Statement on Tax Reform
Submitted to the
Charitable/Exempt Organizations Tax Reform Working Groups
by the
Association of Art Museum Directors

April 15, 2013

The Association of Art Museum Directors (AAMD) is composed of the directors of approximately 220 of the leading art museums in North America. AAMD's mission is to support its members in increasing the contribution of art museums to society.

This statement is to be read in conjunction with the statement we submitted for the record of the February 14 hearing on charitable giving. Rather than re-state what was already said, we would like to address the issue of related-use gifts of art, which space considerations did not allow us to raise in February.

Art museums rely on the generosity of donors to build their collections. On average, 80 percent of the art in museum collections arrived as gifts, a figure confirmed by the 2012 AAMD Statistical Report, which had 95% participation from our members.

All art museums are required by the professional standards of the field to have strict standards for deciding what to accept, including written collections policies and careful board oversight. Museums take qualitative factors into account when assessing the benefit of offered gifts. They acquire cautiously, because caring for an object is a long-term financial commitment. For these reasons, most museums refuse probably 90 percent of what they are offered.

Gifts of art have their own enforcement mechanism at the IRS – the Art Appraisal Service, which receives expert advice from the Art Advisory Panel. Large gifts are front-page news and are highly unlikely to escape IRS scrutiny. Certain types of gifts have their own reporting requirements on the part of both donor and donee. Most museums publish all gifts in their annual report. In short, gifts of art are highly transparent.

For these reasons, gifts of art should be looked at separately from other forms of noncash gifts. Museums of course benefit from such other gifts, but we handle them no differently from other nonprofits and therefore have nothing to add to the discussion.

Some current rules discourage giving art. First, artists can only deduct their "basis". Major gifts by artists have been rare since 1969, when this rule was put in place. As a result, the public has lost the opportunity to engage with art that speaks to the issues of its own time. We understand that there are complicated policy issues - but for art museums, what it comes down to is that artists don't give and the public is deprived. And artists feel that the law is inequitable.

Second, the Pension Protection Act greatly restricted both the deductibility of fractional gifts and the terms under which they may be given. As a result, such gifts are now vanishingly rare.

Finally, with the Tax Reform Act of 1986, despite warnings of harmful consequences, Congress severely restricted the deductibility of gifts of appreciated property, going so far as to turn them into a preference item under the Alternative Minimum Tax. The result was a drastic drop in gifts, including not only art but also securities and real estate. By 1990, Congress reversed itself with respect to tangible property, and by 1993, for all other forms of property as well. In the discussions surrounding tax reform now, in 2013, we see exactly the same arguments advanced for restricting gifts of property.

Pure policy considerations led to the restrictions on artist gifts, fractional gifts, and gifts of appreciated property. In our experience, these considerations led to extremely poor practical consequences. These are poor outcomes to balance against pure policy.

We commend the Working Group on Charitable/Exempt Organizations for soliciting public comment.

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