

**What You Should Know Before Accepting Artwork**  
**John H. Taylor, Partner, Alexander Haas**  
**Written First for Major Gifts Report, 6/2007**

One of your major donors spent the weekend cleaning out her attic and came across an original Norman Rockwell she completely had forgotten about. It is worth well into six figures and she really does not want it any more. However, she would not mind a nice tax deduction. Therefore, she contacts her local chapter of the ASPCA to arrange to make a gift. Everyone is happy, right?

“Maybe at first,” says John Taylor, Principal, Advancement Solutions Consulting Group (Durham, NC). “But when it comes time for the donor to give all of her paperwork to her accountant to file her tax return, she may be in for a rude awakening. And if the ASPCA is not up on the new tax laws, they could be facing fines from the IRS.”

John reports that the Pension Protection Act of 2006 significantly changed the rules for donations of all forms of property gifts. “It is called the *recapture rule*. If donated property is sold or disposed of within three years of the gift date, and the gift was not used for related purposes by the charity, there are serious consequences,” John continues. “The key when it comes to tax-deductibility is whether the nonprofit can, and does, actually use the property.” Per the Pension Protection Act if you donate property but the charity cannot use the gift, other than perhaps to auction it off, the donors’ deduction is limited to their cost-basis in the property. Additionally, if the property is estimated to be worth in excess of \$5,000 and is sold within that 3-year window, the nonprofit must file IRS Form 8282 with the IRS (with a copy to the original donor) reflecting the sales price and further stipulating to whether the property was used for related purposes. The donor, if they originally claimed full value for the property when claiming a deduction, will have to pay back taxes and penalties. “It gets worse,” according to John. “If the donor is told the property will be used for related purposes when it truly cannot, the IRS will assess a \$10,000 fine.”

“In this case the donor would be far better off contributing the Rockwell to an art museum where it can be used (displayed) for related purposes. While the museum would still be obligated to file the 8282 if they sell or transfer the artwork within 3 years, the donor’s deduction of its’ fair market value is protected. In fact,” John continues, “there are provisions that would permit the donor to give the artwork fractionally over a period of 10 years claiming a partial deduction in each year a fraction is donated.”

John concludes, “If we do not know these rules for accepting gifts of art we could seriously impact our donor’s tax filing status, not to mention create a terrible donor relations problem. If you are not in the art or museum business, it is best to consult your own attorney before accepting the gift.”