

THE ART OF NEW YORK LIVING

Belated Gifts

By Kenneth Jay Linsner

'Tis the season to reflect on Year's End Gifting to help offset income. The contribution of works of art, antiques, boats, automobiles and virtually any tangible asset you can think of comes to mind in the month of December.

All property, which you feel has a FAIR MARKET VALUE greater than \$5,000 must be professionally valued before you can claim any tax deduction. The fair market value of such an item is, according to the IRS "The price at which such property changes hands between a willing buyer and a willing seller, neither being under a compulsion to buy or to sell and both having knowledge of all relevant facts." This definition is best satisfied in the auction room and so both your appraiser and the IRS will be taking a look at what comparable property has brought at auction within the recent past. Essentially, the amount you can deduct is limited to what you could have sold the property for as of the date of contribution. The only possible 'out' is the use of the theory of 'most common market' since the code says that the property must be valued in the market in which "such property is most commonly sold to an end user." For many artists and categories of object the number of items sold at the gallery or retail level of trade far exceed those that appear at auction. If this can be demonstrated, then the full retail value of the property may be allowed.

Recently the IRS has focused on the contribution of automobiles. The deductions that were taken in the past centered on the 'Blue Book' value of the vehicle, or the wholesale price. This is to be replaced as of January 1, 2005 with a ruling which limits the deduction to the amount received by the Donee organization upon the sale of the vehicle. This makes some sense since there are very few re-sellers of these contributed vehicles.

The Donee organizations soliciting automobiles as contributions merely advised the reseller of the address of the contributor and they, not the organization, took the vehicle away for sale. Usually, the Donee organization could expect to receive less than 1/3 of the 'Blue Book' value, after commissions. You, the donor, are now limited to the final amount paid to the Donee. This could come as a shock. Only if the vehicle is used by the Donee, in whatever capacity, can the 'Blue Book' amount be accepted.

I recently received a call from a potential client who began the conversation by stating that he had inherited his mother's 'porcelain collection' which he "needed to give away for \$100,000." How could I help? This, of course, is the wrong way round and when I finally saw a list of the 'porcelains' they turned out to be about 60 collector's plates from the 1960's through the 1980's. Their value was less than \$3,000 and based upon that I suggested he did not need my services.

The Donee organization of your choice, for whatever property you choose to contribute, must use the property in the course of their mission, as defined by their mission statement. A gift of a painting to a hospital may place a limitation upon the amount of the fair market value you can deduct...unless the hospital uses it, say, in a birthing room where it can be deemed a necessary element in the environment they chose to create.

If the Donee sells whatever property you contribute within a two year period from the date of gift, the institution must file a form which indicates the sale price. Technically, you are limited to this amount, even though you may have claimed more. This could generate a request for back-tax and interest from the date of contribution. In order to avoid this issue entirely it is wise to contribute the property to an organization which does not re-sell anything. A 'tacit' agreement not to sell the property within the two-year period can be verbally worked out, but you would have no assurance that the item(s) would not be sold. Anything placed in writing can be considered a 'limitation' on the gift and might impact the contribution as a whole.

As an example, the gift of a photograph to an archive with a limitation on use by the public would probably void the gift.

The benefit to the general public must always be greater than the benefit to the Donee organization. A television station which contributed vintage videotapes and kinescopes to a local historical society, but with severe limitations on use and which allowed the station 24 hour access to the archive for their own broadcast purposes, was denied its deduction.

As you can see, the topic is complicated and the pitfalls many. The use of a competent appraiser, with knowledge of the tax code is essential.

Self-generated property is another often explored area. A successful author or scholar may choose to contribute his or her notebooks or field notes to an institution. They do so at their own risk if they wish to claim any substantial amount. The IRS limits these to the cost of materials...ink, paper etc.

Gifts from Artists is another area which deserves attention. If an artist offers you a gift of a work of art that you choose to contribute to a museum or other institution make sure that you pay some nominal fee for it. An outright gift to you from the artist will be deemed to have a cost basis as if it were in the hands of the artist (i.e.; self-created property) and therefore you will be limited to the cost of materials.

You should be aware that any claimed contribution is available for review. The IRS maintains a Valuation Division in each region and while primarily interested in the valuation of real estate, they also have tangible personal property experts. If a work or group of similar works is valued at more than \$20,000 it, most likely, will go to Washington DC to reviewed by the 'Art Panel'. The panel is a revolving one composed of dealers, scholars, auction house representatives and IRS personnel. It is not without flaws.

This brief introduction to the gifting of 'personality' (i.e.; stuff) should spur your interest, and possibly worry, should you have contributed anything in good old 2004. Picking your way through a mine-field is part of the *Art of New York Living*.