

280-RICR-20-70-11

## **TITLE 280 – DEPARTMENT OF REVENUE**

### **CHAPTER 20 – DIVISION OF TAXATION**

#### **SUBCHAPTER 70 – SALES AND USE TAX**

Part 11 - Exemption of Sales by Writers, Composers and Artists

#### **11.1 Purpose**

The purpose of this rule making is to implement R.I. Gen. Laws Chapters 44-18 and 44-19; specifically § 44-18-30(B), which provides an exemption for sales by writers, composers and artists.

#### **11.2 Authority**

These rules and regulations are promulgated pursuant to R.I. Gen Laws §§ 44-1-4 and 44-19-33. These rules and regulations have been prepared in accordance with the requirements of R.I. Gen. Laws Chapter 42-35, the Rhode Island Administrative Procedures Act.

#### **11.3 Application**

These rules and regulations shall be liberally construed so as to permit the Division of Taxation to effectuate the purpose of R.I. Gen. Laws Chapters 44-18 and 44-19 and other applicable state laws and regulations.

#### **11.4 Severability**

If any provision of these rules and regulations, or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the rules and regulations shall not be affected thereby.

#### **11.5 Definitions**

- A. “Art gallery” means a room or building devoted to the exhibition of works of art, or an institution or business exhibiting or dealing in works of art. This definition also includes temporary spaces devoted to the exhibition of works of art or dealing in works of art, such as “pop-up galleries” or art festivals.
- B. “Council” means the Rhode Island Council on the Arts.

- C. “Individual” means any person, partnership, association, corporation, estate, trust, fiduciary, limited liability company, limited liability partnership, or any other legal entity.
- D. “One of a kind” means the creation of a solitary work, conceived and produced by the artist or author or under their direction, not intended for multiple or mass production.
- E. “Limited edition” means the creation of a solitary work, conceived and produced by the artist or author under their direction, which is intended for limited reproduction, signed and numbered by the artist.
- F. “Principal place of business” means the primary location where a taxpayer's business is performed. The principal place of business is generally where the business's books and records are kept and is often where the owner/head of the firm or top management is located.
- G. “Resident of” or “Residing in” means a writer, composer or artist who:
  - 1. Is domiciled in the state, or
  - 2. Is not domiciled in the state but maintains a permanent place of abode in this state and is in the state for an aggregate of more than one-hundred eighty-three (183) days of the taxable year.
- H. “State” means within the exterior limits of the state of Rhode Island and includes all territory within these limits owned by or ceded to the United States of America.
- I. “Work” means:
  - 1. An original and creative work, whether written, composed or executed for “one of a kind or limited edition” production and which falls into one of the following categories:
    - a. A book or other writing;
    - b. A play;
    - c. A musical composition;
    - d. A painting, print, photograph or other like picture;
    - e. A sculpture;
    - f. Traditional and fine crafts;

- g. The creation of a film;
  - h. The creation of a dance.
2. "Work" also includes any product generated as a result of any of the above categories.
  3. This definition does not apply to any piece or performance created or executed for industry oriented, commercial or related production. A commercial use includes the hiring of a photographer to take a photograph, as opposed to purchasing a one of a kind scenic photograph taken by a photographer held out for sale.

## **11.6 Sales and Use Tax Exemption**

- A. The exemption from sales and use tax for sales of artistic works applies to sales by:
  1. An individual who is a resident of and has a principal place of business situated in this state, and has been determined by the tax administrator, in consultation with the council, to have written, composed, or executed, either solely or jointly, a work or works, by the individual. Such determination shall be made after consideration of any evidence submitted by the individual.
  2. A writer, composer or artist conducting their business as a legal entity organized and registered under the laws of this state and that has its principal place of business situated in this state, and has been determined by the tax administrator, in consultation with the council, to have written, composed, or executed, either solely or jointly, a work or works. Such determination shall be made after consideration of any evidence submitted by the entity.
  3. Any art gallery located in the state of Rhode Island.
    - a. Example 1. An art gallery located in Providence, RI sells a "work" for the price of \$1000. Payment is made directly to the art gallery operator. This sale is not subject to sales and use tax, provided that the operator of the art gallery has submitted an "Application for Sales Tax Exemption for Artistic Works" and received an exemption number from the Division of Taxation prior to the sale, which must be written on the customer invoice.
    - b. Example 2. A "pop-up gallery" located at a temporary location in Rhode Island sells a "work" for the price of \$1000. Payment is

made directly to the art gallery operator. This sale is not subject to sales and use tax provided that the operator of the art gallery has submitted an "Application for Sales Tax Exemption for Artistic Works" and received an exemption number from the Division of Taxation prior to the sale. The exemption number assigned by the Division of Taxation must be shown on the customer invoice.

- c. Example 3. A promoter schedules an art festival in a city or town in Rhode Island and rents out space at the event to individual vendors who will be selling "works". The promoter, upon submitting an application and in consideration of the type of art items being sold (works), will be issued a blanket "Certificate of Exemption" by the Division of Taxation. This exemption will exempt the sale of a "work" by all vendors operating at the show who have not individually filed for and received a numbered exemption certificate for the sale of artistic "works." Vendors must still obtain a temporary sales tax permit from the promoter of the show. At the conclusion of the show, vendors must file with the promoter a sales tax return with payment for any items subject to sales tax. In addition, the vendor must also fill out and submit along with the sales tax return, a reconciliation of the sales and activity of the show. Failure to submit the sales tax return or the reconciliation will prevent the vendor from being able to participate in future shows.

## **11.7 Application for Exemption**

- A. Individuals or Legal Entities - For a sale of a work to be exempt, an eligible writer, composer or artist must prior to the sale of any "work", apply to the tax administrator for a Certificate of Exemption on a form prescribed by the tax administrator. In determining the eligibility of the work for exemption the tax administrator will consult with the council, and may require the submission of all books, documents or other evidence relating to the creation of the work.
- B. Art Galleries - For the sale of a work to be exempt by an art gallery, the operator of the art gallery must apply to the tax administrator for a sales tax exemption. The tax administrator will consult with the council to ascertain whether the applicant is eligible for the exemption under the provisions of the law.
- C. The tax administrator shall require a writer, composer, artist, or the operator of an art gallery to submit an annual accounting of the total amount of revenue from the sale of art, the number of works sold, the type of work sold (i.e. book, painting, print, photograph, sculpture, etc.) and the date of sale. Failure to file such a report may, at the sole discretion of the tax administrator, terminate any further eligibility for the exemption of the writer, composer, artist or art gallery.

## **11.8 Individuals, Legal Entities or Galleries with Exemption for Artistic Works Granted Prior to December 1, 2013**

- A. Individuals, legal entities or galleries with an exemption for artistic works granted prior to December 1, 2013 are required to re-apply as required under § 11.7 of this Part for a Certificate of Exemption on a form prescribed by the tax administrator in consultation with the council.
- B. The tax administrator shall require a writer, composer, artist, or the operator of an art gallery to submit an annual certified accounting of the total amount of revenue from the sale of art, the number of works sold, the type of work sold (i.e. book, painting, print, photograph, sculpture, etc.) and the date of sale. Failure to file such a report may, in the sole discretion of the tax administrator, terminate any further eligibility for the exemption of the writer, composer, artist or art gallery.

## **11.9 Compliance under Sales/Use Tax Law**

- A. At the time of application, every writer, composer, artist or art gallery making any retail sales, whether or not such sales are exempt, shall hold a valid permit to make sales at retail and shall comply with all the administrative, collection and remittance requirements of the sales and use tax law.
- B. The exemption number assigned to the artistic work by the Division of Taxation must be shown on the customer invoice. This exemption number must also be shown on the line designated as "other" deductions on Form T-204, Annual Reconciliation, to substantiate the deduction taken from the gross sales being reported.

## **11.10 Income Tax Exemption – Specified Districts**

Income derived from the sale of works created within a specified district (as outlined in R.I. Gen. Laws § 44-30-1.1) by writers, composers and artists who live and work within those districts is exempt from state personal income tax. These districts are within Providence, Pawtucket, Woonsocket, Tiverton, Little Compton, Newport, Warwick and Warren, or the entire town of Westerly. The income derived from the sale of works created in areas other than the specified districts is taxable.

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