



Not-for-Profit Services Division

Client Information Bulletin

Contributions by Artists How Much Can They Deduct?

At a recent conference someone mentioned that artists can now take FMV of donations (produced by them) instead of the value of materials used to make the item. True?

This question arises almost every year. Here are the facts and some history on why people continue to think (and hope) the law changes.

There have been certain bills proposed to change this, but the law is still that an artist's donation of his or her own artwork is limited to tax basis. IRC §170(e)(1) requires that the amount of the charitable income tax deduction otherwise available for a contribution of property, i.e., on the basis of fair market value, be reduced by "the amount of gain which would not have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value." Artwork created by a donor is not treated as a capital asset because IRC § 1221(a)(3), enacted under the Tax Reform Act of 1969, specifically excludes such an asset from the definition of capital asset because it is created by the personal efforts of a taxpayer. (Section 1221(a)(3) provides that a capital asset does not include "a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by (A) a taxpayer whose personal efforts created such property, (B) in the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced ...")

Thus, any contribution of artwork created by the donor is limited to its tax basis, which is generally quite nominal and substantially less than the fair market value of the artwork.

Prior to 1969, artists and collectors alike were able to take a deduction equal to the fair market value of the work. Since that time, fewer and fewer artists have donated their works of art to museums and cultural institutions, given that the existing tax regime offers either no or very little incentive to contribute such works. The sharp decline in the donations to the Library of Congress illustrates this point. Until 1969, the Library of Congress received 15 to 20 large gifts of manuscripts from authors each year. In the four years following the elimination of the fair market value deduction, the Library received only once such gift. Instead, many of these works have been sold to private collectors and are no longer available to the general public. For example, prior to the Tax Reform Act of 1969, Igor Stravinsky planned to donate his papers to the Music Division of the Library of Congress but, after the passage of the Tax Reform Act of 1969, sold his papers to a private foundation in Switzerland.

Under a Bill (known as the “Artist-Museum Partnership Act”) introduced on February 14, 2005 by Senator Patrick Leahy (D-Vt.), S. 372, artists, writers, and composers who donate “literary, musical, artistic, or scholarly compositions” created by their personal efforts to museums and libraries are allowed a charitable contribution deduction equal to the fair market value of the work, thereby providing the same treatment accorded collectors. This same bill was part of the Senate-passed version of the CARE Act, 2003. The Joint Committee on Taxation has estimated that the Bill would cost about \$50 million over 10 years. Under the Bill, the deduction under Section 170 for “qualified artistic charitable contributions” is increased from the deduction otherwise allowable under present law (i.e., income tax basis) to fair market value of the contributed property, measured at the time of the contribution. The amount of the increase in the deduction, however, is limited to: (i) the income from the sale or use of property created by the personal efforts of the donor that is of the same type of the donated property and (ii) income from teaching, lecturing, performing, or similar activities with respect to such property. For this purpose, the term “qualified artistic charitable contribution” means a charitable contribution of any literary, musical, artistic, or scholarly composition, or similar property, or the copyright



thereon (or both) that meets the following requirements:

(1) The contributed property must have been created by the personal efforts of the donor at least (2) The donor must obtain a qualified appraisal of the contributed property, a copy of which is required to be attached to the donor's income tax return for the taxable year in which the contribution is made; (3) The contribution must be made to a public charity or to certain limited types of private foundation; and (4) The use of the donated property by the recipient organization must be related to the organization's charitable purpose or function and the donor must receive a written statement from the organization verifying such use. This and similar bills have never been enacted.