

110TH CONGRESS  
1ST SESSION

# S. 374

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

JANUARY 24, 2007

Mr. DOMENICI (for himself, Mr. SCHUMER, Mr. CRAIG, Mrs. CLINTON, Mr. CRAPO, and Mr. ALLARD) 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 (relating to maximum capital gains  
5 rate) is amended by striking paragraphs (4) and (5) and  
6 inserting the following new paragraphs:

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

10 “(A) section 1202 gain, over

11 “(B) the sum of—

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

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

17 “(5) **RESERVED.**—”.

18 (b) **EFFECTIVE DATE.**—The amendment made by  
19 this section shall apply to taxable years beginning after  
20 December 31, 2006.

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

23 (a) **IN GENERAL.**—Subsection (e) of section 170 of  
24 the Internal Revenue Code of 1986 (relating to certain  
25 contributions of ordinary income and capital gain prop-

1 erty) is amended by adding at the end the following new  
2 paragraph:

3           “(7) SPECIAL RULE FOR CERTAIN CONTRIBU-  
4           TIONS OF LITERARY, MUSICAL, ARTISTIC, OR SCHOL-  
5           ARLY COMPOSITIONS.—

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

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

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

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

23                           “(i) such property was created by the  
24                           personal efforts of the taxpayer making

1 such contribution no less than 18 months  
2 prior to such contribution,

3 “(ii) the taxpayer—

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

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

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

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

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

1           “(vi) the written appraisal referred to  
2           in clause (ii) includes evidence of the ex-  
3           tent (if any) to which property created by  
4           the personal efforts of the taxpayer and of  
5           the same type as the donated property is  
6           or has been—

7                   “(I) owned, maintained, and dis-  
8                   played by organizations described in  
9                   subsection (b)(1)(A), and

10                   “(II) sold to or exchanged by  
11                   persons other than the taxpayer,  
12                   donee, or any related person (as de-  
13                   fined in section 465(b)(3)(C)).

14           “(C) MAXIMUM DOLLAR LIMITATION; NO  
15           CARRYOVER OF INCREASED DEDUCTION.—The  
16           increase in the deduction under this section by  
17           reason of this paragraph for any taxable year—

18                   “(i) shall not exceed the artistic ad-  
19                   justed gross income of the taxpayer for  
20                   such taxable year, and

21                   “(ii) shall not be taken into account in  
22                   determining the amount which may be car-  
23                   ried from such taxable year under sub-  
24                   section (d).

1           “(D) ARTISTIC ADJUSTED GROSS IN-  
 2 COME.—For purposes of this paragraph, the  
 3 term ‘artistic adjusted gross income’ means  
 4 that portion of the adjusted gross income of the  
 5 taxpayer for the taxable year attributable to—

6           “(i) income from the sale or use of  
 7 property created by the personal efforts of  
 8 the taxpayer which is of the same type as  
 9 the donated property, and

10           “(ii) income from teaching, lecturing,  
 11 performing, or similar activity with respect  
 12 to property described in clause (i).

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

23           “(F) COPYRIGHT TREATED AS SEPARATE  
 24 PROPERTY FOR PARTIAL INTEREST RULE.—In  
 25 the case of a qualified artistic charitable con-

1           tribution, the tangible literary, musical, artistic,  
2           or scholarly composition, or similar property  
3           and the copyright on such work shall be treated  
4           as separate properties for purposes of this para-  
5           graph and subsection (f)(3).”.

6           (b) EFFECTIVE DATE.—The amendment made by  
7 this section shall apply to contributions made after the  
8 date of the enactment of this Act in taxable years ending  
9 after such date.

○