

To Whom It May Concern:

Attached please find comments from the Whitney Museum of American Art related to fractional gift provisions included in the Pension Protection Act of 2006.

Best regards,

Nick Holmes

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WHITNEY

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The Honorable Charles Grassley
Chairman
Committee on Finance
United States Senate
Washington DC 20510

The Honorable Max Baucus
Ranking Member
Committee on Finance
United States Senate
Washington DC 20510

Re: Tax Technical Corrections Act of 2006 (S. 4026 and H.R. 6264)

Dear Chairman Grassley and Senator Baucus:

The newly passed Pension Protection Act of 2006 includes a provision on fractional gifts (H.R. 4, section 1218) that we believe will dramatically reduce the number of donated works of art museums receive. We believe fractional gifts are an effective way to encourage donors to give art to American museums, and therefore to the American public.

Fractional gifts have facilitated a number of important gifts to our collection. The Whitney has received fractional gifts of works by significant American artists such as Willem de Kooning, Reginald Marsh, Bruce Nauman, and Bill Viola. In the case of Willem de Kooning's *Untitled VII*, 1983, the Museum received a ten percent gift in 1984. The remainder of the work has been promised to the Whitney and the Museum has shown the work at least four times since it acquired the initial fractional gift. The work complements other examples of de Kooning in the Whitney's collection and allows the Museum to have works representative of the full arc of de Kooning's career.

I encourage you to consider modifying this small portion of the pension bill to avoid undesirable consequences resulting the change from previous law. Specifically the Whitney has a number of concerns and has the following suggestions:

- 1) Donors will now be required to use the lower of the appraisal at the time of the initial fractional gift or any subsequent fractions of the gift. We believe donors should be permitted to use a current, accurate, fair market value appraisal for subsequent gifts. As a way of insuring the accuracy of appraisals, we feel gifts over \$1M should be subject to review by the IRS Art Advisory Panel.
- 2) The new law requires that Museums take "substantial physical possession" of the work during the period of joint ownership. We believe that transporting work without any Museum purpose unnecessarily subjects the work to the risks of transport, as well as the costs of shipping and packing. Accordingly, we believe

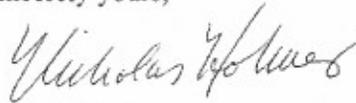
there should be exceptions to the possession requirement, such that it could be waived if either:

- a) the donee museum certifies that physical possession within a 10- year period would not be in the interest of the work of art, the museum or the public because either:
 - i) the museum's permanent collection, exhibition, planning, educational, or construction commitments would prevent showing the work to the public during the period, or
 - ii) packing and transporting the work may damage the work because, for example, of its fragility; or cause a serious financial hardship to the museum because, for example of the cost of transporting and assembling an overly large work of art;
- b) the donor dies within a 10-year period before the donee has an opportunity to possess the work.

3) Donors are now required to complete the gift within 10 years or the date of the donor's death, whichever is sooner. We feel that generous donors, who willingly give up partial interest in a valuable museum-quality work of art, should be able to avail themselves of the flexibility of giving their gift over their lifetime if that best suits their financial and personal needs.

Please do not hesitate to contact me at (212) 606-0391 if you have questions, or if I can put your staff in touch with museum staff members to discuss this matter.

Sincerely yours,



Nicholas Holmes
Legal Officer/Exhibitions and Collections
Coordinator