

Donating an Art Collection Can Be a Challenge

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Meet Ms. Connoisseur, the scion of a prominent New York family. She is an avid collector of German Expressionist works and inherited her family's collection of Dutch Masters paintings in the early 1960s. Ms. Connoisseur has a strong emotional attachment to her paintings, particularly a Rembrandt portrait that used to hang in her father's study.

Much to her chagrin, the cost of conserving, storing and insuring her sizeable collection is not insignificant, and in the present economic climate, Ms. Connoisseur can no longer afford to maintain her entire collection.

Although auctioneers have recommended that she sell the crown jewels of her collection individually at auction, Ms. Connoisseur does not wish to do that. She does not wish to see the collection that she and her parents spent a lifetime accumulating spread to the four winds.

Instead, Ms. Connoisseur's desire is to share her paintings with the public, and seeks to donate her entire collection to a single art museum.

So, Ms. Connoisseur has now come to you, her financial advisor, for a consultation on her proposed charitable donation of artwork. In order to claim a deduction for her charitable contribution of artwork, the IRS will require Ms. Connoisseur to submit written confirmation of her donation from the recipient museum. However, finding a museum to accept an entire art collection is no easy task and can prove to be a heart-wrenching process for donors such as Ms. Connoisseur.

Her advisor should manage her expectations accordingly. Indeed, the works on display at a museum may constitute only a fraction of its holdings, many of which may be housed off site in secure, climate-controlled storage facilities.

Given the expense involved in maintaining works that are already in its collection, the museum may not possess the financial resources to accept all of Ms. Connoisseur's paintings, and may instead opt to cherry pick the *crème-de-la-crème* of her collection.

It is also possible that in evaluating the collection, the museum may make certain discoveries that Ms. Connoisseur finds disturbing, disappointing or even embarrassing. For example, the curator of a museum's Dutch Masters collection might determine that the beloved Rembrandt portrait that used to hang in her father's study is, in fact, a 19th-century forgery.

Or, a provenance search may identify several of the Egon Schiele works in Ms. Connoisseur's collection as Nazi-era looted art. Ultimately, Ms. Connoisseur may need to exclude a handful of works from her donation and be content that she was, in fact, able to donate the majority of her collection to a single museum.

Although charitable donations of artwork may give rise to substantial tax benefits, Ms. Connoisseur should be cognizant that the IRS does not treat all donations equally for tax purposes.

For example, the ultimate use to which a recipient organization puts donated artwork will impact the amount of the charitable deduction that Ms. Connoisseur will ultimately receive.

Indeed, Ms. Connoisseur probably assumes that the deduction she receives for her collection will be equal to the fair market value of the artwork at the time of the contribution (subject to certain limitations based on Ms. Connoisseur's adjusted gross income).

But this is the case only if the artwork is related to the exempt purpose of the charitable organization. Since Ms. Connoisseur seeks to donate her collection to an art museum, whose mission is, among other things, to expose the public to art, the IRS would probably determine that her donation was in fact related to the exempt purpose of charitable organization.

Say, on the other hand, Ms. Connoisseur had a change of heart and decided to donate her entire collection to her favorite non-profit to promote literacy in the third world, thinking that the charity could sell the collection and then use the proceeds to fund its operations. The IRS would probably determine that her contribution was not related to the exempt purpose of the organization.

Under such circumstances, the IRS would reduce the amount of the Ms. Connoisseur's deduction by the amount of gain that would have been her long-term capital gain, had she sold the artwork at its fair market value at the time of her charitable donation.

So the amount of the Ms. Connoisseur's charitable deduction would be limited to her basis in the artwork (i.e. what she paid for it) rather than the artwork's fair market value. Since Ms. Connoisseur inherited her Dutch Masters paintings in the 1960s and has probably owned a number of her German Expressionist works for a long period of time, this difference could be substantial.

Ms. Connoisseur's IRS reporting requirements will become increasingly stringent, as the value of her claimed deduction increases. Assuming that the value of her deduction will be in the six or seven figure range, she would need to file both a Form 8283 (which the IRS requires if the deduction exceeds \$500), and a written appraisal report on the donated artwork from a qualified appraiser (which the IRS requires if the deduction exceeds \$5,000).

The IRS is likely to give more weight to well-formulated, detailed appraisals driven by hard facts and authored by appraisers who are recognized as experts in their fields.

Accordingly, Ms. Connoisseur might consider retaining two appraisers—one for her German Expressionist works and another for her Dutch Masters.

Assuming that Ms. Connoisseur has already obtained a qualified appraisal of each work that she is donating, and at least one of the works has a value of \$50,000 or more, Revenue Procedure 96-15 permits her to request a statement of value from the IRS before filing the tax return that claims her charitable deduction.

In order to do so, Ms. Connoisseur need only attach a completed Form 8283 and a copy of the qualified appraisal to her advance ruling request.

Although she will be required to pay the IRS a fee of \$2,500 for the first three works and \$250 for each additional work, the advance ruling is binding.

That means Ms. Connoisseur will be permitted to rely upon it when claiming her deduction.

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