

LCB File No. R047-01

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

(This proposed regulation was previously adopted as LCB File No. T019-01)

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

AUTHORITY: NRS 360.090, 361.068, 361.186, 374.291, 374.2911 and 374.725.

Section 1. Chapter 361 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. 1. *As used in this section, “fine art for public display” means a work of art which is an original painting in oil, mineral, water colors, vitreous enamel, pastel or other medium, an original mosaic, drawing or sketch, an original sculpture of clay, textiles, fiber, wood, metal, plastic, glass or a similar material, an original work of mixed media or a lithograph.*

2. *Works of fine art do not include:*

- a. Materials purchased by an artist for consumption in the production of a work that is to be a fixture or an improvement to real property;*
- b. 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;*
- c. Products of filmmaking or photography, including, without limitation, motion pictures;*
- d. Literary works;*
- e. Property used in the performing arts, including, without limitation, scenery or props for a stage and;*
- f. Property that was created for a functional use other than, or in addition to, its aesthetic qualities, including, without limitation, a classic or custom-built automobile or boat, a sign that advertises a business, and custom or antique furniture, lamps, chandeliers, jewelry, mirrors, doors or windows.*

Sec. 3. 1. *The purchase price of the fine art must be determined via an arms length transaction and must be \$25,000.00 or more, or have an appraised value of \$25,000.00 or more as determined by a qualified art appraiser.*

- a. The value of the fine art will be determined by sales documentation which includes purchase price, the name of the seller of the fine art, the date of the sale of the work of fine art, and any additional documentation that the county assessor may require; or, a written appraisal, completed by an independent, qualified appraiser of fine art not more than 3 years before the date on which the affidavit is filed.*

Sec. 4. 1. *The art work will be on public display which is defined as a public location such as a private art gallery, museum or other building in this state where members of the general public have access for viewing during publicly advertised hours of at least 20 hours per week during at least 35 weeks of each year for which the exemption is claimed. The facility displaying the artwork will be available for group tours by pupils or students for at least 5 hours on at least 60 days of each full year for which the exemption is claimed, during which the facility in which it is displayed is open, by prior appointment and at reasonable times without charge.*

- a. *A pupil is defined as a person who is enrolled for the current academic year in a Nevada public or private school or who receives instruction in a home and is excused from compulsory attendance pursuant to NRS 392.070. Public schools include all kindergartens, elementary, junior high, middle and high schools. The school system also includes “Charter schools” recognized by the school district for pupils experiencing economic disadvantages requiring special services and assistance.*
- b. *A student is defined as a person who is enrolled in a Nevada school for the current academic year in a community college or university; or a licensed postsecondary educational institution as defined in NRS 394.099. Community college, university or licensed postsecondary educational institution means a licensed academic, vocational, technical or privately owned school offering postsecondary education.*

Sec 5. *If the ~~[facility]~~ taxpayer, who is the owner of the fine art and ~~[displaying the fine art,]~~ meets the display requirements of Section 4 disposes of it before the end of the year for which the exemption is claimed, but displayed the fine art during at least two-thirds of the full weeks during which the facility had possession of it; the display requirements have been met. If the gallery, museum or other building or area in which the fine art will be displayed will not be opened until after the beginning of the fiscal year for which the exemption is claimed, these display requirements must instead be met for the first full fiscal year after the date of opening and the date of opening must not be later than 2 years after the purchases of the fine art being displayed.*

- Sec. 6.** *1. A ~~[person]~~ taxpayer who is the owner of the fine art who is claiming the exemption shall:*
- a. *On or before June 15 for the next ensuing fiscal year, file with the county assessor an affidavit declaring that the fine art will, during that ensuing fiscal year, meet all the criteria set forth in paragraph (b) of subsection 5 of NRS 361.068. The affidavit must include:*
 1. *Listing and description of property upon which a tax exemption is being claimed;*
 2. *Purchase price or appraisal value of property upon which a tax exemption is being claimed;*
 3. *Fiscal year for which the exemption is being applied for;*
 4. *Statement by person claiming exemption stating the following:
“I, _____, state under oath and pursuant to the conditions set forth in NRS 361.265 and NRS 361.185, that the above claim for property tax exemption is made in good faith and is to the best of my knowledge and belief true, correct and complete and that said property meets all the requirements of NRS 361.068. Further, I hereby authorize and empower Nevada taxing authorities and their deputies to personally inspect the property, examine supporting documents or otherwise verify the above exemption claim(s).”*
 5. *Signed and dated by person claiming exemption; and*
 6. *Notarized.*
 - b. *During any fiscal year in which the exemption is claimed, make available for educational purposes and not for resale, upon written request and without charge to any Nevada public or private school or to any parent of a child who receives instruction in a home pursuant to NRS 392.070, one copy of a poster depicting the fine art that the facility has on public display if such a poster is available for purchase by the public at the time of the request. The poster shall include any representation of a qualifying work of art on an unbound piece of paper larger than 8.5 by 11 inches. The retail value of the poster shall not exceed \$25. Upon receiving a request for a poster, the taxpayer shall select which poster(s) are to be provided to the eligible school or parent of a home schooled child. No taxpayer shall be obligated to provide more than three posters to any one eligible school or parent in any fiscal year or to respond to more*

than one such request by each eligible school or parent of a home schooled child in any fiscal year.

Sec. 7. *A taxpayer who is the owner of the fine art may collect an admission fee for the exhibition of fine art otherwise exempt from taxation on its sale, storage, use or other consumption if the taxpayer offers to residents of the State of Nevada a discount of 50 percent from any admission fee charged to nonresidents. A State of Nevada resident is any individual who resides in Nevada and possesses a valid Nevada driver's license or other state issued identification. The discounted admission fee must be offered at any time the exhibition is open to the public and an admission fee is being charged.*

Sec. 8. 1. *If a taxpayer who is the owner of the fine art collects a fee for the exhibition of fine art otherwise exempt from taxation on its sale, storage, use or other consumption and the fee is collected during the first full fiscal year after the purchase of the fine art, the exemption pertaining to that fine art must be reduced by the net revenue derived by the taxpayer for that first full fiscal year. The exemption pertaining to fine art must not be reduced below zero, regardless of the amount of the net revenue derived by the taxpayer for that first full fiscal year.*

(a) For the purpose of this section, net revenue means the gross revenue collected from admission fees and rentals of communication/informational devices less the direct costs of owning and exhibiting the fine art incurred during the fiscal year in which the art is displayed.

(1) The direct costs of owning and exhibiting the fine art include:

- a. Interest identified as directly related to debt used to finance only the acquisition and ownership of the art, limited to the fiscal year for which the exemption is being claimed and based on a reasonable, secured debt rate.*
- b. Insurance directly related to the artwork including insurance for authenticity.*
- c. Repairs, maintenance and conservation of the art including cleaning and framing.*
- d. Transportation costs as directly related to the moving and storage of the art in the immediate area where the art is being displayed.*
- e. Personal property taxes ~~[(or allocations thereof),]~~ directly related to the art and not inclusive of penalties or interest assessed on the tax.*
- f. Salaries and benefits of personnel specifically assigned to work directly for the gallery such as gallery managers, curators, gallery security personnel and employees selling tickets, taking reservations or handling admissions.*
- g. Building operations such as repairs and maintenance directly related to the building or area that houses the artwork and utilities, environmental control systems, special lighting, and security systems that are specific and identifiable to the gallery in which the fine art is displayed.*
- h. Rent and/or other lease obligations directly related to the ~~[building]~~ gallery in which the artwork is being displayed.*
- i. Real estate and personal property taxes ~~[(or allocations thereof),]~~ directly related to the ~~[area]~~ gallery that houses the exhibit, not inclusive of penalties or interest assessed on the tax.*
- j. Depreciation for furniture, fixtures and building or area ~~[(or allocations thereof)]~~ directly related to the building or area in which the artwork is being displayed.*
- k. Communication devices as directly related and limited to informing patrons about the artwork.*
- l. Uniform expense as directly related to personnel working ~~[in]~~ for the gallery and laundry as directly related to the cleaning of uniforms for personnel and the cleaning of furniture or fixtures ~~[in]~~ for the gallery.*
- m. Credit card commissions as directly tied to admissions to the exhibit*
- n. Advertising as exclusively related to notifying the public of the exhibit.*

- (2) *The aforementioned direct costs will be apportioned in circumstances where the exhibit is made up of a combination of owned, leased and other artwork. The basis for the pro-ration will be the value of the qualifying and non-qualifying works of art. A percentage based on the value of qualifying pieces as compared to the value of total pieces will be applied to direct costs and the net cost figure will be used to offset gross revenue as defined by Section 8.1.a. above.*
- (3) *Direct costs do not include rent and/or lease obligations directly related to works of art on exhibition and do not include any allocation of the general and administrative expense of a business or organization that conducts activities in addition to the operation of the facility in which the fine art is displayed, including, without limitation, an allocation of the salary and benefits of a senior executive who is responsible for the oversight of the facility in which the fine art is displayed and who has substantial responsibilities related to the other activities of the business or organization.*

Sec. 9. *A taxpayer who is the owner of the fine art and who is required to pay a tax pursuant to NRS 361.186 and as set forth herein may receive a credit against the tax for any donations made by the taxpayer to the state arts council, the division of museums and history dedicated trust fund established pursuant to NRS 381.0031, a museum unrelated to the owner of the fine art that either provides exhibits specifically related to nature or ~~[a museum that]~~ provides exhibits specifically related to children. In determining whether an organization qualifies as an organization described in this section, any organization that qualifies as a section 501(c) (3) of the Internal Revenue Code that operates a museum providing exhibits specifically related to nature or children will be treated as a qualifying organization even if it also conducts activities in addition thereto, so long as “no part of the net earnings of which inures to the benefit of any private shareholder or individual.”*

Sec. 10. Chapter 374 of NAC is hereby amended by adding thereto the provisions set forth as sections 11 to 18, inclusive, of this regulation.

Sec. 11. 1. *As used in this section, “fine art for public display” means a work of art which is an original painting in oil, mineral, water colors, vitreous enamel, pastel or other medium, an original mosaic, drawing or sketch, an original sculpture of clay, textiles, fiber, wood, metal, plastic, glass or a similar material, an original work of mixed media or a lithograph.*

2. *Works of fine art do not include:*

- a. Materials purchased by an artist for consumption in the production of a work that is to be a fixture or an improvement to real property;*
- b. 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;*
- c. Products of filmmaking or photography, including, without limitation, motion pictures;*
- d. Literary works;*
- e. Property used in the performing arts, including, without limitation, scenery or props for a stage and;*
- f. Property that was created for a functional use other than, or in addition to, its aesthetic qualities, including, without limitation, a classic or custom-built automobile or boat, a sign that advertises a business, and custom or antique furniture, lamps, chandeliers, jewelry, mirrors, doors or windows.*

Sec. 12. 1. *The purchase price of the fine art must be determined via an arms length transaction and must be \$25,000.00 or more, or have an appraised value of \$25,000.00 or more as determined by a qualified art appraiser.*

Sec. 13. 1. *The art work will be on public display which is defined as a public location such as a private art gallery, museum or other building in this state where members of the general public have access for viewing during publicly advertised hours of at least 20 hours per week during at least 35 weeks of each year for which the exemption is claimed. The facility displaying the artwork will be available for group tours by pupils or students for at least 5 hours on at least 60 days of each full year for which the exemption is claimed, during which the facility in which it is displayed is open, by prior appointment and at reasonable times without charge.*

- a. A pupil is defined as a person who is enrolled for the current academic year in a Nevada public or private school or who receives instruction in a home and is excused from compulsory attendance pursuant to NRS 392.070. Public schools include all kindergartens, elementary, junior high, middle and high schools. The school system also includes “Charter schools” recognized by the school district for pupils experiencing economic disadvantages requiring special services and assistance.*
- b. A student is defined as a person who is enrolled in a Nevada school for the current academic year in a community college or university; or a licensed postsecondary educational institution as defined in NRS 394.099. Community college, university or licensed postsecondary educational institution means a licensed academic, vocational, technical or privately owned school offering postsecondary education.*

Sec 14. *If the [facility] taxpayer, who is the owner of the fine art and ~~[displaying the fine art,]~~ meets the display requirements of Section 13 disposes of it before the end of the year for which the exemption is claimed, but displayed the fine art during at least two-thirds of the full weeks during which the facility had possession of it; the display requirements have been met. If the gallery, museum or other building or area in which the fine art will be displayed will not be opened until after the beginning of the fiscal year for which the exemption is claimed, these display requirements must instead be met for the first full fiscal year after the date of opening and the date of opening must not be later than 2 years after the purchases of the fine art being displayed.*

Sec. 15. 1. *A [person] taxpayer who is the owner of the fine art who is claiming the exemption shall:*

- a. During any fiscal year in which the exemption is claimed, make available for educational purposes and not for resale, upon written request and without charge to any Nevada public or private school or to any parent of a child who receives instruction in a home pursuant to NRS 392.070, one copy of a poster depicting the fine art that the facility has on public display if such a poster is available for purchase by the public at the time of the request. The poster shall include any representation of a qualifying work of art on an unbound piece of paper larger than 8.5 by 11 inches. The retail value of the poster shall not exceed \$25. Upon receiving a request for a poster, the taxpayer shall select which poster(s) are to be provided to the eligible school or parent of a home schooled child. No taxpayer shall be obligated to provide more than three posters to any one eligible school or parent in any fiscal year or to respond to more than one such request by each eligible school or parent of a home schooled child in any fiscal year.*

Sec. 16. *A taxpayer who is the owner of the fine art may collect an admission fee for the exhibition of fine art otherwise exempt from taxation on its sale, storage, use or other consumption if the taxpayer offers to residents of the State of Nevada a discount of 50 percent from any admission fee charged to nonresidents. A State of Nevada resident is any individual who resides in Nevada and possesses a valid Nevada driver’s license or other state issued identification. The discounted admission fee must be offered at any time the exhibition is open to the public and an admission fee is being charged.*

Sec. 17. 1. *If a taxpayer who is the owner of the fine art collects a fee for the exhibition of fine art otherwise exempt from taxation on its sale, storage, use or other consumption and the fee is*

collected during the first full fiscal year after the purchase of the fine art, the exemption pertaining to that fine art must be reduced by the net revenue derived by the taxpayer for that first full fiscal year. The exemption pertaining to fine art must not be reduced below zero, regardless of the amount of the net revenue derived by the taxpayer for that first full fiscal year.

- a. For the purpose of this section, net revenue means the gross revenue collected from admission fees and rentals of communication/informational devices less the direct costs of owning and exhibiting the fine art incurred during the fiscal year in which the art is displayed.
 - (1) The direct costs of owning and exhibiting the fine art include:
 - (a) Interest identified as directly related to debt used to finance only the acquisition and ownership of the art, limited to the fiscal year for which the exemption is being claimed and based on a reasonable, secured debt rate.
 - (b) Insurance directly related to the artwork including insurance for authenticity.
 - (c) Repairs, maintenance and conservation of the art including cleaning and framing.
 - (d) Transportation costs as directly related to the moving and storage of the art in the immediate area where the art is being displayed.
 - (e) Personal property taxes ~~[(or allocations thereof),]~~ directly related to the art and not inclusive of penalties or interest assessed on the tax.
 - (f) Salaries and benefits of personnel specifically assigned to work directly for the gallery such as gallery managers, curators, gallery security personnel and employees selling tickets, taking reservations or handling admissions.
 - (g) Building operations such as repairs and maintenance directly related to the building or area that houses the artwork and utilities, environmental control systems, special lighting, and security systems that are specific and identifiable to the gallery in which the fine art is displayed.
 - (h) Rent and/or other lease obligations directly related to the ~~[building]~~ gallery in which the artwork is being displayed.
 - (i) Real estate and personal property taxes ~~[(or allocations thereof),]~~ directly related to the ~~[area]~~ gallery that houses the exhibit, not inclusive of penalties or interest assessed on the tax.
 - (j) Depreciation for furniture, fixtures and building or area ~~[(or allocations thereof)]~~ directly related to the building or area in which the artwork is being displayed.
 - (k) Communication devices as directly related and limited to informing patrons about the artwork.
 - (l) Uniform expense as directly related to personnel working ~~[in]~~ for the gallery and laundry as directly related to the cleaning of uniforms for personnel and the cleaning of furniture or fixtures ~~[in]~~ for the gallery.
 - (m) Credit card commissions as directly tied to admissions to the exhibit
 - (n) Advertising as exclusively related to notifying the public of the exhibit.
 - (2) The aforementioned direct costs will be apportioned in circumstances where the exhibit is made up of a combination of owned, leased and other artwork. The basis for the pro-ration will be the value of the qualifying and non-qualifying works of art. A percentage based on the value of qualifying pieces as compared to the value of total pieces will be applied to direct costs and the net cost figure will be used to offset gross revenue as defined by Section 8.1.a. above.
 - (3) Direct costs do not include rent and/or lease obligations directly related to works of art on exhibition and do not include any allocation of the general and administrative expense of a business or organization that conducts activities in addition to the operation of the facility in which the fine art is displayed, including, without limitation, an allocation of the salary and benefits of a senior executive who is responsible for the

oversight of the facility in which the fine art is displayed and who has substantial responsibilities related to the other activities of the business or organization.

Sec. 18. *A taxpayer who is the owner of the fine art and who is required to pay a tax pursuant to NRS 374.2911 and as set forth herein may receive a credit against the tax for any donations made by the taxpayer to the state arts council, the division of museums and history dedicated trust fund established pursuant to NRS 381.0031, a museum unrelated to the owner of the fine art that either provides exhibits specifically related to nature or ~~[a museum that]~~ provides exhibits specifically related to children. In determining whether an organization qualifies as an organization described in this section, any organization that qualifies as a section 501(c) (3) of the Internal Revenue Code that operates a museum providing exhibits specifically related to nature or children will be treated as a qualifying organization even if it also conducts activities in addition thereto, so long as “no part of the net earnings of which inures to the benefit of any private shareholder or individual.”*