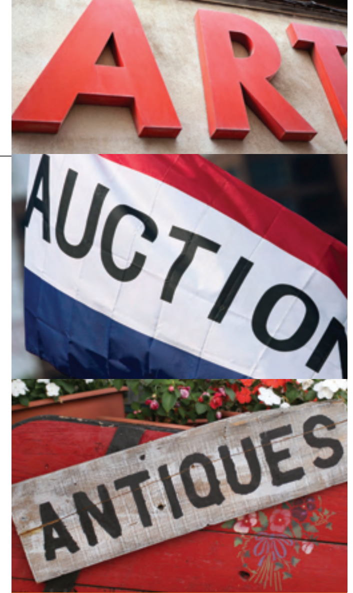


Top 10 Mistakes Made When Planning for Art and Other Collectible Assets

Help your clients avoid these pitfalls

By **Caryn B. Keppler** & **Jodi C. Lipka**

According to a 2014 study by the Center on Wealth and Philanthropy of Boston College, an estimated $51.8 trillion (in 2007 dollars) in assets will be passed inter-generationally between 2007 and 2061.[1] A good percentage of those assets will be tangible personal property, including art and other collectible assets. The foregoing estimate was based on the continuation of the then-$5 million federal estate tax exemption. With the passage of the Tax Cuts and Jobs Act of 2017 and the increase in the federal basic exclusion amount to approximately $11.2 million per person,[2] that number is now, undoubtedly, a low estimate. Despite the fact that a vast amount of wealth is held in the form of art and collectible assets, most legal, financial and tax advisors fail to counsel their clients on appropriate planning techniques for their collections both during life and at death. In our opinion, here are the top 10 mistakes made when planning for art and other collectible assets and how to avoid them.

Client Classification

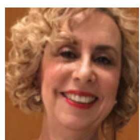
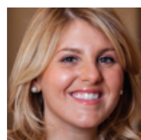
Mistake #1: Not considering how your client is classified: Is your client a dealer, an investor or a collector?

How a client is classified has a direct impact on the income tax treatment of her reported gains and losses and the deductibility of the expenses of maintaining her collection as reported on her personal income tax return.[3] Failing to discuss the different classifications with a client or failing to recognize that a client may qualify for more favorable tax treatment as a dealer or investor can result in the loss of significant income tax savings to a client.

To be classified as a "dealer," a client must be engaged in the trade or business of selling property primarily to customers within the meaning of Internal Revenue Code Section 1221(a)(1). To be "engaged" in a trade or business, the taxpayer must: (1) be involved in the activity with continuity and regularity, the primary purpose of which must be for income or profit, and (2) hold herself out to others as engaged in the selling of goods and/or services.[4] Sporadic activity, such as a hobby or an amusement diversion, doesn't qualify as participation in a trade or business. Similarly, mere investment activities don't constitute a trade or business. An artist may be classified as a dealer because an artist is in the trade or business of making and selling her works of art.[5]

The Internal Revenue Service looks to the following questions to determine if an activity is engaged in for profit:

1. Does the taxpayer devote enough time and effort to the activity to indicate an intention to make a profit?

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2. Does the taxpayer depend on income from the activity?
3. If there are losses, are they due to circumstances beyond the taxpayer's control, or did they occur in the start-up phase of the business?
4. Does the taxpayer have the knowledge needed to carry on the activity as a successful business?
5. Has the taxpayer made a profit in similar activities in the past?
6. Does the activity make a profit in some years?
7. Does the taxpayer expect to make a profit in the future from the appreciation of assets used in the activity?[6]

An activity is presumed to be for profit if it results in a profit in at least three of the last five tax years, including the current year.[7] When an activity is determined not to be for profit, losses from that activity may only be used to offset gross receipts from that activity,[8] and any allowable deductions are subject to a 2 percent floor.[9]

An art dealer is engaged in the business of buying and selling art for profit and realizes ordinary income on sales that realize a gain[10] and ordinary losses on sales that realize a loss,[11] with a current maximum tax rate of 37 percent. A dealer can deduct on her Form 1040 the ordinary and necessary expenses incurred in her trade or business of buying and selling art and collectibles.[12] The same rules apply to the artist who's also a dealer of her own art, except that when computing gain or loss, the basis of the art held in the hands of the artist is limited to the cost of the materials the artist used to create the work, which often results in substantial ordinary gains.[13]

An "investor" is someone who buys and sells art and collectibles primarily for investment purposes rather than for personal use or enjoyment and is considered to be engaged in such business for profit.[14] In contrast, a "collector" is someone who buys and sells art and collectibles primarily for personal pleasure and isn't a dealer or an investor.[15]

Sales by an art investor or collector are treated as sales of capital property so that gains are taxed at more favorable capital gains rates (as compared to ordinary income tax rates) and may be offset by capital losses.[16] Notably, sales of art or collectibles by a client art investor or collector are subject to a 23.7 percent maximum capital gains tax—not the 15 percent tax imposed on the sale of other capital assets (that is, marketable securities).[17]

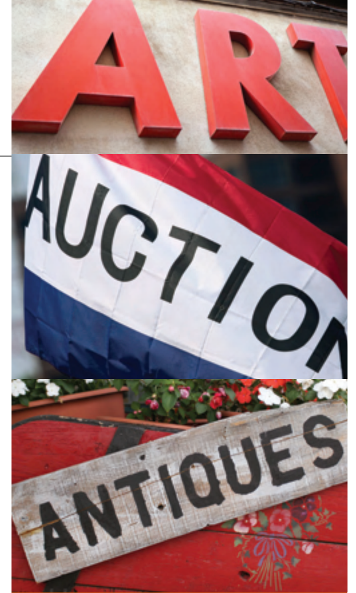
The art investor may deduct the ordinary and necessary expenses incurred in connection with holding her collection for the production of income.[18] Although, like the investor, the art collector realizes capital gains and loss on the sale of her property, she ordinarily can't deduct art-related expenses in connection with her collecting activities. However if a client can show that she acquired the assets primarily for investment purposes, and not for personal use and enjoyment, it may be possible to re-classify a client collector as an art investor. In such cases, the expenses and losses with respect to the sales of any such property are deductible.[19]

Evidence of intent to hold the property for investment purposes can be shown by various factors, such as the collector's: (1) financial position and investment history, (2) consultation with experts on purchases, (3) efforts to display the collection publicly, (4) developing an expertise, and (5) keeping businesslike records.[20] The collector who's unable to be classified as an investor is subject to the hobby loss rules of IRC Section 183(b).

The Disappearing Art Collection

Mistake #2: Adopting the moving van approach.

Ordinarily, the IRS expects to see some valuation for a decedent's tangible personal property reported on Schedule F of a Form 706. Failing to



Although not always the primary motivation for charitable gifting, a client should be properly counseled on the income tax benefits of making a lifetime gift of some or all of her collection to a charitable beneficiary.

properly report the value of a decedent's tangible personal property on Schedule F or undervaluing such property is a popular audit issue and may result in a tax audit on what might have otherwise been a clean estate tax return.[21] How then should you deal with a client who informs you that she intends to make her valuable art collection disappear before her death so that it isn't subject to inclusion in her estate?

First, remind her that there's no statute of limitations on tax fraud, which includes estate tax fraud.[22] If the existence of a collection isn't properly reported on the Form 706, the IRS can pursue the decedent's heirs for the payment of any unpaid taxes, interest thereon and penalties (including prohibitive under-valuation penalties[23]) indefinitely.

Second, inform her that undervaluing, failing to report and/or paying the estate taxes attributable to her personal property will affect issues of provenance and may prevent the sale of any item in the collection at its fair market value (FMV) at a future date.

Estate Tax Burden of Appreciated Assets

Mistake #3: Failure to plan.

Art and collectibles are subject to estate taxes imposed on their FMV on date of death.[24] Taking into account federal and state estate taxes and the costs of the sale of those assets, without appropriate estate planning, there's the risk that a client's collection could lose more than 50 percent of its value at a client's death.

According to a 2012 *Wall Street Journal* article, "The Art of Passing Along Art,"[25] many individuals who bought art in the 1950s and 1960s (the octogenarians of today) are running into an unanticipated problem—their art collections have experienced greater appreciation than their liquid assets, so that their estates aren't equally concentrated in liquid and illiquid positions. For instance, if a client has $40 million in liquid assets and $100 million in art includible in her estate, the estate may be obligated to satisfy a nearly $52 million estate tax bill (without taking into account any available deductions). In such circumstances, the executor may be forced to sell some or all of the decedent's art collection within nine months of death to avoid depleting the estate's available liquid assets to pay the estate's transfer tax liability. If a client's collection must be sold in its entirety to pay the estate's tax bill, it's likely that the estate will only realize a fraction of the collection's true value.

There are numerous planning alternatives that can lessen the estate tax burden imposed on collectibles, including using the artwork to fund a client's charitable intentions, strategic lifetime gifting and methods aimed at shifting highly appreciated (or soon to be highly appreciated) art outside of the taxable estate. When approaching any of these alternatives, consider whether a collection is more valuable as a whole or as the sum of the value of each individual piece.

Professional Appraisals/ Appraisers

Mistake #4: Not realizing the true value of "stuff."

For federal estate and gift tax purposes, transfers are valued on the date made at the then-FMV of the asset. As noted above, one of the more common estate tax audit issues is the failure to properly report the value of items of tangible personal property on a decedent's Form 706. Similarly, failing to properly account for the value of tangible personal property transferred by inter vivos gift may result in the audit of a client's Form 709.

To identify the true value of art and collectible assets, clients should be encouraged or even mandated to obtain professional appraisals despite their upfront costs. Counsel clients on the many functions of appraisals in addition to those relating to estate and gift tax reporting (that is, establishing value for insurance purposes, establishing bidding parameters for assets at auction, obtaining loans with tangible personal property serving as collateral and planning for future gifts).

FMV is defined as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts."[26] Although the most persuasive indication of FMV is an actual contemporaneous sale of the property in question, in the absence of such a sale, an appraisal is typically required to establish the taxable value of the asset subject to transfer.

Under current regulations, a reported gift of tangible personal property that exceeds $5,000 in value must be substantiated by a qualified appraisal conducted by a qualified appraiser.[27] The Pension Protection Act of 2006 (the Pension Act)[28] established new requirements for what it means to have a "qualified appraisal" for tax reporting purposes.

A qualified appraisal must contain a declaration that the appraiser understands that: (1) a substantial or gross valuation misstatement resulting from an appraisal of the value of the property that the appraiser knows, or reasonably should have known, would be used in connection with a return or claim for refund, may subject the appraiser to a civil penalty, and (2) an intentionally false or fraudulent overstatement of the value of the appraised property may subject the appraiser to civil penalty for aiding and abetting an understatement of tax liability.[29]

A qualified appraisal must contain:

1. a detailed description of the property;
2. the physical condition of the property;
3. the date or expected date of the contribution;
4. the terms of any agreement or understanding entered into or expected to be entered into by or on behalf of the client that relates to the use, sale or other disposition of the property;
5. the name, address and taxpayer ID number of the appraiser;
6. a detailed description of the appraiser's background and qualifications;
7. a statement that the appraisal was prepared for tax purposes;
8. the date on which the property was valued;
9. the appraised FMV of the property;
10. the method of valuation used to determine the FMV;
11. the specific basis for the valuation; and
12. a description of the fee arrangement between the client and the appraiser.

A qualified appraisal is prepared by a qualified appraiser defined as an individual who:

1. has earned an appraisal designation from a recognized professional

appraiser organization or has otherwise met minimum education and experience requirements set forth in the regulations;
2. regularly performs appraisals for pay; and
3. meets other requirements that the IRS may prescribe in the regulations.

An individual can't be a qualified appraiser with respect to any specific appraisal unless she:

1. demonstrates verifiable education and experience in valuing the property type being appraised; and
2. hasn't been prohibited from practicing before the IRS at any time over the past 3-year period ending on the appraisal date.

If the appraisal or the appraiser doesn't meet all of the above requirements, the resulting valuation report isn't evidence of value, and the IRS will conduct its own appraisal to determine the FMV of the asset subject to transfer.

In certain instances, providing the IRS with an appraisal that adheres to all of the requirements of the Pension Act may not help with avoiding an estate or gift tax audit, but provides a powerful bargaining tool. For example, regardless of the asset composition of the remainder of the estate, if a decedent dies owning artwork that has a claimed value of $50,000 or more, the appraisal will be subjected to consideration by the IRS Art Advisory Panel, comprised of a body of art industry experts who review and evaluate the acceptability of artwork appraisals submitted by taxpayers in support of claimed FMV.[30] When a qualified appraisal is submitted, the IRS may be more willing to compromise on valuation issues.

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Inventory

Mistake #5: Not maintaining an up-to-date inventory.

Without a proper and organized inventory, a client can't possibly plan for the distribution of her collection. Keeping an inventory can be as simple as creating a computer spreadsheet or, with respect to a larger collection, using an electronic inventory prepared by computer software specially designed for such purposes. Regardless of the method employed, a proper and organized inventory should include: (1) a system for indicating when an item is bought or sold and to or from whom, (2) records of loans and gifts to a person or entity, (3) records of appraisals and/or insurance, and (4) records of damages and losses. An up-to-date inventory will also enable a client to track the provenance of an item, which will be of utmost importance on any subsequent sale.

It's important to note that when planning for a client who's also the creator of the artwork or collectible in inventory, the client artist should also maintain an inventory of her copyrights in her original works, as such items may have been licensed for specific periods of time or may be the subject of a different distribution scheme than the original work itself on the date of death.[31]

Recordkeeping

Mistake #6: Not keeping records of purchases and sales, location and authentication documents.

The provenance of any item is essential to determining its value. Evidence of an item's history and proof of chain of title will help establish an item's authenticity, resulting in the realization of the highest FMV for the item at the time of sale. It will also prevent a client from wasting money on items that are later determined to be inauthentic.

A complete record of an item's history and chain of title should include the item's current location and whether there are any limitations on the ability to freely sell or move the item. This is particularly important when a client owns assets that are of historical significance or in cases in which a client is seeking to transfer items between jurisdictions that impose high taxes on the sale and/or use of art and collectibles.

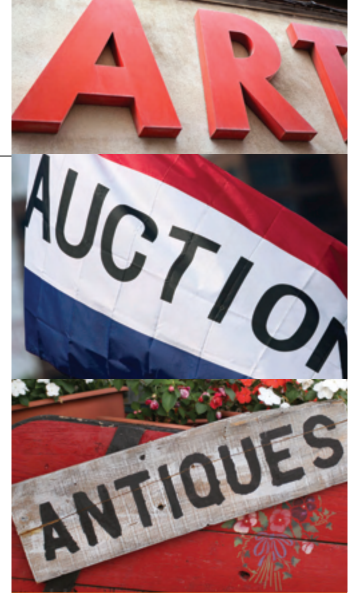
Interestingly, understanding the limitation on a client's ability to freely sell or move an item may be the most important detail of all. In a recent case, the estate of Ileana Sonnabend was forced to sell numerous masterpieces to satisfy a massive combined federal and state estate tax bill premised on the IRS' "theoretical Chinese billionaire approach." Ileana, an art dealer, died owning Robert Rauschenberg's *Canyon*, a collage, which wasn't freely alienable, because it included a stuffed bald eagle in the composition. Two federal statutes bar possessing or trafficking bald eagles, dead or alive. Taking into account these limitations, the estate filed a Form 706 reporting the collage at zero value. The IRS disagreed and determined that its FMV was $65 million, reasoning that "a recluse billionaire in China might want to buy it and hide it."[32] Ultimately and after substantial litigation, the Sonnabend estate settled this dispute with the IRS by arranging a donation of the artwork to the Museum of Modern Art in New York City, for a full charitable deduction.

Although not every client owns an item of the same ilk as Rauschenberg's *Canyon*, understanding the nuances of a client's collection is an important component to the proper representation of such client.

Insurance

Mistake #7: Not properly insuring a collection.

Accidents happen all the time. Whether a piece of artwork or collectible is damaged in shipping, by water or fire, proper insurance can help a client mitigate the damage. If a client doesn't have the proper insurance in place, the results of even a small accident might



prove to be economically devastating.

A client's collection can be insured: (1) as part of the contents of her home, (2) as separately scheduled items, or (3) through blanket coverage. Depending on the scope of a client's collection, we often recommend the additional cost and hassle of procuring insurance on the collection by way of a separate schedule, which inherently includes the need for a client to procure a qualified appraisal to establish the FMV of the collection at the time the insurance is issued. Furthermore, care should be taken to ensure that such appraisals are updated with some frequency so that each piece continues to be insured for its current worth and not for its purchase value. When dealing with highly appreciable assets, like art and collectibles, we recommend a full insurance review at least every five years.

It's only on the rare occasion that the damage to an item is considered so extensive that the insurer will declare a total loss resulting in a full payment to a client. In most other instances, when an insurer determines that there's damage to an item, but that it's still salvageable, the insurer will provide only the funds necessary to have the item repaired or refurbished, likely resulting in a loss in value to a client that may be unquantifiable until sale. Advise a client to obtain an insurance policy with a company that specializes in artwork and collectibles, even if at a higher upfront cost, to best protect her investment. It's also important to note that different insurance policies may be required if some of a client's collection is housed in her home, while other items are housed in storage or on loan to different institutions.

Communication

Mistake #8: Not having a conversation with heirs.

It isn't uncommon to find that a collection may have significant meaning to the client collector, but that it's of little or no value to the people inheriting the collection. Instead, such individuals are interested in converting the collection into cash. Encourage a client to speak with her heirs, as may be appropriate.

If a client's heirs intend to sell a collection, you may wish to counsel her on other methods of disposition that don't include the outright bequest of the collection to her heirs. Even if a client's heirs desire to inherit the collection for their personal use, a client should know whether her heirs wish to keep only select pieces or the collection in its entirety. Valuation issues may arise if a client wishes to give select items of tangible personal property to certain individuals who would otherwise be treated equally, and there's a discrepancy in the total value of the assets being assigned to each individual.

Most importantly, counsel her to speak with an expert in art succession planning. A knowledgeable art succession expert can assist a client in putting in place a plan to transfer her collection to her heirs in a clear, organized and tax-efficient manner.

Charitable Giving

Mistake #9: Not fully discussing the potential for charitable giving.

If collectibles aren't wanted by the family, or if their inclusion in a client's estate will cause a substantial estate tax burden that will be difficult or impossible to satisfy without great expense and diminution in value to the assets of the estate, discuss charitable giving options with her.

Although it may be hard for her to understand, not every institution is willing to accept her generous donation. Therefore, before designating a charity under a client's planning documents as the beneficiary of her tangible personal property or making a present gift, we communicate with the donee charity to ascertain whether it will accept the property, as well as any restrictions a client wishes to place on its use. Clearing the gift or bequest and its terms with

the donee charity prior to transfer will avoid the necessity of post-mortem litigation to determine whether a charitable gift will be allowed, to whom and under what circumstances, as well as the potential loss of an estate tax charitable deduction.

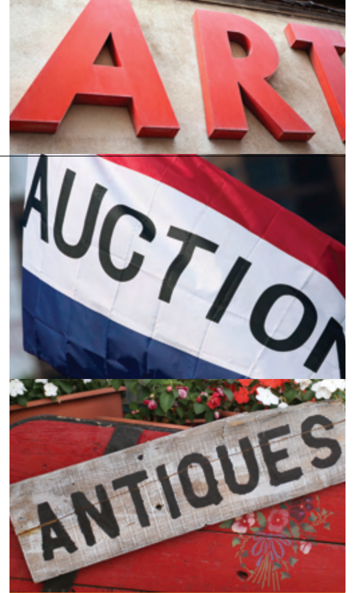
Although not always the primary motivation for charitable gifting, a client should be properly counseled on the income tax benefits of making a lifetime gift of some or all of her collection to a charitable beneficiary. An income tax charitable deduction is allowed for the contribution of art and collectibles to a public charity so long as they're capital gains property and meet the "related use rule," defined below, to the full extent of the FMV on the date of the transfer.[33] The charitable income tax deduction is allowed in the year of transfer and is limited to 30 percent of the taxpayer's adjusted gross income (AGI). Any amount that exceeds the 30 percent limitation may be carried forward for five years.[34]

The related use rule requires that the use of the tangible personal property by the donee charity must be related to the purpose or the function constituting the basis of the donee's exemption under IRC Section 501. If the use of the collection by the donee charity is unrelated to the purpose or the function constituting the basis for the donee organization's charitable purpose, the amount of the charitable deduction must be reduced by 100 percent of the appreciation, and the remainder may be deducted up to 50 percent of the taxpayer's AGI.[35] Further limitations also exist under the Pension Act if a charitable organization accepts a donation of appreciated tangible personal property but disposes of the property within three years of receipt, unless the donee charity provides a certification that the property was intended to be used or was put to a use related to the donee's exempt purpose.[36]

A client must also be counseled on the difference between making gifts to public charities versus private foundations (PFs). With respect to gifts to PFs, an income tax charitable deduction is allowed for the contribution of collectibles that are capital gains property but only to the extent of the taxpayer's basis in the property and not in excess of 20 percent of the taxpayer's AGI. Any amount that exceeds the 20 percent limitation may be carried forward for five years.[37]

The main obstacle to a client engaging in charitable gifting during her lifetime is convincing her to part with her collection while she's still alive and able to enjoy it. Prior to Aug. 17, 2006, a client could make a fractional gift of tangible personal property to a donee charity by donating her collection while still enjoying the items on a part-time basis, but the Pension Act added valuation, time and use limitations to gifts of fractional shares of tangible personal property to a donee charity. A client who may have embarked on a plan of charitable gifting with another advisor before the Pension Act was signed into law should be made aware of the new requirements and limitations affecting the status of her charitable deduction, if she hasn't already been re-educated.

Under IRC Section 170(o), the income tax deduction for a client's contribution of a fractional interest in an item of tangible personal property is now limited to the lesser of: (1) the value used for purposes of determining the charitable income tax deduction for the initial fractional contribution, or (2) the FMV of the item at the time of the subsequent contribution.[38] The time limitation provides that the client must complete the donation of her entire interest in the work before the earlier of 10 years from the initial fractional contribution or the client's death.[39] The use limitation requires that the donee charity of a fractional interest of a collectible must: (1) have substantial physical possession of the work during the client allowed possession period



(10 years), and (2) satisfy the related use rule.[40] If the time or use limitations are violated, a client's charitable income and gift tax deductions for all previous contributions of interests in the work are recaptured with interest plus an additional tax in an amount equal to 10 percent of the amount recaptured.[41]

Outright transfers at death to a donee charity by a client, whether public or private, will provide an estate tax charitable deduction for the FMV of the property on the date of a client's death. Notably, transfers of tangible personal property on the death of a client usually don't trigger the application of the related use rule.[42]

Experts

Mistake #10: Not using a team of experts.

Any client, whether an artist, dealer, collector or investor, who owns a substantial collection of tangible personal property should familiarize herself with dealers, appraisers, museum curators and other collectors in the area of her collection's concentration. Such experts can provide valuable information on sales, buyers and current market prices, as well as assist with future purchases to round out her collection. This is, of course, in addition to an attorney and a full team of experts who can handle the legal and financial aspects for her, including a financial advisor, a tax specialist and a succession planner.

It's been our experience that many professional advisors are unfamiliar with how to plan for collectibles and may not even ask their clients whether they have collections that might require special planning or protection. When compiling information about a client's net worth, be sure to ask about the

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Group of eight scrolls by Zhang Daqian (Chinese, 1899-1983), Landscape, ink and color on paper, *Sold for $2,860,000 | June 2017*

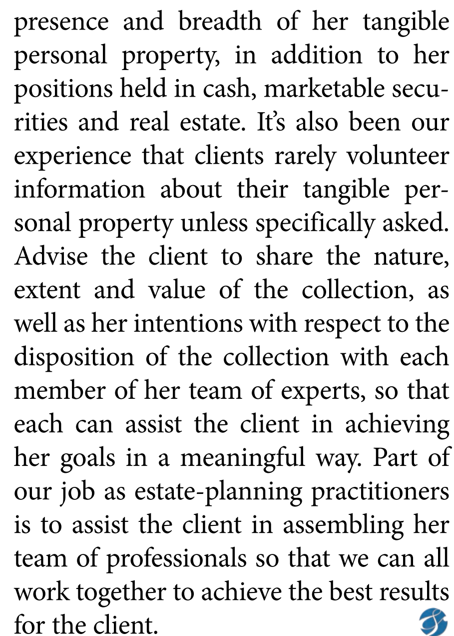
Jean-Michel Basquiat (American 1960-1988), Untitled (Arto Lindsay), 1982, oil stick on paper, *Sold for $313,800 | May 2017*

Provenance: Property from a prominent Piedmont, CA estate. Fine Art from this estate sold for over $600,000

Ingrid Donat (B. 1957) 'Commode aux 14 Tiroirs', designed 2002, editions 6 of 8 and 7 of 8, (1 of 2 shown) *Sold for $118,000 | July 2017*

Diamond and 18k two tone ring centering (1) round brilliant-cut diamond, weighing approximately 6.30 cts. *Sold for $72,600 | December 2016*

Provenance: From a prominent Carmel, CA estate. Jewelry from this estate sold for a total of over $355,000.



presence and breadth of her tangible personal property, in addition to her positions held in cash, marketable securities and real estate. It's also been our experience that clients rarely volunteer information about their tangible personal property unless specifically asked. Advise the client to share the nature, extent and value of the collection, as well as her intentions with respect to the disposition of the collection with each member of her team of experts, so that each can assist the client in achieving her goals in a meaningful way. Part of our job as estate-planning practitioners is to assist the client in assembling her team of professionals so that we can all work together to achieve the best results for the client.

Endnotes

1. John J. Havens and Paul G. Schervish, "A Golden Age of Philanthropy Still Beckons: National Wealth Transfer and Potential for Philanthropy Technical Report," Center on Wealth and Philanthropy Boston College (May 28, 2014).
2. The Tax Cuts and Jobs Act of 2017 increased the basic exclusion amount to $10 million before taking into account a required inflation adjustment. The 2018 amount that includes the inflation adjustment hasn't yet been released but is expected to be approximately $11.2 million. The basic exclusion amount will continue to be indexed for inflation but will revert back to the pre-2018 level of $5 million adjusted for inflation in 2026.
3. *Thomas B. Drummond v. Commissioner*, 73 T.C.M. (CCH) 1959 (1997).
4. *Gajewski v. Comm'r*, 723 F.2d 1062 (2d Cir. 1983).
5. *Comm'r v. Groetzinger*, 107 S. Ct. 980 (1987).
6. *Drummond, supra* note 3; Treasury Regulations Section 1.183-2.
7. Internal Revenue Code Section 183(d); Form 52B.
8. *Stanley v. Comm'r*, 40 T.C.M. (CCH) 516 (1980); IRC Section 183(b)(2).
9. IRC Section 67(a).
10. *See* IRC Section 165(c)(1).
11. *See* IRC Section 68(d).
12. *See* IRC Section 212(1)-(2).
13. IRC Section 1221(a)(3)(C).
14. *Wood v. Comm'r*, 16 T.C. 213 (1951); *Kemon V. Comm'r*, 16 T.C. 1026 (1951); *see Hollis v. United States*, 121 F. Supp. 191 (N.D. Ohio 1954); *Seeley v. Helvering*, 77 F.2d 321 (2d Cir. 1953); *Nehring v. Comm'r*, 16 T.C.M. (CCH) 224 (1957); Technical Advice Memorandum 8140015 (June 30, 1981).
15. *See supra* note 10.
16. Currently 23.8 percent for assets held for more than one year and assuming the property wasn't received by the taxpayer as a gift from the creator of the property. *See* IRC Sections 165(c)(2), 212, 1221(a)(1)-(2) and 1223.
17. Internal Revenue Service Publication 550.
18. *See* Section 212(1)-(2).
19. *See* IRC Section 262; *Wrightsman v. United States*, 428 F.2d 1316 (Ct. Cl. 1970).
20. *Tatt v. Comm'r*, 166 F.2d 697 (5th Cir. 1948).
21. Jill L. Miller, "Common Estate Tax Audits and How to Avoid Them," *www.appraisenj.com/ESI/pdf/AvoidingEstateTaxAudits.pdf.*
22. IRM 25.6.1.9.5.2
23. IRM 25.6.1.12.22; IRM 25.6.1.9.13; IRM 25.6.1.9.5.3.
24. Treas. Regs. Section 20.2031-1.
25. Kelly Greene, "The Art of Passing Along Art," *Wall Street Journal* (March 2, 2012).
26. Treas. Regs. Section 20.2031-1(b).
27. IRS Publication 561; IRM 4.48.6.
28. Pub. L. 109-280.
29. IRC Section 170(f); *See also* Notice 2006-96 for guidance on the requirements for a qualified appraisal.
30. IRM 4.48.2; IRM 8.18.13.
31. Under IRC Section 2055(2)(e), copyrights attributable to a work of art are a separate asset from the actual work.
32. Janet Novack, "The IRS Invents A Chinese Billionaire," *Forbes* (Feb. 22, 2012).
33. Section 170(e)(1)(B)(3); Treas. Regs. Section 170A-4(b)(3)(i).
34. Treas. Regs. Section 1.170A-1; IRS Publication 526; IRS Publication 561.
35. Section 170(e)(1)(B).
36. Section 170(e)(7)(A); Treas. Regs. Section 1.170A-4.
37. IRS Publication 526.
38. Section 170(o)(2).
39. Section 170(o)(3)(A)(i).
40. Section 170(o)(3)(A)(ii).
41. Section 170(o)(3)(A); The Technical Corrections Act of 2007 repealed the changes made to the estate and gift tax so that the special valuation limitation doesn't apply for transfer tax purposes.
42. *See* IRC Section 2055(e)(4). However, the related use rule will apply if a decedent, usually the artist/client, owns both the work of art and the copyright attached thereto but bequeaths only the work to a qualified charity without the corresponding copyright. *See* Treas. Regs. Section 26-2055-2(e)(ii).