

109TH CONGRESS
1ST SESSION

S. 1186

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

JUNE 7, 2005

Mr. DOMENICI (for himself, Mr. SCHUMER, Mr. COCHRAN, Mr. ALLARD, and Mr. COLEMAN) 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, 2004.

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.

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