

ENCOURAGING CHARITABLE GIFTS TO ARTS AND CULTURE

SUPPORT AMERICA'S NONPROFIT ARTS ORGANIZATIONS

ACTIONS NEEDED

We urge Congress to:

- **Include the IRA Charitable Rollover in legislation to extend the “expiring provisions” that lapsed on December 31, 2009.**
- **Cosponsor H.R. 1250 introduced by Reps. Earl Pomeroy (D-ND) and Wally Herger (R-CA) or S. 864 introduced by Sens. Byron Dorgan (D-ND) and Olympia Snowe (R-ME). The legislation would make permanent the IRA Charitable Rollover provision, allowing individuals to roll funds from IRAs to charity without first treating them as taxable income. It would also remove the cap of \$100,000 of funds that may be rolled over free of tax.**
- **Preserve incentives for charitable giving.**

TALKING POINTS

The Nonprofit Arts Sector:

Nonprofit arts organizations improve quality of life by contributing to lifelong learning, preserving our cultural heritage, and fostering the creative expression that tells the story of our personal and collective histories.

- In communities large and small across the country, nonprofit arts organizations engage the public in a diverse array of cultural and artistic experiences. Arts organizations offer communities a significant number of free events and provide public access to the arts through online resources, distance learning, and social networking.
- Ticket sales and admission fees alone do not come close to subsidizing the artistic presentations, educational offerings, and community-based programming of nonprofit arts organizations. A significant percentage of direct financial support for nonprofit arts organizations is derived from charitable giving. Without this support, public access to the arts would be greatly diminished.
- Diverse types of charitable giving comprise support for arts organizations large and small: individual contributions; planned giving; family, business, and corporate foundation grants; in-kind contributions; and gifts of art.
- Nationally, the nonprofit arts and culture industry generates \$166.2 billion in economic activity every year—\$63.1 billion in spending by organizations and an additional \$103.1 billion in related spending by their audiences. (Figures from Americans for the Arts, *Arts & Economic Prosperity III* study, 2007).
- The fundamental characteristics of federal support for the nonprofit community, which have built a cultural sector that is the envy of the world, need not only to remain in place but should be strengthened for the future. The nonprofit arts community can continue delivering the vital programs and services that the country has relied on so long as mission-related income is exempt from federal tax, real property is exempt from property tax, and charitable contributions remain fully tax-deductible.

IRA ROLLOVER

- The IRA Charitable Rollover provision permits donors age 70.5 and older to make tax-free charitable gifts directly from their individual retirement accounts to charities, up to an annual ceiling of \$100,000. The IRA Rollover was enacted as part of the Pension Protection Act of 2006 and expired on December 31, 2007. Before the 110th Congress adjourned, the provision was extended to December 31, 2009, as part of a package of other popular tax bills. The House has approved a bill that would extend the IRA Rollover through December 31, 2010 (Sec. 135 of H.R. 4213) but the Senate has not yet followed suit.
- The IRA Rollover had an immediate and ongoing positive impact in the nonprofit arts community, underscoring the provision as a key incentive for charitable giving.
- The IRA Rollover increases gifts to charity by providing a new incentive for charitable giving. Beginning at age 70.5, all IRA owners are required to take annual minimum distributions, even if they do not need the income. With the charitable rollover, IRA owners may use the required distribution and other money in their IRAs to support charitable causes, without being taxed on the distribution. No additional tax deduction is taken for an IRA Rollover gift to charity.

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- Since its enactment in 2006, the IRA Rollover has spurred millions of dollars in new gifts to all forms of charities.
- Legislation (H.R. 1250 and S. 864)) has been introduced that would make the IRA Rollover permanent, remove the arbitrary \$100,000 cap, and reduce the qualifying age to 59.5. Reps. Earl Pomeroy (D-ND) and Wally Herger (R-CA) also co-sponsored the bill last year in the House of Representatives along with Sens. Byron Dorgan (D-ND) and Olympia Snowe (R-ME) in the Senate, and is supported by a broad coalition of organizations, including the arts, higher education, human services, health, and other nonprofits.

PRESERVE INCENTIVES FOR CHARITABLE GIVING

The administration's FY 2011 budget proposes reducing the value of tax deductions from 35 percent to 28 percent for charitable donations made by taxpayers with incomes over \$200,000 (single) or \$250,000 (joint).

- Whereas last year the Administration proposed this measure as a way to pay for healthcare reform which would have other economic benefits to nonprofits, this year's proposal would dedicate revenue solely to federal deficit reduction.

Reducing the rate for charitable deductions would reduce donations and add challenges to nonprofits.

- Many experts believe that this provision would serve as a disincentive to individual donors as foundation and corporate giving declines, along with state and local government spending cutbacks.
- The Indiana University Center on Philanthropy calculated, using 2006 data on giving, that had the Obama tax plan been in effect taxpayers with incomes of \$250,000 or more would have decreased their giving by 4.6 percent or nearly \$3.9 billion.

Congressional leaders from both parties spoke out against the proposal last year.

- House Majority Leader Steny Hoyer (D-MD) called the idea "controversial" and of "great concern" for charitable institutions. House Minority Leader John Boehner (R-OH) said the proposed limitation was "reckless policy" and "absolutely the wrong thing to do."

The administration also proposes to reinstate an itemized deduction floor in an amount equal to three percent of a donor's income in excess of \$200,000. In other words, if a person earns \$250,000, he or she would not be able to deduct the first three percent of \$50,000, which is equal to \$1,500. As a result, if the person then donates \$5,000 and incurs \$20,000 of other itemizable expenses, he or she would only be able to deduct \$23,500 instead of the full \$25,000.

- Both proposals would reduce donations to the arts and other charities at a time when society is counting on them more than ever. Because charitable giving is purely discretionary, upper income taxpayers can choose to preserve their bottom line by simply giving less.

BACKGROUND

The United States supports a robust private charitable sector that provides many public services in fields ranging from education and healthcare to arts and culture. Nonprofit organizations provide access to arts and culture in every U.S. congressional district, and receive crucial—but indirect—government support through tax benefits that encourage charitable gifts by generous individuals.

A charitable contribution is an act of private giving for the public good. The tax deduction for charitable gifts enhances the public good by encouraging contributions to arts programs, museums, libraries, or other nonprofit efforts that serve the public. Private donations range from very small gifts to large donations and are contributed by corporations, foundations, and individuals in support of a myriad of arts programs. It is this process of private giving for the public good that sustains the arts and helps the arts to reach more and more Americans.

Charitable giving keeps access to the arts and humanities affordable for all segments of society, subsidizing thousands of programs and other activities that serve our citizens. The above measures will result in more services to the public as increased charitable giving, including gifts of art as well as cash, strengthen nonprofit arts organizations. They will encourage Americans to be as generous as possible rather than being limited by arbitrary caps and other restrictions.

The current economic climate presents challenges to the charitable sector. Donors need to be encouraged to maintain their commitment to the vital services and programs the nonprofit community provides, especially as local governments and municipalities struggle to maintain the current level of services to their communities.

Tax Fairness for Artists and Writers: Please see our separate Issue Brief on this topic.

TAX FAIRNESS FOR ARTISTS AND WRITERS

CREATING AMERICA'S ARTISTIC HERITAGE

ACTION NEEDED

We urge Congress to:

- **Cosponsor the Artist-Museum Partnership Act, S. 405, introduced by Sens. Patrick Leahy (D-VT) and Robert Bennett (R-UT), or H.R. 1126, introduced by Reps. John Lewis (D-GA) and Todd Platts (R-PA).**

Most museums, libraries, and archives have limited funds to acquire new works; the primary way is through donations. However, artists, writers, choreographers, and composers have no financial incentive to give their works because they cannot claim a tax deduction for a 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 never come into the public domain.

TALKING POINTS

- 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. Creators should have the same right when they donate their own 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 whose value is minimized for the purposes of claiming a charitable deduction while the artist is alive.
- Visual artists, performers, scholars, and the public at large would benefit from access to materials that reveal the creative underpinnings of existing compositions and inspire the works of emerging artists. 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, our heritage is often sold abroad or goes into private collections.
- A report prepared by the National Endowment for the Arts at the request of Sens. Leahy and Bennett (www.aamd.org/advocacy/documents/NEA-report.pdf) 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, material created purely for a deduction would unlikely be accepted by a library, archive, or museum. Museums, for example, reject over 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.

2. *Since art is so subjective, will it be difficult to establish a fair evaluation?* No. For gifts over \$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

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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 this bill is enacted, the creator would be claiming the tax deduction for the donation of property, not of volunteer services.

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

BACKGROUND

Prior to 1969, 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 the 1969 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 years after 1969 the museum received 28 works of art from artists—a decrease of more than 90 percent.
- The biggest loser was the Library of Congress, which annually received 15–20 large gifts of manuscripts from authors. In the four years after 1969, it received one gift.
- Dr. James Billington, 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.”

The bills are identical to legislation that the Senate has passed five times in the past few years, but that has not been reviewed by the House. In the 110th Congress, the bills gained 111 cosponsors in the House and 30 in the Senate, including then-Senator Barack Obama, who also included it in his campaign platform for the arts.

ADDITIONAL TAX FAIRNESS ISSUE

Qualified Performing Artist Tax Benefit: Performing artists who satisfy three tests are allowed to deduct their expenses “above the line” on their tax returns, which is more advantageous than treating such expenses as itemized deductions. This tax benefit was originally enacted in 1986 and reflected the fact that many performing artists were poorly paid and that, absent some kind of help, they were unable to maintain themselves as working artists. It further recognized that artists faced significant expenses connected with gaining employment. One of the three tests mentioned above limits their allowable adjusted gross income to no greater than \$16,000. This cap has been static since it was first enacted.

Sen. Schumer (D-NY) is working on a bill that would bring the tax code into the 21st century by raising the income cap to \$30,000 and indexing it to inflation. Performing artists should not have to live in abject poverty to qualify for this benefit. If this legislation is not enacted, artists will fall even further behind in their struggle to earn a living by their art, and the public will suffer their loss.

We urge Congress to support efforts to fix the out-of-date Qualified Performing Artist benefit.

HOUSE COMMITTEE ON WAYS AND MEANS

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1102 Longworth House Office Building, Washington, DC 20515
Tel: (202) 225-3625, Fax: (202) 225-2610
<http://waysandmeans.house.gov>

The House Committee on Ways and Means has jurisdiction over all tax policies, including tax policies aimed at increasing giving to charitable organizations.

Democrats (26):

Sander M. Levin (Michigan-12), Acting Chair

Charles Rangel (New York-15)
Fortney Pete Stark (California-13)
Jim McDermott (Washington-7)
John Lewis (Georgia-2)
Richard E. Neal (Massachusetts-2)
John Tanner (Tennessee-8)
Xavier Becerra (California-31)
Lloyd Doggett (Texas-25)
Earl Pomeroy (North Dakota-AL)
Mike Thompson (California-1)
John B. Larson (Connecticut-1)
Earl Blumenauer (Oregon-3)
Ron Kind (Wisconsin-3)
Bill Pascrell Jr. (New Jersey-8)
Shelley Berkley (Nevada-1)
Joseph Crowley (New York-7)
Chris Van Hollen (Maryland-8)
Kendrick B. Meek (Florida-17)
Allyson Y. Schwartz (Pennsylvania-13)
Artur Davis (Alabama-7)
Danny K. Davis (Illinois-7)
Bob Etheridge (North Carolina-2)
Linda T. Sanchez (California-39)
Brian Higgins (New York-27)
John A. Yarmuth (Kentucky-3)

Republicans (15):

Dave Camp (Michigan-4), Ranking Member

Wally Herger (California-2)
Sam Johnson (Texas)
Kevin Brady (Texas-8)
Paul D. Ryan (Wisconsin-1)
Eric Cantor (Virginia-7)
John Linder (Georgia-7)
Devin Nunes (California-21)
Patrick J. Tiberi (Ohio-12)
Ginny Brown-Waite (Florida-5)
Geoff Davis (Kentucky-4)
David G. Reichert (Washington-8)
Charles W. Boustany (Louisiana-7)
Dean Heller (Nevada-2)
Peter J. Roskam (Illinois-6)

SENATE COMMITTEE ON FINANCE

United States Senate
219 Dirksen Senate Office Building, Washington, DC 20510
Tel: (202) 224-4515, Fax: (202) 228-0554
<http://finance.senate.gov>

The Senate Committee on Finance has jurisdiction over all tax policies, including tax policies aimed at increasing giving to charitable organizations.

Democrats (13):

Max Baucus (Montana), Chair

John D. Rockefeller IV (West Virginia)
Kent Conrad (North Dakota)
Jeff Bingaman (New Mexico)
John F. Kerry (Massachusetts)
Blanche Lincoln (Arkansas)
Ron Wyden (Oregon)
Charles E. Schumer (New York)
Debbie Stabenow (Michigan)
Maria Cantwell (Washington)
Bill Nelson (Florida)
Robert Menendez (New Jersey)
Thomas R. Carper (Delaware)

Republicans (10):

Charles E. Grassley (Iowa), Ranking Member

Orrin G. Hatch (Utah)
Olympia J. Snowe (Maine)
Jon Kyl (Arizona)
Jim Bunning (Kentucky)
Michael D. Crapo (Idaho)
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