

# ENCOURAGING CHARITABLE GIFTS TO ARTS AND CULTURE

## SUPPORT AMERICA'S NONPROFIT ARTS ORGANIZATIONS

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### ACTIONS NEEDED

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We urge Members of Congress to:

- Cosponsor H.R. 1250 introduced by Reps. Earl Pomeroy (D-SD) and Wally Herger (R-CA) to make permanent the IRA Charitable Rollover provision, allowing individuals to roll funds from their Individual Retirement Accounts to charity at a lower qualifying age requirement and with the removal of the \$100,000 cap.
- Cosponsor the market value deduction bills, which would allow artists, writers, and composers to take a fair-market value deduction for contributions of their own works to arts organizations (see Tax Fairness for Artists and Writers Issue Brief).

### TALKING POINTS

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#### The Nonprofit Arts Sector:

Nonprofit arts organizations improve the 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 and distance learning opportunities.
- 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.
- The fundamental characteristics of federal support for the nonprofit community, which have built an unrivalled 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 by reinforcing that mission-related income be exempt from federal tax like any endowment income; ensuring that real property is exempt from property tax; and making sure that 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 IRAs 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 110<sup>th</sup> Congress adjourned, the provision was extended to December 31, 2009, as part of a package of other popular tax bills.
- The recent extension of the IRA Rollover has already shown an immediate 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.
- Since its enactment in 2006, the IRA Rollover has spurred millions of dollars in new gifts to all forms of charities.

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- Legislation (HR 1250) has been introduced that would make the IRA Rollover permanent, remove the arbitrary \$100,000 cap, and reduce the qualifying age to 59.5. Rep. Earl Pomeroy (D-SD) 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.

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

## **BACKGROUND**

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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.

## **OTHER TAX ISSUES**

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Tax policy has multiple impacts on the arts and humanities at the local, state, and federal levels. Below is a description of an arts-specific issue that is also worthy of congressional attention.

**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 (D-NY) 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 fix the out-of-date Qualified Performing Artist benefit.**

# TAX FAIRNESS FOR ARTISTS AND WRITERS

## CREATING AMERICA'S ARTISTIC HERITAGE

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### ACTION NEEDED

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We urge Members of Congress to:

- **Cosponsor the Artist-Museum Partnership Act, S. 405, introduced by Senators Patrick Leahy (D-VT) and Robert Bennett (R-UT), or identical House legislation introduced by Rep. John Lewis (D-GA).**

### TALKING POINTS

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- Most museums, libraries, and archives have limited funds to acquire new works; 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 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 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.
- In contrast, ordinary 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.*
- 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.
- 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.
- 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 Senators 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-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.

**2. *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.

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**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.

# HOUSE COMMITTEE ON WAYS AND MEANS

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United States House of Representatives  
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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):**

### **Charles Rangel (New York-15), Chair**

Fortney Pete Stark (California-13)  
Sander M. Levin (Michigan-12)  
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

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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)  
Pat Roberts (Kansas)  
John Ensign (Nevada)  
John Cornyn (Texas)  
Michael B. Enzi (Wyoming)