

LCB File No. T009-98

TEMPORARY REGULATION OF THE NEVADA TAX COMMISSION

EXPLANATION – Matter in *italics* is new; matter in brackets [] is material to be omitted.

AUTHORITY: §§1-8, NRS 360.090, 360.095, 361.045 and 361.068; §§9-19, NRS 360.090, 360.095 and 374.291.

Section 1. Chapter 361 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. *As used in NRS 361.068 and sections 3 to 7, inclusive, of this regulation, the department shall interpret the term “public display” to mean the display of a work of fine art where members of the public have access to the work of fine art for viewing [either] free of charge [or for a nominal fee] during publicly advertised hours. The term does not include the display of a work of fine art in an area where the public does not generally have access, such as in a private office, hallway or meeting room of a business, or in a private residence, or to other places in a building or business where access to certain segments of the public is restricted by age or other legal or physical restriction or disability.*

Sec. 3. *The exemption provided for in paragraph (j) of subsection 1 of NRS 361.068 does not apply to:*

- 1. A work of fine art that is a fixture or an improvement to real property;*
- 2. A work of fine art that constitutes a copy of an original work of fine art, unless the work is a lithograph that is a limited edition and that is signed and numbered by the artist;*
- 3. Products of filmmaking or photography, including, without limitation, motion pictures or still photographs;*

4. *Literary works;*

5. *Property used in the performing arts, including, without limitation, scenery or props for stages; or*

6. *Property that was created for a functional use other than or in addition to its aesthetic qualities, including, without limitation:*

(a) *A classic or custom-built automobile;*

(b) *A classic or custom-built boat;*

(c) *A sign that advertises a business;*

(d) *Custom or antique furniture;*

(e) *Custom or antique lamps;*

(f) *Custom or antique chandeliers;*

(g) *Custom or antique jewelry;*

(h) *Custom or antique mirrors;*

(i) *Custom or antique doors; or*

(j) *Custom or antique windows.*

Sec. 4. *The affidavit required to be filed pursuant to subsection 3 of NRS 361.068 must clearly identify:*

1. *The work of fine art for which the exemption is being claimed;*

2. *The date of:*

(a) *Purchase of the work of fine art; or*

(b) *The written appraisal of the work of fine art upon which the person who claims the exemption relies to establish a value of \$25,000 or more.*

3. *The location in the county at which the person who claims the exemption expects the work of fine art to be on public display.*

Sec. 5. *1. A person who claims the exemption provided for in paragraph (j) of subsection 1 of NRS 362.068 shall:*

(a) Retain for 4 years after he submits the affidavit required pursuant to subsection 3 of NRS 361.068; and

(b) Provide, upon request, to the county assessor, documentation that establishes that the current value of the work of fine art is \$25,000 or more.

2. If the work of fine art was purchased not more than 2 years before the date on which the affidavit is filed with the county assessor, the documentation required pursuant to subsection 1 must include, without limitation:

(a) The purchase price for the work of fine art, the name of the seller of the work of fine art, the date of sale of the work of fine art, and any additional documentation that the county assessor may require if it reasonably appears to the county assessor that the work of fine art may not have been purchased in an arm's length transaction; or

(b) A written appraisal of the work of fine art that was completed by an independent, qualified appraiser of fine art not more than 3 years before the date on which the affidavit is filed and that certifies that the work of fine art has a value of \$25,000 or more; or

3. If the work of fine art was purchased more than 2 years before the date on which the affidavit is filed with the county assessor, the documentation required pursuant to subsection 1 must include a written appraisal which was completed by an independent, qualified appraiser

of fine art not more than 3 years before the date on which the affidavit is filed and which certifies that the work of fine art has a value of \$25,000 or more.

Sec. 6. *1. A person who claims the exemption provided for in paragraph (j) of subsection 1 of NRS 362.068 shall:*

(a) Retain for 4 years after he submits the affidavit required pursuant to subsection 3 of NRS 361.068; and

(b) Provide, upon request, to the county assessor, documentation that establishes that the work of fine art has been on public display for at least 20 hours per week for at least 35 weeks during the tax year for which the exemption is claimed.

2. The documentation required pursuant to subsection 1 may include, without limitation:

(a) Contracts or agreements between the owner of the work of fine art and a person operating an art gallery, museum or other building or place where the work of fine art will be displayed that set forth the times and dates that the work of fine art is available for viewing by the public; or

(b) Written advertisements or announcements distributed to the public or published in the local media setting forth the place, time and date that the work of fine art is available for viewing by the public.

Sec. 7. *1. A person who claims the exemption provided for in paragraph (j) of subsection 1 of NRS 362.068 shall:*

(a) Retain for 4 years after he submits the affidavit required pursuant to subsection 3 of NRS 361.068; and

(b) Provide, upon request, to the county assessor, documentation that establishes that the work of fine art is available for educational purposes.

2. The documentation required pursuant to subsection 1 must include, without limitation, copies of written notification that the work of fine art is available for educational purposes. The written notification must:

*(a) Be sent to [each primary and secondary school, college and university in the county in which the work of fine art will be displayed] **the superintendent of schools for each county in the state, to the president of each college and university in the state and to the state superintendent at the State Department of Education at least once a year for each year for which the exemption is claimed; and***

(b) Contain the name and telephone number of a person to contact to schedule a viewing or to obtain additional information about the work of fine art.

Sec. 8. Chapter 374 of NAC is hereby amended by adding thereto the provisions set forth as sections 9 to 18, inclusive, of this regulation.

Sec. 9. *As used in this chapter, unless the context otherwise requires, “department” means the department of taxation.*

Sec. 10. *As used in NRS 374.291 and sections 11 to 18, inclusive, of this regulation, the department shall interpret the term “public display” to mean the display of a work of fine art where members of the public have access to the work of fine art for viewing [either] free of charge [or for a nominal fee] during publicly advertised hours. The term does not include the display of a work of fine art in an area where the public does not generally have access, such as in a private office, hallway or meeting room of a business, or in a private residence, or to*

other places in a building or business where access to certain segments of the public is restricted by age or other legal or physical restriction or disability.

Sec. 11. *The exemption set forth in NRS 374.291 does not apply to:*

- 1. A work of fine art that is a fixture or an improvement to real property;*
- 2. Materials purchased by an artist for consumption in the production of a work of fine art that is to be a fixture or an improvement to real property;*
- 3. A work of fine art that constitutes a copy of an original work of fine art, unless the work is a lithograph that is a limited edition and that is signed and numbered by the artist;*
- 4. Products of filmmaking or photography, including, without limitation, motion pictures or still photographs;*
- 5. Literary works;*
- 6. Property used in the performing arts, including, without limitation, scenery or props for stages; or*
- 7. Property that was created for a functional use other than or in addition to its aesthetic qualities, including, but not limited to:*
 - (a) A classic or custom-built automobile;*
 - (b) A classic or custom-built boat;*
 - (c) A sign that advertises a business;*
 - (d) Custom or antique furniture;*
 - (e) Custom or antique lamps;*
 - (f) Custom or antique chandeliers;*
 - (g) Custom or antique jewelry;*

(h) Custom or antique mirrors;

(i) Custom or antique doors; or

(j) Custom or antique windows.

Sec. 12. *A person who intends to purchase a work of fine art for which he will pay \$25,000 or more or which has an appraised value of \$25,000 or more on the date of purchase and who wishes to obtain the exemption set forth in NRS 374.291 may apply to the department of taxation for a letter of exemption that he may present to the retailer of the work of art. The application must contain:*

1. The name and address of the person who intends to purchase the work of fine art;

2. The location in the state where the person intends to display the work of fine art to the public for the time prescribed by NRS 374.291; and

3. A statement that the work of fine art will be available for educational purposes during the 12 months immediately following the purchase.

Sec. 13. *A retailer is not required to collect the taxes imposed by chapter 374 of NRS on the sale of a work of fine art if:*

1. The work of fine art is exempt pursuant to NRS 374.291; and

2. The purchaser provides to the retailer a letter of exemption issued by the department.

Sec. 14. *1. The purchaser of a work of fine art who obtains the exemption set forth in NRS 374.291 shall retain and provide to the department, upon request, documentation that establishes the value of the work of fine art was \$25,000 or more on the date of purchase.*

2. The documentation required pursuant to subsection 1 must include, without limitation:

(a) A copy of the invoice, contract of sale or bill of sale that sets forth the price paid for the work of fine art was \$25,000 or more; or

(b) A written appraisal that was completed by an independent, qualified appraiser of fine art not more than 3 years before the date on which the application for exemption is submitted to the department that certifies that the work of fine art had a value of \$25,000 or more on the date of purchase.

Sec. 15. *1. The purchaser of a work of fine art who obtains the exemption set forth in NRS 374.291 shall retain and provide to the department, upon request, documentation that establishes that the work of fine art has been on public display for at least 20 hours per week for at least 35 weeks during the 12 months immediately following the date of the purchase of the work of fine art.*

2. The documentation required pursuant to subsection 1 may include, without limitation:

(a) Contracts or agreements between the purchaser of the work of fine art and a person operating an art gallery, museum or other building or place where the work of fine art is displayed that set forth the times and dates that the work of fine art is available for viewing; or

(b) Written advertisements or announcements distributed to the public or published in the local media setting forth the place, time and date the work of fine art is available for viewing by the public.

Sec. 16. *1. The purchaser of a work of fine art who obtains the exemption set forth in NRS 374.291 shall retain and provide to the department, upon request, documentation that establishes that the work of fine art is available for educational purposes.*

2. *The documentation required pursuant to subsection 1 must include, without limitation, copies of written notification that the work of fine art is available for educational purposes. The written notification must:*

(a) Be sent to [each primary and secondary school, college and university in the county in which the work of fine art is displayed] the superintendent of schools for each county in the state, to the president of each college and university in the state and to the state superintendent at the State Department of Education not later than 30 days after the date of purchase of the work of fine art; and

(b) Contain the name and telephone number of a person to contact to schedule a viewing or to obtain additional information about the work of fine art.

Sec. 17. *If the purchaser of a work of fine art fails to submit an application to the department for a letter of exemption pursuant to section 12 of this regulation before he purchases the work or if the purchaser fails to submit such a letter to the retailer at the time of purchase, the purchaser may present a claim of exemption to the department. The claim of exemption must include, without limitation, the documentation required pursuant to sections 14, 15 and 16 of this regulation. The department may conduct an investigation to verify the information submitted and the entitlement of the purchaser to the exemption. If the department determines that the purchase of the work of fine art for which the exemption is claimed meets the statutory requirements of NRS 374.291, subject to any statute of limitation, the department shall credit or refund any excess tax paid by the purchaser, without interest.*

Sec. 18. *A retailer who sells a work of fine art that is exempt pursuant to the provisions of NRS 374.291 shall retain and provide to the department upon request:*

- 1. A copy of the letter of exemption issued by the department to the purchaser; and*
- 2. The documentation required pursuant to section 14 of this regulation.*

Sec. 19. NAC 374.020 To calculate the amount of the allowance provided in subparagraph (1) of paragraph (e) of subsection 3 of NRS 374.030 and paragraph (f) of subsection 3 of NRS 374.070, the department [of taxation] shall interpret the term “used vehicle” to:

1. Have the meaning ascribed to the term “vehicle” in NRS 482.135; and
2. Exclude special mobile equipment. As used in this subsection, “special mobile equipment” has the meaning ascribed to it in NRS 482.123.

INFORMATIONAL STATEMENT

Temporary Regulation of the Nevada Tax Commission

LCB File No. T009-98

The following statement is submitted for adopted temporary amendments to Nevada Administrative Code (NAC) Chapters 361 and 374.

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

Notices of hearing for the adoption and amendment of the proposed temporary regulation were posted at the following locations: Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Nevada State Library, 100 Stewart Street, Carson City, Nevada; The Legislative Building, Capitol Complex, Carson City, Nevada; each County Main Public Library; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of taxation, 555 East Washington Avenue, Las Vegas, Nevada.

A copy of the notice of hearing and the proposed temporary regulation were placed on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. additional copies of the notice and the proposed regulation were also made available and placed on file at the department of Taxation, 1550 East College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation, 850 Elm Street, No. 2, Elko, Nevada; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours.

The hearing was held on October 6, 1998 at the Nevada State Legislative Building, Room 1412, Carson City, Nevada, 89710. It appears that due to the primarily procedural nature of the proposed temporary regulation, only affected or interested person and businesses as set forth in #3 below responded to the proposed regulation and testified at the hearing. A copy of the transcript of the hearing, for which a reasonable fee may be charged, may be obtained by calling the Nevada Department of Taxation at (702) 687-4896, or by writing to the Nevada Department of Taxation at 1550 East College Parkway, Suite 115, Carson City, Nevada, 89706.

The proposed temporary regulation was submitted to the Legislative Counsel Bureau, which completed its review and minor revisions on March 23, 1998. thus, the proposed temporary regulation, for practical purposes, was discussed at four workshops and has been heard and considered at two public hearings of the Nevada Tax Commission.

2. The number of persons who:

(a) Attended the hearing: 42

(b) Testified at the hearing: 8

(c) Submitted to the Tax Commission written comments: Written comments were submitted by Mr. Joseph E. Dini, Jr. - Speaker of the Nevada Assembly, Senator Joseph M. Neal, Jr., Mr. Robert Ostrovsky, Clark County Assessor's Office, Mr. Peter Stremmel, Mr. Jeffrey D. Conway - Attorney at Law, Mr. Robert Tracy, Ph.D. - Associate Dean, College of Fine Arts - UNLV, and the Nevada Taxpayers Association prior to the hearings pertaining to suggested changes to language contained in the proposed temporary regulation. No other written comments were submitted to, or received by, neither the Tax Commission nor the Department of Taxation.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected and interested businesses and persons by the notices set forth in #1 above, by direct mail to all county assessors, and by direct mail to the approximately 150 interested businesses and persons on the department of Taxation's mailing list.

Comments from the affected or interested public were received relative to all sections of the proposed temporary regulation with respect to: Public display, fees charged for viewing the fine art, types of fine art that would or would not be exempt, notification for educational purposes, property tax exemption affidavit to be filed with the county assessor's office, written appraisals of the work of fine art; and records retention of documentation showing notification for educational purposes and public display requirements found in Nevada Revised Statutes Chapters 361 and 374.

4. If the regulation was adopted without changing any part of the proposed temporary regulation, a summary of the reasons for adopting the temporary regulation without change.

The proposed temporary regulation was modified at two hearings in front of the Nevada Tax Commission prior to adoption, due to issues raised by the department of taxation, members of the tax Commission and by affected or interested businesses and persons.

Sections 2, 7, 10, and 16 of the proposed temporary regulation were modified prior to adoption, due to issues raised during the hearing by affected or interested businesses and persons. The remaining sections of the proposed temporary regulation were not changed since the Tax Commission believed no changes other than those made was necessary.

5. The estimated economic effect of the adopted temporary regulation on the business which it is to regulate and on the public. These must be state separately and each case must include: (a) Both adverse and beneficial effects; and (b) Both immediate and long-term effects.

(a) Adverse and beneficial effects.

the proposed temporary regulation presents no foreseeable or anticipated adverse economic effects to businesses or to the general public other than as considered by the Nevada Legislature, since they merely implement those statutes.

(b) Immediate and long-term effects.

Same as #5(a) above.

6. The estimated cost to the agency for enforcement of the adopted temporary regulation.

The proposed temporary regulation presents no foreseeable or anticipated cost or decrease in costs for enforcement.

7. A description of any regulations of other state or governmental agencies which the temporary regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the temporary regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.,

The proposed temporary regulation is particular to the Department of Taxation practices and procedures and does not appear to overlap or duplicate regulations of other state or local governmental agencies.

8. If the temporary regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no known federal regulations pertaining to state property tax procedures, which are the subject of the proposed temporary regulation.

9. If the temporary regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed temporary regulation does not provide a new fee or increase an existing fee.