

ARTISTS' FAIR-MARKET VALUE DEDUCTION BILLS

CREATING AMERICA'S ARTISTIC HERITAGE

ACTION NEEDED

We urge Members of Congress to:

- **Cosponsor the Artist-Museum Partnership Act S. 548 introduced by Senators Patrick Leahy (D-VT) and Robert Bennett (R-UT), or H.R. 1524 introduced by Reps. John Lewis (D-GA) and Jim Ramstad (R-MN).**

TALKING POINTS

- The general public benefits from access to the best of contemporary art.
- Most museums, libraries, and archives have limited funds to acquire new works of art; the primary way is through donations. However, living artists, writers, choreographers, and composers—many of whom earn very little—have no financial incentive to give their works to a nonprofit institution because they cannot claim a tax deduction for the fair-market value of their work. Rather, they can deduct only the value of materials, such as paper, ink, 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.
- S. 548/H.R. 1524 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.
- Performers and scholars would benefit from access to materials that reveal the creative underpinnings of existing compositions and inspire the works of emerging artists.
- 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.
- 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.
- A report prepared by the National Endowment for the Arts at the request of Senators Leahy and Bennett (<http://www.aamd.org/advocacy/documents/NEA-report.pdf>) demonstrates how current law impacts artists and writers, and undermines the ability of public and cultural organizations to preserve our nation's heritage.

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

2. *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-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.

3. Since art is so subjective, will it be difficult to establish a fair evaluation? No. For gifts over \$5,000, taxpayers 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 actual, 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.

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 to 20 large gifts of manuscripts from authors. In the four years after 1969, 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.”

H.R. 1524 and S. 548 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.