

## 9th Circuit Affirms Tax Court's Ruling in Kollsman Disregarding the Report of Taxpayer's Appraiser

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On July 26, 2019, The [Appraisal Foundation](#) released a [press statement](#) urging legal advisors and wealth managers, in light of the recent affirmation of [Kollsman v Commissioner](#), (T.C. Memo. 2017-40) to recognize the primacy of the personal property appraisal profession. The Appraisal Foundation is the nation's foremost authority on valuation services, authorized by Congress as the source of appraisal standards and appraiser qualification criteria. The [9th Circuit affirmation of Kollsman](#) establishes that attorneys and other allied professionals should, as a minimum standard of care, recognize appraising as a professional discipline distinct from other types of art market expertise.

From the Appraisal Foundation's release:

*with this ruling, the competency and professionalism of personal property appraisers has been confirmed for the second time by the judicial system in the United States ... wealth managers and estate attorneys now have a greater fiduciary duty to their clients to fully understand appraiser qualification criteria and appraisal standards when vetting personal property appraisal experts.*

The Tax Court decision in *Kollsman* essentially [disregarded an appraisal](#) submitted by a high-ranking executive of a premiere auction house as lacking basic qualification, credibility, support and objectivity. The decision relied almost exclusively on the opinion of the IRS expert, who was a relevantly credentialed, professional appraiser. The 9th Circuit opinion found the Tax Court did not err in rejecting the auction house expert's opinion, in part because it was not supported by comparable sales data and failed to consider relevant past sales. In disregard to established caselaw and standard professional appraisal practice, the auctioneer testified that when he arrived at his valuations, he was "not interested" in comparables, and had only reviewed comparables after the IRS challenged his methodology. In finding the auction house appraisal to be "unreliable and unpersuasive" the Tax Court opinion deemed the omission of comparables supporting the valuations to be "remarkable", stating: "we have repeatedly found sale prices for comparable works quite important to determining the value of art". In contrast, the court found the credentialed appraiser engaged by the IRS explained his methodology, relied on comparables, and conducted research as to the impact of the subject property's condition to an expected level of professional performance and objectivity.

To help ensure a trustworthy level of professional competency, The Appraisal Foundation's sponsoring professional personal property organizations, the [International Society of Appraisers](#), the [Appraisers Association of America](#), and the [American Society of Appraisers](#), have embraced and are bound to implement the [Personal Property Appraiser Minimum Qualification Criteria](#) in issuing credentials to members. Each organization maintains a public registry where the appraiser's level of credentialing, areas of specialization, education and experience may be accessed and confirmed. Members of these associations earn their credentials through a stringent admissions, training and testing process. They are required to comply with IRS guidelines and the Appraisal Foundation's [Uniform Standards of Professional Appraisal Practice](#) (USPAP), are bound to continuing education requirements and to submit to the oversight of their professional organization's ethics committee.

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As a member of the Appraisal Foundation's Board of Trustees, I welcome the opportunity to collaborate with the legal and wealth management professions on best practices in identifying and engaging qualified appraisers, particularly for IRS use appraisals. As we see here, every appraisal report submitted to the IRS has the potential to become the subject of litigation. Procedurally Taxing readers are invited to review my earlier post for an [in-depth analysis of the implications of the original ruling](#), and [Keith Fogg's earlier coverage](#) of this case highlighting the avoidable perception of bias when engaging an expert seeking any involvement in the sale or purchase of the subject of an appraisal.

Last September the American College of Trust and Estate Counsel (ACTEC) Regional Meeting in Baltimore hosted a panel addressing this issue. The feedback from the considerable post-presentation engagement from attendees was that the qualification criteria for real property appraisers are well understood by the legal profession. However, qualification criteria and practice standards for personal property and business valuation experts, sourced by the same authority, are clearly less so, often with devastating outcomes for consumers.

In the wake of the *Kollsman* affirmation, particularly as the ruling applies to the benefits of engaging relevantly credentialed experts for IRS valuations, and critically, the Appraisal Foundation's now public stance on this issue, it will be increasingly difficult for tax and legal advisors to defend engagement of less than fully qualified valuation experts.

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**About the author:** Cindy Charleston-Rosenberg, ISA CAPP, is a past President and Certified Member of the International Society of Appraisers (ISA), the largest professional organization of qualified appraisers in the United States and Canada. She is an experienced expert witness and writes and presents widely on advanced appraisal methodology issues. Cindy is active in industry activities to raise awareness of the critical importance of meaningful appraiser qualification standards, and currently serves as on the Board of Trustees of Appraisal Foundation. The Foundation is authorized by Congress as the source of appraisal practice standards and appraiser qualification criteria.

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