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COMMENTS ON PROPOSED DEPARTMENT OF REVENUE REGULATIONS ON "EXEMPTION OF SALES BY WRITERS, COMPOSERS AND ARTISTS"[1]
[280-RICR-20-70-11]
February 14, 2025

The ACLU of Rhode Island appreciates the opportunity to comment on these proposed regulations, for they address a topic on which we have received many inquiries from affected artists, and particularly authors.

The statewide sales tax exemption on art has been in effect for over a decade now, but its implementation has been rocky. As the Department knows, six years ago the ACLU was forced to sue over the agency's implementation of the statute when it decided that non-fiction books did not constitute artwork covered by the sales tax exemption law. We are pleased that these proposed regulations codify the outcome of that lawsuit and make explicit that works qualify regardless of whether they are deemed fiction or non-fiction.

However, the proposed regulation's attempt to further clarify – and narrow – the sales tax exemption's reach only creates other problems, which we briefly outline below. We recognize that the Department, along with the State Council on the Arts, is implementing a vague law. The statute – by failing to define what constitutes a "one-of-a-kind, limited-production" work of art – is far from a model of clarity and has helped contribute to the confusion and controversy surrounding its implementation. Nonetheless, the goal of the statute – to "strengthen Rhode Island's identity as an arts-friendly destination" – must always be kept in mind in adopting implementing regulations.

[1] These comments should be taken as also applying to the similar amendments being simultaneously proposed to DOR's rules governing "Modification of Certain Income of Writers, Composers and Artists," 280-RICR-20-55-13, which deals with the exemption's reduction of federal gross adjusted income pursuant to R.I.G.L. §44-30-1.1.

The Department's attempt to craft an unduly narrow definition of what constitutes a qualifying work of art negates that goal.[2]

Presently, the regulations require a "limited edition" that qualifies for an exemption to be a solitary work "intended for limited reproduction signed and numbered by the artist." The proposal would additionally require the work to be self-published; to total no more than 300 copies; and to not be "sold through an online marketplace or third-party vendor." Without conceding the current definition's validity,[3] we find these additional limitations inappropriate and urge their rejection.

Whether a book is self-published is totally unrelated to either the creative or Rhode Island-based nature of the work and, therefore, irrelevant to whether it should qualify for an exemption. An author should not be penalized merely for relying on a third party to handle the non-creative aspect of having their art presented to the public. The use of a third party to publish a book simply does not turn it into a non-exempt "commercial" production, and nothing about the two specific examples cited in the regulations to explain the term suggests otherwise. *See* §11.5(K)(3)(a-b). Indeed, it would be impossible to apply such a standard to various other creative works exempt under the statute, such as films or plays, and there is no reason to do so for books.

Since the proposed rule separately disqualifies a book if sold through a third-party vendor, this provision denies an author use of the sales tax exemption for a "non-self-published" book even when it is sold directly by the author. In failing to define the term, the regulation thus appears to allow authors to qualify for the tax exemption only if they use a printing press in their basement to reproduce the book. There is no basis in the statute for such a cramped reading of the law.

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[2] It also seems unduly harsh since the DOR's accompanying documentation appears to suggest that these proposed restrictions would garner the State less than $100,000 in tax revenue.

[3] For example, we strongly question DOR's basis for requiring a work to be "solitary." The statute specifically refers to creative works written "either solely or jointly." R.I.G.L. §44-18-30B(c)(2)(ii). We have related concerns about the regulation's definition of "one of a kind," but that term is not being amended in this proposal, and we have limited our comments to addressing only revisions being proposed in this rule-making proceeding.

We also cannot conceive of a compelling rationale for limiting the sale of a book to 300 copies in order to qualify for the exemption. Leaving aside the completely arbitrary nature of this number,[4] a person will have no idea when applying for the exemption whether a book they have written will sell more than 300 copies, and it seems absurd to require as a condition of obtaining the exemption that the author agree in advance not to sell more than 300 copies of their work.[5]

Further, such an arbitrary limitation serves only to penalize an author for being successful in their artistic endeavor. That hardly seems to be in keeping with the statute's stated goal of "foster[ing] creativity, innovation, and entrepreneurship."

In short, while the statute refers to "limited production" works of art, that term, whatever it means, certainly should not be interpreted as being restricted to such a relatively small number of copies of a book or other writing. In that regard, we note that there is no comparable limitation on the number of produced "painting[s], print[s], photograph[s] or other like picture[s]" to qualify for an exemption, nor should there be.

For the same reasons that we object to the proposal's requirement that books be "self-published," we oppose the prohibition on their being sold "through an online marketplace or third-party vendor." As the proposal recognizes by excluding art galleries from this limitation, there are legitimate bases for relying on third parties to sell a work of art. Especially in this day and age, disqualifying a book (or other artwork) from the sales tax exemption merely because copies are sold through a website inappropriately and unnecessarily hampers the statute's goals. In any event, even if such a restriction were legitimate, it should not serve as a basis for denying the availability of the tax exemption to those books when they are separately sold directly by the author.

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[4] The documentation accompanying this rule indicates that the number was taken from another statute addressing the completely separate issue of an artist's right of authorship. R.I.G.L. § 5-62-1 et seq.

[5] If the regulation's intent is to limit the exemption to the *first* 300 copies of the work sold, it does not make that clear.

We therefore urge the Department to reject these provisions narrowing the exemption's scope. Instead, we encourage the agency to make use of the Administrative Procedures Act's advance rule-making provisions, R.I.G.L. §42-35-2.5, to bring interested stakeholders together to discuss the regulatory implementation of the artist sales tax exemption statute and to consider fairer and more suitable definitions of what qualifies for the exemption. Such a meeting could also be helpful in addressing complaints we have received that the exemption process is sometimes unduly lengthy and burdensome and has led to what some see as arbitrary decision-making.

We appreciate your attention to our views, and trust that you will give them your careful consideration. If the suggestions we have made are not adopted, we request, pursuant to R.I.G.L. §42-35-2.6(1), a statement of the reasons for not accepting the arguments we have made.

Submitted by: Steven Brown, Executive Director
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