



February 13, 1997

Mr. Robert Geruso
Assistant Tax Administrator
Rhode Island State Department of Revenue
One Capitol Hill
Providence, RI 02908

Dear Mr. Geruso:

Thank you for your recent call, in which you request our assistance in helping to define one provision of the new laws providing sales/use tax and certain personal tax exemptions for artists. Specifically, you would like our opinion on language that exempts income derived from "one-of-a-kind, limited" production works of art, as outlined in the legislation.

Artists create work in a number of different ways. However, for the purposes of this discussion I believe we can categorize the creation of a work of art in three ways:

1. The creation of a solitary work, conceived and produced by the artist or under his/her direction, not intended for multiple or mass production.
2. The creation of a solitary work, conceived and produced by the artist or under his/her direction, which is intended for limited reproduction under the control of the artist.
3. The creation of a solitary work, usually conceived and produced by the artist or under his/her direction, but intended for mass production, not always under the control of the artist.

In my opinion, art work created under categories one and two above are in keeping with the intent of the legislation. In each instance the artist has created an original work of art, and has maintained personal involvement and control over the work. With limited editions the artist has invested as much personal care into the creation of each subsequent reproduction as he or she has invested in the creation of the original. With limited edition work the artist's intent is to produce a work that has the same artistic value as the original. In the visual arts, we would define "limited reproduction" as no

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more than 150 copies of a single work of art, numbered and signed by the artist and produced at one time.

Work created for mass production often involves as much artistic effort as the creation of a unique, "one-of-a-kind" piece. However, in commercial or mass-produced art work the artist tends not to play a personal role in the creation of each individual work. The finished work may be of high quality, but does not have the artistic value of being personally crafted, individual and unique. It is, as indicated in the legislation, a "piece or performance created or executed for industry oriented or related production."

I hope that the above opinion helps as you and your department address this issue. As you know, the Tax Administrator has asked the Arts Council to render opinions on specific applicants for the artist exemptions, and we intend to convene a panel for that purpose. We would also be willing to ask this panel to render an opinion on specific questions regarding this "limited, one-of-a-kind" issue as well.

Thank you for your efforts in this matter, and we look forward to working with you now and in the future.

Sincerely,

Randall Rosenbaum
Executive Director

cc: Patricia McGlaughlin, Deputy City Solicitor

DRAFT EXAMPLES OF TAX EXEMPTION ISSUES

1. The creation of a solitary work, conceived and produced by the artist or under his/her direction, not intended for multiple or mass production.
 - For “a book or other writing”: the income derived from writing and selling a book or other writing to a publisher, but not the income derived from the mass production of the book or other writing by a commercial publisher.
 - For “a play or the performance of said play”: the income derived from selling a play to a publisher, performing the work either singly or in an ensemble under the direction or involvement of the creative artist, or the royalties received from subsequent performances of the play (given the language of the law). NOTE: Often theatrical works are performed without the direct involvement of the playwright, although the original work was created under his/her supervision.
 - For “a musical composition or the performance of said composition”: the income derived from selling a musical composition to a publisher, the income derived from the creative artist performing the work alone or in an ensemble under the direction or involvement of the creative artist, or the royalties received from subsequent performances of the work (given the language of the law). NOTE: the same issues regarding the performance of a work without the direct supervision of the composer apply here as they do in theatre.
 - For “a painting or other like picture”: the income derived from selling a single, unreproduced painting or ‘other like picture’.
 - For “a sculpture”: the income derived from selling a single, unreproduced sculpture.
 - For “traditional and fine crafts”: the income derived from selling a single, unreproduced, handcrafted work of fine art.
 - For “the creation of a film or the acting of said film”: the income received from acting in a film, or received by the creative filmmaker/videographer from licensing or selling the film or video to a distributor.
 - For “the creation of a dance or the performance of said dance”: the income derived from the creative artist performing the work alone or in an ensemble under the direction or involvement of the creative artist, or the royalties received from subsequent performances of the work (given the language of the law). NOTE: the same issues regarding the performance of a work without the direct supervision of the composer apply here as they do in theatre.

2. The creation of a solitary work, conceived and produced by the artist or under his/her direction, which is intended for limited reproduction under the control of the artist.
 - For “a book or other writing”: the same as above, but it would also include income derived from book sales by non-commercial, non-profit independent presses. NOTE: independent presses typically print and distribute limited quantities of high quality fiction, poetry and creative non-fiction.
 - For “a play or the performance of said play”: same as #1 above

- For “a musical composition or the performance of said composition”: same as #1above
- For “a painting or other like picture”: the income derived from selling an original and up to 150 signed and numbered copies of a single “painting or other like picture”, created and produced at one time.
- For “a sculpture”: same as for “a painting or other like picture”
- For “traditional and fine crafts”: same as for “a painting or other like picture”
- For “the creation of a film or the acting of said film”: same as #1 above
- For “the creation of a dance or the performance of said dance”: same as #1 above