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## Giving It Away

By **William Hanley**

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Giving It Away

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Photo by John Glembin, courtesy Milwaukee Art Museum

Manierre Dawson,  
"Unidentified" (1913)[CLICK TO ENLARGE PHOTO](#)

NEW YORK—As sales continue to set records this auction season, collectors may be tempted to cash in on the booming market by putting big-name work on the block. But art advisor and collector **Laurence Zale** of Manhattan's **Laurence C. Zale Associates** notes that for some U.S. collectors, rushing to consign work to auction may not be the best way to take advantage of soaring prices. "I think it's important to consider that the capital gains [tax] rate for art is higher than any other asset class," he said. "It's 28 percent, and if you're a New York resident, you have to factor in state and local taxes as well, bringing the number to just under 40 percent."

Given the risk involved in betting that the hammer price will far enough exceed a work's value to offset the sale's tax, many collectors have opted instead to donate work to a collecting institution, which enables them to take a healthy deduction. If a collector makes an outright gift of a work, the full value of the piece—determined by an independent, qualified appraiser no more than 60 days prior to the donation—can be written off that year's taxes. "While you want to be philanthropic," said Zale. "There is also a practical incentive to making a gift to a museum, historical society, or another qualified charity."

### Finding the Right Fit

Donations generally need to fit neatly into the receiving institution's acquisitions plan, which at any given museum can be determined by everyone from curators to members of the board of trustees to the director. As an art advisor, Zale stresses the importance of cultivating a long-term collecting strategy that takes into account where the work may eventually end up. "I recommend that a triangular relationship be established among collectors and their art advisor, financial advisor, and legal council, and then a plan be put together that takes into consideration both lifetime and estate issues," he said.

Museums are careful about what works they take as gifts because they do not want to devote resources to objects that fall outside their curatorial programs. But there are also consequences for the donor if the institution acquires a work that does not fit its collecting goals. "One of my primary concerns [as an art advisor] is with the 'related use'

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Arthur Smith, "Necklace" (ca. 1958)

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provision of the tax code," said Zale of a stipulation mandating that a tax-deductible gift be placed on public view or made available for research. "I need to ensure that the recipient will not deaccession quickly; otherwise the donor runs the risk of being audited and having to pay penalties and interest on the tax deduction because the gift has not been put to a 'related use.'"

"When we take things into the collection, we're very careful about taking things that we would expect to be able to exhibit or use in some educational or research capacity," said **Joe Ketner**, chief curator at the **Milwaukee Art Museum**. "I'm quite candid with donors or potential donors. If someone were to come to us with something that we absolutely would never use, it's very important to be up front and say, 'No, this is a wonderful thing and we know it's important to you, but it's not likely that we would use this.'"

"Then we offer to assist in directing the donor to an institution that we think would use the work," he added. "Inevitably, it develops the respect of the donor in your institution."

## Building Relationships

From the museum's point of view, developing respect and fostering relationships with local collectors is the most substantial way to build a collection. "That's what shapes the growth of every major institution," said Ketner, "even more so than curatorial and directorial acquisitions. What do people in the community collect, and what do they want to leave as a legacy?"

Thanks to its **Santiago Calatrava**-designed home, the Milwaukee Art Museum has a global profile, but its collection is nevertheless rooted in gifts from benefactors with ties to the Midwest. "More often than not, someone with a significant

collection would be thinking about giving it to the institution in their community," he said.

As an example of how local collections influence the museum, Ketner mentioned a recently acquired group of works by the Chicago painter **Manierre Dawson**, a little-known artist who was active at the turn of the 20th century. "Besides a show that was done in the 1970s and a gallery exhibition that was done within the last 10 years, there has been very little work on Dawson, but I believe that the Milwaukee Art Museum may have the earliest abstract painting done by an American artist in his *Prognostic* (1910)," Ketner said. "We got to know the heirs who managed the estate, developed a good relationship with them, and they have, over the last couple of years, given us some very nice Dawson paintings that fit very well with our American and European early-Modern work."

This kind of organic relationship between curator and donor generally shapes the gift process, but some museums have also begun to employ more direct approaches to attracting donations. As the **Museum of Fine Arts**, Boston, constructs a new \$500 million building, slated to open in 2010, it has gotten more aggressive in soliciting gifts and tapping new resources. "The museum is placing a priority on gifts," said **David Blackman**, in charge of gift planning at the MFA, "especially now that art prices are just outrageous."

In 2001, the museum launched the Gifts of Art program with Blackman at the helm. This new initiative put him in the position—unique in the museum world—of official liaison between potential donors and the curators, trustees, and other people at the museum who traditionally work with collectors. "The curators have so many great relationships with prospective donors already," he said. "But I see my job as helping to potentially identify new donors, and I can assist them in making gifts by explaining the process or even the tax issues."

So far the program has brought several important gifts to the museum, including the collection of **Melvin N. Blake** and **Frank M. Purnell**, who bequeathed work by artists such as **Claudio Bravo**, **Lucien Freud**, and **Larry Rivers** to the museum, as well as a 600-piece collection of contemporary studio craft jewelry, a gift from **Daphne Farago**, which will be the subject of an exhibition opening May 22.

### Tricky Tax Breaks

Potential donors and museums alike were dealt a blow last year when the U.S. government passed the Pension Protection Act of 2006, which decreased tax incentives for a popular kind of donation, known as a "fractional gift." Fractional gifts allow institutions to receive an immediate percentage interest in a work in the donor's collection. This percentage increases over a period of time until the institution owns the piece outright. In the interim both the donor and the museum can display the work.

Prior to the Pension Protection Act, the donor could take a tax deduction every year equal to the percentage of the work given to the institution. If the piece's value increased during the year, the amount of the deduction would be higher. Following the change of law, however, donors can deduct only a percentage of the work's value at the time the institution received its first percentage—no matter how much the value has increased over time—and the entire work must be transferred within 10 years. On top of that, if the value declines over time, the donor must deduct a percentage of the new, lower value, rather than the original appraisal.

According to Zale, it's too early to say if the legislation has had a cooling effect on the overall number of gifts given to museums. "It will take a while for people to say with varying degrees of confidence that gifts have either stayed the same or changed up or down, but for the moment I would say that these particular gifts need to be handled with great care," he said.

As a curator, Ketner worries about the negative effects of the legislation. Without the combined incentives of sustaining a partial interest in a work while taking increasing tax benefits, Ketner sees donors becoming less likely to make gifts of their most important pieces. "You will see fewer and fewer of those gifts," he said. "At the Milwaukee Art Museum, one of our greatest sculptures is a **Donald Judd** that is a fractional gift. It's unlikely that we will see that kind of thing again."

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