

Making a Gift of Art to the American Fund for the Tate Gallery

The following outlines the process for making gifts of works of art through the American Fund for the Tate Gallery, which will allow you to receive tax exemption on your gift. As we are unable to provide tax advice, we highly recommend that you consult your tax counsel before you start the process.

Initial Steps:

- Once we have received formal confirmation that you would like to present the work to the American Fund for the Tate Gallery, we will inform the Tate Trustees of your generous offer. Tate Trustees meet every two months.¹
- In most circumstances, Tate will pay for shipping and insurance of works to the United Kingdom. This may take place either prior to the Tate Trustees meeting or around the time a deed of gift is made.²

Gift Agreement:

- Following their “in principle” agreement to accept the works in due course, we will produce a gift agreement between yourself and the American Fund for the Tate Gallery.
- Most donors make outright gifts, however we are able to receive fractional interest in works of art (starting at 10%). The law requires that 100% gift be completed within either a 10-year period or the death of the donor whichever is first. In addition, the donee must have (i) "substantial physical possession" of the item during the 10-year period as long as the donor remains alive, and (ii) used the item for the organization's exempt purpose. Failure to comply with these requirements results in the recapture of all tax benefits plus interest and the imposition of a 10 percent penalty. In such cases, the agreement would reflect the agreed fractional gift and would include a line stating “that the gift shall be 100% completed no later within either a 10-year period or the death of the donor whichever is first”.
- The agreement will need to be signed in the presence of a notary public. McDermott, Will & Emory LLP (our lawyers) will act as a notary public for donors in New York City, but we would kindly ask donors outside New York City to make their own arrangements.

¹ The American Fund is able to accept gifts after the Tate Trustees meeting in November and up until the end of the tax year provided the Tate Director has given “in principle” agreement to the gift. In such cases, Tate Trustees will be informed of the gift in January.

(2) ² It is possible for works of art to remain in the donors home/workplace even after a deed of gift has been signed while shipment to the United Kingdom is being arranged.

Independent Valuation:

- In order to qualify for tax exemption (Form 8283) on your gift you will need to get an independent valuation from an accredited appraiser. This appraisal can not be made more than 60 days before the deed is signed. We kindly ask donors to cover these costs.
- In most circumstances a conservation report will be required to help qualify the independent valuation. We kindly ask donors to cover these costs.

Ownership of the Work/s of Art:

- After the formal agreement is signed, the work/s will be owned by the American Fund until such time as the American Fund's Trustees vote to give title to the work/s to Tate in London. In order for the Fund to retain its independent charitable status, there is no fixed time limit for gifting works of art to Tate.
- When works are on loan to Tate display a standard credit line would be used: "Lent by the American Fund for the Tate Gallery, courtesy of [name of donor], [year of gift]". Once a work is presented to Tate by the American Fund the credit line would change to "Presented by the American Fund for the Tate Gallery, courtesy of [name of donor], [year of gift]". Please let us know if you would like the gift to remain anonymous.
- When a fractional interest is given the work will be co-owned by the American Fund and the owner. In these circumstances, Tate will consult with donors on any request to borrow the work/s for display purposes, Tate will ask the co-owner to fully insure and conserve the work/s while in their possession, and it will undertake to insure the work during display. The credit line for such gifts would read: "Lent by the American Fund for the Tate Gallery and [name of donor], fractional and promised gift [year of gift]".

Further information:

- Please contact Richard Hamilton, Director American Patrons of Tate if you have any specific questions regarding this process.

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Thank you for your support!

Notes on Fractional Gifts

The Pension Protection Act of 2006 (the “PPA”) and the Tax Technical Corrections Act of 2007 (the “TCA”) altered the tax implications of fractional interests in gifts of art to charity. The following bullet points set forth guidelines to be followed in connection with gifts of fractional interests of art:

- Favorable tax treatment is available only if the donee is a museum or other charity whose charitable purpose relates to use of art;
- Immediately prior to the fractional interest gift, all interests in the donated property must be held either by the taxpayer or by the taxpayer and the donee charity;
- For income tax purposes, the value of the charitable deduction for the donee attributable to subsequent contributions is limited to the lesser of (i) the value used for purposes of determining the charitable deduction for the initial fractional contribution and (ii) the fair market value of the item at the time of the subsequent contribution;
- For estate and gift tax purposes, no such limitation applies so that regardless of appreciation or depreciation in the value of the donated property no estate or gift tax will result from future gifts of fractional interests;
- Entire interest must be gifted within the earlier of ten years and the death of the donor;
- The donee charity must have substantial physical possession of the donated property;
- The charity must use the donated property as part of its charitable mission prior to the donor’s death and disposition of the property within three years of the gift will result in a rebuttable presumption that this related use rule was not satisfied; and

The IRS will recapture tax liability and will impose interest and penalties where the entire interest is not timely gifted, the charity does not enjoy substantial physical possession of the donated property or the related use rule is not satisfied.