

# ENCOURAGING CHARITABLE GIFTS TO ARTS AND CULTURE

## SUPPORT AMERICA'S NONPROFIT ARTS ORGANIZATIONS

---

### ACTIONS NEEDED

---

#### We urge Members of Congress to:

- Enact legislation to make the IRA Rollover permanent, allowing individuals to roll funds from their Individual Retirement Accounts to charity, and to remove the arbitrary \$100,000 cap.
- Cosponsor S. 548, the artist fair-market value deduction bill, which allows artists, writers, and composers to take a fair-market value deduction for contributions of their own works to arts organizations (see Artists' Fair-Market Value Deduction Issue Brief), and soon to be introduced identical legislation in the House of Representatives.

### TALKING POINTS

---

#### IRA Rollover:

- The IRA Rollover provision permits donors age 70.5 and older to make tax-free charitable gifts directly from their IRAs to charities, up to an annual ceiling of \$100,000. Before the IRA Rollover provision was enacted as part of the Pension Reform Act of 2006, individuals who wished to make charitable gifts from their retirement accounts had to withdraw funds and treat them as taxable income, reducing the amount available for donation to charity.
- The IRA Rollover spurs giving to all forms of charities and is supported by a broad coalition of organizations, including the arts, higher education, human services, health, and other non-profits.
- The IRA Rollover is scheduled to expire on December 31, 2007. If it is allowed to expire, charities and the public they serve will suffer.
- Renewal legislation should make the provision permanent and remove the arbitrary cap of \$100,000, which limits the generosity of those who are able to give.
- The legislation has bipartisan support, with chief sponsors Reps. Wally Herger (R-CA) and Earl Pomeroy (D-ND), as well as Sen. Byron Dorgan (D-ND).
- President Bush's FY 2008 budget calls for permanent enactment of the IRA Rollover.
- Charities are collecting information to document the effectiveness of the new provision.

**Artists' Fair-Market Value Deduction Brief:** Please see our separate Issue Brief on this topic.

### BACKGROUND

---

In most other countries, governments are the sole provider of services in fields ranging from education to health care to arts and culture. The United States, by contrast, supports a private charitable sector that provides many of these services instead. There are over one million charitable organizations across the nation which receive crucial – but indirect – government help through tax benefits that encourage charitable gifts by generous individuals.

A charitable contribution is an act of private investment in a public purpose in which the return is not to the donor but to the public. Thus, donors and donees are not two halves of a special interest working to protect their particular tax break: rather, they are collectively working to enhance a public good, be it an arts program, a museum, library, or other non-profit that serves public purposes, not private ones. The charitable deduction creates an incentive to give, but it does not eliminate the financial loss which donors experience when they make their gifts.

The above measures will encourage more charitable giving, including gifts of art as well as cash, which will strengthen arts organizations and allow them to provide more services to the public. They will encourage Americans to be as generous as possible rather than being limited by arbitrary caps and other restrictions. Moreover, such support helps keep access to the arts and humanities affordable for all segments of society, subsidizing thousands of programs and other activities that serve our citizens.

*(continued)*

## **OTHER TAX ISSUES**

---

Tax policy has multiple impacts on the arts and humanities at the local, state, and federal levels. Below are descriptions of two arts-specific issues that are also worthy of congressional attention.

**Fractional gifts:** The Pension Protection Act of 2006 included a provision that severely limits donors' ability to give a single gift of art (or a collection of art) over multiple years. Previously, a generous donor could give a gift in fractions over the donor's lifetime. The donor was allowed to give fractions to a museum until the donor's death and take a fair-market value deduction for each fraction as it was donated. The recipient institution had the right to take possession of the work for part of each year. The new law requires donors to give the entire gift within ten years and does not allow a fair-market value deduction after the first fraction is given.

By requiring that a gift be completed in ten years, and limiting its deductibility to a value no greater than the gift's worth at the time of the first installment, the new law will cause donors to give fewer works of art to collecting and educational institutions. Senators Charles Schumer (D-NY) and Gordon Smith (R-OR) are working on legislation to amend the more draconian provisions of the new law.

**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.

Senator Schumer is working on a bill that would bring the tax code into the 21<sup>st</sup> 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 amend the Pension Protection Act fractional gifts provision and to fix the out-of-date Qualified Performing Artist benefit.**

# ARTISTS' FAIR-MARKET VALUE DEDUCTION BILLS

## PROTECTING AMERICA'S CULTURAL PATRIMONY

---

### ACTION NEEDED

---

We urge Members of Congress to:

- Cosponsor S. 548, the “Artist-Museum Partnership Act” offered by Senators Patrick Leahy and Robert Bennett in the Senate, and the identical bipartisan legislation soon-to-be introduced in the House.

### TALKING POINTS

---

- Most museums, libraries, and archives have no acquisition funds; the only way to acquire new works is through donations.
- Living artists, writers and composers - many of whom earn very little - have no financial incentive to give their works to a nonprofit institution; instead works of local, regional and national significance are sold into private hands and never come into the public domain.
- The artists' fair-market value deduction bill would allow creators of original works to take a fair-market value deduction for self-created works given to a nonprofit institution.
- Collectors have the right to deduct the fair-market value of gifts of works of art that they donate; creators should have the same right when they donate their own works. It is only fair.

### FREQUENTLY ASKED QUESTIONS

---

**1. *Why should a creator be able to deduct fair-market value for donating his work to a nonprofit organization, when a volunteer, offering pro bono services to the same institution, cannot deduct his time?*** The tax code provides that donations of tangible property are deductible while donations of volunteer services are not. In this case, the creator of a work of art would be claiming the deduction for the donation of property, not of services.

**2. *Isn't there a danger that this bill will encourage people to 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-artists 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.

And finally, even if people were to create such works, few institutions would be able to accept them, since the institution must have an IRS 501(c)(3) status, be incorporated, have articles of organization, and file annual reports with the IRS.

**3. *Since art is so subjective, won't it be difficult to establish a fair evaluation?*** For over 30 years the application of existing law as applied to collectors demonstrates that deductions do not lead to misvaluation. For gifts over \$5,000, taxpayers must obtain a “qualified appraisal” to substantiate the amount of the proposed deduction.

Knowledgeable individuals provide written appraisals to taxpayers claiming a deduction, and the IRS, when conducting audits, uses panels of experts to review those appraisals to assess whether they are reasonable. Appraisals cannot be delivered on a whim: they must take into account the actual, objective record of free market sales of similar work by the creator. Reasonable people can disagree on an exact number, but a true misvaluation is relatively easy to spot. 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.

*(continued)*

## **BACKGROUND**

---

In 1969, Congress repealed legislation allowing artists, writers, and composers to take a fair-market value deduction for their works donated to a museum, library, or archive, essentially depriving Americans of their cultural patrimony. As a result of the 1969 repeal, works donated by artists to nonprofit institutions dramatically declined. Yet, while creators can no longer donate works for a fair-market deduction, collectors who own those works can take the fair-market value deduction when they donate to a nonprofit institution. The repeal of the 1969 legislation puts an unfair tax burden on creators of artistic works.

Senators Patrick Leahy (D-VT) and Robert Bennett (R-UT) have introduced S.548, the “**Artist-Museum Partnership Act.**” Reps. Jim Ramstad (R-MN) intends to introduce identical legislation - the “**Artists’ Contribution to American Heritage Act of 2007**” - in the House, as he and then-Rep. Ben Cardin (D-ME) did in the 109th Congress. The previous bills had broad bipartisan support, with more than 100 representatives and 20 senators signed on as cosponsors. ***The artists’ bill has passed the Senate five times, but has never come to a vote in committee in the House.*** In addition to the free-standing bills mentioned above, Senators Domenici (R-NM) and Schumer (D-NY) have introduced S. 374, which contains an identical provision.

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. For example:

- The Museum of Modern Art in New York received 321 gifts from artists in the three years prior to the repeal; in the three years following repeal 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 to 20 large gifts of manuscripts from authors. In the four years after repeal it received one gift.
- Dr. James Billington, Librarian of Congress, says “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.”

### **Co-sponsors of S.548 (as of 2/16/07)**

Senator Robert Bennett (UT)  
Senator Maria Cantwell (WA)  
Senator Benjamin Cardin (MD)  
Senator Thad Cochran (MS)  
Senator Norm Coleman (MN)  
Senator Kent Conrad (ND)  
Senator Christopher Dodd (CT)  
Senator Pete Domenici (NM)  
Senator Richard Durbin (IL)  
Senator Dianne Feinstein (CA)  
Senator Edward Kennedy (MA)  
Senator John Kerry (MA)  
Senator Joseph Lieberman (CT)  
Senator Patrick Leahy (VT)  
Senator Bernie Sanders (VT)  
Senator Charles Schumer (NY)  
Senator Ted Stevens (AK)

# HOUSE COMMITTEE ON WAYS AND MEANS

---

United States House of Representatives  
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 (24):**

### **Charles Rangel (New York), Chair**

Pete Stark (California-13)  
Sander M. Levin (Michigan-12)  
Jim McDermott (Washington-7)  
John Lewis (Georgia-2)  
Richard E. Neal (Massachusetts-2)  
Michael R. McNulty (New York-21)  
John Tanner (Tennessee-8)  
Xavier Becerra (California-31)  
Lloyd Doggett (Texas-25)  
Earl Pomeroy (North Dakota-AL)  
Stephanie Tubbs Jones (Ohio-11)  
Mike Thompson (California-1)  
John B. Larson (Connecticut-1)  
Rahm Emanuel (Illinois-5)  
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)

## **Republicans (17):**

### **Jim McCrery (Louisiana-4), Ranking Member**

Wally Herger (California-2)  
Dave Camp (Michigan-4)  
Jim Ramstad (Minnesota-3)  
Sam Johnson (Texas-3)  
Phil English (Pennsylvania-3)  
Jerry Weller (Illinois-11)  
Kenny Hulshof (Missouri-9)  
Ron Lewis (Kentucky-2)  
Kevin Brady (Texas-8)  
Thomas M. Reynolds (New York-26)  
Paul D. Ryan (Wisconsin-1)  
Eric Cantor (Virginia-7)  
John Linder (Georgia-7)  
Devin Nunes (California-21)  
Pat Tiberi (Ohio-12)  
Jon Porter (Nevada-3)

# 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 (11):**

### **Max Baucus (Montana), Chair**

John D. Rockefeller IV (West Virginia)  
Kent Conrad (North Dakota)  
Jeff Bingaman (New Mexico)  
John Kerry (Massachusetts)  
Blanche Lincoln (Arkansas)  
Ron Wyden (Oregon)  
Charles E. Schumer (New York)  
Debbie Stabenow (Michigan)  
Maria Cantwell (Washington)  
Ken Salazar (Colorado)

## **Republicans (10):**

### **Charles E. Grassley (Iowa), Ranking Member**

Orrin G. Hatch (Utah)  
Trent Lott (Mississippi)  
Olympia J. Snowe (Maine)  
Jon Kyl (Arizona)  
Craig Thomas (Wyoming)  
Gordon H. Smith (Oregon)  
Jim Bunning (Kentucky)  
Michael D. Crapo (Idaho)  
Pat Roberts (Kansas)