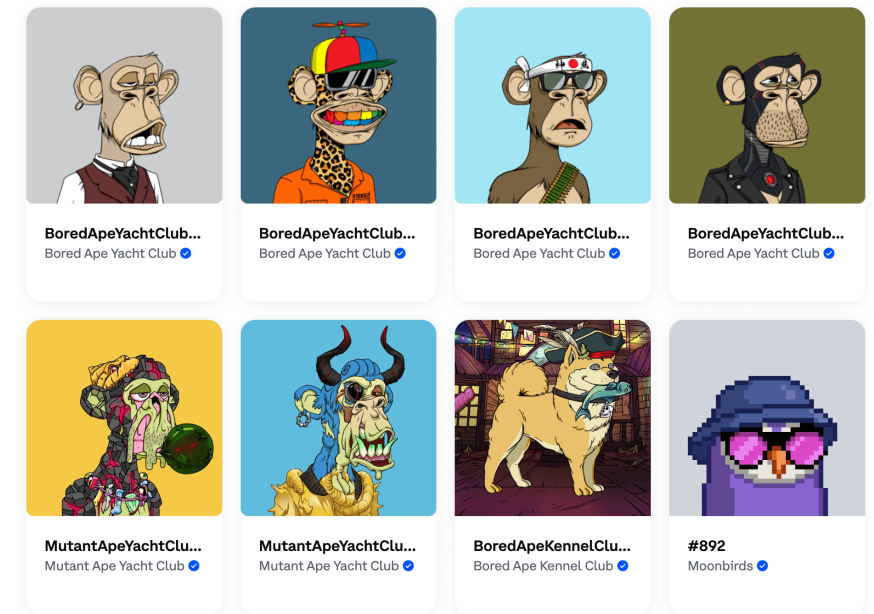
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- ❑ Any work of art
- ❑ Non-Fungible Tokens/Digital Files (NFTs discussed later in further detail)
- ❑ Any rug or antique
- ❑ Any metal or gem
- ❑ Any stamp or coin
- ❑ Any alcoholic beverage, or
- ❑ Automobiles
- ❑ Any other **TANGIBLE** personal property specified by the Secretary of the Treasury
- ❑ Collectibles are defined as tangible assets other than real estate
  - What about digital assets?
    - According to Notice 2023-27, look-through method: may depend upon the underlying use of the asset

# Digital Assets Treated as Collectibles: IRC §1221

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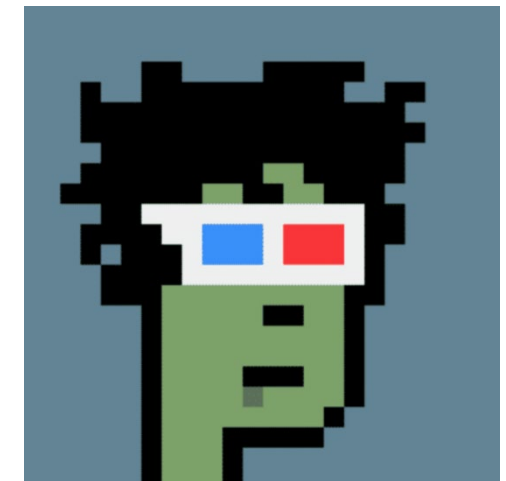
- On March 21, 2023, the IRS released Notice 2023-27, announcing plans for additional guidance on the treatment of NFTs as collectibles under IRC Section 408.
  - The IRS has not yet released additional guidance.
- Pursuant to the Notice, and until the guidance is issued, the IRS will use a "look-through analysis" to determine if an NFT is considered a collectible based on the underlying use right or asset associated with it.
  - NFTs granting the right to use purely digital assets, like virtual land or in-game items, would not be taxed as collectibles under the look-through analysis.
- **The IRS is also assessing whether digital files can be considered a “work of art” for tax purposes.**



# Digital Assets Treated as Collectibles: IRC §1221 (cont'd)

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- Although IRS Notice 2023-27 may be the precursor to much needed guidance, many issues are still unresolved.
  - For example, the definition of a “collectible” only covers tangible personal property, excluding both intangible and real property.
  - The term “similar property” under IRC Section 1221 has generally been interpreted by commentators to include most NFTs under the assumption that an NFT falls within the same nature of the self-created artistic compositions (which means that gain on a taxable disposition of the NFT would be ordinary if sold by the creator of the NFT).
- When the look-through analysis in Notice 2023-27 is applied to an NFT, however, a key question arises regarding the underlying digital file and whether it qualifies as a “work of art” **or** “similar property.”



# Valuation Challenges & Market Volatility

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- Valuation of an NFT for U.S. estate and gift tax purposes may depend heavily on the **date and time** such valuation takes place due to market volatility.
- While stocks and other marketable securities often trade on an exchange for a finite period (which allows for price certainty at the close of trading), NFTs often trade on **platforms without an ending trading period**.
- Justin Bieber is reportedly sitting on approximately \$1.23 million in unrealized losses with respect to a Bored Ape Yacht Club NFT, which is valued at just **\$60,000 despite Bieber's \$1.3 million purchase price in January 2021**.

# Acquiring/Selling Art – Income Tax Rules

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- **Artists / Dealers** – Federal ordinary income rate = 37% + state rate – self created/inventory
- **Collectors** – Federal short-term capital gain rate = 37% + state rate
- **Collectors** – Federal long-term capital gain rate for collectibles = 31.8%\* (28% + 3.8%)
  - 20% vs 28% for collectibles
- **To qualify for long-term capital gain treatment:**
  - **Must be a “capital asset” held for investment**
    - The Internal Revenue Code defines “capital asset” negatively—if it’s not on a list of excluded categories of assets, it’s a capital asset.
      - Self-created copyrights, literary works, and “SIMILAR PROPERTY” produced by a taxpayer’s personal efforts are excluded from the definition of “capital asset.”
      - **Exception to the exclusion for self-created musical compositions.**
      - **Inventory is not a capital asset**
  - **Must be sale or exchange**
  - **Must be held for more than one year**

\*Additional 3.8% Medicare Tax if Net Investment income is greater than threshold amount based upon filing status

# History: 1031 Exchange of Work of Art

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- Before the 2018 tax reform laws, an IRC §1031 exchange could be used for art in a similar way to how it's used for real estate.
  - Congress will need to pass new legislation to reinstate IRC §1031 exchanges for art and other personal property.
- If 1031 exchanges become available again, these are issues to consider:
  - The taxpayer must be an investor, and not a dealer or collector
  - Both the property exchanged and the property acquired must have been held for investment
  - The art exchanged must be “like kind” to the art acquired
  - For 1031 purposes, like kind is interpreted narrowly. A painting can be exchanged for a painting, but a painting cannot be exchanged for a sculpture
  - A qualified intermediary (escrow company or other professional accommodator) must handle the transaction
  - All the technical rules for an exchange must be followed

# Current: Qualified Opportunity Zone Funds

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- ❑ Any capital gain, long or short
- ❑ Sale of art by other than artist (self-created) or gallery (inventory)
- ❑ Should produce a capital gain (long or short), therefore, can be rolled into an Opportunity Zone Fund on or before December 31, 2026
- ❑ A lot of art districts are in opportunity zones
- ❑ Two major benefits:
  - ▣ Capital gain deferral until December 31, 2026 in an unlimited amount
  - ▣ Unlimited forgiveness of post investment gains realized or recognized through December 31, 2047
  - ▣ No recapture of any depreciation or amortization
- ❑ Holding the Q-Zone investment inside a defective grantor trust supercharges the program, because you get the leverage and estate tax exclusion, **and** the income tax basis step-up
- ❑ How about art business – gallery in the zone



# Acquiring/Selling Art- Choice of Entity

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How to structure creation, acquisition, bequest

- Individual / General Partnerships
  - One level of income tax; personally liable
- LLC / S Corp / Limited Partnerships
  - Generally one level of income tax\*; may shield owner from liability
- C Corporation
  - Two levels of income tax; may shield owner from liability
- Trust
  - Grantor
  - Non-Grantor

\*1.5 California S Corporation Tax

# Income Tax Charitable Deduction

# Income Tax Charitable Deduction for Contributions of Tangible Property During Life

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- The amount of the income tax charitable deduction for individuals who itemize is determined by:
  - Type of property donated – long or short capital gains vs. ordinary income property
  - How long does the donee/donor have to hold the property?
  - Type of organization that is the donee
  - Type of donor
  - Use of the tangible property in relation to charitable purpose of the donee
  - Length of time the charity holds the donated property
  - Adjusted Gross Income of the donor

# What is a Nonprofit vs. a 501(c)(3)?

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- **Nonprofit** means the entity, usually a corporation (sometimes a trust), is organized for a nonprofit purpose
- **501(c)(3)** means a nonprofit organization that has been organized for any allowable purpose under 501(c)(3) and has been recognized by the IRS as being tax-exempt by virtue of its charitable programs
  - Unrelated Business Taxable Income

# Charitable Contributions – Types of Charities

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- **Public Charity**
  - Receive support from general public and primarily provides services in furtherance of its exempt purpose
  - Donor Advised Fund (DAF)
- **Private Foundation**
  - Funded primarily by one family or person
  - Assets used to make grants to other charities
- When is a DAF more desirable than a private foundation?
- **Private Operating Foundation**
  - Funded primarily by one family or person, but uses assets providing services in furtherance of its exempt purpose

# Types of Donors:

## Donations of Art **By the Artist** During Life

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- ❑ Income Tax Deduction
- ❑ Self created art is not a capital asset
- ❑ Subject to the rules of section 170(e)
- ❑ Under current copyright regime, art work and copyright interest in the art work are separate assets.
- ❑ Artists are able to donate (1) the art work itself, (2) a copyright interest in the art work, or (3) both
  - ❑ If artist donates both, the charitable deduction is limited to artist's tax **basis** in the art, which is likely to be minimal where the art is self created
  - ❑ If artist donates the art during life but not the copyright, or vice versa, the donation constitutes a split-interest donation, and **NO DEDUCTION** is allowed, not even tax basis.
  - ❑ Split interest restrictions apply for income tax donations
  - ❑ Artists do not have tax incentive to make donation during life
  - ❑ NOTE: Different rules for estate tax charitable deduction



# Charitable Contributions of Art During Life by a **NON Artist/Artist**

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- Deduction is generally based upon fair market value of the work
  - ▣ **Deduction limited to lesser of fair market value or income tax basis of work if:**
    - Any donor where the art is a capital asset and the charity's use is unrelated to its charitable purpose or
    - Any donor who donates short-term capital gain property, or
    - Artist is donor and donates both the copyright and the tangible property (or donor received the artwork from the artist as a gift) or
    - If Artist donates during life, either tangible or copyrighted but not both; zero charitable deduction
  - ▣ Any donor where the charity is a private non-operating foundation

# Charitable Contributions of Tangible Property During Life: What is **Related Use**?

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- Form 8283 to be filed when value of donated non-cash property exceeds \$500
  - ▣ Charity might be required to certify that use is related to its charitable purpose
  - ▣ If donee is an art museum, and work of art is of a type generally displayed by the museum, it is reasonable for Donor to anticipate that use is related
    - What about a church, temple, mosque or other nonprofit places of worship?
      - It may depend on the subject matter of the artwork
    - What about a hospital that displays art in its hallways?
      - Can you argue that the art has therapeutic value? Generally, yes.



# No Disposition of Tangible Personal Property by Charity **within 3 Years** of Contribution

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- If disposition is in the year of contribution, deduction is limited to basis of property
- If disposition is in subsequent year but before 3 years, then donor must recognize income equal to the difference between the adjusted basis of the contributed property and the deducted amount
- Charity must report disposition on Form 8282 advising the IRS of the amount of the proceeds received
- A copy must be provided to donor
- **Consider requiring a 3-year hold as a condition of the gift**
  - Otherwise the donor's charitable deduction is limited to the charity's sales price

# Donation of Art by **Art Gallery**

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- Art will likely be considered inventory and will not qualify as a capital asset; therefore they can receive an income tax deduction equal to the **lesser of** its income tax basis in the donated art, or its fair market value.



# Donation To **Private Museums** Under Scrutiny – Private **Operating** Foundations

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- The U.S. government is scrutinizing the tax-exempt status of private museums and questioning whether some institutions benefit their wealthy founders more than the general public
- The Senate Finance Committee sent a letter to 11 single-donor museums requesting information about attendance, opening hours, trustees and grant-making activities
- Under current law:
  - Collectors can deduct the fair-market value of art when they donate it to certain charitable entities that have art-related missions
    - Public access required
    - Retained use substantially restricted
  - Donors cannot benefit directly from their own organizations' activities (except to the extent such benefits are also available to the public and a substantial number of public persons are reasonably expected to utilize the benefit)
    - For example, donors cannot have greater access than the general public to the museum, unless it's in the context of work the donors are doing for the foundation
    - Public recognition for donation to support activities is excluded from self-dealing

# Overview of **Adjusted Gross Income** Percentage Limitations; CASH, Ordinary Income or Short Term Capital Gain Property

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- If contributing cash and ordinary income property to a **public charity or private operating foundation**, the income tax charitable deduction is limited to:
  - 60% of the taxpayer's adjusted gross income
  - If instead donating to a **private non-operating foundation**, the deduction is limited to 30% of the taxpayer's adjusted gross income
- The amount of charitable deduction for ordinary income property and short-term capital gain property is limited to the **lesser of basis of the property in the hands of the donor and its fair market value**
  - Related use is irrelevant

# Overview of Adjusted Gross Income Percentage Limitations; Long Term Capital Gain Property Related Use

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- Long Term Capital Gain Property
  - If the capital asset is held for more than one year and donated to **a public charity or private operating foundation**, **and** the related use test is met, the charitable deduction is permitted to the extent of the **fair market value** of the property, but not in excess of **30%** of the taxpayer's gross adjusted income
    - Related Use Test: the artwork must be related to the donee's charitable purpose
    - Ex: a painting donated to an art museum to put on display by a collector and not by the artist or dealer
    - Where the **related use test is met**, the taxpayer may elect to **increase the 30% limitation to 60%** of his or her adjusted gross income, but the election limits the deduction to the donor's **cost basis**
      - This may be useful for donated assets that have not substantially appreciated in value
    - Remember hospital example

# Overview of **Adjusted Gross Income** Percentage Limitations; **Long Term Capital Gain Property Related Use** (cont'd)

38

- If the related use test is not met, the deduction is limited to the **lesser of fair market value or cost basis**
- Additionally, for contributions of long term capital gain property held for more than one year to a **private non-operating foundation**, the deduction is generally limited to **20%** of the taxpayer's adjusted gross income
- If instead to a **private operating foundation**, the deduction is generally limited to **30%** of the taxpayer's adjusted gross income.

# Carryovers

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- Any amount of charitable contribution in excess of the 60%, 30% or 20% adjusted gross income limitations may be carried forward for 5 years – so long as the donor survives
- **If the donor dies, the carry-forward dies too**



# Substantiating Charitable Contributions-

## NO ROOM FOR ERROR

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- It is essential to satisfy all substantiation requirements. Failure to do so puts the **ENTIRE** deduction in jeopardy.
- For a list of requirements, visit: <https://www.irs.gov/Charities-&-Non-Profits/Substantiating-Charitable-Contributions>
- Specific cases with documentation flaws: *Durden v. Commissioner*, *Albrecht v. Commissioner*, *Keefe v. United States*, *Legaspi v. Commissioner* and *Hewitt v. Commissioner*
- May 2019: *RERI Holdings I, LLC et al. v. Commissioner*
  - \$33 million charitable donation claimed by RERI Holdings LLC was denied because the company **omitted information** from Form 8283
  - Company donated interest in a CA web-hosting facility to a university in 2003, and claimed \$33 million as a deduction; left the space for 'donor's cost or adjusted basis' blank.
  - Donated property was originally acquired for \$3 million
  - In addition to the denial, the Tax Court imposed a 40% gross valuation misstatement penalty.





# Substantiating Charitable Contributions

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- A \$26 million charitable contribution deduction was claimed for the donation of “The Palace Banquet” to the Metropolitan Museum of Art in New York City
- Taxpayer claims substantial compliance and a qualified appraisal
- **The IRS disallowed the ENTIRE deduction because taxpayers failed to satisfy all the substantial requirements regarding the donation**
- Furthermore, the IRS claims that the taxpayer substantially overvalued the painting and appraised its value at \$5 million



# Don't Forget the **Contemporaneous Written Acknowledgement By Charity**

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- For donations of artwork (or any donation) **in excess of \$250**, there must be a contemporaneous written acknowledgement by the charity to substantiate the charitable deduction so that the donor may claim the deduction
- Proposed regulations have been issued under IRC 170(f)(8)(D) that would create a new, separate form that a charity would complete and file – in the absence of contemporaneous written acknowledgement of a donation – in order for the donor to receive a deduction
  - ▣ Individual, partnership, and corporation donors must file Form 8283 to report information about noncash charitable contributions when the amount of their deduction for all noncash gifts **in excess of \$500**.

# Substantiating Charitable Contributions

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- May 2022: *Martha L. Albrecht v. Commissioner*
  - Donation of 120 pieces in 2014 from Albrecht's collection of Native American jewelry and artifacts, to the Wheelwright Museum in Santa Fe, NM
  - Albrecht claimed a deduction on her taxes for that year (amount of deduction is not known)
  - Donation was substantiated by 5-page "Deed of Gift"
  - **The Deed did not include whether goods and services were exchanged for the gift, as required by the Internal Revenue Code**
  - **Deed mentions a Gift Agreement, but does not include one**
  - **NO DEDUCTION WAS ALLOWED**



Wheelwright Museum of the American Indian

# Partial Interest Charitable Contributions of Tangible Property **During Life**

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- Can initially give only a partial interest to charity with the intent of eventually giving the whole
- Only if wholly owned by donor and/or donee
- If giving undivided interest to charity, must give 100% away by the **earlier of 10 years or death**
- Charity must have **substantial physical possession**
- If rules are not followed, all deductions may be recaptured plus a 10% penalty
- The donated work must be put to a **“related use”**

# Partial Interest Charitable Contributions of Tangible Property **During Life** (cont'd)

45

- For income tax purposes, subsequent gifts of interest in the work are valued at the lesser of the value at the time of gift of the first interest and the value at the time of the subsequent interest
- No tax benefit for increase in the value of the work after initial contribution
- Do not want discount valuations here. Why?
  - IRS may impose a discount
- Not very common in the real world

# Partial Interest Charitable Contributions – Example

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- An undivided one-quarter interest in a painting that entitles an art museum to possession of the painting for 3 months of each year is a fractional interest in the property and allows the donor to take a deduction equal to 25% of the fair market value of the property donated
- Related use
- Museum must take actual possession
- Donor must give entire interest in work away by the earlier of 10 years or death
- The interest must go to the same donee

# How to Properly Claim Art Donations

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- Taxpayers will need to keep detailed records to properly claim a charitable contribution deduction:
  - ▣ Name and address of charitable organization that received the art.
  - ▣ Date and location of the contribution.
  - ▣ Detailed description of the donated art.
  - ▣ If value is more than **\$5,000**, no deduction can be made unless a qualified appraiser appraises the donation and provides a qualified written appraisal

# How to Properly Claim Art Donations (cont'd)

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- Additional records may be required based on the value of the claimed deduction:
  - \$250 or more: Taxpayer will need to obtain a contemporaneous written acknowledgment of the contribution from the charitable organization.
    - Document must be received before the taxpayer files their tax return for the year of the donation or by the due date of filing the return.
  - More than \$500 but not over \$5,000: Taxpayer must complete Form 8283, Noncash Charitable Contribution, Section A, with their tax return.
  - More than \$5,000: Taxpayer must complete Form 8283, Section B, including signatures of qualified appraiser and donee, and obtain a qualified written appraisal of the donated art.
  - \$20,000 or more: Taxpayer must do all the above and include a copy of the appraisal with their tax return. They will also need a high-resolution image of the art that they can provide if needed.



# How to Properly Claim Art Donations: IRS Art Appraisal Services (AAS)

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- The IRS has a team of trained art appraisers who assist and advise the IRS with valuation questions.
- Art Appraisal Services, under the IRS Independent Office of Appeals, assists the IRS examination function, lawyers from the IRS Office of Chief Counsel and the Department of Justice, and Appeals Officers with determining the value of personal property and works of art.
- The Commissioner's Art Advisory Panel, composed of up to 25 art experts, also provides advisory opinions to the AAS.
  - ▣ IRS Appraisers, the Director of Art Appraisal Services, and panel members meet regularly to discuss art valuations submitted for review.

# Beware of Exaggerated Art Donation Deductions

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- IRS is warning taxpayers of exaggerated art donation promotions.
  - Scammers are persuading high-income taxpayers to purchase art, wait to donate, and then take an excessive deduction.
- What to watch out for:
  - Promoters will encourage taxpayers to buy art at a “discounted” price.
    - May claim price also includes storage, shipping, appraisal, and donation.
  - Persuade taxpayers to then wait at least a year before donating art to claim a tax deduction for inflated fair market value.
  - Promoters may also suggest:
    - Donating art annually and allowing taxpayers to buy a quantity of art that guarantees a certain deductible amount.
    - Arranging for certain charities to take donations.

# Beware of Exaggerated Art Donation Deductions: IRS Action

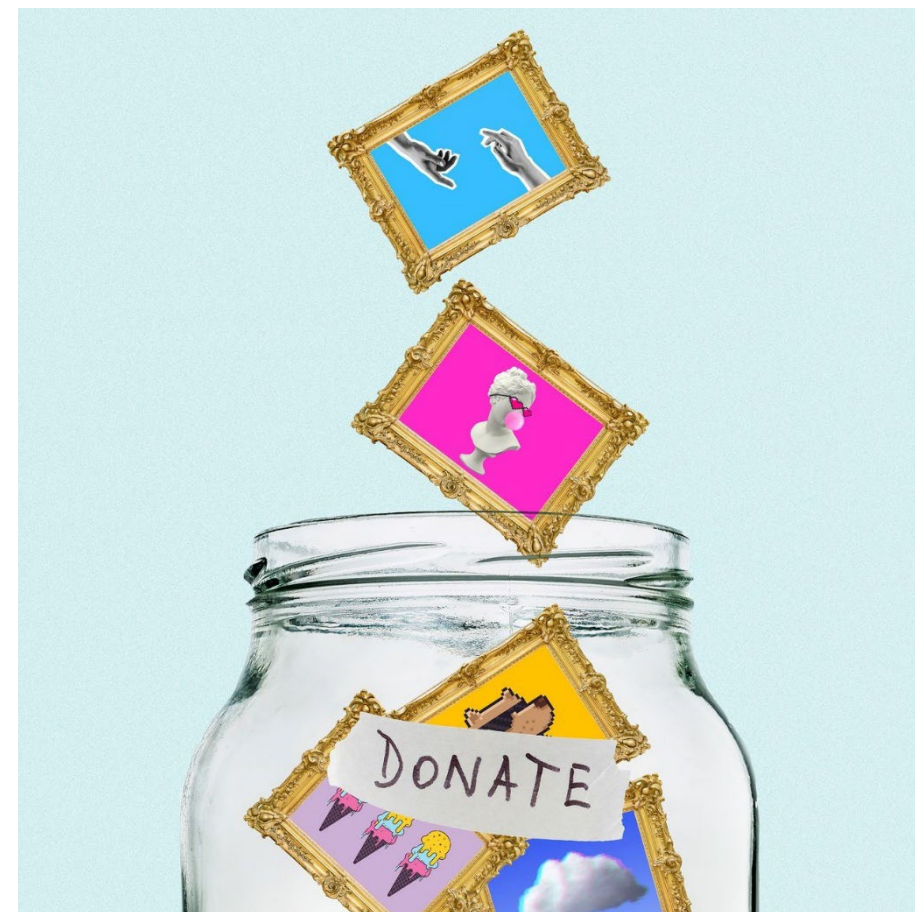
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- To prevent schemes, the IRS is working to increase compliance efforts.
  - ▣ IRS is conducting abusive art donation promoter investigations and audits of questionable art donations.
  - ▣ More than 60 taxpayer audits have been completed:
    - Recovered over \$5 million in additional tax.
  
- Red flags to look out for:
  - ▣ Buying multiple works by the same artist with low market value outside of promoter advertisements.
  - ▣ Specific appraisers lined up by promoters.
  - ▣ Appraisals that lack crucial details:
    - Rarity, age, quality, condition, stature of artist, price paid, and quantity purchased.

# Charitable Contributions of Digital Assets

52

- On January 13, 2023, the IRS released new guidance (CCA 202302012) requiring that a taxpayer procure a **qualified appraisal** in order to qualify for a deduction of more than \$5,000 for the charitable contribution of cryptocurrency.
- The guidance applies to all digital assets, including NFTs
- Values reported by NFT marketplaces cannot replace a **qualified appraisal**. To avoid potential losses, taxpayers have been turning to third-party valuations and expert opinions.
  - ▣ **May be currently impossible to satisfy qualified appraiser requirement**
- Other considerations: fractional donations, volatile market values and certifying that the NFT will relate to a charitable purpose



# Transfer Taxes: Estate, Gift, & Generation Skipping Tax

# Federal Estate & Gift Tax

54

- \$19,000 gift exclusion per donee per year – indexed for inflation
- \$13,990,000 (through Dec 31, 2025) per individual\* – indexed for inflation
- \$27,980,000 (through Dec 31, 2025) per married couple\* – indexed for inflation
- If Congress does nothing:
  - On January 1, 2026: approximately \$7,000,000 per individual
  - On January 1, 2026: approximately \$14,000,000 per married couple
- Unlimited estate and gift tax marital deduction of gifts/bequests to US citizen spouses
  - \$190,000 2025 gift exclusion to non-U.S. citizen spouses (increased from \$185,000 in 2024)
- Carryover basis on non income taxed lifetime gifts
- Probably not a good idea to do lifetime gifts of substantially appreciated art if the art will be sold by the donees shortly after receiving the bequest
  - Do the math-if a lifetime gift is contemplated, consider gifting to intentionally defective grantor trust and have the trust sell the art before death
- Basis adjustment to fair market value for income tax purposes for gifts received at death of donor
  - Community property – basis adjustment to fair market value at first death
- Compare estate tax vs. income tax
  - Loss of step-up of income tax basis at death vs elimination of estate taxation at death

\* 17 states plus Washington DC have additional state estate tax or inheritance tax

# Federal Estate & Gift Tax (cont'd)

55

- Individuals have the ability to make a limited amount of gift tax-free gifts during life and/or death.
- Every gift is valued during life, and the donor must file a gift tax information return advising the IRS of a use of all or part of their lifetime gift credit.
  - For example:
- Once the donor uses up all their lifetime tax-free gift credit, all subsequent gifts are taxed at 40%. Upon death, any lifetime gift reduces their estate tax-free bequest. Any bequest in excess of their remaining estate tax exemption will be taxed at 40%.
- Why is 40% gift tax much cheaper than 40% estate tax?
  - Example:

# Non-Charitable Gifts During Life vs. After Death – Income Tax Basis

56

- Donee receives a carryover basis
- Artist's income tax basis in the art is generally cost of materials
- When owner of the art dies, the income tax basis of the art is adjusted to fair market value
  - ▣ The art is included in the estate whether or not the owner has a taxable estate:
    - If income tax basis is low, generally preferable to wait until death and make a gift or donation after basis has been stepped up to fair market value
      - Community property – full step up in basis after **first** spouse dies
        - Take one for the team
    - If income tax basis is high and the art's fair market value is worth less than its basis, then it is better to give it away before death (to avoid a step down of income tax basis which is carried over to transferee at death)
- The combined CA state and federal income tax rate on sale of art can be greater than the 40% estate tax rate; therefore, gifts of art may be less beneficial than they were when the estate tax rate was substantially higher than the combined federal and income tax rate.
  - ▣ In many cases, it may be better to pay the estate tax on any appreciation, then let the donee pay income tax on any **post-death appreciation** when the work is sold.
    - Does the donee plan on keeping the art or selling the art?
    - To the extent that the donee is not contemplating a sale, the loss of the step up in income tax basis becomes less important
- **Balance estate tax, if any, with benefit of income tax step up in basis**



# Non-Charitable Gifts During Life vs. After Death – Income Tax Basis (cont'd)

57

- Inherited low basis assets included in the estate of the donor enjoy a special adjusted basis to fair market value
  - Person who inherited the asset can reflect their basis to be the value at the date of death of the person they inherited the art from
  - Usually this results in a stepped up basis, which reduces the gain on a subsequent sale
  - **Example:** You bought a piece of art 40 years ago for \$50,000. That art is now worth \$2,000,000. Your basis is the \$50,000 you paid for it. If you sold the piece for the \$2,000,000, you would have a taxable capital gain of \$1,950,000 (\$2,000,000 – \$50,000). However, if you hold on to the piece, when it passes through your estate, the heir's basis is the value at the date of death. In this case, the piece was worth \$2,000,000 at the date of death (the date they inherited). If they then sell the piece for \$2,000,000, their taxable capital gain is zero.
- “Step-down” in basis is possible if value of art is less than the original purchase price or income tax basis

# Non-Charitable Gifts During Life **by Artist**

58

- If donee receives a gift from an artist during the artist's lifetime, the property will be considered ordinary income property
  - ▣ **Character of the gain will be ordinary if the donee subsequently sells the work or donates it to charity**
    - **Even if held the gift of art for many years, the character of the gain remains ordinary**
- Basis is generally minimal
- Donee receives carryover basis
- Death of artist donor does not effect gift of previous works out of estate
- Character of gain changes to capital upon the death of the **donee**

# Partial Interest Charitable Contributions **at** **Death**

59

- A donor can separate out the copyright and the tangible work and receive an estate tax deduction for a contribution of either or both the copyright and/or the tangible work
  - ▣ However, only gifts that are made to charitable organizations **other than private foundations** (a private operating foundation is not considered a private foundation for this purpose) and for related use by the charity in furtherance of its exempt purpose will qualify for the treatment of the work and the copyright associated with the work as separate interests

# Intentionally Defective Grantor Trust (DGT)

## – Advanced Planning

60

- The Intentionally Defective Grantor Trust is ignored for income tax purposes (similar to living trust)
- Artwork is gifted or sold to the trust so that the collector is treated as the owner for income tax purposes, but not for estate or gift tax purposes
- At death, the assets in the trust, including all appreciation, is outside of the estate for estate tax purposes
  - No income tax basis adjustment at death
- The sale to the trust is ignored for income tax purposes
  - For example:
- All income earned by the Intentionally Defective Grantor Trust (including rental payments) may be reported on personal income tax returns, but the art itself is not included in the estate for estate tax purposes
  - Assets to be sold during life – Intentionally Defective Grantor Trust
    - Consider transferring any asset that you are planning to sell during life to a DGT prior to sale
  - Assets to be sold at death – keep in estate
  - Assets to be kept by kids post death
    - If taxable estate...
    - If non-taxable estate...
- Provides additional benefits to beneficiaries without using up their lifetime gift tax exemption
  - For example:
- One time power to ‘turn-off’ the grantor trust status

# Gift/Sale – Advanced Planning

## Leasing of Art

61

- Transfer the art and retain the use through a display fee
- Leasing art from:
  - Children
  - Trusts or LLC owned or for the benefit of children / grandchildren
  - Charity
- Plan:
  - Gift to non-charitable beneficiaries at low discounted value and eliminate appreciation from the estate
  - Income, gift, and estate tax free transfer of rental income to your beneficiaries
  - Income tax deduction for charitable bequest but retain use for limited period of time
- This is a relatively new area that is developing and there are many unanswered questions
- The client and its professionals should be prepared for an audit
  - For example, the determination of what is the **fair market “rental” value** is at its infancy. However, use of valid appraisal by a respected appraisal firm experienced in appraising art should be defensible

# Leasing of Art: Advanced Planning (cont'd)

62

- In addition, many museums and companies are beginning to rent art to patrons and the public, and the amount of the rent is often determined by a percentage of fair market value
- The percentage is generally inversely correlated to the duration of the lease term, e.g.: the longer the lease, the lower the percentage (2% to 5% of value for multiple year leases; 10% to 15% of value for lease terms of a few days or months)
- If the art is gifted to a non-charitable donee (and leased back), then the Internal Revenue Service may attempt to include the art in the estate. It is better if art is purchased by the donee/trust. The purchase can be designed as income tax free if purchased by an intentionally defective grantor trust. Even better if art is purchased by the trust from a third party
- **If rent too low – retained interest**
- **If rent too high – additional gift**
- **Better to err on the side of paying too much rent and risk possible additional gift rather than risking estate inclusion**

# Estate Planning: Transfers of Art at Death

63

- ❑ Re-consider general “personal effects” clause
- ❑ Consider how estate taxes will be allocated
- ❑ If children don’t want art, **mandate in the estate plan that the art will be sold**
  - ▣ Allows estate to take deduction for auction expenses, commissions and other selling expenses, such as seller’s premium
  - ▣ Premium is only deductible if sale of artwork is mandated in estate planning documents



# Estate Planning: Use Art Executor to Ensure Expenses are Deductible

64

- Family member, friend or attorney as traditional executor
- If sale of art is not mandated, then use art dealer as “Art Executor”
  - ▣ Arrange for commission that is within state-prescribed limit for executor’s fees
  - ▣ Commission should be deductible





# Estate Planning: Miscellaneous

65

- ❑ Keep an inventory during life to assist post death administration
- ❑ Consider title insurance at time of purchase to save estate headache later
- ❑ Keep general liability insurance current, including theft
- ❑ Utilize alarms and cameras as safety precautions
- ❑ Report any missing art to police, FBI, Interpol and Art Loss Register
  - ❑ Review statute of limitations for claims against dealers (CA – four year)
- ❑ If art is stolen from estate, have proper owner file a claim so estate can get a theft deduction
- ❑ Avoid estate inclusion by completing the transfer
  - ❑ Deed, physical transfer and change insurance



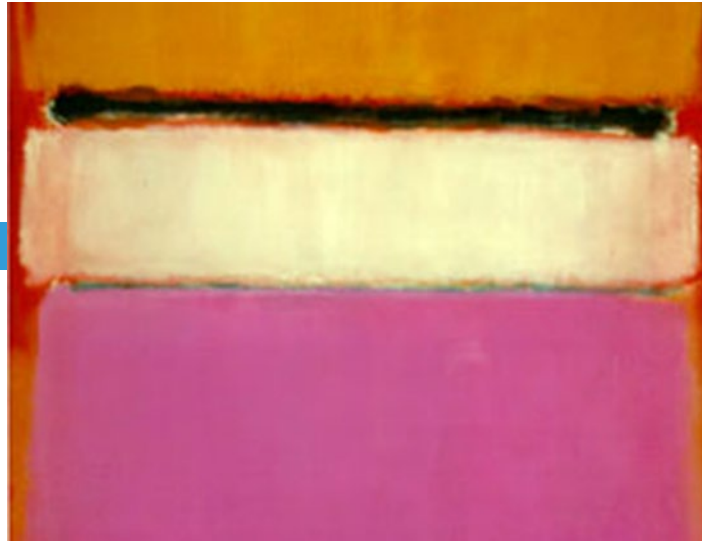


**Andy Warhol**  
***Marilyn (Hot Pink), 1964***

The litigation in Warhol's estate was not about taxes, as the sole beneficiary was the Andy Warhol Foundation for the Visual Arts. The battle was over legal fees. The Art Executor's contract with his attorney agreed to pay the attorney a percentage of the total value of the art assets. The difference of opinion on value between the attorney and the estate was about \$600 million.

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# Estate Administration



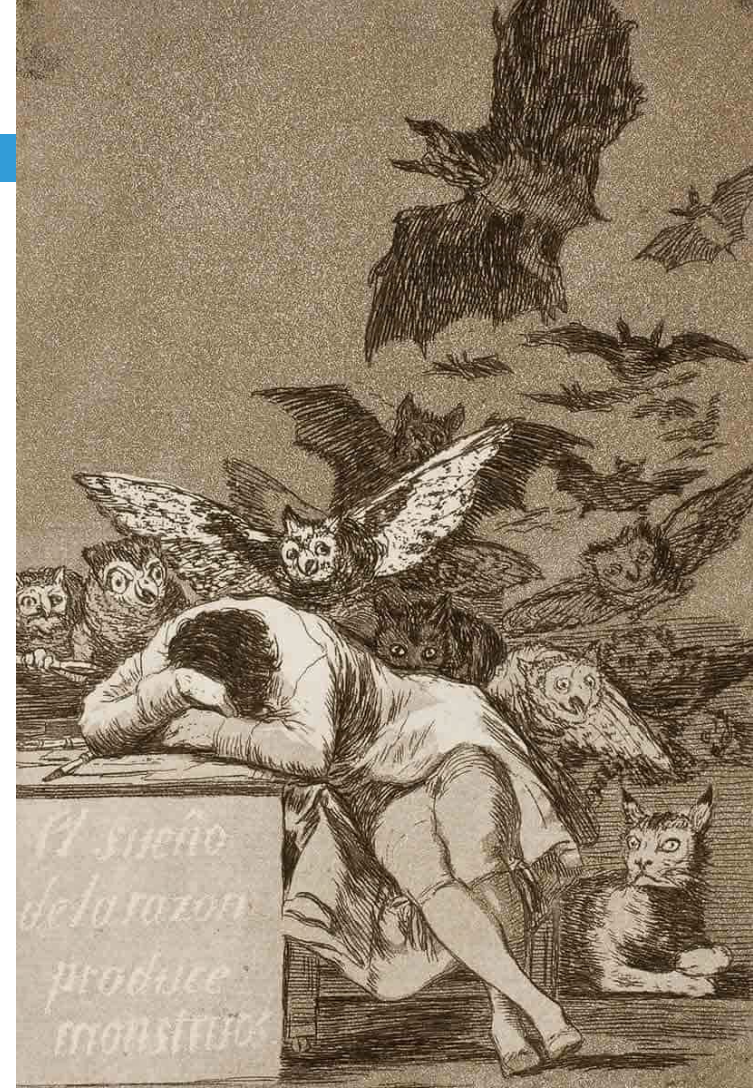
## Mark Rothko

### *White Center*, 1950

Just one month after his death, Mark Rothko's executors contracted to sell 798 of his works to the gallery owned by one of the executors, for a price that breached the executors' fiduciary duties to the beneficiaries of the estate.

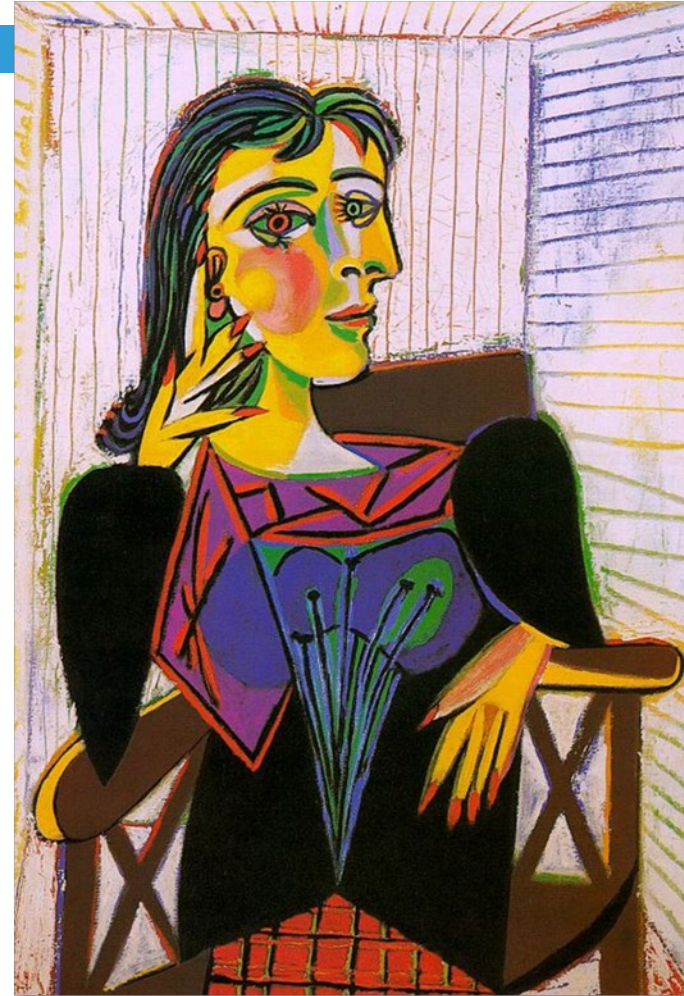
## Francisco Goya

In April 2024, 200 Goya etchings and about 85 paintings valued at \$4.3 million were anonymously donated to the local government of Álava in Spain's Basque Country to settle a tax bill debt of \$4.7 million.



## Pablo Picasso *Portrait of Dora Maar, 1937*

When Picasso died in 1973, Picasso's wife and children agreed to let the government choose which pieces it would take to pay taxes before carrying out the distribution and the dissolution of the collection. The French government received 203 paintings, 158 sculptures, 29 relief paintings, 88 ceramics, 1,500 drawings, and 1,600 etchings, as well as manuscripts and works of pasted paper.



# Paying Estate and Generation Skipping Taxes

71

- Consider life insurance to create liquidity
- Section 6161 extension of time to pay – year by year – if reasonable cause
  - Up to 10 years to pay, if a forced sale is only alternative.
- Artists or Dealers may qualify for Section 6166 family-owned business deferral. If closely held active business exceeds 35% of adjusted gross estate
  - Tax may be paid in installments for up to 15 years
  - Must be “actively engaged in the trade or business”
    - Therefore, “collectors” may not qualify
  - An interest rate is charged on a portion of the estate taxes deferred

**Why did the art thief's van run out of gas as he drove away from the museum?**

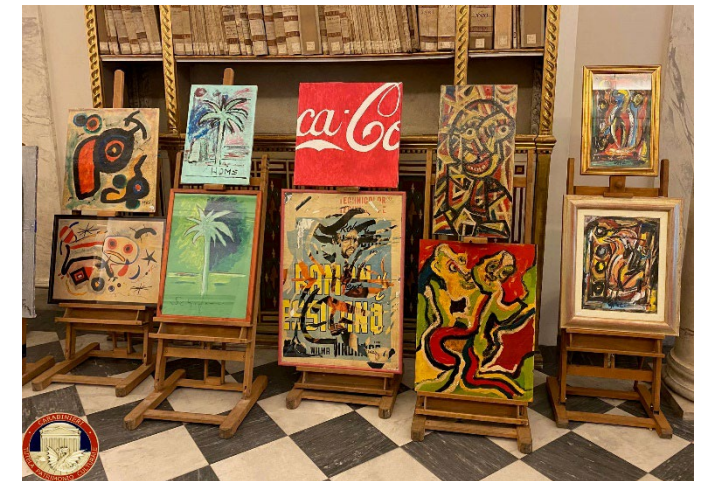
**Because he had no Monet to buy Degas to make the Van Gogh.**



# Recent Massive Art Forgery Ring Bust

73

- ❑ “Operation Cariatid” began in March 2023 and uncovered a major art forgery network in Europe
- ❑ The group forged works by over 30 famous artists, including Picasso, Dalí, Warhol, Basquiat and Banksy
- ❑ Authorities have charged 38 suspects in Italy, Spain, France, and Belgium
- ❑ Police seized 2,100 counterfeit artworks worth €215 million
- ❑ Banksy was the most forged artist, with fake exhibitions held in Italy
- ❑ Other targeted artists included Mondrian, Kandinsky, Chagall, van Gogh, and Pollock



# Warhol Theft

74

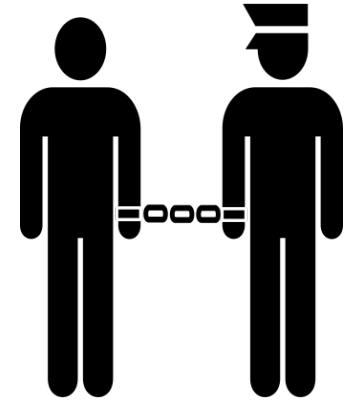
- Seven Andy Warhol painting on permanent display at the Springfield Art Museum in Missouri were stolen on April 7, 2016
- The collection is set number 31 of the "Campbell's Soup I" collection, the FBI said. It's valued at approximately \$500,000



# Celebrity LA Art Dealer Scam

75

- High-profile art dealer Perry Rubenstein has been charged with failing to pay more than \$1 million for artwork linked to two of Los Angeles' most powerful art collectors, Eli Broad and Michael Ovitz
- One of the charges centers on his sale of “The World of Sphere” by Japanese artist Takashi Murakami, to the Eli and Edythe Broad Foundation
- The two other counts against Rubenstein arise from his agreements with Ovitz to sell two works by Richard Prince that together are worth more than \$1 million



# California Legislation to Address Politically Motivated Art Theft

76

- Legislation introduced March 2024 to bolster efforts by Holocaust survivors and other victims of politically motivated thefts to recover artwork
- If passed, the new law would dictate that property be returned in these scenarios, and would apply in any case considering these issues, including those on appeal before the Supreme Court
- Introduced in response to a recent 9<sup>th</sup> Circuit ruling that a painting stolen from a family fleeing Nazi Germany in 1939 could remain with the Madrid art museum where it is currently displayed.



Rue Saint-Honoré in the Afternoon. Effect of Rain  
Camille Pissarro

# Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith – Copyright Infringement

77

- Copyright case which centered on Warhol's iconic series of silkscreen prints of the musician Prince, which were based on a photograph taken by photographer Lynn Goldsmith.
- The lower courts initially ruled in favor of Goldsmith's estate, finding that Warhol's use of the photograph was not transformative enough to constitute fair use.
- **The US Supreme Court ruled 7-2 that the 2016 publication of an Andy Warhol image of singer Prince violated photographer Lynn Goldsmith's copyright.**
- The court's decision relies on how the image was used. In this case, wrote the justices, the commercial nature of the Prince portraits means that the images aren't covered by fair-use law.
- In the majority opinion, Justice Sonia Sotomayor emphasized that the photographer's "original works, along with those of fellow photographers, deserve copyright protection, regardless of the fame of other artists."
- The two dissenting justices, Elena Kagan and John Roberts, argued that this ruling could stifle the creativity of artists who want to riff on copyrighted material.



# Valuation

# Valuation Discounts for Federal Estate & Gift Tax Reduction

79

- Discounts: the law applicable to discounts available to transfers of partial interests in works of art is currently undetermined, with courts allowing a range between 5% and 67%.
  - ▣ An alternative may be to place the work in an entity (such as an LLC or partnership), then transfer interests in the entity. It's unclear at this point whether a court would 'look through' the entity.
- No discount for income tax embedded on unrealized gains in the work
- Why does a fractional interest reduce value?
  - ▣ Minority interest
  - ▣ Lack of marketability
  - ▣ Lack of control
- Good news/bad news
  - ▣ Inter-family transfer: wants a discount
  - ▣ Charitable bequests: do not want the discount

## Robert Rauschenberg *Canyon*, 1959

This mixed media collage known as a “combine” includes a stuffed bald eagle, which makes it illegal to sell or trade. When the children of New York art dealer Ileana Sonnabend inherited the work, they reported its value as \$0 on the estate tax return, and the IRS insisted the masterwork was worth \$65 million. Estate taxes of \$29.2 million and penalties of \$11.7 million were waived when the children donated the work to the Museum of Modern Art (MoMA) in NYC





# Valuation Issues

81

- **Very detailed appraisal requirements**
  - Income Tax Valuations
  - Substantiation
    - Qualified Appraisal
  - Estate and Gift Tax Valuations
  - Art Advisory Panel (volunteers active in the art community)
    - If the work has a value in excess of \$20,000
    - Theoretically, the panel doesn't know if the donor wants a high value (gift to charity) or low value (gift to family member)
  - It may not be currently possible to satisfy the qualified appraisal requirement for digital assets

# Valuation Issues (cont'd)

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- Penalties
  - ▣ Assessed against Taxpayer, Attorney/Accountant and Appraiser
- Form 8283, Noncash Charitable Contributions
  - ▣ Form to use when filing income tax return to report noncash donations over \$500
  - ▣ If value is more than \$5,000, no deduction unless a qualified appraisal by a qualified appraiser. Very detailed requirements
  - ▣ If value is \$20,000 or more, must include complete copy of appraisal with tax return
- Failure to strictly comply will result in loss of entire deduction even if it is “obvious” that the value is as claimed. For example, a purchase and donation the same day

# Art, Antiques, & Collectibles

83

- Donation
  - If art donated is appraised at \$50,000 or more, you may request Statement of Value for that item from IRS prior to filing income tax return to avoid potential future audit regarding donation
  - Cost for Statement of Value is \$2,500
  - Cost of an appraisal, delivery of art, and tax advice cannot be deducted as a charitable contribution
  - May be able to claim the expenses as a miscellaneous itemized deduction on tax return – which has a limited benefit



# Art, Antiques, & Collectibles (cont'd)

84

- IRS Art Advisory Council
  - ▣ Reviews art appraisals above certain amounts that have been used for gifting, donating, or estate purposes
- IRS Publication 526
  - ▣ Information on charitable contributions
- IRS Publication 561
  - ▣ Information on determining value of donated art

# Sales & Use Taxes

# Sales and Use Tax

86

- A **Sales Tax** is a transaction tax imposed on a retail sale occurring within a particular jurisdiction. In general, the vendor collects the sales tax and remits it to the state on behalf of the purchaser
- A **Use Tax** is generally imposed on the privilege of owning, possession, use, storage or consumption of tangible property or services in a particular jurisdiction regardless of where the purchase took place
- In general, the purchasing consumer self-assesses and remits use tax to the state in cases where a retailer does not have an obligation to collect sales tax. The same consumer generally does not have to pay both a sales and use tax to the same jurisdiction for the same transaction

# Acquiring/Selling Art – Sales and Use Tax Rules

87

- **Sellers of art in California are liable for sales tax unless exemption applies**
- Common exceptions:
  - ▣ Sale to a dealer or someone with valid resale license
  - ▣ Occasional sales (less than 3 sales within 12 months)
  - ▣ Shipments out of state (contract must require that the work be shipped out of state by the seller)
- Dealers must collect sales tax upon sale of artwork – CA sales tax rate ranges from 7.5% to 10% depending on the city where the sale is made
- Since Artists and Collectors generally are not retailers, they generally are not required to collect sales tax; however, the buyer may be obligated to pay these taxes at the same rate
- A client went on 60 Minutes where he discussed the expensive art he had bought outside of CA and the CA taxing authorities sent him a \$700,000 use tax bill.
  - ▣ **Keep a low profile—California in particular is very aggressive in tracking use tax on art sales, and has a sales tax office in New York.**
    - Ex: Do not post the artwork in your personal residence online or on social media

# Taxation by Vendor's Situs State

88

- A credit is typically allowed if sales/use tax must be paid to two states (e.g. state of sale situs and state of purchaser's residence) such that "double taxation" is mitigated by the purchaser taking a credit in the purchaser's state of residence for tax paid in the remote state
- The sales tax prong is generally applied as a destination tax based on the point of delivery or the point at which possession is transferred by the vendor to the purchaser (or a designee of the purchaser)
- Sales of taxable goods for delivery to the consumer outside the state of the vendor's location are generally not subjected to sales tax in that state
- State law matters: care must be taken to assure that the sales tax laws of the vendor's situs state are reviewed and complied with so as to assure that the acquisition is not considered to be sale occurring within the dealer's state triggering the acquisition of a collection responsibility on the vendor. Once comfort is obtained that no sales tax will be imposed in the dealer's situs state, the tax analysis shifts to the imposition of use tax in the remote state in which the purchaser takes delivery



# California Vendor

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California applies the origin approach to the application of the sales tax such that the sales tax rate of the retailer (i.e., the originator of the sale) applies to taxable sales. California taxes all sales that occur in the State, unless prohibited by the U.S. Constitution. However, if title to the sold item passes to the purchaser at a point outside the State, or if for any other reason the sale occurs outside the State, the sales tax **does not** apply.

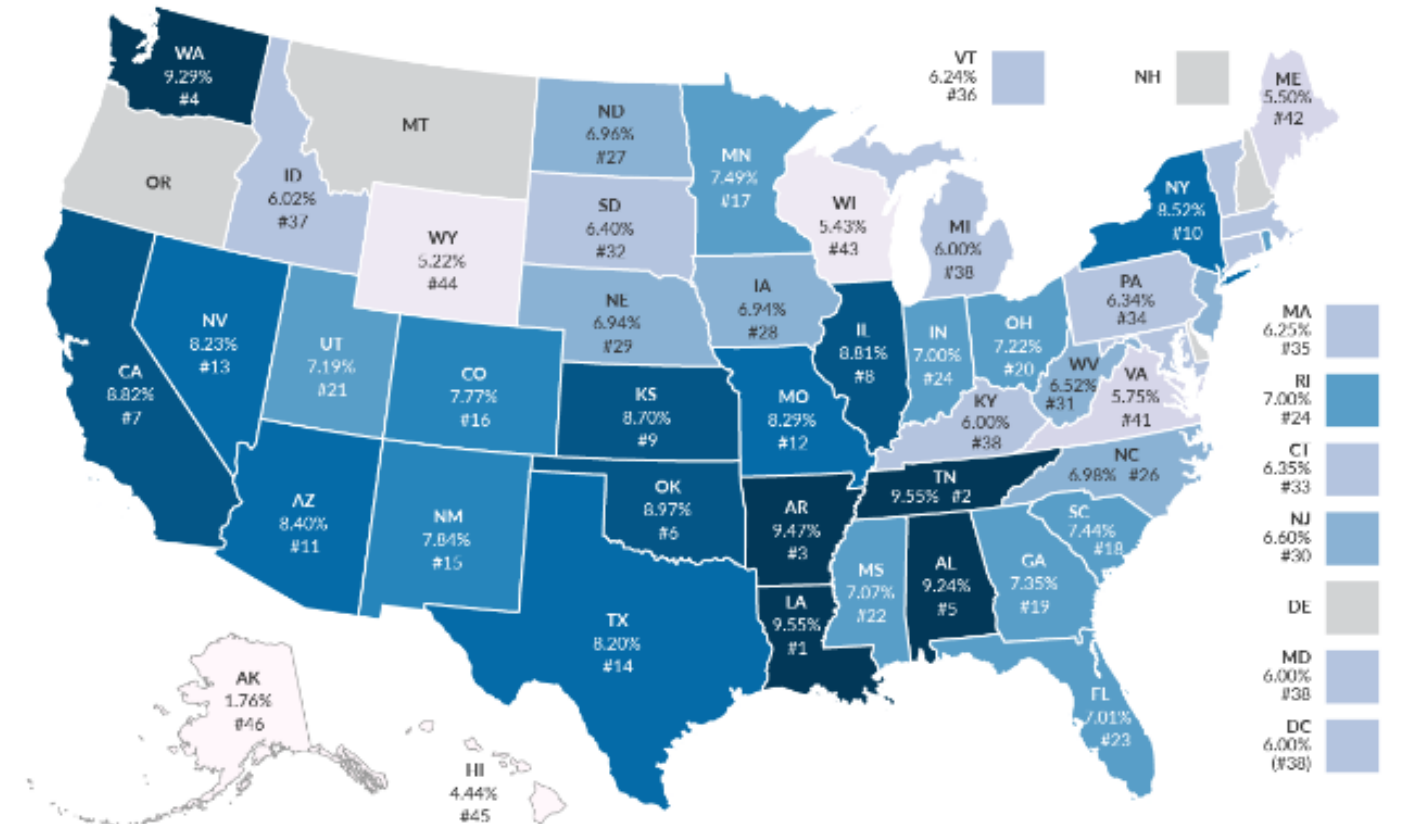
# Other States

90

- While a similar analysis will generally apply in other states, the sales tax laws of each state of potential purchases should be reviewed to assure that no unique rule, with more or less favorable results, would apply to an anticipated purchase of artwork.
- Any of the five states which do not have a sales and use tax (Alaska, Delaware, Montana, New Hampshire and Oregon) should meet the initial tax screening objectives of not subjecting the artwork to state sales and use tax. However, of those five states, Oregon is the closest in proximity to California and has been determined to have acceptable facilities to store and display high quality artwork.

## How High are Sales Taxes in Your State?

Combined State & Average Local Sales Tax Rates, January 2022



Notes: City, county and municipal rates vary. These rates are weighted by population to compute an average local tax rate. The sales taxes in Hawaii, New Mexico and South Dakota have broad bases that include many business-to-business services. D.C.'s rank does not affect states' ranks, but the figure in parentheses indicates where it would rank if included.

Sources: Sales Tax Clearinghouse; Tax Foundation calculations; State Revenue Department websites

Combined State & Average Local Sales Tax Rates



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# California Use Tax - Planning

91

- The use of taxable property within a state will typically trigger the application of the use tax prong of a state's sales and use tax. Because the artwork is probably intended to be displayed “used” in the personal residence of a purchaser located in California, it would be subject to California use tax.
- However, California has a rule permitting use in California without imposition of use tax if the property is “first functionally used” in another jurisdiction for more than 90 days after acquisition and before delivery to California, exclusive of any time of shipment to California or time of storage for shipment to California.
  - 12 months for vehicles, vessels and aircraft



# California Use Tax - Planning (cont'd)

92

- I have not identified any statutory or case law guidance on the definition of “first functionally used”
- However, in California the State Board of Equalization Tax Information Bulletin September 2000 (9/1/2000) Issue, it states that first functionally used means “used for the purpose for which they were designed”
- Although this has not been tested, we believe the best method to ensure that artwork is “functionally used” outside of California is to have the artwork **displayed** in a public setting for at least 90 days\*
  - ▣ **Storage** in a museum outside of California for 90 days may not satisfy the first functional use test\*

\*12 months for vehicles, vessels and aircraft



# New York State Sales Tax Trap

93

- A New York State Taxing Authority Bulletin puts art work purchased in New York but shipped out of New York at risk of being subject to New York State **sales tax**
- Under the terms of the bulletin, New York is now considering the private or contract carrier to be the purchaser's designee in essence meaning that the **purchaser** is taking possession of the art when the art transport company picks up the art work subjecting it to New York sales tax
- The taxing authority has differentiated between using a commercial common carrier and a private or contract carrier hired by the purchaser
- **The tax bulletin makes it clear however that this problem arises only when the art transport company is hired by the purchaser.**
- Therefore, it is imperative that the **seller**, be it the gallery, private seller, consultant or auction house, make the arrangements, contract and pay the art transport company. That should avoid the New York State sales tax

# New York Sues Sotheby's for Helping a Client Dodge Sales Tax

94

- Sotheby's helped a foreign national client avoid sales tax on over \$27 million in art
- Client filed 4 resale certificates, which allow for the exemption of sales tax (sales tax would be collected on final sale of art)
- New York's attorney general filed a complaint against Sotheby's for accepting the certificates, even when they had direct evidence (such as seeing the art displayed in the client's home) that the purchases were for personal use
- Law suit seeks damages and civil penalties under the New York False Claims Act

# International Art Dealer to Pay \$4.2M Tax Settlement in New York; Failure to Collect & Remit

95

- Gagosian Gallery Inc. paid New York \$4.2 million to settle charges that it failed to collect and remit sales tax on art shipped in and out of the state. The settlement includes \$547,586 in penalties, plus back taxes, interest and fees.
- New York alleged that an affiliate of Gagosian in California sold and shipped \$40 million worth of art to New York customers over a period of 10 years without collecting and remitting sales tax.
- Under New York law, sales tax is due if possession is transferred by the vendor to the **purchaser** or purchaser's agent within the state. Gagosian should have collected and remitted sales tax when it turned over art to shipping companies that were contract carriers acting as the **purchasers' agents**.
- The settlement comes amid a wave of investigations into financial dealings in the art market. Aby Rosen, a New York real estate developer with a half-billion dollar art collection, agreed in May to pay \$7 million related to claims that he avoided paying sales and use taxes on \$80 million of fine art since 2002. At the same time, Victoria Gelfand, a Gagosian Gallery director, agreed to pay \$210,000 in unpaid taxes on more than 30 pieces of art she had purchased through her privately owned companies.

# Brad Cohen

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[BCohen@jmbm.com](mailto:BCohen@jmbm.com)  
Direct: 310.201.3575

Brad Cohen specializes in tax, estate, and business planning for ultra-high-net-worth individuals and closely held businesses. He takes a holistic, family-office approach to wealth structuring, multi-generational planning, and complex transactions, including mergers, acquisitions, and philanthropy.

Brad has extensive experience advising clients with significant collections of tangible assets, such as art, jewelry, wine, and automobiles. He has assisted with their acquisition, financing, donation, and sale, as well as the establishment of private museums to showcase these collections. His expertise extends to cutting-edge ventures in AI, digital currency, and real estate including Opportunity Zones.

Notable projects include serving as principal advisor on the largest trust administration in U.S. history and representing the lead donor for the Space Shuttle Endeavour's permanent exhibition. Brad's practice also spans the entertainment, sports, and nonprofit sectors, offering strategic, innovative counsel tailored to his clients' unique needs. His clients have also included two former presidents of the United States and a United States senator.

In addition to his wide-ranging expertise and client representations, Brad is also an Ironman Triathlon finisher.



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