



AMERICANS  
*for the* ARTS

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June 7, 2005

The Hon. Charles Grassley  
Chairman  
Committee on Finance  
United States Senate  
Washington, DC 20510

The Hon. Max Baucus  
Ranking Member  
Committee on Finance  
United States Senate  
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Baucus:

I am writing to you on behalf of America's local arts agencies as well as on behalf of artists, patrons, and arts advocates around the nation.

Of the nation's 4,000-plus local arts agencies, about three-quarters are 501(c)(3) public charities while the remainder are municipal agencies. As you know, institutions under both forms of governance are subject to the same law with respect to charitable donations. Local arts agencies often maintain art collections that are built through donations, and they are also responsible for placing art in municipal buildings and parks where it is seen by a broad public. Therefore, they are deeply interested in preserving tax deductibility for non-cash gifts, including though not limited to gifts of art. They are also interested in the broader questions of charitable governance on which your Committee is working.

As art is central to our members' missions, we will particularly address gifts of art, but we will also comment on other types of gifts that our organizations count on to advance their charitable missions, as well as on several proposals regarding the governance of nonprofit organizations.

**Gifts of tangible property, including art:**

We are pleased that the Joint Committee on Taxation (JCT) staff report of January 27 included an option for retaining the fair market value deduction for gifts of tangible personal property that are put to exempt purpose by the recipient institutions. We have no problem with the language effectively requiring recipients to retain "related-use" gifts for three years. In fact, it represents an improvement over current law because it affords practitioners a brighter line. We also understand and appreciate the JCT proposal to eliminate the requirement to file the Form 8282 upon disposal of gifts which the recipient has declared to be non-exempt-purpose. However, we have reservations over the requirement to file the Form 8282 upon disposal of related-use gifts worth as little as \$500 as opposed to the current-law requirement, which applies to gifts of over \$5,000. On the one hand, it is unlikely that local arts agencies often dispose of related-use gifts after only three years. On the other hand, they



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certainly receive many gifts that are worth less than \$5,000. Therefore, it seems likely that instituting a tracking mechanism for such gifts would impose a fairly substantial burden. We would prefer keeping the reporting level at \$5,000, as under current law.

As you know, Independent Sector's Nonprofit Panel has also put forward an option, which, though different from JCT's, also appears to be reasonable. In common with Independent Sector, we suggest that any final language should hold appraisers to a higher standard than current law requires. Appraisers are viewed as experts, and those who seek their advice are likely to defer to it. Thus, they are in a unique position to influence the compliance behavior of donors. Therefore, we suggest that you develop an enforcement regimen that includes additional requirements and/or penalties for appraisers. We understand that the professional appraisers societies are working on a similar proposal in this regard.

### **Other non-cash gifts:**

While nonprofit arts organizations rely inherently on gifts of art to carry out their missions, they also receive gifts of land, buildings, and closely held stock. The proposals to limit the deductibility of such gifts therefore causes deep concern. We urge you to find a workable solution to limit possibilities of abuse while preserving the incentive for individuals to donate private assets for public purposes, and we would be happy to work with you toward that result.

As you know, we also support a new incentive: the artists' fair-market value deduction, which you included in last year's version of the CARE Act. The language of the bill (reintroduced this year as S. 372) was carefully crafted to provide safeguards against any potential abuse. If enacted, this bill would bring more works by living artists into public collections, where they would be enjoyed by current and future generations.

We would also like to mention our support for the IRA Rollover, another provision that you included in last year's CARE Act.

### **Governance issues:**

Three issues in particular have caused concern in our field. All were raised by the Finance Committee last year.

The first relates to restricting the size of nonprofit boards. In short, we do not believe that a restriction would be practical. Different institutions have different requirements; while it makes sense that a tiny organization with a small budget and uncomplicated services might make do with a small board, a more complex institution might well need to involve more individuals with various fields of expertise on its



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board. Also, local arts agencies attempt to represent the entire community, not just part of it, and therefore larger and more diverse communities in particular are likely to need larger boards. We hope that the Finance Committee has reconsidered this proposal.

Second, we urge you to proceed with great caution in lowering the budget threshold for requiring nonprofits to conduct expensive and frequent financial audits. Organizations with operating budgets of under \$1 million are extraordinarily sensitive to new paperwork and financial requirements. We suspect that the diversion of scarce resources from services towards administration would not be justified in terms of improved public oversight and accountability.

A final issue on which we offer comment was raised by JCT: namely, requiring organizations to file detailed information every five years in order to establish that they are still organized and operating for exempt purposes. We concur that a periodic review would be useful for the organizations and the IRS. It may be reasonable to expect organizations to periodically submit any changes in bylaws or mission statements, and perhaps to summarize past activities. However, the scope of the information that JCT would require appears to be overly broad, especially with respect to forecasting future activities. We recommend taking a much closer look at what information should be required. We also concur with Independent Sector's Nonprofit Panel that boards ought to conduct a periodic review as a matter of best practice.

### **Conclusion:**

For our part, we pledge to educate the nation's local arts agencies, including both boards and staffs, regarding any changes in the law or regulations. We would be happy to work with you and the IRS toward that end.

Again, thank you very much for your concern for America's charities. We believe that the discussion of the past two years has been a useful one, and we look forward to its successful conclusion.

Sincerely,

Robert L. Lynch  
President and CEO