

CARFAC 50 tax presentation

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In the recent past, the basis of a visual artist's engagement with Revenue Canada rests on IT504R2, an Interpretation Bulletin dating to 1995 guiding interpretation of tax procedures for visual artists and writers. Overall, the terms of this document are remarkably friendly to artists—if not downright progressive—thanks to the hard work of CARFAC members and staff past. Of particular note is the sections on a “reasonable expectation of profit”, sections 4 through 7.

This section establishes various tests as to whether an artist is a professional artist, and it is not tied explicitly to showing a profit. It states that receipt of a grant is a marker of being a professional artist; furthermore presentation of work, training, and peer recognition are also markers; it includes gross revenue, not just net income, which means an expensive project funded by public or private grants with no profit would be considered an aspect of a professional activity.

Most telling in it's understanding of the state of the economic conditions of artists is paragraph 7, which states “In the case of an artist or writer, it is possible that a taxpayer may not realize a profit during his or her lifetime but still have a reasonable expectation of profit.”

Then, **tax folios** were introduced in 2013, slowly moving to more comprehensive streamlined information that is both web friendly and accessible (this is a good thing). The folios are intended to replace the Interpretation Bulletins and the Technical Publications. There are 7 series, which comprise 47 individual folios which consist of multiple chapters. Since then, however, parts of only 26 have been produced, the last one being in April of 2017. Who knows how long until the entire series are complete.

Eventually, though, **Series 4, Folio 14, Income from Artistic Endeavours** will be produced, and we will all rejoice when all the positive analysis of IT504 is incorporated!

Right now, we are dealing with T4As from grants getting caught up in the new capabilities of computers, namely in matching of T4As with individuals income tax

return. When an amount reported on a T4A does not show up (usually line 130, other personal income), there is likely a flag sent up somewhere, and a letter is sent to the person filing to clarify where this money might reported. It is possible to deduct expenses for a grant and report the net amount on line 130, but that goes against establishing that one is a professional artist (IT504 section 5 paragraph e, “(e) the amount of revenue received that is relevant to the artist's or writer's own works including, but not limited to, revenue from sales, commissions, royalties, fees, grants and awards which may reasonably be included in business income”)

Instead, artists should be filing business returns so the grant can be considered business income, and in a business return one can deduct expenses from their practice and business use of home expenses, and other such things, to reduce their income accordingly. It also means that an artist can post a loss in a year (something that using line 130 would not allow), reducing their total tax paid on their day job! This is an important point when we realize that 50% of artists lose money from their practice in any given year.

In the meantime, one has to use the current website of the CRA to understand what the non-specialist will understand of artist grants (and this includes front-line CRA staff doing reviews or otherwise engaging with the public). Primarily, the reviews and queries letters I have heard about artists receiving came through a review of personal returns, not business returns, and primarily they have appeared to have been triggered by T4a income being reported in business returns.

So, a search of artists grants and artists project grants on the website and all the results return artist grants *only* in the context of student scholarships. There is sometimes a caveat that the income could be reported on a business income, but the T4a matching program means that there will almost always be review, and if the person conducting the review does not go further than the surface documents, you may be found to have no reported income (whether you have or not) and deemed to owe more taxes, leading potentially to a situation that Steve Higgins found himself in.

*IT-504R2 (Consolidated)*

*INCOME TAX ACT*

*Visual Artists and Writers*

[see <https://tinyurl.com/IT504R2>]

*[extracts]*

***Reasonable Expectation of Profit***

The concept of profit is critical in determining whether a taxpayer's artistic activity or literary undertaking constitutes the carrying on of a business or is merely the furtherance of a hobby. The nature of art and literature is such that a considerable period of time may pass before an artist or writer becomes established and profitable. A longer period of time may be required in establishing that such reasonable expectation does exist.

***¶ 5. Factors which will be considered by the Department in determining whether or not an artist or writer has a reasonable expectation of profit include:***

- (a) the amount of time devoted to artistic or literary endeavours,
- (b) the extent to which an artist or writer has presented his or her own works in public and private settings including, but not limited to, exhibiting, publishing and reading as is appropriate to the nature of the work,
- (c) the extent to which an artist is represented by an art dealer or agent and the extent to which a writer is represented by a publisher or agent,
- (d) the amount of time devoted to, and type of activity normally pursued in, promoting and marketing the artist's or writer's own works,
- (e) the amount of revenue received that is relevant to the artist's or writer's own works including, but not limited to, revenue from sales, commissions, royalties, fees, grants and awards which may reasonably be included in business income,
- (f) the historical record, spanning a significant number of years, of annual profits or losses relevant to the artist's or writer's exploitation of his or her own works,
- (g) a variation, over a period of time, in the value or popularity of the individual's artistic or literary works,
- (h) the type of expenditures claimed and their relevance to the endeavours (e.g., in the case of a writer there would be a positive indication of business activity if a substantial portion of the expenditures were incurred for research),
- (i) the artist's or writer's qualifications as an artist or writer, respectively, as evidenced by education and also by public and peer recognition received in the form of honours, awards, prizes and/or critical appraisal,

- (j) *membership in any professional association of artists* or writers whose membership or categories of membership are limited under standards established by that association,
- (k) the significance of the amount of gross revenue derived by an artist or writer from the exploitation of that individual's own works and the growth of such gross revenue over time. In applying this factor, external influences such as economic conditions, changes in the public mood, etc., which may affect the sale of artistic or literary works will be taken into consideration, and
- (l) the nature of the literary works undertaken by a writer. It is considered that a literary work such as a novel, poem, short story or any non-fictional prose composition that is written for general sale or syndicated distribution would normally have a greater profit potential than a work undertaken for restricted distribution.

No particular factor described in ¶ 5 above is more important than another...

**¶7. In the case of an artist or writer, it is possible that a taxpayer may not realize a profit during his or her lifetime but still have a reasonable expectation of profit....**

*Sample of online CRA language:*

*Artists' Project Grant*

If you received an artists' project grant, whether separately from or in addition to other scholarship income, that you used in producing a literary, dramatic, musical, or artistic work (other than a grant received for work completed as part of a business or employment), you may claim the scholarship exemption to reduce the total amount that must be included in your income as scholarship income.

You have to include in your income for the year the total of your artists' project grants that is greater than your scholarship exemption.

**If you received an artists' project grant, enter the total of these amounts (from box 105 of your T4A slips) less your allowable exemption or expenses, if any, on line 130.**

*Sample of print CRA language:*

**Scholarships, fellowships, bursaries, and artists' project grants**

Elementary and secondary school scholarships and bursaries are not taxable.

Post-secondary school scholarships, fellowships, and bursaries are not taxable if you received them in 2017 for your enrolment in a program that entitled you to claim the full-time education amount in 2016 or if you are considered a full-time qualifying student for 2017 or 2018.

**If you were not eligible for the full-time or part-time education amount for 2016 and you are not considered a qualifying student for 2017 or 2018, report on line 130 the part of the post-secondary scholarships, fellowships, and bursaries you received in the year that is more than \$500.**

*If you received an artists' project grant, see Guide P105 (Students and Income Tax) for more information.*

## **TYPES OF REVIEWS**

<https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/review-your-tax-return-cra/types-reviews.html>

### **Pre-assessment Review Program**

The reviews conducted during this program take place before a Notice of Assessment is issued.

The peak period for this program is **February to July**.

### **Processing Review (PR) Program**

Although similar to the Pre-assessment Review program, the reviews conducted during this program take place after the Notice of Assessment has been issued.

The peak period for this program is **August to December**.

### **Matching Program**

The reviews conducted during this program also take place after the Notice of Assessment has been issued. In this program, information on an individual's income tax return is compared to information provided by third-party sources, such as employers or financial institutions.

### **Special Assessments Program**

The reviews conducted during this program can take place before or after a Notice of Assessment has been issued.

The Special Assessments Program conducts a more in-depth review of the income tax returns to identify and gather information on trends and situations in areas of non-compliance that may represent a risk to the self-assessment system.

All requests for information are sent directly to the taxpayer. This includes taxpayers who have authorized someone to act on their behalf such as a tax preparer.