

PROPOSED REGULATION OF THE DEPARTMENT OF TAXATION

PROPERTY TAX REGULATION

Chapter 361 of NAC is hereby amended by adding thereto a new section to read as follows:

1. The exemption provided by NRS 361.06(1)(j) applies only to works of fine art which constitute personal property. Works of fine art which are incorporated into or become an improvement to real property are not eligible for the exemption.
2. To qualify for the exemption, the work of fine art must be an original painting, sculpture, mosaic, drawing, sketch, work of mixed media, or lithograph. Artwork which constitutes a copy of an original work of fine art does not qualify for the exemption. The exemption does not apply to the products of filmmaking or photography such as motion picture film or photographs, literary works, or property used in the performing arts such as stage scenery or props. The exemption does not apply to property which was created for a functional use other than or in addition to its aesthetic qualities such as, for example, a classic or custom built automobile or boat, a sign advertising a business, custom or antique furniture, lamps, chandeliers, jewelry, mirrors, doors or windows.
3. For purposes of establishing that the work of fine art was purchased for \$25,000 or more in an arm's length transaction, the owner must retain and provide upon request by the county assessor documentation that sets forth the purchase price for the artwork, the person selling the artwork, and the date of sale. Additional documentation may be required if it reasonably appears to the assessor that the artwork may not have been purchased in an arm's length transaction. the purchase price paid for a work of fine art will not be accepted as establishing the current value of a work of fine art if the artwork was purchased more than two years prior to the date on which the application of the exemption is filed with the assessor. Thereafter, the person must obtain a written appraisal rendered by a qualified certified appraiser of fine art establishing a value of \$25,000 or more to qualify for the exemption.
4. For purposes of qualifying for the exemption on the basis of an appraisal that the original work of art has a value of \$25,000 or more, a written appraisal of the work of art rendered by an independent qualified certified appraiser of works of fine art must be retained and produced by the owner upon request by the county assessor. Written appraisals rendered more than three years prior to the date on which the application for exemption is submitted to the assessor will not be accepted as documentation of the current value of the work of fine art.
5. The owner of the work of fine art shall retain in his records documentation establishing that the original work of fine art for which the exemption is claimed has been displayed in this state in a public or private art gallery, museum or other building or area accessible to the public for at least 20 hours per week for at least 35 weeks per tax year. Acceptable documentation includes, without limitation:

(a) Contracts or agreements between the owner of the work of fine art and a person or entity operating an art gallery, museum or other building or place at which the artwork is to be displayed to the public that sets forth viewing times and dates;

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

6. Original works of art will be considered to be on public display only when members of the public are permitted to have access to the artwork for viewing either free of charge or for a nominal fee during publicly advertised or publicized viewing hours. Artwork which is not displayed in areas generally accessible by the public, such as in a private office, hallway, or meeting room of a business, or in a private residence, will not be considered to be on public display.

7. For purposes of meeting the requirement that the original works of art be available for educational purposes, the owner must retain and provide to the county assessor upon request documentation that at a minimum establishes that each primary and secondary school in the county in which the artwork is to be displayed, and each college or university in the state has been contacted in writing with notification that the artwork is available for educational study. The written notification must be sent at least once every year for which the exemption is being claimed, and must contain the name and telephone number of a person to contact to schedule a viewing and to obtain additional information about the artwork for educational purposes.

8. To claim the exemption, the owner of the original work of fine art must file with the county assessor in the county in which the work of art will be present for a majority of the tax year for which the exemption will be claimed, on or before June 15 of the year prior to the tax year in which the exemption is to be claimed an affidavit stating that the fine art:

(a) Was purchased in an arm's length transaction for \$25,000 or more, or that the work of art has an appraised value of \$25,000 or more;

(b) Will be on public display in a public or private art gallery, museum or other building or area in this state for at least 20 hours per week during at least 35 weeks of the tax year for which the exemption is claimed; and

(c) Will be available for educational purposes.

The affidavit must identify with particularity the work or works of art for which a claim of exemption is made, the date of purchase or the date of the written appraisal upon which the person is relying to establish a value of \$25,000 or more, and the place at which the person expects the works of art to be on public display in the county.

SALES TAX REGULATION

Chapter 374 of NAC is hereby amended to add the following section:

1. The exemption provided by NRS 374.291 applies only to works of fine art which are sold as tangible personal property. A contract calling for a work of fine art to be incorporated into or become a part of an improvement to real property is not a sale of tangible personal property subject to the exemption. Materials purchased by the artist for consumption in producing a work of fine art that is to be incorporated into or become a part of an improvement to real property are subject to sales or use tax.

2. To qualify for the exemption, the work of fine art must be an original painting, sculpture, mosaic, drawing, sketch, work of mixed media, or lithograph. Artwork which constitutes a copy of an original work of fine art does not qualify for the exemption. The exemption does not apply to the products of filmmaking or photography such as motion picture film or photographs, literary works, or property used in the performing arts such as a stage scenery or props. The exemption does not apply to property which was created for a functional use other than or in addition to its aesthetic qualities such as, for example, a classic or custom built automobile or boat, a sign advertising a business, custom or antique furniture, lamps, chandeliers, jewelry, mirrors, doors or windows.

3. A retailer who makes a retail sale of an original work of art in this state may claim the exemption provided by NRS 374.291 only by accepting from the purchaser and retaining in his records a copy of a letter issued by the department to the purchaser indicating that the purchaser is qualified with the department to purchase works of fine art that the purchaser intends to publicly display in this state for at least 20 hours per week for a period of at least 35 weeks during the 12-month period following his purchase of the artwork, and that the artwork will also be available for educational purposes during that period. If the purchaser does not provide the letter of exemption, the retailer may not exempt the sale from sales tax under NRS 374.291.

4. In addition to the requirements of subsection 3, for purposes of establishing that the sale of the original work of fine art is exempt from sales tax under NRS 374.291, the retailer must retain in his records:

(a) Written documentation such as an invoice, contract of sale or bill of sale that establishes the sales price for the artwork was in the amount of \$25,000 or more; or

(b) A written appraisal rendered by an independent qualified appraiser of works of fine art certifying that the fair market value of the artwork was \$25,000 or more on the date the artwork was sold.

5. A person who intends to purchase an original work of fine art, for which he will pay a purchase price of \$25,000 or more, or which carries an appraised value as of the date of purchase of \$25,000 or more, and who wishes to qualify the purchase as exempt from sales or

use tax under NRS 374.291 may apply to the department for a letter of exemption to be presented to the vendor. The application must contain the following information:

(a) The name and address of the person intending to purchase the artwork;

(b) The location or locations in the state where the person intends to publicly display the artwork for at least 20 hours per week for at least 35 weeks in the 12 months following purchase of the artwork;

(c) A statement that the artwork is to be made available to the public for educational purposes in the 12 months following purchase.

6. The purchaser shall retain in his records documentation establishing that the original work of fine art for which the exemption is claimed has been displayed in this state in a public or private art gallery, museum or other building or area accessible to the public for at least 20 hours per week for at least 35 weeks per tax year. Acceptable documentation includes, without limitation:

(a) Contracts or agreements between the owner of the work of fine art and a person or entity operating an art gallery, museum or other building or place at which the artwork is to be displayed to the public that sets forth viewing times and dates;

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

7. Original works of art will be considered to be on public display only when members of the public are permitted to have access to the artwork for viewing either free of charge or for a nominal fee during publicly advertised or publicized viewing hours. Artwork which is not displayed in areas generally accessible by the public, such as in a private office, hallway, or meeting room of a business, or in a private residence, will not be considered to be on public display.

8. For purposes of meeting the requirement that the original works of art be available for educational purposes, the owner must retain and provide to the county assessor upon request documentation that at a minimum establishes that each primary and secondary school in the county in which the artwork is to be displayed, and each college or university in the state has been contacted in writing with notification that the artwork is available for educational study. The written notification must be sent at least once every year for which the exemption is being claimed, and must contain the name and telephone number of a person to contact to schedule a viewing and to obtain additional information about the artwork for educational purposes.

9. In the event a purchaser fails to apply with the department of a letter of exemption prior to purchasing an original work of fine art, or fails to supply the retailer with such a letter, the purchaser may present a claim of exemption to the department together with the documentation

required under subsections 4, 6 and 8 above. The department may conduct an investigation to verify the information submitted and the purchaser's entitlement to the exemption. If the department determines that the purchase of the original work of art for which the exemption is claimed meets the statutory requirements, subject to any applicable statute of limitation, the department will credit or refund any excess sales or use tax paid by the purchaser, without interest.