

# TAX FAIRNESS FOR ARTISTS AND WRITERS

## CREATING AMERICA'S ARTISTIC HERITAGE

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### ACTION NEEDED

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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

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- 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](http://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

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**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

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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 110<sup>th</sup> 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

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**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.