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March 5, 2010

Ms. Diane Ryan  
Chief, Appeals Division  
Internal Revenue Service  
1099 14th Street, N.W.  
Suite 4200E  
Washington, DC 20005

Mr. Joseph E. Bothwell  
Chair, Commissioner's Art Advisory Panel  
Internal Revenue Service  
1099 14th Street, N.W.  
Suite 4200E  
Washington, DC 20005

Dear Ms. Ryan and Mr. Bothwell:

On behalf of the several hundred art appraisers credentialed by the American Society of Appraisers, we are writing to request a meeting to clarify an Art Advisory Panel (AAP) format recommendation which states that appraisals submitted for art valued over \$20,000 "Include images of your comparable sales and/or the auction catalogue pages." This instruction is included in the June 2009 AAP document entitled "Preferred Object Identification Format for Art Valued Over \$20,000".

Our members question the feasibility of this recommendation in many important circumstances; and they are greatly concerned over the response of the Service and Panel to situations in which an appraiser has made a concerted, good faith effort – but an unsuccessful one – to secure images of the most relevant comparable sales from the parties controlling access to and information about them. As you know, dealers and private parties are frequently unwilling to provide appraisers with images of artworks, antiques or property they have purchased, sold or brokered based on considerations of client privacy or for other reasons they deem appropriate. Under these circumstances, independent professional appraisers would not be able to comply with the image provision.

Our members certainly understand the usefulness of including images of comparables with an appraisal whenever possible. But, a Service requirement – or a preference that is tantamount to a requirement – for such images could have the unintended and unwelcome effect of causing appraisers to select comparable properties based not on their relevancy to the appraised item but the availability of their photographs. The temptation to select less relevant comparables simply to avoid breaching an IRS/AAP directive could be significant and, on many occasions, could distort the appraiser's conclusion of value. Such an outcome would be unfair to the taxpayer and inconsistent with professional appraisal practice.

We recognize that a Note at the end of the Preferred Object Identification document acknowledges that "complete information will not be readily available in every case...." However, the same Note also states that "the validity of the appraiser's valuation is enhanced and the IRS's appraisal review facilitated by complete and accurate information." In short, the Note can be read as sending the mixed message that while the inclusion of comparable images is merely "preferred," their absence could have a negative impact on the Panel's view of the appraisal's validity or its willingness to review it. Indeed, ASA's concern over this ambiguity is heightened by our knowledge that in at least one instance, the Panel and IRS explicitly cited an appraiser's failure to include the images of comparable sales as a factor in rejecting an appraisal filed in support of a taxpayer's charitable contribution deduction.

Accordingly, we respectfully seek clarification of the AAP document's image directive in situations where the appraiser has been unable, through no fault of his or her own, to secure such images. Specifically, our art appraisers need specific guidance on how such a failure would likely affect the Service's and Panel's response to the appraisal? Would it be a disqualifier? Would it cause the Panel to doubt the validity of the appraisal? Would it result in a delay in the Panel's review, with the possibility that the appraisal would be sent back to the appraiser for additional information?

Appraisals of art for charitable contribution, Estate and other tax purposes – together with a smoothly functioning and efficient appraisal review system - are fundamental to achieving the public policy purposes behind the relevant Tax Code sections. We hope you will agree that appraisers, taxpayers and the tax administration system would benefit from greater clarity on the possible consequences of an appraiser's inability to comply with the photograph image directive; and, possibly, from a reconsideration of the directive itself. If the unavoidable absence of images of comparables will cause delays in AAP reviews of submitted appraisals or give rise to doubts about their validity, then appraisers and taxpayers need to understand that; and, hopefully, be provided an opportunity to explore with the Service and Panel ways to eliminate or minimize these uncertainties and their negative consequences.

While the possibility of a provision requesting images of comparable items was informally mentioned last year to ASA and some of the other professional appraisal organizations, it was never presented as a change that was going to be viewed as a requirement or as a preferred format when the failure to follow that format could produce negative consequences for the appraiser and the taxpayer. Regrettably, the Service adopted the image directive without first proposing it in any formal way and seeking comments from interested stakeholders. Had such a process occurred, we believe the record would have clearly demonstrated the difficulty, and often the impossibility, of meeting a comparable image test in certain important situations, thereby giving the Panel a reason to modify its object identification preferences or to clarify their impact.

ASA respectfully requests a meeting to discuss this matter at the earliest possible time. Peter Barash, ASA's Government Relations Consultant, will contact you in an effort to arrange a meeting and respond to any questions. He can be reached at (202) 466-2221 or at [peter@barashassociates.com](mailto:peter@barashassociates.com).

Sincerely,

Sharon Ring Rollins, ASA  
Chair, ASA Personal Property Committee

Sandra J. Tropper, ASA  
Past Chair, ASA Personal Property Committee

Jay E. Fishman, FASA  
Chair, ASA Government Relations Committee