

108TH CONGRESS  
1ST SESSION

# S. 242

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.

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IN THE SENATE OF THE UNITED STATES

JANUARY 29, 2003

Mr. DOMENICI (for himself and Mr. BENNETT) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## 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 (5) and (6) and  
6 inserting the following new paragraph:

7 “(5) **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 (b) **CONFORMING AMENDMENTS.**—

18 (1) Section 1(h)(9) of the Internal Revenue  
19 Code of 1986 is amended by striking “collectibles  
20 gain, gain described in paragraph (7)(A)(i),” and in-  
21 serting “gain described in paragraph (7)(A)(i)”.

22 (2) Section 1(h) of such Code is amended by re-  
23 designating paragraph (12) as paragraph (6).

24 (c) **EFFECTIVE DATE.**—The amendments made by  
25 this section shall apply to taxable years beginning after  
26 December 31, 2002.

1 **SEC. 3. CHARITABLE CONTRIBUTIONS OF CERTAIN ITEMS**  
2 **CREATED BY THE TAXPAYER.**

3 (a) IN GENERAL.—Subsection (e) of section 170 of  
4 the Internal Revenue Code of 1986 (relating to certain  
5 contributions of ordinary income and capital gain prop-  
6 erty) is amended by adding at the end the following new  
7 paragraph:

8 “(7) SPECIAL RULE FOR CERTAIN CONTRIBU-  
9 TIONS OF LITERARY, MUSICAL, ARTISTIC, OR SCHOL-  
10 ARLY COMPOSITIONS.—

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

13 “(i) the amount of such contribution  
14 taken into account under this section shall  
15 be the fair market value of the property  
16 contributed (determined at the time of  
17 such contribution), and

18 “(ii) no reduction in the amount of  
19 such contribution shall be made under  
20 paragraph (1).

21 “(B) QUALIFIED ARTISTIC CHARITABLE  
22 CONTRIBUTION.—For purposes of this para-  
23 graph, the term ‘qualified artistic charitable  
24 contribution’ means a charitable contribution of  
25 any literary, musical, artistic, or scholarly com-

1 position, or similar property, or the copyright  
2 thereon (or both), but only if—

3 “(i) such property was created by the  
4 personal efforts of the taxpayer making  
5 such contribution no less than 18 months  
6 prior to such contribution,

7 “(ii) the taxpayer—

8 “(I) has received a qualified ap-  
9 praisal of the fair market value of  
10 such property in accordance with the  
11 regulations under this section, and

12 “(II) attaches to the taxpayer’s  
13 income tax return for the taxable year  
14 in which such contribution was made  
15 a copy of such appraisal,

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

18 “(iv) the use of such property by the  
19 donee is related to the purpose or function  
20 constituting the basis for the donee’s ex-  
21 emption under section 501 (or, in the case  
22 of a governmental unit, to any purpose or  
23 function described under section 501(e)),

24 “(v) the taxpayer receives from the  
25 donee a written statement representing

1 that the donee's use of the property will be  
2 in accordance with the provisions of clause  
3 (iv), and

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

10 “(I) owned, maintained, and dis-  
11 played by organizations described in  
12 subsection (b)(1)(A), and

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

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

21 “(i) shall not exceed the artistic ad-  
22 justed gross income of the taxpayer for  
23 such taxable year, and

24 “(ii) shall not be taken into account in  
25 determining the amount which may be car-

1           ried from such taxable year under sub-  
2           section (d).

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

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

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

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

1           “(F) COPYRIGHT TREATED AS SEPARATE  
2           PROPERTY FOR PARTIAL INTEREST RULE.—In  
3           the case of a qualified artistic charitable con-  
4           tribution, the tangible literary, musical, artistic,  
5           or scholarly composition, or similar property  
6           and the copyright on such work shall be treated  
7           as separate properties for purposes of this para-  
8           graph and subsection (f)(3).”.

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

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