

## NEWS US & Americas

# Married gay couples to get art tax breaks

Museums could benefit, as well as sponsors

### TAX

**Washington, DC.** The ruling that same-sex spouses should be treated as married for federal tax purposes across all American states – regardless of whether the state they live in recognises gay marriage – could have an impact on several sections of the art world, from private collectors to museums.

The ruling by the Internal Revenue Service (IRS) on 29 August follows a US Supreme Court decision in June that struck down as unconstitutional a provision of federal law that defined marriage as a union between “one man and one woman”. Same-sex spouses

living in Washington, DC and the 13 states that recognise gay marriage immediately became eligible for federal spousal tax benefits. The IRS ruling makes clear that couples who wed in a “recognition” state remain married for federal tax purposes if they move to one of the 37 states that do not recognise gay marriage.

The action by the IRS means that same-sex spouses can file refund claims for past taxes paid, so long as the statute of limitations has not expired. The ruling is also “an enormous opportunity for people in non-recognition states” to save federal estate and gift taxes, because of the unlimited tax-free gifts allowed between spouses during life or



Oh Brad! Is it me or the tax breaks you truly want?

at death, at appreciated values”, says Elizabeth Schwartz, an estate and gay rights lawyer in Miami Beach. A same-sex spouse can now sell an inherited work of art without capital gains tax, she says.

Equality is not yet complete, however. The IRS excludes from married status couples who have entered into civil unions or domestic partnerships (the sole form of union permitted in states such as New Jersey). And the US Social Security Administration has announced that it will not pay benefits to a same-sex spouse who is living in a non-recognition state.

man of the New York law firm John Silberman Associates. Now, there is no federal estate tax on bequests to a same-sex spouse. This means that the spouse is in a better financial position, and potentially able to make charitable gifts to museums and so receive the further benefit of an income tax deduction on the full market value of the works.

Another income tax benefit stems from the ability of spouses to “pass unlimited amounts of art to each other

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*Martha Lufkin*

### In brief

#### Public arts funding falls

Government arts funding in the US reached a record low in 2011, according to the latest edition of the National Arts Index, published last month by the non-profit organisation Americans for the Arts. Local government spending on the arts dropped 21% between 2008 and 2011. There was a rise in the number of non-profit arts organisations operating at a deficit (43% in 2011, up from 36% in 2007), due in part to decreased funding across all levels of government. “While just a small piece of the arts funding model, government dollars are vital to the arts sector,” says Robert Lynch, the president of Americans for the Arts. “Even when audience demand rises, as it did in 2011,

decreases in public funding can stifle an organisation’s ability to fully reach and engage its community.” J.H.

#### Getty diptych row

The J. Paul Getty Museum sued a French citizen in California’s federal court on 6 September, seeking a declaration that the museum lawfully owns a 14th-century diptych, *The Stigmatisation of Saint Francis and Angel Crowning Saints Cecilia and Valerian*, 1330s (above), which was painted by an anonymous Avignon artist and is worth around €2m. The Getty bought the work in 1986 from Wildenstein gallery, which had obtained it from the Sabran-Pontevès



family. The defendant, Géraud Marie de Sabran-Pontevès, believes that the sale to Wildenstein was unauthorised. As *The Art Newspaper* went to press, he had not responded to the complaint. L.G.

#### Art lawyer fraud claim

Two of the four directors of the Cy Twombly Foundation have accused a fellow director, the art lawyer Ralph Lerner, of fraudulently taking \$750,000 in fees from the organisation. The claim, filed last month, is part of an ongoing civil lawsuit over the alleged mismanagement of a separate trust that

looks after the works of the painter and sculptor (right), who died in 2011. In a statement to the *New York Times*, Lerner’s office says that all fees “were made in accordance with the practices established by Mr. Twombly when he was alive”. J.H.

#### Stolen Matisse returns

A stolen painting by Matisse that was recovered by undercover agents from the Federal Bureau of Investigation (FBI) in Miami last year will be returned to Venezuela after being certified by an



authentication committee. According to a statement released by the Venezuelan government, the director of the Archives Henri Matisse in Paris, Wanda de Guébriant, has confirmed the authentication of the painting. In 2002, it was discovered that Matisse’s *Odalisque with Red Pants*, 1925, at the Museum of Contemporary Art in Caracas, had been replaced with a fake, although it is unclear when the work was stolen. Two people—Pedro Antonio Marcuello Guzman and Maria Martha Elisa Ornelas Lazo—had tried to sell the painting to the undercover agents, and were sentenced to 33 and 21 months in jail respectively in January after pleading guilty on charges of the transportation, possession and attempted sale of the painting. L.R.

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