

*Restitution of
Nazi Looted Art,
the Woman in
Gold, and Tax
Effects*

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Rubell Museum







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Stolen Art Taxation

Income tax: What happens when you recover your stolen art?

- Usually, the tax basis in the recovered art is the lesser of the FMV and the original cost basis.
 - Exception if you claimed theft loss deduction in year of theft.
 - Another exception discussed next

Estate tax: What if you die owning stolen art?

- Decedent's possession of economic equivalent of ownership rather than technical legal title counts for valuation of estate tax purposes.
 - No deduction for estate if art eventually returned to rightful owner, if after the date for final administration of the estate.

Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)

Sec. 803(a) In General.--For purposes of the Internal Revenue Code of 1986, any **excludable restitution payments** received by an eligible individual (or the individual's heirs or estate) and any excludable interest--

(1) shall not be included in gross income; and

(2) shall not be taken into account for purposes of applying any provision of such Code which takes into account excludable income in computing adjusted gross income, including section 86 of such Code (relating to taxation of Social Security benefits).

For purposes of such Code, **the basis of any property received by an eligible individual (or the individual's heirs or estate) as part of an excludable restitution payment shall be the fair market value of such property as of the time of the receipt.**

Sec. 803 (b) Eligible Individual.--For purposes of this section, the term ``eligible individual'' means a person who was **persecuted on the basis of race, religion, physical or mental disability, or sexual orientation by Nazi Germany**, any other Axis regime, or any other Nazi-controlled or Nazi-allied country.

Under EGTRRA, settlements are also nontaxable

Sec. 803 (c) Excludable Restitution Payment.--For purposes of this section, the term 'excludable restitution payment' means any payment or distribution to an individual (or the individual's heirs or estate) which--

(1) is payable by reason of the individual's status as an eligible individual, including any amount payable by any foreign country, the United States of America, or any other foreign or domestic entity, any amount payable as a result of a final resolution of a legal action, and any amount payable under a law providing for payments or restitution of property.

(2) constitutes the direct or indirect return of, or compensation or reparation for, assets stolen or hidden from, or otherwise lost to, the individual before, during or immediately after World War II by reason of the individual's status as an eligible individual..

Tax Effects for Woman in Gold?

- Stepped up basis due to EGTRRA (value of \$135 million)
 - 28% capital gains tax on collectibles. But no taxable gain!
- How to pay the lawyer?
- What if Maria died owning it?
 - In 2011, the year of Maria's death, estate tax was the excess over \$5M value of worldwide assets taxed at the rate of 35%. Likely would have resulted in a tax of over \$45M.
 - In 2024, it is excess of \$13.61M taxed at 40%.
- Gifting is also restricted by the same exclusion amounts as estate tax.
- Maria established the Maria Altmann Family Foundation.