

TAX FAIRNESS FOR ARTISTS AND WRITERS

Strengthening the Creative Sector and Providing Public Access to America's Artistic Heritage

Musicians, scholars, orchestras, and the public rely on numerous tax provisions that strengthen the creative sector. Congress should support provisions in upcoming tax technical corrections bills or other future relevant legislation that would provide tangible assistance to artists, cultural communities, and in turn, the public.

ACTION NEEDED

We urge Congress to:

- *Enact H.R. 1793, the Artist-Museum Partnership Act, which would allow artists to deduct the fair market value of their work when they donate it to charitable collecting institutions.*
- *Update the qualified performing artist tax deduction by supporting, HR 3121, the Performing Artists Tax Parity Act of 2019, and reinstate deductions for unreimbursed employee business expenses.*
- *Maintain artist eligibility in the Low-Income Housing Tax Credit program, the income tax exemption for private activity bonds, and the Historic Tax Credit.*

TALKING POINTS

Fair Market Deduction for Artists' Donations

- Most museums, libraries, and archives acquire new works primarily through donations. However, artists, writers, choreographers, and composers—unlike collectors—have no financial incentive to donate their works because they cannot claim a tax deduction for the 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 may never come into the public domain. The Artist-Museum Partnership Act might be the key difference that encourages living composers and conductors to gift original manuscripts, marked scores, and performance notes to a nonprofit cultural organization.
- If more works of contemporary, living artists were available to the public, emerging artists, visual artists, performers, scholars, and the public at large would benefit from this access and draw inspiration from these current pieces. Collectively, these works constitute an important part of America's heritage.
- 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. The creators of those works should have the same right when they donate their works. *It is only fair.* Furthermore, when artists die, works of art in their estate are taxable at their fair market value.
- A [report](#) prepared for Congress by the National Endowment for the Arts at the request of Sen. Patrick Leahy (D-VT) and former Sen. Robert Bennett (R-UT) demonstrates how current law impacts artists and writers and undermines the ability of cultural organizations to preserve our nation's heritage.

Tax Deductions for Artists' Expenses

- Tax reform signed into law in 2017 (P.L. 115-97) preserved the long-standing "above the line" tax deduction for job-related expenses of performing artists who work for two or more employers and have related expenses that are more than 10% of their performing arts income. Although the income cap of

\$16,000 is grossly out-of-date (dating to 1986 and never adjusted for inflation), this provision helps some artists pursue their passion to the benefit of audiences everywhere

- On June 5, 2019, Rep. Judy Chu (D-CA) and Rep. Vern Buchanan (R-FL) introduced HR 3121, the Performing Artist Tax Parity Act of 2019, which would raise the income ceiling to \$100,000 for individual filers and \$200,000 for joint filers.
- Across occupations, P.L. 115-97 eliminated the opportunity to deduct unreimbursed employee business expenses that exceed 2% of adjusted gross income. For musicians who are employees, this means that the costs of supplies, instruments, professional dues, and other expenses essential to employment are no longer tax-deductible. This deduction should be reinstated.

Low-Income Housing Tax Credit (LIHTC)

- The LIHTC program has preserved existing affordable housing and built new affordable housing nationwide, including almost 3 million new housing units. Some of this housing brings artists into city-centers to preserve and support the cultural community, and helps address vacant industrial properties, restores community access, and promotes economic growth. The LIHTC was preserved under P.L. 115-97.

Historic Tax Credit (HTC)

- For over three decades, the HTC has been a widely used redevelopment tool for cities, towns, and rural communities across the country. It has a proven track record of stimulating economic growth and creating jobs through public-private leveraging opportunities. Through the life of the program, the HTC has preserved more than 42,000 buildings, expanding cultural access and preserving American heritage. P.L. 115-97 preserved the 20 percent credit, but eliminated the 10 percent credit for pre-1936 buildings.

Private Activity Bonds

- State and local governments use private activity bonds to provide financing at lower borrowing costs, enabling construction of cultural infrastructure projects like museums and concert halls, and also hospitals, port authorities, and housing projects. Nonprofits have used tax-exempt private activity bonds to obtain lower-cost financing for such projects that provide a benefit to the public.

BACKGROUND

As work to enact comprehensive tax reform occurred in December 2017, numerous provisions important to cultural institutions, nonprofits, and individual artists cropped up. Some favorable provisions were enacted, others weren't included, and some harmful provisions made it into the final bill, as outlined above.

One of the long-sought-after provisions not included was the Artist-Museum Partnership Act, a proposal that has been repeatedly introduced in Congress for over 15 years to correct an inequity for artists that also harms public access to living artists' works of art. For many years, 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 this legislation was immediate and drastic.* As just one example, the Museum of Modern Art in New York received 321 gifts from artists in the three years prior to 1969; in the three following years, the museum received 28 works of art from artists—a decrease of more than 90 percent. The Senate has passed artists deduction legislation five times in previous years, but the bills have not been reviewed by the House.

The arts community seeks support for provisions that would strengthen the creative sector in upcoming tax technical correction bills or other future relevant legislation.

*The League of American Orchestras is a member of the Legislative Planning Committee for Arts Advocacy Day.
Positions in this brief were developed in partnership with the Committee.*