

Senate Bill No. 521—Committee on Taxation

CHAPTER.....

AN ACT relating to taxation; revising the provisions governing the exemption of works of fine art from certain taxes; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 361 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *A taxpayer may collect an admission fee for the exhibition of fine art otherwise exempt from taxation pursuant to NRS 361.068 if the taxpayer offers to residents of the State of Nevada a discount of 50 percent from any admission fee charged to nonresidents. The discounted admission fee for residents must be offered at any time the exhibition is open to the public and admission fees are being charged.*

2. Except as otherwise provided in subsection 5, if a taxpayer collects a fee for the exhibition of fine art otherwise exempt from taxation pursuant to NRS 361.068, the exemption pertaining to that fine art for the fiscal year must be reduced by the net revenue derived by the taxpayer for that fiscal year. The exemption pertaining to fine art for a particular fiscal year must not be reduced below zero, regardless of the amount of the net revenue derived by the taxpayer for that fiscal year.

3. A tax resulting from the operation of this section is due with the tax otherwise due under the taxpayer's first statement filed pursuant to NRS 361.265 after the 15th day of the fourth month after the end of the fiscal year in which the net revenue was received or, if no such statement is required to be filed, under a statement of the net revenue filed on or before the last day of the fourth month after the end of that fiscal year.

4. A taxpayer who is required to pay a tax resulting from the operation of this section 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 that provides exhibits specifically related to nature or a museum that provides exhibits specifically related to children, if the taxpayer:

(a) Made the donation before the date that either statement required pursuant to subsection 3 is due; and

(b) Provides to the county assessor documentation of the donation at the time that he files the statement required pursuant to subsection 3.

5. If a taxpayer qualifies for and avails himself of both of the exemptions from taxation provided by NRS 361.068 and 374.291, the reduction of the exemptions by the net revenue derived by the taxpayer, as required pursuant to subsection 2 of this section and subsection 2 of section 6 of this act, must be carried out in such a manner that the total

net revenue derived by the taxpayer is first applied to reduce the exemption provided pursuant to NRS 374.291. If the net revenue exceeds the amount of the exemption provided pursuant to NRS 374.291, the remaining net revenue must be applied to reduce the exemption provided pursuant to NRS 361.068. If the net revenue is less than or equal to the exemption provided pursuant to NRS 374.291 for that fiscal year, the exemption provided pursuant to NRS 361.068 must not be reduced.

6. For the purposes of this section:

(a) "Direct costs of owning and exhibiting the fine art" does 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.

(b) "Net revenue" means the amount of the fees collected for exhibiting the fine art during that fiscal year less the following paid or made during that fiscal year:

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

(2) The cost of educational programs associated with the taxpayer's public display of fine art, including the cost of meeting the requirements of sub-subparagraph (IV) of subparagraph (1) of paragraph (b) of subsection 5 of NRS 361.068.

Sec. 3. *The exemption provided in paragraph (j) of subsection 1 of NRS 361.068 applies to taxes on personal property otherwise due from the owner of a work of fine art that is leased to a person who publicly displays the work. The price or value to which that section refers is the price or value of the work that is leased.*

Sec. 4. NRS 361.068 is hereby amended to read as follows:

361.068 1. The following personal property is exempt from taxation:

(a) Personal property held for sale by a merchant;

(b) Personal property held for sale by a manufacturer;

(c) Raw materials and components held by a manufacturer for manufacture into products, and supplies to be consumed in the process of manufacture;

(d) Tangible personal property purchased by a business which will be consumed during the operation of the business;

(e) Livestock;

(f) Colonies of bees;

(g) Pipe and other agricultural equipment used to convey water for the irrigation of legal crops;

(h) All boats;

(i) Slide-in campers and camper shells;

(j) ~~[Fine]~~ *Except as otherwise provided in section 2 of this act, fine art for public display; and*

(k) Computers and related equipment donated for use in schools in this state.

2. The Nevada tax commission may exempt from taxation that personal property for which the annual taxes would be less than the cost of collecting those taxes. If such an exemption is provided, the Nevada tax commission shall annually determine the average cost of collecting property taxes in this state which must be used in determining the applicability of the exemption.

3. A person claiming the exemption provided for in paragraph (j) of subsection 1 shall ~~be on~~ :

(a) On or before June 15 for the next ensuing fiscal year, file with the county assessor an affidavit declaring that the fine art is:

~~—(a) Was purchased in an arm's length transaction for \$25,000 or more, or 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 year for which the exemption is claimed; and~~

~~—(c) Will be available for educational purposes.~~ *will, during that ensuing fiscal year, meet all the criteria set forth in paragraph (b) of subsection 5; and*

(b) During any fiscal year in which he claims the exemption, make available for educational purposes and not for resale, upon written request and without charge to any public school as defined in NRS 385.007, private school as defined in NRS 394.103 and 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.

4. To qualify for the exemption provided in paragraph (k) of subsection 1, a taxpayer must donate the property through a foundation or organization, not for profit, that accepts such property for use in schools in this state. The foundation or organization shall issue a voucher identifying each item of property donated. To obtain the benefit of the exemption, the taxpayer must apply to the county assessor and tender the voucher. The county assessor shall compute the assessed value of the property for the year in which the donation was made using the original cost and the year of acquisition. The county assessor shall allow a credit of that amount against the personal property assessment for the year following the donation.

5. As used in this section:

(a) "Boat" includes any vessel or other watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water.

(b) "Fine art for public display" :

(1) Except as otherwise provided in subparagraph (2), means a work of art which:

~~[(1)]~~ (I) 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)]~~ (II) Was purchased in an arm's length transaction for \$25,000 or more, or has an appraised value of \$25,000 or more;

~~[(3)]~~ (III) Is 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 each year for which the exemption is claimed ~~[(3)]~~ or, if the facility displaying the fine art disposes of it before the end of that year, during at least two-thirds of the full weeks during which the facility had possession of it, or 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 purchase of the fine art being displayed; and

~~[(4)]~~ (IV) Is on display in a facility that is available for ~~educational purposes.~~ 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; and

(2) Does not include:

(I) A work of fine art that is a fixture or an improvement to real property;

(II) 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;

(III) Products of filmmaking or photography, including, without limitation, motion pictures;

(IV) Literary works;

(V) Property used in the performing arts, including, without limitation, scenery or props for a stage; or

(VI) 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.

(c) "Personal property held for sale by a merchant" includes property that:

(1) Meets the requirements of sub-subparagraphs (I) and (II) of subparagraph (1) of paragraph (b);

(2) Is made available for sale within 2 years after it is acquired; and

(3) Is made available for viewing by the public or prospective purchasers, or both, within 2 years after it is acquired, whether or not a fee is charged for viewing it and whether or not it is also used for purposes other than viewing.

(d) "Public display" means the display of a work of fine art where members of the public have access to the work of fine art for viewing 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, including, without limitation, a private office, hallway or meeting room of a business, a room of a business used for private lodging and a private residence.

(e) "Pupil" means a person who:

(1) Is enrolled for the current academic year in a public school as defined in NRS 385.007 or a private school as defined in NRS 394.103; or

(2) Receives instruction in a home and is excused from compulsory attendance pursuant to NRS 392.070.

(f) "Student" means a person who is enrolled for the current academic year in:

(1) A community college or university; or

(2) A licensed postsecondary educational institution as defined in NRS 394.099 and a course concerning fine art.

Sec. 5. NRS 361.068 is hereby amended to read as follows:

361.068 1. The following personal property is exempt from taxation:

(a) Personal property held for sale by a merchant;

(b) Personal property held for sale by a manufacturer;

(c) Raw materials and components held by a manufacturer for manufacture into products, and supplies to be consumed in the process of manufacture;

(d) Tangible personal property purchased by a business which will be consumed during the operation of the business;

(e) Livestock;

(f) Colonies of bees;

(g) Pipe and other agricultural equipment used to convey water for the irrigation of legal crops;

(h) All boats;

(i) Slide-in campers and camper shells; and

(j) ~~Fine~~ *Except as otherwise provided in section 2 of this act, fine art for public display.*

2. The Nevada tax commission may exempt from taxation that personal property for which the annual taxes would be less than the cost of collecting those taxes. If such an exemption is provided, the Nevada tax commission shall annually determine the average cost of collecting property taxes in this state which must be used in determining the applicability of the exemption.

3. A person claiming the exemption provided for in paragraph (j) of subsection 1 shall ~~[-on]~~ :

(a) *On* or before June 15 for the next ensuing fiscal year, file with the county assessor an affidavit declaring that the fine art ~~[-~~;
~~—(a) Was purchased in an arm’s length transaction for \$25,000 or more, or 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 year for which the exemption is claimed; and~~
~~—(c) Will be available for educational purposes.]~~ *will, during that ensuing fiscal year, meet all the criteria set forth in paragraph (b) of subsection 4; and*

(b) *During any fiscal year in which he claims the exemption, make available for educational purposes and not for resale, upon written request and without charge to any public school as defined in NRS 385.007, private school as defined in NRS 394.103 and 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.*

4. As used in this section:

(a) “Boat” includes any vessel or other watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water.

(b) “Fine art for public display” :

(1) Except as otherwise provided in subparagraph (2), means a work of art which:

~~[(1)]~~ *(I)* 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)]~~ *(II)* Was purchased in an arm’s length transaction for \$25,000 or more, or has an appraised value of \$25,000 or more;

~~[(3)]~~ *(III)* Is 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 each year for which the exemption is claimed ~~[-]~~ *or, if the facility displaying the fine art disposes of it before the end of that year, during at least two-thirds of the full weeks during which the facility had possession of it, or 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 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 purchase of the fine art being displayed; and*

~~[(4)]~~ (IV) Is on display in a facility that is available for ~~educational purposes.]~~ 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; and

(2) Does not include:

(I) A work of fine art that is a fixture or an improvement to real property;

(II) 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;

(III) Products of filmmaking or photography, including, without limitation, motion pictures;

(IV) Literary works;

(V) Property used in the performing arts, including, without limitation, scenery or props for a stage; or

(VI) 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.

(c) "Personal property held for sale by a merchant" includes property that:

(1) Meets the requirements of sub-subparagraphs (I) and (II) of subparagraph (1) of paragraph (b);

(2) Is made available for sale within 2 years after it is acquired; and

(3) Is made available for viewing by the public or prospective purchasers, or both, within 2 years after it is acquired, whether or not a fee is charged for viewing it and whether or not it is also used for purposes other than viewing.

(d) "Public display" means the display of a work of fine art where members of the public have access to the work of fine art for viewing 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, including, without limitation, a private office, hallway or meeting room of a business, a room of a business used for private lodging and a private residence.

(e) "Pupil" means a person who:

(1) Is enrolled for the current academic year in a public school as defined in NRS 385.007 or a private school as defined in NRS 394.103; or

(2) Receives instruction in a home and is excused from compulsory attendance pursuant to NRS 392.070.

(f) "Student" means a person who is enrolled for the current academic year in:

- (1) A community college or university; or*
- (2) A licensed postsecondary educational institution as defined in NRS 394.099 and a course concerning fine art.*

Sec. 6. Chapter 374 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A taxpayer may collect an admission fee for the exhibition of fine art otherwise exempt from taxation on its sale, storage, use or other consumption pursuant to NRS 374.291 if the taxpayer offers to residents of the State of Nevada a discount of 50 percent from any admission fee charged to nonresidents. The discounted admission fee for residents must be offered at any time the exhibition is open to the public and admission fees are being charged.

2. If a taxpayer collects a fee for the exhibition of fine art otherwise exempt from taxation on its sale, storage, use or other consumption pursuant to NRS 374.291 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.

3. Any tax due pursuant to this section must be paid with the first sales and use tax return otherwise required to be filed by the taxpayer following the 15th day of the fourth month after the end of the first full fiscal year following the purchase of the fine art or, if no sales and use tax return is otherwise required to be filed by the taxpayer, with a sales and use tax return filed specifically for this purpose on or before the last day of the fourth month after the end of the first full fiscal year following the purchase of the fine art.

4. A taxpayer who is required to pay a tax resulting from the operation of this section 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 that provides exhibits specifically related to nature or a museum that provides exhibits specifically related to children, if the taxpayer:

(a) Made the donation before the date that either return required pursuant to subsection 3 is due; and

(b) Provides the department documentation of the donation at the time that he files the return required pursuant to subsection 3.

5. For the purposes of this section:

(a) "Direct costs of owning and exhibiting the fine art" does 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.

(b) "Net revenue" means the amount of the fees collected for exhibiting the fine art during the fiscal year less the following paid or made during the fiscal year:

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

(2) The cost of educational programs associated with the taxpayer's public display of fine art, including the cost of meeting the requirements of paragraph (d) of subsection 4 of NRS 374.291.

Sec. 7. NRS 374.055 is hereby amended to read as follows:

374.055 1. "Retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business of tangible personal property. *The terms do not include a sale of property that:*

(a) Meets the requirements of subparagraphs (1) and (2) of paragraph (a) of subsection 4 of NRS 374.291;

(b) Is made available for sale within 2 years after it is acquired; and

(c) Is made available for viewing by the public or prospective purchasers, or both, within 2 years after it is acquired, whether or not a fee is charged for viewing it and whether or not it is also used for purposes other than viewing.

2. The delivery in a county of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in the county, is a retail sale in the county by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

Sec. 8. (Deleted by amendment.)

Sec. 9. NRS 374.085 is hereby amended to read as follows:

374.085 "Storage ~~["and "use" do]~~, *use or other consumption*" does not include ~~the~~ :

1. The keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state ~~H~~; or

2. The keeping, retaining or exercising any right or power over tangible property that:

(a) Meets the requirements of subparagraphs (1) and (2) of paragraph (a) of subsection 4 of NRS 374.291;

(b) Is made available for sale within 2 years after it is acquired; and

(c) Is made available for viewing by the public or prospective purchasers, or both, within 2 years after it is acquired, whether or not a fee is charged for viewing it and whether or not it is also used for purposes other than viewing.

Sec. 10. NRS 374.291 is hereby amended to read as follows:

374.291 1. ~~There~~ *Except as otherwise provided in section 6 of this act, there* are exempted from the taxes imposed by this chapter the gross receipts from the sales of, and the storage, use or other consumption in a county of, works of fine art for public display.

2. *In determining whether a payment made pursuant to a lease of a work of fine art is exempt under subsection 1, the value for the purpose of paragraph (b) of subsection 4 is the value of the work and not the value of possession for the term of the lease, and the year described in paragraphs (c) and (d) of subsection 4 is the first full calendar year after the payment is made.*

3. *During the first full fiscal year following the purchase of fine art for which a taxpayer receives the exemption provided in this section, make available, upon written request and without charge to any public school as defined in NRS 385.007, private school as defined in NRS 394.103 and 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 and that the facility makes available for purchase by the public at the time of the request.*

4. As used in this section ~~the~~ *“fine”* :

(a) *“Fine art for public display”* :

(1) *Except as otherwise provided in subparagraph (2), means a work of art which:*

~~(a)~~ (I) 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;

~~(b)~~ (II) Is purchased in an arm’s length transaction for \$25,000 or more, or has an appraised value of \$25,000 or more;

~~(c)~~ (III) 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 first full calendar year after the date on which it is purchased ~~it~~, *or if the facility displaying the fine art disposes of it before the end of that year, during at least two-thirds of the full weeks during which the facility had possession of it, or 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 first full calendar year after the date on which the fine art is purchased, 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 purchase of the fine art being displayed;* and

~~[(d)]~~ (IV) Will be *on display in a facility that is available for educational purposes, group tours by pupils or students for at least 5 hours on at least 60 days of the first full fiscal year after the purchase of the fine art, during which the facility in which it is displayed is open, by prior appointment and at reasonable times, without charge; and*

(2) Does not include:

(I) A work of fine art that is a fixture or an improvement to real property;

(II) Materials purchased by an artist for consumption in the production of a work of art that is to be a fixture or an improvement to real property;

(III) 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;

(IV) Products of filmmaking or photography, including, without limitation, motion pictures;

(V) Literary works;

(VI) Property used in the performing arts, including, without limitation, scenery or props for a stage; or

(VII) 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.

(b) “Public display” means the display of a work of fine art where members of the public have access to the work of fine art for viewing 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, including, without limitation, a private office, hallway or meeting room of a business, a room of a business used for private lodging and a private residence.

(c) “Pupil” means a person who:

(1) Is enrolled for the current academic year in a public school as defined in NRS 385.007 or a private school as defined in NRS 394.103; or

(2) Receives instruction in a home and is excused from compulsory attendance pursuant to NRS 392.070.

(d) “Student” means a person who is enrolled for the current academic year in:

(1) A community college or university; or

(2) A licensed postsecondary educational institution as defined in NRS 394.099 and a course concerning fine art.

Sec. 11. If a facility containing a public or private art gallery, museum or other building or area for exhibition was under development or construction on July 1, 1997, sections 1 and 2 of chapter 592, Statutes of Nevada 1997, at pages 2979 and 2980, apply to works of art purchased

before that date and displayed in the gallery, museum or other building or area within 2 years after their purchase. In that case, the required period of display is the later of the year for which the exemption is claimed or the first full year after the gallery, museum or other area or building is first opened for exhibition, and the affidavit required by section 1 of chapter 592, Statutes of Nevada 1997, at page 2979, must be filed on or before June 15 preceding the applicable year. As used in this section, "year" means fiscal year for purposes of section 1 of chapter 592, Statutes of Nevada 1997, and calendar year for purposes of section 2 of chapter 592, Statutes of Nevada 1997.

Sec. 12. 1. This section and sections 1 to 4, inclusive, and 6 to 11, inclusive, of this act become effective on July 1, 1999, and apply to sales, leases, dispositions, keeping and retention of property, and to property held, before, on or after that date except that the provisions of subsection 1 of sections 2 and 6 of this act do not apply to require the taxpayer to have offered discounted admission fees for residents before July 1, 1999.

2. Section 4 of this act expires by limitation on June 30, 2003.

3. Section 5 of this act becomes effective on July 1, 2003.

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