



Tell it to the IRS: Is Writing Your Business or Your Hobby?

by Kathryn Page Camp

It's common for new writers—and sometimes even seasoned ones—to spend more on their writing efforts than they make from them. If this is your situation, you may ask, “Can I write the losses off on my personal income taxes?”

If writing is your business, you can. If it is just a hobby, you cannot. That seems simple, but it isn't. How do you (and the IRS) determine whether writing is your business or your hobby? The basic test is whether you are doing it to make a profit. Unfortunately, just because you say you are doesn't make it so. The IRS and the tax courts want proof.

One caveat: this article only deals with sole proprietors. If you have incorporated your writing business (see “Writer, Inc.”), you will not be able to write your losses off against your personal taxes, although the corporation may be able to write them off against profits from other years. See your tax advisor for more information.

And a note: even if writing is a hobby, you may be able to deduct some of your writing expenses. However, you can only do so if you itemize your deductions, and you cannot deduct more than your writing income. This means you can offset your profits, but you can't write off your losses.

So how can you prove that writing is your business and not your hobby? There are two main ways to do it: 1) make a profit three out of five years, or 2) show that you treat writing as a business. The first is easier to show but can be harder to meet. Here is a more detailed discussion of each.

Make a Profit

The law presumes that writing is your business if you make money three out of five years.¹ The five years must be consecutive, however, so if you do not start making money until year 4, you cannot use the presumption for year 1, and if you don't make money again until year 7, you cannot use it for years 2 or 3, either.

The IRS can rebut the presumption if it can prove that your writing is really a hobby. It isn't likely to try unless it sees something unusual, however. For example, if you have huge losses in two years and only modest profits in the other three, or if you have expenses that most writers don't incur, it may consider trying to rebut the presumption.

Treat Writing as a Business

So if you don't make a profit three out of five years, are you out of luck? Not necessarily. The basic test is whether you write to make a profit, not whether you actually achieve that goal. If you meet the presumption, the IRS has to prove writing is your hobby. If you don't meet the presumption, the burden of proof switches over to you, and you have to prove that writing is your business. But as long as you treat it as a business, proving it isn't that hard to do.

As I already said, the basic test for whether writing is your business is this: "Are you doing it to make a profit?" If the answer is "yes," it is a business. If the answer is "no," it is not. But if the IRS won't take your word for it, how do you prove it? The IRS and the courts look at a number of factors when deciding whether you are in it to make money. In fact, some types of behaviors—submitting manuscripts and marketing your work, in particular—help you with more than one factor.

Here are the factors that are most important for writers.² You do not need to have all of them, but the more, the better.

The way you carry on your writing activities. Do you keep good books and records? Do you do the things successful writers do? As with the factors in general, you don't need all of the following, but the more, the better.

It is very important that you keep separate records of your writing income and expenses. Ideally, this means a spreadsheet as well as copies of payment vouchers and receipts.

If you sell your books from the trunk of your car or at speeches or events where nobody is collecting sales taxes for you, you probably need a business license from that state. Having the necessary business licenses and filing sales tax returns is strong evidence that writing is your business.

Having an annual budget and business plans and goals (short and long-term) show that you are treating writing as a business. Other types of business logs (e.g., submissions, sales) also help.

Successful writers submit their work. In fact, that's the way writers make money. So if you write but never submit, it isn't a business.

If you have a published book, market it.

Training and expertise. Do you know how to write and are you trying to improve your craft? Do you understand the subject you are writing about?

You don't have to be an English major or even have a college degree, but you should know grammar. Going to writers' conferences and applying what you learn there helps, too.

The IRS and the courts also look at your subject matter expertise. If you write about an unfamiliar topic, you should research it or talk to someone who is an expert. This goes for fiction as well as non-fiction.

Time and effort. Do you write regularly and continuously? Do you try to market your work? You don't necessarily have to devote 40 hours a week, or 20 hours, or even 10, but you do have to put in at least several hours a week and do it routinely. If you write only when the spirit moves you, it isn't a business.

Income and loss history/occasional profits. To repeat, the basic test is whether you are writing to make a profit. Although you don't actually have to make money, you do have to try. If you do, chances are that you will have at least some income, even if it is small. That doesn't mean you can never submit to non-paying markets, especially if you have a reason for doing it (e.g., to gather writing credits). But if you only submit to non-paying markets, it isn't a business.

Personal pleasure. The courts recognize that most writers enjoy writing. However, every business has some parts that aren't fun, and you can't limit yourself to those activities you enjoy. I already mentioned that if you only write when you feel like it, it isn't a business. If you write but never submit, it isn't a business. If you self-publish but don't market, it isn't a business.

So what do the courts say?

Tax court cases provide examples of what is a business and what is a hobby. Some of the cases are even fun to read.

Self-publishing is a red flag for the IRS. Fanny Hawkins paid to publish a 56-page book containing 43 poems.³ Prior to that, her work had appeared "very, very rarely" in community magazines, and, as the court described it, "Fanny did not generally publish poems in magazines as she wished to control the exposure of her works," which would seem to imply that she did not even submit them. Fanny did not try to get anything else published after her book came out. The judge found that her writing was not a business.

Gary Kalbfleisch also lost.⁴ He wrote a number of short stories and prepared a catalog offering copies of the stories for individual sale, although it was unclear what, if anything, he did to distribute the catalog. He also self-published a political pamphlet or newsletter. The judge held that writing was Gary's hobby, noting (among other things), that he had no marketing program and devoted little capital to his writing activities. It is unclear whether the IRS would have bothered with the case if Gary had limited his deductions to paper, ink, and normal writing expenses, but it could not ignore the "business" deductions for the cost of his vacations and house cleaning services.

Self-publishing makes it harder to prove you are writing to make a profit, but it doesn't make it impossible. In one very interesting case, Ralph Vitale paid to publish a novel based on the experiences of prostitutes at Nevada brothels.⁵ He made several trips to Nevada to interview prostitutes, and he paid their normal fee for services. In finding that Ralph was writing as a business, the decision noted that he wrote other (as yet unpublished) manuscripts, attempted to

find a traditional publisher, spent a significant amount of time on his writing activities, belonged to professional writers' organizations, and took other steps that indicated he intended to make a profit.

As an aside, although Ralph won on the larger issue, the court did not allow him to deduct his payments to the prostitutes. The judge noted that some expenses are so "inherently personal" that they can never be deducted as business expenses, and Ralph's "interview" expenses fell within that category.

Submitting your work to non-paying markets is another red flag. Colvin Bert was an engineer who wrote on the side.⁶ Five of his forty-plus articles and poems were published by non-paying markets, and none were published by paying markets. The opinion does not state whether Colvin submitted to any paying markets, but it concludes that he wrote for personal reasons rather than for profit.

The following two cases illustrate what the courts look at when deciding if writing is a business or a hobby. In the first case, the taxpayer won, and in the second, the taxpayer lost. You should be able to pick out the factors that made the difference.

Eleanor Harris supported herself as a free-lance writer before she married Jack Howard, the president and CEO of The E.W. Scripps Company, which was the parent corporation of Scripps-Howard Newspapers.⁷ After their marriage, she continued to write some magazine articles but focused on writing plays. Eleanor spent several hours a day writing in an office near her home and spent additional time outside the office gathering information for articles, short stories, and plays. She belonged to a number of professional associations, kept a separate bank account for her writing income and expenses, and submitted her plays to agents and producers. Even though her husband's money allowed her to branch out into a new area (writing plays) that was not profitable at that time, the judge found that she was a dedicated writer who intended to make a profit from her work.

Maurice Dreicer also had an independent income, although his came from an inheritance.⁸ In 1955 he published a book on various restaurants around the world through a traditional publisher, but the book was not a commercial success. He also wrote articles off and on, but when he sold them he did so for minimal compensation or none at all.

Sometime in the mid-1950s, Maurice decided to write a book about searching for the perfect steak. During the next twenty-plus years, he traveled all over the world gathering material for the book, staying in the finest hotels, dining in the finest restaurants, and returning to some cities more than once. After writing what he considered his completed draft (but what the judge characterized as still in outline form), he sent it to one publisher and one agent. After they rejected it, he stopped trying to get it published.

Maurice put greater effort into trying to deduct his travel expenses, which he claimed he incurred in connection with his writing business. The judge rejected his arguments, but it took two appeals before Maurice gave up.

A final comment on motive

Although you must write to make a profit, that does not have to be your only motive. You can write because you enjoy it—if you also write to make money. You can write because you feel called—if you also write to make money. You can write because you want glory or fame—if you also write to make money. If you don't care whether you make money, however, writing is not your business.

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So if writing is your business, write on and write it off.

¹ 26 U.S.C. 183.

² See 26 C.F.R. 1.183-2.

³ *Hawkins v. Commissioner of Internal Revenue*, T.C. Memo 1979-101.

⁴ *Kalbfleisch v. Commissioner of Internal Revenue*, T.C. Memo 1991-61.

⁵ *Vitale v. Commissioner of Internal Revenue*, T.C. Memo 1999-131.

⁶ *Bert v. Commissioner of Internal Revenue*, T.C. Memo 1989-503.

⁷ *Howard v. Commissioner of Internal Revenue*, T.C. Memo 1981-250.

⁸ In *Dreicer v. Commissioner of Internal Revenue*, T.C. Memo 1979-395, the tax court judge found that Dreicer's writing was a hobby, not a business. On appeal, the Circuit Court held that the judge had used the wrong standard and sent the case back for further consideration. *Dreicer v. Commissioner of Internal Revenue*, 665 F.2d 1292 (D.C. Cir. 1981). Applying the standard articulated by the appeals court, the judge again found that Dreicer was engaged in a hobby, and the Circuit Court affirmed that finding without opinion. *Dreicer v. Commissioner of Internal Revenue*, 78 T.C. 642 (1982), *aff'd*, 702 F.2d 1205 (Table) (D.C. Cir. 1983).