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## Tax Court Judge Appreciates Art More Than Your Average Revenue Agent

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[Susan Crile](http://susancrile.com/) (<http://susancrile.com/>) is a distinguished artist. Some of her work is owned by the [Metropolitan Museum of Art](http://www.metmuseum.org/collection/the-collection-online/search/485076) (<http://www.metmuseum.org/collection/the-collection-online/search/485076>). That might not make much of an impression on a revenue agent. To get the revenue agent job you need a college degree with at least 30 credit hours in accounting, no art courses required. (<https://twitter.com/intent/tweet?>

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Although, it may not end up helping her that much at least she found [a Tax Court judge](#) (<http://ustaxcourt.gov/InOpHistoric/CrileMemo.Lauber.TCM.WPD.pdf>) who had some appreciation for her artistic work. Here is the story.

### The Issue

What will make an impression on a revenue agent is year after year of Schedule C losses on a return with steady W-2 income. In the years under audit (2004 – 2008) Professor Crile’s salary as a tenured professor in studio arts at Hunter College went from \$85,999 to \$106,058. Roughly \$100,000 in salary and \$40,000 to \$60,000 losses on Schedule C, year in and year out brings up the issue of Section 183 – Activities not engaged in for profit. Section 183 is sometimes referred to as the “hobby loss” rule which, in the case of Professor Crile, is really insulting.

In his discussion of “taxpayers success in other activities”, Judge Albert Lauber notes that, here we have an inversion of the typical “hobby loss” case.

“ In a typical section 183 case, the taxpayer achieves considerable success in a business activity and later embarks on a new activity that the IRS regards as a hobby or sport. Here the sequence is reversed. Petitioner embarked on the challenged activity (as an artist) a decade before she secured her salaried position (as a professor). And she practiced as an artist for 25 years before becoming a full professor in 1996. Petitioner has plainly been successful in her academic career. She rose through the ranks at Hunter College from visiting assistant professor to tenured member of the faculty. Obtaining a studio art teaching position at Hunter College is extremely competitive, and her steady upward path shows that she had the skills, determination, and personal qualities that might also benefit her career as an artist. Because she commenced her career as an artist many years before she started teaching, her success in the latter is not exactly a “leading indicator” of success in the former. But the academic success and prestige she gained in the late 1990s may have contributed to her belief that her prospects as an artist could flourish during the next decade.



*The Metropolitan Museum of art in New York City. (Photo credit: Wikipedia)*

### **Susan Crile Definitely Not A Hobbyist**

It struck me that the IRS was pretty off-base with the hobby loss aspect of this case and I got a good sense from the outset that Judge Lauber was heading in that direction. He devotes ten paragraphs to Professor Crile’s distinction as an artist before getting down to business, so to speak, beginning with:

“ She has worked for more than 40 years in media that include oil, acrylic, charcoal, pas-tels, printmaking, lithograph, woodcut, and silkscreen. She has exhibited and sold her art through leading galleries; she has received numerous professional accolades, residencies, and fellowships; and she is a full-time tenured professor of studio art at Hunter College in New York City.

And proceeding to:

“ Petitioner’s artwork hangs in the permanent collections of at least 25 museums. These include the Metropolitan Museum of Art, the Guggenheim Museum, the Brooklyn Museum of Art, the Phillips Collection, the Hirshhorn Museum, and art museums at eight colleges and universities. Museums have a rigorous vetting process for acquiring art. Museum acquisitions boost an artist’s reputation in the eyes of collectors and may contribute to price increases for the artist’s other works.

Lew Taishoff, who was taking a pass on this case till I asked him about it, wrote: (<http://taishofflaw.com/2014/10/04/arts-and-the-man/>)

“ So much of the opinion deals with Susan’s illustrious career and accomplishments, that I thought it better suited to the introduction to a *catalogue raisonnée* ([http://en.wikipedia.org/wiki/Catalogue\\_raisonn%C3%A9](http://en.wikipedia.org/wiki/Catalogue_raisonn%C3%A9)) than to a blogpost on taxes.

## The Education Of A Tax Court Judge

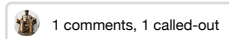
Lew's comment is probably a good segue into another thing that struck me about this case. Note the phrase *catalogue raisonnée* ([http://en.wikipedia.org/wiki/Catalogue\\_raisonn%C3%A9](http://en.wikipedia.org/wiki/Catalogue_raisonn%C3%A9)), which I had to look up. It's part of Lew's active vocabulary. Bottom line is that, in general, lawyers have much better educations than accountants. That had me wondering if Judge Lauber's appreciation for art would show up in his biography. Well it did. Between his bachelors degree from Yale in 1971 and his JD from Yale in 1977, he received an MA in classics from Clare College, Cambridge (<http://www.clare.cam.ac.uk/Home/>). That's not the Cambridge that is forty miles or so east of Worcester with the former seminary for Congregational ministers and the technical college, the town where Margaret Fuller and Thomas Wentworth Higginson grew up. It's the one in England. Clare College was founded in 1326.

### What Is Different About This Case?

There are traditionally nine factors that are considered in a Section 183 case.

1. Manner in Which Activity is Conducted
2. Expertise of Taxpayers and Advisors
3. Taxpayers Time and Effort
4. Expectation of Appreciation in Value
5. Taxpayers Success in Other Activities

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