

TAX FAIRNESS FOR ARTISTS AND WRITERS

PROVIDING PUBLIC ACCESS TO AMERICA'S ARTISTIC HERITAGE

ACTION NEEDED

We urge Congress to:

- Enact the Artist-Museum Partnership Act (S.931) which would allow artists to take an income tax deduction for the fair market value of their work when they donate it to charitable collecting institutions.

BACKGROUND

The Senate has passed artists deduction legislation five times in previous years, but the bills have not been reviewed by the House. In the 111th Congress, this legislation gained 93 cosponsors in the House and 23 in the Senate. At press time, Rep. John Lewis (D-GA) had not yet reintroduced the legislation in the House for the 114th Congress, but is expected to do so shortly.

For many years, artists, writers, and composers were allowed to take a fair market value deduction for their works donated to a museum, library, or archive. In 1969, however, Congress changed the law, and as a result the number of works donated by artists dramatically declined. *The effect of this legislation was immediate and drastic:*

- The Museum of Modern Art in New York received 321 gifts from artists in the three years prior to 1969; in the three following years, the museum received 28 works of art from artists—a decrease of more than 90 percent.
- Particularly grave harm was done to the Library of Congress, which annually received 15–20 large gifts of manuscripts from authors. In the four years after the law was changed, it received one gift.
- Dr. James Billington, former Librarian of Congress, said: “The restoration of this tax deduction would vastly benefit our manuscript and music holdings, and remove the single major impediment to developing the Library’s graphic art holdings. [The] bill would also benefit local public and research libraries. When this tax deduction was allowed in the past, many urban and rural libraries profited from the donation of manuscripts and other memorabilia from authors and composers who wanted their creative output to be available for research in their local communities.”

TALKING POINTS

- Most museums, libraries, and archives acquire new works primarily through donations. However, artists, writers, choreographers, and composers—unlike collectors—have no financial incentive to donate their works because they cannot claim a tax deduction for the work’s fair market value. Rather, they can deduct *only the value of materials*, such as paint and canvas. As a result, works of local, regional, and national significance are sold into private hands and may never come into the public domain.
- The Artist-Museum Partnership Act would allow creators of original works to deduct the fair market value of self-created works given to and retained by a nonprofit institution. It would encourage gifts of visual art, such as paintings and sculptures, as well as original manuscripts and supporting material created by composers, authors, and choreographers.
- Collectors have the right to deduct the fair market value of gifts that they donate. The creators of those works should have the same right when they donate their works. *It is only fair.*
- When artists die, works of art in their estate are taxable at their fair market value—the very same works they cannot claim tax deductions for donating while alive.

- If more works of contemporary, living artists were available to the public, emerging artists, visual artists, performers, scholars, and the public at large would benefit from this access and draw inspiration from these current pieces. Collectively, these works constitute an important part of America's heritage.
- When creators of artistic works do not have the same incentive to donate that other taxpayers enjoy, they are more likely to sell their work to private collectors, depriving the general public of the chance to experience and interact with it when it is new, fresh, and most relevant to contemporary society.
- A report prepared for Congress by the National Endowment for the Arts at the request of Sen. Patrick Leahy (D-VT) and former Sen. Robert Bennett (R-UT) demonstrates how current law impacts artists and writers and undermines the ability of cultural organizations to preserve our nation's heritage.

FREQUENTLY ASKED QUESTIONS

1. *Would people create art in order to donate it to some institution for personal financial gain?* No, only a relatively small number of people would be eligible under this bill, since all deductions must be claimed against income earned from artistic activity. Non-creators would not have such income. In addition, a library, archive, or museum would be extremely unlikely to accept material created purely for a deduction. Museums, for example, reject more than 90 percent of what is offered to them because of quality, incompatibility with the collection, cost of preservation and storage, or a belief that the work will never be shown or studied. They collect according to formal, written policies, and decisions are made not by individuals according to whim, but by staff committees subject to board approval.

FREQUENTLY ASKED QUESTIONS (CONTINUED)

2. *Since art is so subjective, is it difficult to establish a fair evaluation?* No. For gifts worth more than \$5,000, taxpayers already must obtain a "qualified appraisal" to substantiate the amount of the proposed deduction. Appraisals cannot be delivered on a whim: they must take into account the objective record of free market sales of similar work by the creator. Moreover, when the IRS conducts audits, panels of experts review those appraisals to assess whether they are reasonable. The definition of a "qualified appraisal" is strict and the sanctions are severe. The IRS's long history with this specific issue suggests that arriving at a legitimate value for donated material is not a problem.

3. *Why should a creator be able to deduct fair-market value for donating his work to a nonprofit organization, when a volunteer cannot deduct his time?* The tax code provides that donations of tangible property are deductible while donations of volunteer services and time are not. If the Artist-Museum Partnership Act is enacted, the creator would be claiming the tax deduction for the donation of property, not of volunteer services, since none were rendered.

4. *How much would the Artist-Museum Partnership Act cost?* Revenue loss estimates have varied over several Congresses, running from as low as \$6 million per year to as much as \$20 million.

5. *Who would benefit from the Artist-Museum Partnership Act?* First and foremost, the public at large would benefit by gaining greater access to the best of contemporary art. Artists would also benefit from greater exposure if their work were accepted into permanent collections, especially those who cannot afford to donate under current law. Third, museums and other collecting institutions would benefit, especially those that cannot afford to buy contemporary art. These institutions rely on donations to build their collections—in fact, 80 percent of the objects in museums arrived as gifts.