Reprinted with permission from:
FineArtConnoisseur
800.610.5771 or International 011-561.655.8778.
CLICK TO SUBSCRIBE

Donating Art Is a Wise Move

By PHILIP T. TEMPLE and LAURENCE C. ZALE

Many collectors feel an emotional involvement with their artworks, while others view them as disposable assets. The wisest approach is to regard them through both lenses. Those who want to make gifts of art, in life or after death, face such complex issues as authentication, provenance, valuation, and taxation. Thus they should work with independent visual arts advisors, museum development officers, and legal and tax counsel to ensure the greatest benefits for all parties.

Recent tax legislation has created potential adverse consequences for donors who wish to give a fractional interest in an artwork. Easier to navigate are outright gifts of art related to the purpose of the donee charity: The deduction is for fair market value, with a ceiling of 30 percent of the donor's adjusted gross income (AGI), and with a five-year carryover for any excess contribution. If the gift is not put to a related use by the charity, the deduction is based only on cost, with a 50 percent ceiling.

Art can also be transferred through split-interest, planned giving vehicles in which the donor usually retains some type of income stream for life, with the charity receiving the assets when the trust terminates. Here are two real-life studies to consider.

GIVING AN ENTIRE COLLECTION TO AN ART MUSEUM

A widower amassed one of America's finest collections of Baroque art, with an estimated fair market value of more than $30 million. He wanted to keep the collection intact while providing income for his daughter. Understandably, he was concerned about estate tax (potentially 50 percent of value), which would require an auction sale, since art comprised the bulk of the estate.

Thus the collection was transferred to a revocable trust, which at the collector's death became irrevocable; at that time its assets (the collection) were divided into two equal shares. The first share was placed into a net-income-with-makeup unitrust, paying the lesser of (i) 5 percent of the fair market value of the trust assets, as revalued annually or (ii) the actual unitrust income. The term was 20 years; the beneficiary was the collector's daughter or, if she died during the term, her children. The trustees had the power to name the charitable remainder organization.

The second share was placed into a charitable lead annuity trust, paying an annuity amount to charity equal to 8 percent of the initial fair market value of the assets. The term was the same 20 years; the charitable beneficiaries were to be selected each year by the trustees; and the trust remainder was payable to the collector's daughter or her children.

The benefits of this mechanism were significant. First, it generated a substantial estate tax charitable deduction. Second, the power to designate the charitable beneficiaries gave the trustees leverage to negotiate with potential buyers. Third, significant income and future principal were generated for the daughter and her children. Finally, the collection could be kept intact, if a museum purchaser could be found.

Indeed, a museum bought the entire collection, agreeing to maintain it substantially intact. Of the sales proceeds, 20 percent was used by the revocable trust to pay administrative expenses and estate taxes; 40 percent went to the unitrust; and 40 percent to the charitable lead annuity trust. Finally, the museum was designated both charitable remainder organization and annuity trust beneficiary. Since it received the remainder of the unitrust and the annuity stream from the lead trust, its cost of acquiring the collection was $10-14 million, in present value terms.

DIVIDING A COLLECTION, THEN SELLING THE BALANCE

Morey Bunin was a puppeteer who created programs that began being televised in 1944. In 1949 William Saroyan called them "without a doubt the best and most dramatic shows on television." At Bunin's death in 1997, his family donated all of the puppets and memorabilia to the Museum of the Moving Image in New York City. But they retained an extensive archive of the original film, reappraised in December 2005 with a fair market value of $2.2 million. The family wanted to gift most of this archive to appropriate museums, yet they also wanted to explore the shows' commercial value.

A comprehensive plan was created by the family's visual arts advisor, financial advisor, and legal counsel. Thus they donated the following shares of the archive at strategic moments:

- Library of Congress ($450,000 — December 2005)
- Museum of Radio & Television ($450,000 — December 2005)
- Museum of Modern Art ($350,000 — February 2006)
- UCLA Film Archive ($350,000 — February 2006)

The balance of the archive, valued at $600,000, became available for sale to collectors and commercial entities. This plan suited the family's needs because it generated a full fair market value tax deduction of $900,000 for 2005, and then a full one of $700,000 for 2006. The Bunins also avoided paying for another appraisal, since the second gift was made within 60 days of the first, as required by law. While the archive has been divided, the integrity of the shows remains intact, and they are available to a variety of viewers at four great institutions.

SO WHAT NOW?

In both cases, successful solutions were identified through the combined expertise of (1) a visual arts advisor, (2) legal and tax counsel, and (3) qualified charitable organizations. Together, such a team can advise collectors about opportunities during their lifetimes and via their estates. As always, planning well ahead is the best policy.

PHILIP T. TEMPLE *(ptemple@mccarthyfingar.com) is an attorney with the White Plains, NY, law firm McCarthy Fingar LLP.* LAURENCE C. ZALE *(lczale@aol.com) is president of Laurence C. Zale Associates, an independent visual arts advisory firm based in New York.*

Editor's Note: We thank *Merrill Lynch Nonprofit News* for allowing us to share this information further afield.