

112TH CONGRESS
1ST SESSION

S. 930

To amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2011

Mr. SCHUMER (for himself and Mr. CRAPO) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Art and Collectibles
5 Capital Gains Tax Treatment Parity Act”.

1 **SEC. 2. CAPITAL GAINS TREATMENT FOR ART AND COL-**
2 **LECTIBLES.**

3 (a) IN GENERAL.—Section 1(h) of the Internal Rev-
4 enue Code of 1986 is amended by striking paragraphs (4)
5 and (5) and inserting the following new paragraphs:

6 “(4) 28-PERCENT RATE GAIN.—For purposes of
7 this subsection, the term ‘28-percent rate gain’
8 means the excess (if any) of—

9 “(A) section 1202 gain, over

10 “(B) the sum of—

11 “(i) the net short-term capital loss,
12 and

13 “(ii) the amount of long-term capital
14 loss carried under section 1212(b)(1)(B) to
15 the taxable year.

16 “(5) RESERVED.—”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to taxable years beginning after
19 December 31, 2010.

20 **SEC. 3. CHARITABLE CONTRIBUTIONS OF CERTAIN ITEMS**
21 **CREATED BY THE TAXPAYER.**

22 (a) IN GENERAL.—Subsection (e) of section 170 of
23 the Internal Revenue Code of 1986 is amended by adding
24 at the end the following new paragraph:

1 “(8) SPECIAL RULE FOR CERTAIN CONTRIBU-
 2 TIONS OF LITERARY, MUSICAL, ARTISTIC, OR SCHOL-
 3 ARLY COMPOSITIONS.—

4 “(A) IN GENERAL.—In the case of a quali-
 5 fied artistic charitable contribution—

6 “(i) the amount of such contribution
 7 taken into account under this section shall
 8 be the fair market value of the property
 9 contributed (determined at the time of
 10 such contribution), and

11 “(ii) no reduction in the amount of
 12 such contribution shall be made under
 13 paragraph (1).

14 “(B) QUALIFIED ARTISTIC CHARITABLE
 15 CONTRIBUTION.—For purposes of this para-
 16 graph, the term ‘qualified artistic charitable
 17 contribution’ means a charitable contribution of
 18 any literary, musical, artistic, or scholarly com-
 19 position, or similar property, or the copyright
 20 thereon (or both), but only if—

21 “(i) such property was created by the
 22 personal efforts of the taxpayer making
 23 such contribution no less than 18 months
 24 prior to such contribution,

25 “(ii) the taxpayer—

1 “(I) has received a qualified ap-
2 praisal of the fair market value of
3 such property in accordance with the
4 regulations under this section, and

5 “(II) attaches to the taxpayer’s
6 income tax return for the taxable year
7 in which such contribution was made
8 a copy of such appraisal,

9 “(iii) the donee is an organization de-
10 scribed in subsection (b)(1)(A),

11 “(iv) the use of such property by the
12 donee is related to the purpose or function
13 constituting the basis for the donee’s ex-
14 emption under section 501 (or, in the case
15 of a governmental unit, to any purpose or
16 function described under section 501(c)),

17 “(v) the taxpayer receives from the
18 donee a written statement representing
19 that the donee’s use of the property will be
20 in accordance with the provisions of clause
21 (iv), and

22 “(vi) the written appraisal referred to
23 in clause (ii) includes evidence of the ex-
24 tent (if any) to which property created by
25 the personal efforts of the taxpayer and of

1 the same type as the donated property is
2 or has been—

3 “(I) owned, maintained, and dis-
4 played by organizations described in
5 subsection (b)(1)(A), and

6 “(II) sold to or exchanged by
7 persons other than the taxpayer,
8 donee, or any related person (as de-
9 fined in section 465(b)(3)(C)).

10 “(C) MAXIMUM DOLLAR LIMITATION; NO
11 CARRYOVER OF INCREASED DEDUCTION.—The
12 increase in the deduction under this section by
13 reason of this paragraph for any taxable year—

14 “(i) shall not exceed the artistic ad-
15 justed gross income of the taxpayer for
16 such taxable year, and

17 “(ii) shall not be taken into account in
18 determining the amount which may be car-
19 ried from such taxable year under sub-
20 section (d).

21 “(D) ARTISTIC ADJUSTED GROSS IN-
22 COME.—For purposes of this paragraph, the
23 term ‘artistic adjusted gross income’ means
24 that portion of the adjusted gross income of the
25 taxpayer for the taxable year attributable to—

1 “(i) income from the sale or use of
2 property created by the personal efforts of
3 the taxpayer which is of the same type as
4 the donated property, and

5 “(ii) income from teaching, lecturing,
6 performing, or similar activity with respect
7 to property described in clause (i).

8 “(E) PARAGRAPH NOT TO APPLY TO CER-
9 TAIN CONTRIBUTIONS.—Subparagraph (A) shall
10 not apply to any charitable contribution of any
11 letter, memorandum, or similar property which
12 was written, prepared, or produced by or for an
13 individual while the individual is an officer or
14 employee of any person (including any Govern-
15 ment agency or instrumentality) unless such
16 letter, memorandum, or similar property is en-
17 tirely personal.

18 “(F) COPYRIGHT TREATED AS SEPARATE
19 PROPERTY FOR PARTIAL INTEREST RULE.—In
20 the case of a qualified artistic charitable con-
21 tribution, the tangible literary, musical, artistic,
22 or scholarly composition, or similar property
23 and the copyright on such work shall be treated
24 as separate properties for purposes of this para-
25 graph and subsection (f)(3).”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to contributions made after the
3 date of the enactment of this Act in taxable years ending
4 after such date.

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