

Donating fine art

How it could be the smart thing to do, taxwise **Interviewed by Steve Trusty**

Do you own fine art? Have you considered donating fine art for tax benefits, to help out a cause that you believe in, or both? There are beneficial tax breaks to collectors who donate art to museums or other qualified charitable organizations. Before you make any decisions on contributing your fine art, there are numerous factors to consider.

“It takes smart planning to maximize financial benefits and minimize tax consequences of owning and donating fine art,” says Emery Sheer, CPA*/ABV, CVA, partner in the Coral Gables headquartered CPA firm of Berenfeld, Spritzer, Shechter & Sheer. “The laws are complex and are constantly changing. But, when all the rules are followed, these donations can be a win-win for the donor and the recipient.”

Smart Business talked with Sheer for more insight on some of the things to consider as you contemplate donating fine art.

What is the definition of fine art in accounting/tax terms?

Artwork can be described as objects that are with visual content and have an aesthetic value. Examples include collectibles as well as fine arts, such as paintings, drawings, prints, sculptures and photography.

What are some of the tax ramifications of donating fine art?

Generally, a work of art is considered capital gain property rather than ordinary income property. As capital gain, its donation can be deducted from your taxes at full fair market value as long as certain rules are met, including the related-use rule, and that the value does not exceed 30 percent of adjusted gross income (AGI). In this case, any excess deductibility can be carried over the five following years. It only qualifies for ordinary income when:

- It is created by the donor.
- It is given to the donor as a gift from the creator.
- It is the inventory of a dealer of that



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type of item.

- It has been owned for less than a year.

What happens if the art meets one of those four ordinary income definitions?

If you donate art that qualifies as ordinary income, you will only be able to deduct for your investment in the art. The amount of the deduction in any individual tax year may be limited. If you are the creator of the art, you may only deduct the value of supplies, such as canvas, paints and stretcher bars.

What is meant by the ‘related-use’ rule?

The charity’s use of the art must be related to the basis for the organization’s charitable exemption under Section 501. The art must be of a type normally retained and exhibited by that charitable organization, such as a museum or educational institution that has a collection of similar art or uses art for instruction. If you don’t meet this requirement, you will lose all the appreciated value of the donated art.

For instance, a museum of modern art would not meet the test of related use for a Michelangelo or van Gogh painting. It is important to obtain a clear agreement. If possible, a ‘deed of gift’ should be obtained

that clearly states that the museum is accepting the art and will be putting it to use as a related purpose for at least three years.

Can the art be donated to any entity that will use it for a related purpose?

Make sure that you are donating to an IRS-recognized charity. If you donate to a private foundation, you can only deduct your costs for a contribution of appreciated art.

To confirm whether your charity of choice qualifies, look at IRS Publication 78, Cumulative List of Organizations. This list is available on the IRS Web site at www.irs.gov.

Is an appraisal required to determine the fair market value?

If the gift property has a value exceeding \$5,000, the planned recipient of the property must have it appraised by a qualified appraiser not more than 60 days before the acceptance of the gift. The appraiser must provide 12 specific points of information.

What should be done if a work of art has depreciated in value?

That situation is rare, but if a work of art becomes damaged — like an elbow through a painting or the wreck of an antique car — consider selling it and donating the proceeds. Besides taking a charitable contribution for the cash donation, you may be eligible to deduct the loss.

Any additional recommendations?

Charitable giving options are ever-changing and have been evolving since the tax laws of 1969. Laws that may seem to be unrelated may have an impact. Make sure that your tax advisers are keeping up on the latest laws and rulings.

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