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Congress Should End Special Tax Breaks for Art Gifts

By Pablo Eisenberg

Wealthy donors have long received extraordinarily generous tax breaks when they donate art to museums.

For years, donors have been permitted to give partial ownership rights of an art object to a museum or charity and immediately receive a tax deduction on their income taxes for the donated portion of the object's value.

For example, if a donor gave 25 percent of a painting worth \$1-million, he or she was entitled to a \$250,000 deduction as long as the museum had the right to display the painting for one quarter of the year.

In many cases, museums didn't ask to put the painting on exhibit, enabling the donor to both keep the art at home and get a tax write-off. The donor was also allowed to donate additional portions of the object's value at a later date, and take a write-off that reflected any growth in the value of the art object.

Fractional giving, as this practice is known, not only has cost the federal government hundreds of millions, if not billions, of dollars in lost revenue, but also has often delayed for many years the public's access to works of art.

This bonanza to a great extent is ending as a result of a new law that places stiff restrictions on fractional giving.

First, the donors cannot take a bigger deduction just because a work has grown in value; he or she must always base their write-offs on the amount they said their artwork was worth the first time.

Second, museums must take substantial possession of the artwork at the time of the gift and take full possession of it within 10 years.

This change in the tax laws, which affects all donations made after August 17, has unleashed a firestorm of protests and hand-wringing by museum directors, tax lawyers, and wealthy donors.

The American Association of Museums sent a protest letter to Sen. Charles Grassley, the Iowa Republican who chairs the Senate Finance Committee, which drafted the new legislation.

Donors will no longer want to make art donations if they cannot capitalize on the appreciated value of their gifts and must complete their gifts within 10 years, the letter said.

The reaction of museum directors was predictable. It reflects a purely self-interested view of the tax laws, notions of tax equity, and the role of nonprofit groups in general.

Most other charitable gifts don't come with the flexibility and big write-offs available for artworks. What's more, the museum directors dismiss the fact that only about 10 percent of all donations of art are accomplished through fractional giving. And it paints the restrictions on fractional giving as earth-shattering, as though the end of the museum world is about to unfold. What palpable nonsense.

As for wealthy donors, can we blame some of them for taking advantage of such unfair incentives and then fighting to maintain these tax inequities?

On the first count, the answer is no; on the second, the answer is yes. Wealthy Americans should be ashamed of themselves for letting their greed trump the notion of charitable generosity.

Not only do they want ample tax deductions for their gifts but they also want to keep their gifts at home. Those donations aren't really gifts, although eventually the donated art objects will land in museums. They seem more like tax rip-offs.

Agnes Gund, a New York socialite and wealthy art collector, told *The New York Times* that fractional giving "is really a driving force for people who are true collectors...If you are collecting because you love the art, you want to be able to enjoy the work while you have it and not give it away very soon."

The answer to this donor dilemma is simple. Either keep the art at home, or give it to a museum now and receive the standard tax deduction for any gift.

Donors shouldn't be permitted to do both. Would some collectors refuse to donate their art before their deaths without tax advantages for fractional giving? Possibly. But many others, I suspect, would give their art without the unfair tax incentives.

Those wealthy donors who plan to lobby and fight for the reversal of the new tax provisions will only give themselves and the notion of American generosity a bad name.

After all, why should multimillionaires and billionaires worry about what are for them relatively small tax breaks? Instead, they should focus on how to support a society that permitted them to amass all their wealth.

What is particularly galling in this brouhaha over fractional giving of art objects is the position taken by Sen. Charles Schumer, Democrat of New York.

Responding to the criticism of the new law by New York museums, according to *The New York Times*, the senator replied, "We must try to right this wrong."

For a politician who has repeatedly attacked the Bush administration for unfairly cutting taxes for the wealthy, his stance in defending this tax boondoggle for the rich is perplexing and hypocritical. He deserves condemnation.

The American public should thank Senator Grassley, his colleagues on the Senate Finance Committee, and the committee's staff for their effort to make the tax code fairer and to ensure that all citizens have the right to view artworks that received federal subsidies, in this case through a tax deduction for the donors.

While placing restrictions on fractional giving was a major step in the right direction, it is not enough. Donors shouldn't get any deductions at all unless they give away their art objects fully and completely. That's the next act for Congress.

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