

# Is Kollsman a Major Shift? Appraisal Takeaways from the Upheld Tax Court Decision

American Society of Appraisers

By John Russell, J.D.

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“As the Kollsman Tax Court and Ninth Circuit opinions demonstrate, it is perilous for those filing estate tax returns with the IRS to support reported values of fine art and collectibles with other than disinterested appraisals by qualified appraisers applying *Uniform Standards of Professional Appraisal Practice*.”

Michael Heumann  
Art attorney and advisor



# Personal Property

Much has been discussed about how the 9th Circuit Court's decision upholding the Tax Court opinion in *Kollsman v. Commissioner* impacts estate and gift valuations moving forward.[1] While the practices of executors, attorneys, and accountants won't change overnight because of *Kollsman*, the case demonstrates why an independent, impartial, and objective appraisal is the best choice in estate or gift situations.

## The Tax Court held Wachter's interest in consigning the paintings against him.

The simultaneous acts of providing an opinion of fair market value and offering to consign the works at a Sotheby's auction worked to irreparably damage Wachter's [2] ability to posit an objective opinion of value. In fact, the court felt that Wachter had "a direct financial incentive to curry favor with Mr. Hyland by providing... 'lowball' estimates that would lessen the Federal estate tax burden..."[3] No matter what followed, it would be difficult if not impossible for Wachter to be perceived as neutral, disinterested, and objective – the most essential traits of a professional appraiser.

The biggest takeaway from *Kollsman* is the need for objectivity in valuation. The other issues the Tax Court identified with Wachter's opinion could have been rectified at any point between the original valuation date and the subsequent litigation, but once compromised it is virtually impossible to reestablish objectivity.

## Diligence in obtaining "reasonable knowledge of relevant facts" matters.

Wachter identified the condition of the paintings as a significant factor that, in his opinion, affected the value of the works. If true, then why did Wachter not take the logical step of determining the costs and risks associated with restoring the paintings?

That question clearly bothered the Tax Court, who not only pointed to the Estate Tax regulations in their opinion, but also underscored the need to discover and investigate "those facts that a reasonable buyer or seller would uncover during the course of negotiations." [4] To that end, the Tax Court found that "given the dirty condition of the paintings on the valuation date, a reasonable investigation into their values would involve at the very least seeking an opinion from a conservator about the risks and likely outcome of having them cleaned." [5]

## The days of "because I said so" are long gone.

On the issue of comparable sales and their use, the Tax Court was most pointed: "Mr. Wachter... has provided no comparables to support his valuations. This omission is remarkable. We have repeatedly found sale prices for comparable works quite important to determining the value of art." [6]



The absence of such basic valuation tenets from a proffered valuation was a fatal flaw in the eyes of the Tax Court. The *Uniform Standards of Professional Appraisal Practice (USPAP)* requires appraisers to summarize "...the information analyzed and the reasoning that supports the analyses, opinions, and conclusions." [7]

## Why retain an ASA accredited appraiser?

The ASA accreditation process is rigorous and ensures that accredited ASA appraisers have training and experience that exceeds the IRS and statutory requirements. In addition, ASA appraisers are required to abide by the *Uniform Standards of Professional Appraisal Practice* and to maintain competence with continuing education.

### About the Author:

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[1] See No. 18-70565, United States Court of Appeals, Ninth Circuit, Argued and Submitted June 5, 2019 – Portland, Oregon, Filed June 21, 2019

[2] George Wachter, chairman of Sotheby's Americas and co-chairman of Sotheby's old master paintings

[3] See *Kollsman v. Commissioner*, T.C. Memo. 2017-40 (filed February 22, 2017) at p. 20.

[4] *Id.* at p. 23, citing *Bergquist v. Commissioner*, 131 T.C. 8, 19 (2008)

[5] *Id.*

[6] *Id.*, p. 25.

[7] See *Uniform Standards of Professional Appraisal Practice (USPAP)*, "Standards Rule 8-2(a), Content of a Personal Property Appraisal Report," 2020-21 edition.