



Peter J Reilly (<http://www.forbes.com/sites/peterjreilly/>) Contributor
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Susan Crile Paints A Picture Of Tax Court Victory For Artists

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Susan Crile (<http://susancrile.com/>) is a renowned painter and printmaker. Her politically charged works are in the collections of the Metropolitan Museum of Art, the Guggenheim Museum and several other institutions including the Worcester Art Museum.



(<http://vqs61.v3.pair.com:8080/emuseum/view/objects/asitem/People@9991/0;jsessionid=Do3238A24B92A4744165t:state:flow=b2649d37-2e3e-4f90-8848-ce2a9020f6fb>) She may be best known for her works based on the photographs of the abuses at Abu Ghraib prison in 2004 (<http://query.nytimes.com/gst/fullpage.html?res=9E0DE5DD1130F930A25753C1A9609C8B63>). Thus it was rather odd that the IRS decided to go after her with Code Section 183 (Activities Not Engaged in For Profit) which is usually applied to the sketchiest of tax shelters and professionals and business executives trying to live out boyhood dreams of being cowboys and pilots and the like with tax deductible dollars. (<https://twitter.com/intent/tweet?url=http%3A%2F%2Fonforb.es%2F1uCbbic&text=Live%20out%20boyhood%20dreams%20of%20being%20cowboys%20>

Didn't I Just Read About Susan Crile On This Very Blog?

Very good returning reader. Yes you did. And for new readers here is the link to [my previous coverage](#)

(<http://www.forbes.com/sites/peterjreilly/2014/10/06/tax-court-judge-appreciates-art-more-than-your-average-revenue-agent/>) and that of Tony Nitti (<http://www.forbes.com/sites/anthonymitti/2014/10/04/artists-rejoice-tax-court-concludes-painters-activity-isnt-a-hobby/>). Tony's opening line "It has to suck to make your living as an artist" is a trenchant observation on the practitioners of most creative pursuits even, if I may be so bold, tax blogging.

In my study of the tax blogosphere which is peopled by tax preparers, planners and academics of various sorts, I have yet to find a tax blogger who has given up his or her day job to launch a full time writing career.

(<https://twitter.com/intent/tweet?url=http%3A%2F%2Fonforb.es%2F1uCbbic&text=I%20have%20yet%20to%20find%20a%20tax%20blogger%20who%20>

<http://www.forbes.com/sites/peterjreilly/2014/10/06/tax-court-judge-appreciates-art-more-than-your-average-revenue-agent/>

Last year my day job at Grant Thornton gave me up, but it did not take me long to cobble together enough consulting work to keep my retirement accounts intact for a few more years.

So What Brings Susan Crile Back To These Pages?

There has been a new development. Judge Alber Lauber's Tax Court decision in [Susan Crile, Petitioner v Commissioner of Internal Revenue Service, Respondent TCM 2014-202](#)

(<http://ustaxcourt.gov/InOpHistoric/CrileMemo.Lauber.TCM.WPD.pdf>) is one of the rare Tax Court decisions that has broken its way out of the tax blog ghetto into the mainstream. Randy Kennedy wrote about the case in the Arts & Design section of the New York Times. – [Tax Court Ruling Is Seen as a Victory for Artists](#) (http://www.nytimes.com/2014/10/07/arts/design/tax-court-ruling-is-seen-as-a-victory-for-artists.html?_r=0). Tony and I both heard from [Studio 360](#) (<http://www.studio360.org/>). He was quicker getting back to them so he will get what glory there is for tax bloggers on NPR this weekend. Kennedy's piece seems to be getting picked up in the art world, with [mentions like this one](#) (<http://artforum.com/news/id=48538>). Given all that, I thought it might be worthwhile to do something of a round up of Section 183 cases over the last several years with a particular emphasis on those that bear some similarity to Professor Crile's case. Fortunately I don't have to look far for coverage because I might say that Section 183, sometimes referred to as "hobby loss", cases are something of a hobby of mine.

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Overview



As I noted the typical hobby loss case involves someone who has done well in one field and then loses money in another field.

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<http://www.forbes.com/sites/peterjreilly/2011/08/13/horse-breeders-win-in-tax-court/> The IRS seems to have a particular animus to people who take up horse breeding, although [horse breeders often win in Tax Court](#).

[Race car drivers](#)

[generally don't do that well](#). Probably the worst Section 183 case to bring forward is that of an [Amway "Independent Business Owner"](#).

[I traced their record back to the beginning of time](#)

[and it is really sad](#). Of course, there are many purported attempts at profitability that the IRS doubts. Among the more common cases are ranching and airplane and yacht chartering. At least in a broadly defined sense, activities with some artistic component do show up from time to time.

Why The IRS Should Have Known They Were Going To Lose

The case with that has the strongest resemblance to Susan Crile's (and was cited by Judge Lauber) is the 1979 decision of the Tax Court in the case of [Gloria Churchman](#)

http://leagle.com/decision/197776468bftc696_1707.xml/CHURCHMAN%20v.%20COMMISSIONER).

Ms. Churchman showed a record of solid artistic achievement and no profits, although not from lack of trying:

“ In 1969, petitioner designed and ran a gallery where her work was shown and she sold a number of her posters at such gallery. During the period in question, petitioner exhibited her paintings and sculptures at least once a year at commercial galleries or other places where the public might see and purchase them. She has had one-woman shows at galleries in San Francisco and San Rafael, Calif. In the year prior to trial herein, petitioner had three shows. In addition, petitioner opens her home studio to the public at least once a year.

Petitioner maintains a mailing list of about 200 names of students, friends, customers of the art gallery which she ran, and members of organizations to which she belongs, including an art club. When she has a show petitioner sends an announcement of it to the people on such list. In addition, gallery shows are announced by the gallery through newspapers as well as the gallery's own mailing list.

Petitioner began making posters and books in order to make her work more available to the public and more profitable, and she went to galleries in New York and San Francisco seeking to have her work shown there but she was largely unsuccessful. Such galleries, however, encouraged petitioner to go on with her work in the hope that it might one day be shown. At the time of trial, she was working on a book in which much of the work that petitioner has done in the past 20 years will be reproduced and thereby made more available to the public.

It was enough for the Tax Court.

“ It is abundantly clear from her testimony and from the objective evidence that petitioner is a most dedicated artist, craves personal recognition as an artist, and believes that selling her work for a profit represents the attainment of such recognition. Therefore, petitioner intends and expects to make [pg. 703]a profit. For section 183 purposes, it seems to us irrelevant whether petitioner intends to make a profit because it symbolizes success in her chosen career or because it is the pathway to material wealth. In either case, the essential fact remains that petitioner does intend to make a profit from her artwork and she sincerely believes that if she continues to paint she will do so.

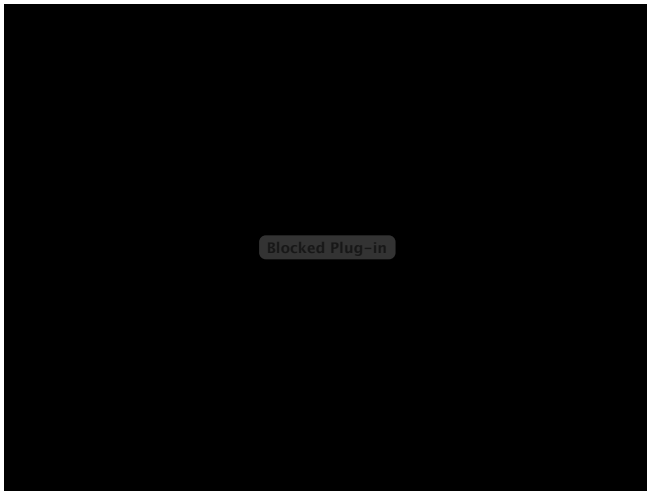
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Petitioner has a relatively large inventory, she has considerable training, she devotes substantial time to her artwork, she has sold some paintings in the past, and is attempting to sell more. It is certainly conceivable, in our view, that she may someday sell enough of her paintings to enable her “to recoup the losses which have meanwhile been sustained in the intervening years.”

There is a good discussion of the Churchman case on [FreelanceTaxation.com](http://www.freelancetaxation.com/interview-jackie-battenfield) (<http://www.freelancetaxation.com/interview-jackie-battenfield>).

The Churchman case is so painfully like the Crile case, that I suspect IRS people are kicking themselves for having pushed so hard creating another precedent. (<https://twitter.com/intent/tweet?url=http%3A%2F%2Fonforb.es%2F1uCbBic&text=Churchman%20case%20is%20so%20painfully%20like%20the%20C>)

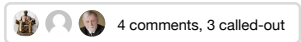
Churchman has been cited numerous times in cases that went both ways in many different types of endeavors. Sally Ann Renner, an art teacher, was denied home studio expenses in 1984, but she had never sold a single painting. Herbert Stahnkes deductions for his writing and lecturing on venomous animals were not poisoned by lack of profitability. More recently Lee Storey, a full time attorney, was allowed substantial losses for a documentary project which produced [Smile Till It Hurts](http://www.smiletilthurts.com/index.html) (<http://www.smiletilthurts.com/index.html>), which was about the [Up With People](http://www.upwithpeople.org/) (<http://www.upwithpeople.org/>) program.



Other Art Related Cases

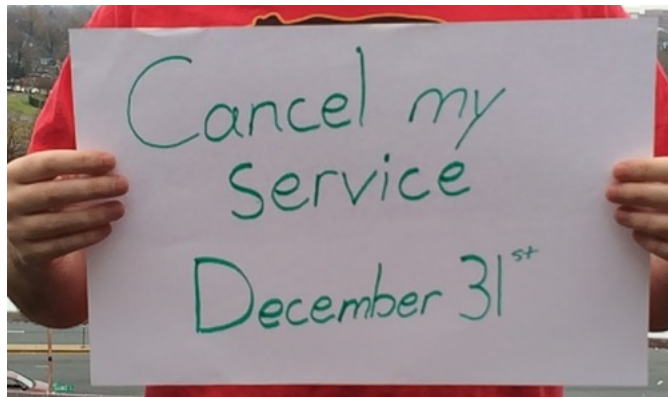
Also relatively recently, there is one case of a musician who beat the IRS in Tax Court (<http://www.forbes.com/sites/peterjreilly/2013/09/23/musician-wins-hobby-loss-case/>) and some band backers who lost (<http://www.forbes.com/sites/peterjreilly/2013/10/30/were-with-the-band-kind-of/>). Sal Westrich was a history professor at Pratt Institute in Brooklyn. The Tax Court decided that his book about New Jersey Wine (<https://historypress.net/catalogue/bookstore/books/Location/American%20Palate/Wine/New-Jersey-Wine/9781609491833>) did not require trips to France (<http://www.forbes.com/sites/peterjreilly/2013/05/09/book-on-new-jersey-wines-does-not-support-deducting-trips-to-france/>).

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