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THE TAX LAWYER

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Tax Ideas For Songwriters

You probably don't plan on writing a sweet love song about taxes. Perhaps not a country tune or hip-hop piece either. Still, writing a song—any song—can have tax implications. Here's how.

You may not consider the IRS a music fan—just look at how tough they were on Willie Nelson for so many years! See [Willie Nelson's Assets Are Seized By The IRS](#). But the IRS can still lend a helping hand. IRS regulations allow songwriters to elect to treat the sale of musical compositions or copyrights in musical works as capital gain.

You don't need a musical muse to tell you 15% is better than 35%. If you sell a musical composition or copyright in a musical work you create by your own personal efforts you can make this election to have it treated as capital gain property. It's allowed under [Section 1221\(b\)\(3\)](#) of the tax code. See [T.D. 9514, Regulation Section 1.221-3](#).

This is only for music, not for books or other written work. So if you write the Great American Novel, you'll pay ordinary income tax. The my-novel-is-capital-gain-argument has been tried without success.

As with virtually all things in the tax world, there are technicalities to be observed. So if your song hits the Top 40, hire someone to observe these



details for you. You must make a separate election for each musical composition (or copyright in a musical work) you sell during the year.

You make the election on the capital gain schedule to your tax return. For individuals, that means [Schedule D](#) to your [Form 1040](#). But see [New Capital Gain Tax Reporting For 2011 Tax Returns](#). As for timing, you have to make this election by the due date (including extensions) of your tax return for the year you sell your song. See [Regulation Section 1.1221-3\(b\)](#).

Changed Your Tune? Like a good country song, you can change your tune, er, mind. The tax regulations allow you to revoke your election in some cases. If you timely filed your tax return (by April 15th) claiming capital treatment but then change your mind, just file an amended return that treats the sale as ordinary within the 6-month automatic extension period.

If you can't revoke under this quick timetable you can ask the IRS if it will **allow** you to revoke. To do that, you must submit a request for a letter ruling under the appropriate IRS administrative procedures. See [Regulation Section 1.1221-3\(b\)](#).

For more, see:

[SOPA, Meet The Player Piano Copyright Threat](#)

[Of Thongs And Sheet Music – 10 Lamest Tax Arguments of 2011](#)

[Ten Ways To Audit Proof Your Tax Return](#)

[E-Filing And IRS Website](#)

[Paper Or E-File Your IRS Return?](#)

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