A Little Education on Artwork and Copyrights

In thinking on the number of artists on the introduction discussion in a Art Planning group on Linked In recently, I thought I would just take the time to do a little education on how an artist can do some creative planning using both the tangible artwork, and the intangible copyrights of the artwork, for income and estate tax planning.

Basically, a work of art and its related copyright are treated as separate properties for estate tax charitable deduction purposes if certain requirements are met. Thus, a charitable deduction will be allowed for a qualified contribution of a copyrighted art work even though the copyright itself is retained by the donor or transferred to a noncharity.

The IRS says a work of art and its copyright continue to be treated as two interests in the same property for income tax charitable deduction purposes. It says that if the above provision were extended to income tax, it would provide an unnecessary tax incentive. An income tax charitable deduction is denied for split-interest transfers of copy righted art work despite the above rule for estate tax charitable deduction purposes.

A “work of art” is any tangible personal property with respect to which there's a copyright under federal law so a “work of art” is not limited to paintings but is any tangible personal property (e.g., sculpture, pictorial, or graphic work) that is copy righted can qualify. This also includes copyrights to images of artwork over which the copyrights may have lapsed over time, such as publishing a book on Ming ceramics creates a copyright in the image of the objects (whence the tiny writing below each picture in most art books).

A qualified contribution is a contribution of a copy righted work of art to a qualified organization (i.e. a public charity) where the work of art is put to a related use by the organization. A charitable deduction is then allowed even though the bequest is made to a private rather than a public charity, and even if the work of art is not put to a related use by the charity, and also private operating foundation defined in Code Sec. 4942(j)(3), is considered a qualified charitable organization. This related use test would bar an estate tax charitable deduction under the above rule for bequests of copyrighted art works the charity is expected to sell.

An example of splitting the copyrights and the works of art exists in my own family. My great aunt, Esther Forbes, donated her manuscripts to Clark University, but donated the copyrights to her works (including the rights to Johnny Tremain) to the American Antiquarian Society, a research library here in Worcester MA where she did much of her research. The result was that we were able to take two deductions in her estate, one for the value of the physical manuscripts, and one for the financial value of the copyrights.