

# TAX FAIRNESS FOR ARTISTS AND WRITERS

## Strengthening the Creative Sector and Providing Public Access to America's Artistic Heritage

### ACTION NEEDED

#### We urge Congress to:

- Enact the Artist-Museum Partnership Act, which would allow artists to deduct the fair market value of their work when they donate it to charitable collecting institutions.
- Update the qualified performing artist tax deduction by supporting the bipartisan Performing Artists Tax Parity Act and reinstate deductions for unreimbursed employee business expenses.
- Pass the Help Independent Track Succeed (HITS) Act to harmonize the tax treatment of music production with other existing tax provisions and incentivize the creation of independent music.

### TALKING POINTS

#### Fair Market Deduction for Artists' Donations

- Most museums, libraries, and archives acquire new works primarily through donations. However, artists, writers, choreographers, and composers—unlike collectors—have no financial incentive to donate their works because they cannot claim a tax deduction for the work's fair market value. Rather, they can deduct *only the value of materials*, such as paint and canvas, or paper and pen. As a result, works of local, regional, and national significance are sold into private hands and may never come into the public domain.
- If more works of contemporary, living artists were available to the public, emerging artists, visual artists, performers, scholars, and the public at large would benefit from this access and draw inspiration from these current pieces. Collectively, these works constitute an important part of America's heritage. The majority of museums, particularly those in rural and smaller communities, lack resources for acquisitions, creating inequitable access to significant additions to their collections. The Artist-Museum Partnership Act would encourage artists and creators to donate work to a broader range of institutions, not just to the most notable museums.
- When Congress disallowed the artist deduction in 1969, the effect was immediate and drastic: artist donations to some museums declined by more than 90%.
- The Artist-Museum Partnership Act would allow creators of original works to deduct the fair market value of self-created works given to and retained by a nonprofit institution. It would encourage gifts of visual art, such as paintings and sculptures, as well as original manuscripts and supporting material created by composers, authors, and choreographers.
- Collectors have the right to deduct the fair market value of gifts that they donate. The creators of those works should have the same right when they donate their works. *It is only fair*. Furthermore, when artists die, works of art in their estate are taxable at their fair market value.

#### Tax Deductions for Artists' Expenses

- Tax reform signed into law in 2017 (P.L. 115-97) preserved the long-standing “above the line” tax deduction for job-related expenses of performing artists who work for two or more employers and have related expenses that are more than 10% of their performing arts income. Although the income cap of \$16,000 is grossly out-of-date (dating to 1986 and never adjusted for inflation), this provision helps some artists pursue their passion to the benefit of audiences everywhere.
- On June 5, 2019, Rep. Judy Chu (D-CA) and Rep. Vern Buchanan (R-FL) introduced HR 3121, the Performing Artist Tax Parity Act of 2019, which would raise the income ceiling to \$100,000 for individual filers and \$200,000 for joint filers. This bill is expected to be reintroduced soon.
- Across occupations, P.L. 115-97 eliminated the opportunity to deduct unreimbursed employee business expenses that exceed 2% of adjusted gross income. For artists who are employees, this means that the costs of supplies,

instruments, professional dues, and other expenses essential to employment are no longer tax-deductible. This deduction should be reinstated.

### HITS Act

- Under §181 of the Internal Revenue Code, qualified film or television productions may elect to fully deduct the cost of production, up to \$15 million. Music production is not given the same treatment under the tax code. Instead of being able to fully deduct production expenses in the year they occur, independent recording artists amortize production expenses for tax purposes over the full economic life of a sound recording.
- The HITS Act will let independent artists deduct 100% of their production expenses for records created in the United States, up to \$150,000, in the year expenses are incurred, in the same way that qualified film and television production costs are expensed.

## BACKGROUND

The arts community seeks support for provisions that would strengthen the creative sector in any upcoming tax policy considered by Congress.

The Artist-Museum Partnership Act is a proposal that has been repeatedly introduced in Congress for over 15 years to correct an inequity for artists that also harms public access to living artists' works of art. For many years, artists, writers, and composers were allowed to take a fair market value deduction for their works donated to a museum, library, or archive. In 1969, however, Congress changed the law, and as a result the number of works donated by artists dramatically declined. *The effect of this legislation was immediate and drastic.* As just one example, the Museum of Modern Art in New York received 321 gifts from artists in the three years prior to 1969; in the three following years, the museum received 28 works of art from artists—a decrease of more than 90%. The Senate has passed artists deduction legislation five times in previous years, but the bills have not been reviewed by the House.

*Issue brief prepared by the Cultural Advocacy Group, a collaboration of arts and culture stakeholders working collectively to advance federal policy. Updated 2021.*