

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R011-98

2/5/2004

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 8, inclusive, of this regulation.

Sec. 2. *As used in sections 3 to 8, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in section 3 of this regulation have the meanings ascribed to them in that section.*

Sec. 3. *The term “public display” as used in NRS 361.068 means 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.*

Sec. 4. *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. 5. *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; 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; and

(c) 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. 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 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:

(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. 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 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 to the public that state times and dates 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 that the work of fine art is available for viewing by the public.

Sec. 8. *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 which the owner sent to each primary and secondary school, college and university in the county in which the work of fine art will be displayed. The written notification must:

(a) Be sent 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. 9. Chapter 374 of NAC is hereby amended by adding thereto the provisions set forth as sections 10 to 19, inclusive, of this regulation.

Sec. 10. *As used in sections 11 to 19, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in section 11 of this regulation have the meanings ascribed to them in that section.*

Sec. 11. *The term “public display” as used in NRS 374.291 means 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.*

Sec. 12. *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. 13. *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. 14. *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 the work of fine art is exempt pursuant to NRS 374.291 only if the purchaser provides to the retailer a letter of exemption issued by the department.*

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 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:*
 - (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. 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 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 to the public that state times and dates 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. 17. *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 which the purchaser sent to each primary and secondary school, college and university in the county in which the work of fine art is displayed. The written notification must:

(a) Be sent 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. 18. *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 13 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 the documentation required pursuant to sections 15, 16 and 17 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, 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 15 of this regulation.*