

On behalf of the Los Angeles County Museum of Art ("LACMA"), I urge you to include in the Technical Corrections bill (S. 4026 and H.R. 6264) the following changes to the provisions on fractional gifts in the recently enacted Pension Protection Act of 2006 (Section 1218) (the "Act"). Without these technical corrections, the Act will have a substantial chilling effect on such fractional gifts, on which the LACMA and, indeed, all of our museums rely.

Here at LACMA, we regularly receive fractional interests in donated art works which in fact do become 100% acquisitions. In just the last three years, such fractional donations, now 100% owned by LACMA, include: 39 etchings by David Hockney, 6 paintings by other artists (Matt Mullican, Tim Ebner, Simon de Vlieger, Aelbert Cuyp, Jacob van Ruisdael, and Jan van Huysum); an assemblage by François Morellet; sculptures by Keith Haring and Allen Ruppersberg; 43 photographs by Robert Stivers and Garry Winogrand, prints by Sam Francis and Johann Friedrich Overbeck; and a Japanese screen of Kinoshita Itsuun (Shōsai). In addition, LACMA currently owns a fractional interest in well more than 100 significant works of art, under gift agreements entered into before HR 4 was enacted. Each of these agreements will be negatively impacted by the provisions of the Act, if it is permitted to apply retroactively.

Specifically, the following provisions on fractional interests in the Act would have a significant, unfavorable effect on LACMA's programs:

1. ***Estate and Gift Tax Consequence.*** If a donor were to initiate a fractional gift after the effective date of the Act, or if he or she were to donate additional fractions of gifts already in progress, each successive fraction would trigger either gift tax (during the donor's life) or estate tax consequences (after the donor's death), because of the difference between the deduction permitted under the Act and the actual fair-market value.

To correct the problem: all fractions should be allowed at the fair-market value after a qualified appraisal.

2. ***Transitional clarification.*** The new law should not apply to subsequent gifts of fractional interests in property if the donee institution already owns a fractional interest in such property. This would avoid disrupting pre-existing acquisition, program, and development plans by museums that were put in place in reliance on continuing acquisition of additional fractions of already partially-owned gifts. Because this clarification would apply only to works in which fractional interests were given prior to enactment, there is no risk that this change would give rise to a pre-effective date flurry of fractional gifts. Without this clarification, donors who have already made gifts of fractional interests in works will be unlikely to give additional interests out of fear of becoming subject to the new law's uncertainties and harsh penalties. Thus the next installment of fractional gifts already in process will most likely not come to the donee museum until the death of the donor.

To correct the problem: only fractional gifts begun after the effective date should be subject to the new law.

3. ***Eliminate the requirement for gifts to be given within 10 years or donor's death whichever is sooner.*** This provision would likely result in the postponement, and in some cases, outright elimination of some gifts of fractional gifts in artwork to LACMA. Rather than surrender a work in so short a time, a potential donor might well prefer to wait until later in life. The gift postponed could then become the gift denied, if plans change or if the donor dies before making the gift. It would be fairer and still encourage giving to require that the museum take actual possession for a period of time proportional to the fractional gift, rather than imposing an arbitrary maximum ten-year period on a donor and donee museum. We do agree that the donor should be required to provide for the gift of the remainder of the work at or prior to the date of death of the donor (or the donor's spouse), which is generally the practice of most museums.

To correct the problem: allow donors to give the gift over the period of time that suits their needs. To ensure the charitable disposition of fractional gifts and proper disclosure of such donations, the new law should require binding contracts with mandatory reporting and recapture of deductions plus interest. This would mark a significant change for some institutions and would ensure that any work for which a tax deduction is taken will ultimately go to the donee museum for the benefit of taxpayers. Such a contract should require:

- a) A donor of an undivided fractional interest in a work of art to evidence his or her gift in writing and pledge the remainder of the work to the same donee on or before his or her death (or the later death of the donor's spouse);
- b) Museums to give written acknowledgment of receipt of fractional interest gifts;
- c) Museums, under penalty, to inform the IRS, similar to reporting required by IRS Form 8282, if donors fail to give a remaining fractional interest, fail to comply with the possession requirements detailed above, or fail to honor any other contract requirement;
- d) The recapture of deductions plus interest for donors who fail to comply with the terms of fractional gift contracts.

4. ***To ensure accurate appraisals.*** The provision that the donor must use the original appraisal, if lower, for each fractional gift is simply unfair to the donor and thus a disincentive to giving, since donors would not be able to take the full measure of the value of an appreciated gift. The more rigorous rules for the appraisal of donated personal property should be sufficient to address any perceived abuses. In lieu of the punitive requirement that donors use the lower of the appraisal at the time of the initial fractional gift or any subsequent fractions of the gift, donors should be allowed to use a current, accurate, fair-market value appraisal, provided that appraisals for fractional gifts in which the value of the work as a whole exceeds \$1 million automatically would be subject to review by the IRS Art Advisory Panel. The US Treasury has confirmed the reliability and efficacy of the IRS Art Advisory Panel. The technical correction could include a requirement directing the IRS to require taxpayers to identify such works by checking a box on the appropriate tax form.

To correct the problem: submit all works the whole of which exceeds \$1 million to the IRS Art Advisory Panel.

5. ***Physical possession requirement and exceptions to create a safe harbor.*** Under the Act, the donee institution must take physical possession of the work of art for a substantial period within the 10-year period or before the fractional gift is complete. We don't disagree that some requirement of proportional possession be included prior to the time the gift is completed, but believe that (1) for purposes of determining "physical possession," credit will be given for any exhibition of the work to the public at another institution; (2) the donee's possession should be proportional over the life of the loan (exercised, perhaps, within each 10 year period); and (3) in certain cases, physical possession may be waived if either:
- a) The donee museum certifies that physical possession within a 10-year period would not be in the interest of the work of art, the museum or the public because either:
 - i) The museum's permanent collection, exhibition, planning, educational, or construction commitments would prevent showing the work to the public during the period, or
 - ii) Packing and transporting the work may damage the work because, for example, of its fragility; or cause a serious financial hardship to the museum because, for example of the cost of transporting and assembling an overly large work of art; or

- b) The donor dies within a 10-year period before the donee has an opportunity to possess the work.

To correct the problem: create exceptions in the rare case a museum cannot accommodate a work or the work would risk damage or extraordinary costs to move.

The mission of LACMA is to serve the public through the collection, conservation, exhibition and interpretation of significant works of art from a broad range of cultures and historical periods, and through the translation of these collections into meaningful educational, aesthetic, intellectual and cultural experiences for the widest array of audiences.

To carry out this mission, LACMA relies in substantial part on the generosity of donors to increase its permanent collection by the donation of works of art. In general, the tax code recognizes and supports this activity through its long-standing incentives fostering such private philanthropy. Unless these technical corrections are adopted, the Act's changes on fractional interests will discourage and place significant negative limits on donors wishing to so contribute. In turn, this could detrimentally impact LACMA's operations. To ensure that the Act does not harm legitimate charitable activity, it is important that the Technical Corrections bill eliminate altogether or at least modify these harmful provisions in the Act.

We would appreciate your attention to these suggested technical corrections and thank you for your consideration of this request and for supporting charitable organizations.

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