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Passing On Art Through Estate Planning - Lifetime Planning

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“Making money is art and working is art and good business is the best art.” *Andy Warhol*

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Gifts to Irrevocable Trusts: Use and Enjoyment

- By the Donor
 - Where will the art be kept after it is gifted?
 - Rental agreements between the trust and the donor may be necessary to avoid estate tax inclusion for the grantor.
 - Appraisals required each time the rental agreement is renewed.
 - Income tax consequences of rental.
- By the Beneficiaries
 - Who will be responsible for allocating trust assets among beneficiaries?
 - When will a division take place?
 - Disparities in monetary and sentimental value.
 - Equalization and fairness.



Lifetime Sales of Art – Tax Implications

Seller Category	Definition	Income/Taxation	Deductions
Artist	- Person who creates work of art	- Income from the sale of art is taxed as ordinary income (IRC Sections 61, 64)	- Expenses related to creating, acquiring, preserving, or transporting art if they are incurred as normal and ordinary business expenses are deductible (IRC Section 162)
Collector	- Person who buys art for personal enjoyment without consideration of future profitability	- Generally, is a capital asset in which gains are recognized, but losses are not allowed (IRC Sections 1221 and 165(c))	- Expenses attributed to acquiring, maintaining, and transporting art are generally NOT deductible (IRC Section 262)

Lifetime Sales of Art – Tax Implications

Seller Category	Definition	Income/Taxation	Deductions
Dealer	<ul style="list-style-type: none"> - Person who regularly buys and sells art as a trade or business 	<ul style="list-style-type: none"> - Income from the sale of art is taxed as ordinary income (IRC Sections 61, 64) 	<ul style="list-style-type: none"> - Expenses related to acquiring, preserving, or transporting art if they are incurred as normal and ordinary business expenses are deductible (IRC Section 162)
Investor	<ul style="list-style-type: none"> - Person who buys, sells, and collects art primarily as an investment. 	<ul style="list-style-type: none"> - Taxable as a capital gain unless it falls outside the definition of capital asset (IRC Section 1221) 	<ul style="list-style-type: none"> - Expenses related to acquiring, preserving, or transporting art may be added to the basis of a purchased work (IRC Section 212) - Capital losses on the sale of art may be deducted against ordinary income (IRC Section 165(c)(2))

Lifetime Sales of Art - Tax & Other Considerations

- **Income & Capital Gains Tax**

- Works of art held for one year or less are subject to income tax rates of up to 39.6%.
- Works of art held for more than one year are taxed at a maximum rate of 28%.
- There is an additional 3.8% tax on net investment income above certain thresholds.

- **Sales Tax**

- In the United States, sales tax rates range from 0% to 8.875%.

- **Customs Duties**

- In the United States, imported goods are not subject to any customs duties BUT some countries impose significant import duties.

- **Non-Tax Considerations - Prohibited Items**

- Cultural artifacts
- Endangered species and restricted materials.



Donating Art to Charity: Charitable Deduction Limitations

Recipient Category	Cash	Long-Term Capital Gain Property	Ordinary Income/Short-Term Capital Gain Property
Public Charity or Donor Advised Fund	<ul style="list-style-type: none"> - 50% or 60% of contribution base - FMV 	<ul style="list-style-type: none"> - 30% of contribution base - FMV less amount of gain (which generally means deduction limited to basis) for gifts of “unrelated use” TPP - FMV for all other long-term capital gain property (including “related use” TPP) 	<ul style="list-style-type: none"> - 50% of contribution base - FMV less amount of gain that is not long-term capital gain (or unrecognized ordinary income for inventory)
Private Foundation	<ul style="list-style-type: none"> - 30% of contribution base - FMV 	<ul style="list-style-type: none"> - 20% of contribution base - FMV for gifts of “related use” TPP and “qualified appreciated stock” - FMV less amount of gain (which generally means deduction limited to basis) for all other long-term capital gain property (including “unrelated use” TPP) 	<ul style="list-style-type: none"> - 30% of contribution base - FMV less amount of gain that is not long-term capital gain (or unrecognized ordinary income for inventory)

Donating Art to Charity: Non-Tax Considerations

- **Acknowledgement**
 - Perpetual naming rights.
 - Anonymous gifts.
- **Retention and Display**
 - Will the museum put the art on permanent or temporary display?
 - If not, is the museum willing and able to keep the gift in storage?
- **Conservation and Preservation**
 - Does the museum have the resources to maintain the art in good condition?
- **Use and Enjoyment**
 - Irrevocability.
 - Pledges and loans as alternatives.



Active Management of Art Collections

- **Loans to museums**
 - Common practice of collectors eager to increase the value of their pieces.
- **Conservation**
 - Protect your art from the elements.
 - Utilize a professional for cleaning and preparing for storage.
- **Insurance**
 - Protect your collection against risks, such as theft or natural disasters.
 - Ensure proper coverage amounts.
 - Review annually or after any material acquisitions.
- **Appraisals**
 - Have your collection appraised every 3 to 5 years depending on the type of collection you own.

Questions???



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