



VIEWPOINT

by Elin Lake Ewald, ASA

My Lunch With IRS

She's slight, almost fragile in appearance, but that appearance is quite deceptive. After sixteen years as an appraiser with the Art Valuation Division of IRS, and now chief of the department, this lady is a pro. In a voice that is soft, moderated and always pleasant, the statements made by Karen Carolan are affected in a tone that brooks no nonsense.

It was July 27th, 1990, and we were meeting in the offices of Wilson Fadely, Public Affairs Officer for IRS. Mr. Fadely remained throughout the interview at 1111 Constitution Avenue, IRS' central D.C. building.

I had requested this interview a few weeks earlier when Ms. Carolan and I met at an art/law seminar in New York. As I had mentioned to her, the more ASA members know about IRS regulations and their interpretation, the better off we will all be. The best method of dissemination of this specific knowledge would be through publication in *The Personal Property Journal*.

Before the interview I prepared approximately twenty questions, based on an article Ms. Carolan had submitted for inclusion in the art/law seminar handbook. She and Mr. Fadely were each given a copy of the questions. Following are some of the questions and their responses to them.

There are sixty-three IRS district offices throughout the nation. When a tax return that is being audited includes artworks valued over \$ 20,000, either for estate or donation purposes, the information is forwarded for review to the central office of Art Appraisal Services in the IRS National Office, Washington, D.C. At that point further documentation is requested of the taxpayer. The majority of appraisers, says Carolan, don't provide sufficient information until reconsideration by IRS. She mentioned a figure of 80%-difficult to believe in this era of information surfeit.

Carolan began the interview by emphasizing the common sense approach to appraising. She underscored the fact that one should look to the usual or most common market in which an item is sold in order to reflect the correct fair market value. She pointed out that should the quality of the painting an appraiser is valuing for a client be higher than works by that artist that have been offered at auction, the appraiser should look to the retail market for value. An inferior work by a well-known artist, for example, cannot be equated with an excellent example of their work, even if the two paintings are of the same date and size. In other words, a fine art appraiser should be competent to evaluate the aesthetic level of a work of art in order to make a value judgement. (*sic*)

We touched on the matter of estate evaluation and the fact that estate tax returns must be filed within nine months of the date of death. I reported that one of the most frequently heard complaints by appraisers is that they provide values for works of art for estates as of the date of death, then IRS challenges those figures based on auction values for the artist obtained several months after the date of death. The IRS response is that the values should be obtained from records within a "reasonable" time. Our conclusion was that "reasonable" indicated a period up to six months following date of death. This is intended to allow for any sudden escalations in the prices for an artist's works during that period and is a standard that also applies to the appraisal of an artist's estate.

When auction price is provided for estates or donations, how is fair market value interpreted in terms of hammer price? The IRS answer is that appraisers are to provide hammer price plus the buyer's premium (usually 10%).

This figure also includes the seller's commission. The exception to this rule occurs when the appraised items are sold from an estate. In this



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case a 10% deduction can be taken as an administrative expense.

There are instances when there is no gallery representation nor any recent auction prices for works of certain artists. Carolan initially said that distant (old) auction values may be utilized if it can be proven that there have been no market changes since that date and there is sufficient justification for that opinion. When we mentioned that in these cases our firm usually added on a 10% increment for each year following the last available sale, she decided that this was a sensible and conservative approach to the problem.

I queried Ms. Carolan about the statement she had made at the law seminar that photographs of appraised items were no longer required for submission with the tax return and The Appraisal Summary (Form 8283). She stated that the rationale behind this new ruling was that many appraisals consist of hundreds of items; the ruling was intended to eliminate unwieldy appraisals. If a review becomes necessary, photographs will be requested.

Another frequently asked question, "Why is the Art Dealers Association permitted to provide an appraisal based on a photograph and to charge a fee that is a percentage of the stated value of the work, while independent appraisers are not allowed these privileges?" Answer: the ADA is not the only organization granted this right. Other non-profit associations are also permitted the photo/fee procedure. In fact, if the ASA decided to set up its own panel to provide estate or donation appraisals as an organizational activity, it would be given the same privileges, the kicker being that the organization would receive proceeds from the percentage fee; the individual appraisers would have to waive their fees. However, it's an intriguing idea and perhaps one that might be pursued.

As for Form 8283 required for donation appraisals: when information is required

concerning the donor's acquisition costs, IRS does not believe it is the responsibility of the appraiser to provide that information. It is up to the donor.

Why aren't independent appraisers allowed to serve on the Art Advisory Panel? In the past, says IRS. ASA members have provided expertise on the panel. The rule, according to Ms. Carolan, states that while serving on the Art Panel, an individual (whether an appraiser or dealer) cannot perform appraisals for tax purposes since this would be a conflict of interest. Cited was a government ruling under the Federal Advisory Committee Act, Office of Personnel Management. As we understood it, an appraiser would be required to curtail their own work during the period they might serve on the panel.

There seems to be a certain number of gray zones in the arena in which IRS/appraisers perform. For instance, if an appraiser provides a value for an item outside his area of expertise, or one that involves work for which he has never before given values, how can IRS know that he is a "qualified" appraiser? Ignorance of the law is no excuse, according to IRS. The appraiser must sign a statement on Form 8283 stating that he or she is qualified. An appraiser is-in deep trouble if there's a review and their expertise cannot be proven.

How long after submitting an appraisal for estate/donation can one determine that the taxpayer will not be called in for audit? Public Affairs Officer Fadely admitted that the exact information is a secret, but provided one clue; returns are scored by computer for review and the highest scores are taken first. At the time of the interview, IRS was auditing 1989 returns for review. Within 22 months taxpayers might begin to breathe a bit easier, and after three years they're home free when the statute of limitations has run out.

We confronted the problem that arises when there are no auction prices to substantiate values



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and the dealer representing the artist won't cooperate by providing prices. The solution is simple. In the appraisal, state that the dealer was not cooperative and that a specific value could not be obtained. During the interview it became increasingly clear that IRS wants heavyweight explanations for evaluations. Providing one-liners won't work anymore. Scholarship is appreciated by the panelists and justification/explanation of the evaluation process renders the appraisal more acceptable to the reviewers.

"Use common sense," said Carolan, more than once during our conversation. The tone in which she registered the suggestion made it highly convincing.

Karen Carolan has an art history background, as do the other appraisers in the IRS Art Valuation Division. She was graduated from Gettysburg College, cum laude, in 1971, receiving a degree with honors in art history. This was followed by graduate work in art history at Pennsylvania State University, where she became a teaching assistant. She is the recipient of appraisal certificates and has studied appraisal principles, methods and techniques. Beginning as a staff appraiser, she rose to the position of senior appraiser and then chairperson of the print panel before taking over as head of the Commissioner's Art Advisory Panel of IRS. Author of articles on the documentation of art for federal tax purposes, Carolan has also had extensive experience as a lecturer and panelist in seminars concerning evaluation and its relationship to federal taxation.

One very valuable piece of information: when asked what reference material IRS looks to for evaluation, Carolan provided us with several sources which follow.

Auction catalogs (*sic*)

- a. Sotheby's (New York and London)
- b. Christie's (New York and London)
- c. William Doyle Galleries (New York)

II Computer Database

- a. ArtQuest

III Books

- a. *International Auction Records*, E. Mayer
- b. *Annual Art Sales Index*, R. Hislop
- c. *Gordon's Print Price Annual*, Martin Gordon
- d. *Christie's Review of the Season*
- e. *Sotheby's Art at Auction*
- f. Catalog raisonnés and other art books

IV Periodicals

- a. *American Journal of Archaeology*
- b. *Antiques*
- c. *Art & Antiques*
- d. *Art at Auction*
- e. *ArtNews*
- f. *Arts of Asia*
- g. *Connoisseur*
- h. *Hali*
- i. *Orientalism*
- j. *Maine Antiques Digest*

Carolan also mentioned that ArtQuest, an auction database source, costs about \$200.00 an hour for usage and provides up-to-date auction sales since 1970. It is, she implied, just another tool among the many that appraisers should use for fact finding.

Oh yes, I did mention lunch in the title of this article.

Well, Ms. Carolan was invited for lunch and she accepted. We sat in the courtyard of the Old Post Office building nearby IRS headquarters. The afternoon sky was overcast, the weather - D.C. humid; the circular metal table had developed a pronounced tilt and our plates tended to dance erratically as forks speared lettuce leaves. But aside from the ceramic projectiles the conversation was comfortable and art-filled, focused on the social rather than the official.

At the end of the lunch I took the check. Carolan



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said she'd feel more comfortable paying her own half. I wasn't going to argue with IRS.

Postscript: When the 101st Congress passed-its budget package, included in it was a one year restoration of tax deductions for the full market value of donated works of art. This move, almost single-handedly pushed through by Senator Daniel Patrick Moynihan (D-NY), was designed as an incentive for art owners to donate their possessions to museums rather than sell them. Art patrons will once again be able to deduct the appreciated value of art and manuscripts given to museums and libraries. At present, this rule is in place for 1991-92 only. The editors of *Personal Property Journal* thought that before this issue went to press I might query Karen Carolan about her thoughts on this appraisal sensitive matter. In doing so, I was assured that the same rules will apply for 1991 donations, as were in place before the 1986 tax changes and that, as was the case before, appraisers are to look to the "most common market" for evaluations. Her personal view? "I am pleased with it," she commented, and indeed that's the way she sounded. And so, I might add, are all fine arts appraisers.

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of the New York Chapter of ASA. She is a member of the American Arbitration Association, and is a doctoral candidate, Ph. D program, New York University. Ms. Ewald, a fine art appraiser, is President of O'Toole Art Associates, Inc., a 12 person firm specializing in the appraisal of corporate collections and in damage/loss/fraud reports involving fine and decorative art. She is currently researching her dissertation topic focusing on art ethics and law involving the fine art appraiser.

Worth Knowing

The *Personal Property Journal* (Vol. 3 #1. Spring 1990) was introduced and accepted as evidence in a civil case involving a Picasso painting. The Article, "Obligations of an Agent in the Art Market," by Elin Lake Ewald, ASA, was cited. The plaintiff/purchaser claimed that the appraiser/dealer acting as an agent did not disclose pertinent information prior to the sale due to his financial interest in the work. The appraiser/dealer claimed that there was not a body of ethical standards adhered to by appraisers and that his actions were considered appropriate. The case involved two states, New York and Virginia and two countries, the United States and Canada.