

The Tax Man



OPEN BOOK 005
The Tax Man
Alison Gerber

Pamphlets for print and screen.
Share, distribute, copy, enjoy.
Authors' words and IP are their own.



Who gets to call himself an artist? In America, the critic and the curator, the gallerist and the buyer all drop hints. But the final judge – the one that can really make or break you – is the tax man.

Venus DeMars and I met because I had heard that she was going through a rough audit, and I wanted to know more. She told me her story and at the end of that first conversation I asked a silly question: wasn't the worst possible outcome just a change in the way she did her taxes, a bit of money to pay back? What did it matter? Her voice caught. "It feels like it's discrediting me as a person," she said, "and just throwing my 20 year career out the window. Saying, you were just playing the whole time. It can crush you."

Venus is a Minnesota artist and small business owner. She doesn't hold a day job and made about \$30,000 from her artwork last year. For more than a decade she has worked with an accountant to file a Schedule C each year with her tax return. With a Schedule C, she and 23 million other self-employed workers in this country are able to write off business expenses and investments, and for many those deductions make doing business possible. But the Minnesota Department of Revenue has issued a final opinion ruling Venus to be, officially, a hobbyist.

When Schedule C filers are audited, what should be a straightforward look at the numbers can turn nasty, and artists are hit especially hard. According to the Census, one-third of the two million artists in

the United States are self-employed. In my research I have spoken with artists across the country who have experienced their audits as attacks on the quality of their work and their status as professionals. Those who have lost their status as self-employed have had to rethink their practices. Some have even quit entirely, beaten down by a process that they experience as unnecessarily personal and arbitrary. The IRS and state Departments of Revenue that use their guidelines say that in order to qualify as a business for tax purposes, the taxpayer must show a profit motive.

Motives and intentions are tough to prove. Artists are especially vulnerable to the ambiguous requirement that the primary purpose of their activities be income, since generations of artists have been taught to act as though they make art for love, not money. You might argue that vague guidelines are a gentler approach than strict set of rules; after all, many small businesses take years to turn a profit, and it is hard to make regulations that are fair to everyone. But the IRS does have standards – audits are triggered by a carefully guarded algorithm – and when artists and other small business owners risk losing important economic rights they deserve better than an attack on their motives.

Perhaps the Internal Revenue Service and State Departments of Revenue could simply give artists and other small business owners the benefit of the doubt – to audit their receipts, not question their motives. But that would force us to pretend that

numbers are just numbers. Each element of an audit involves enormous discretion on the part of even the most by-the-book auditor, and subjective judgments invite the bias that rules can be designed to avoid. We want auditors to approach taxpayers as professionals in a bureaucracy, to leave their issues at the door. The lack of clarity and transparency around the standard of a profit motive leaves open a loophole that can have devastating consequences. Getting audited should be a normal part of doing business, not a personal attack.

The IRS does circulate nine “factors” they consider when determining whether a given taxpayer should classify their activities as a hobby or a business. Tax attorneys and CPAs know they move in a vast grey area with ample room for prejudice when they try to navigate these guidelines: the factors include “whether you carry on the activity in a businesslike manner” and “whether the time and effort you put into the activity indicate you intend to make it profitable”. One factor the tax authorities consider goes unmentioned in their publications, though it recurs in my interviews with artists.

When the Minnesota Department of Revenue issued their final determination reclassifying Venus as a hobbyist, they sent her a long document explaining why. One section reads, “The presence of personal motives in carrying on of an activity may indicate that the activity is not engaged in for profit.” Underneath, bullet points outline evidence against her. In just a few words, the auditor’s letter calls into question the centuries-old Western understanding

of art as an expression of the artist's soul. He recasts an aesthetic choice (and savvy brand-building strategy) as a black mark on Venus's record. The first point reads simply: "The music and art are self-created by the taxpayer and based on [her] life experience and perspective, and are intensely personal."

The IRS should develop and publish clear rules regulating for-profit status and the ability to file a Schedule C as a business owner. More clarity and transparency from U.S. tax offices will allow artists and other small business owners to do business with confidence. Without the benefit of clear, transparent rules, agents audit people, not receipts. For now, it's the auditor who decides: you're an artist, or maybe you're not. And as Venus told me the first time we spoke, it can crush you.

*A version of this op-ed was published as Gerber, Alison. 2014.
"The Tax Collectors vs. the Artists." Minneapolis Star Tribune,
April 3, A13.*

