

## ARTWORK CUSTODY AND THE NYC SALES AND USE TAX

### IMPORTANT GUIDELINES

Collectors, galleries, indeed anybody who buys, sells, and collects artwork and other fine collectibles should be aware of rules governing sales tax. Purchases in NYC are subject 8.875% tax. This includes a NY State rate of 4%. As with most items, artwork purchased in NYC for shipment to another state or country is not subject to local sales tax. For a variety of reasons the City has increased enforcement in ensuring items exempted from sales tax are indeed eligible. Enforcement of "Use" tax laws for items transported into and used in the state has also increased. Liability issues can arise when items are transported, lent, auctioned, or entered into probate.

Below are guidelines on navigating sales tax liabilities in NY. If they can be distilled into one suggestion it is use a knowledgeable and reputable transport company that maintains good records. Renwick Fine Art Services is a recognized carrier with the US Department of Transportation ([#2122499](#)) and is familiar with local sales and use tax laws. When we deliver items we capture signatures on Bill of Ladings (BOL) via network-enabled tablets. Completed and signed BOLs are automatically attached to your account and are available at any time in the future should the need arise.

### COLLECTOR TIPS:

- The sales tax is a "consumer tax," that is, the tax is imposed on the retail sale of tangible personal property and certain services and is collected from the person who purchases at retail--the consumer. The buyer cannot shift the liability for payment of the tax to another person nor otherwise relieve himself of such liability, although the vendor is personally liable for the tax he was responsible for collecting.
- The definition of "Resident" for sale and use tax purposes is NOT the same as for income tax! For this purpose, any individual who owns or leases an apartment or home in NY is considered a resident of NY.
- A Sales and Use tax is just that. Anything brought into NYC by a resident of NY State is theoretically subject to the tax, including a painting just purchased overseas.
  - *Example: Say you buy an artwork in Colorado for your ski condo. Were you at any time to sell your condo and move your artwork to NY you would be liable for the tax assuming you had any type of residence in NYC at the time of the Colorado purchase.*



- Keep diligent records and save all receipts. Sales and Use taxes are offset by taxes paid in other jurisdictions. So in the above example, you could provide a sales tax receipt for the 2.9% Colorado rate and only be liable for the difference.
- Even artwork lent to a NY museum is subject to a Use tax if the lender can be shown to be a resident at the time of the purchase. Lender beware!
- Custody and delivery: If a buyer or its agent takes possession of an item at any time in NY then it is considered use in NY and tax is due.
- Sellers are liable for paying the initial sales tax on items sold in NY and are frequently audited. They must be able to prove that exempt items did indeed get exported. Increasingly, the only acceptable form of proof is a Bill of Lading from a recognized carrier and that carrier must be hired by and work at the direction of the seller.
- Allow the seller to make shipping arrangements. Avoid contacting the carrier directly.

#### **GALLERY AND SELLER TIPS:**

- Hire and use reputable carriers that are familiar with tax laws and have experience exporting items from NYS.
- Open an account with the carrier, arrange for payments, and pay the carrier directly. Reimbursements from the buyer for shipping should be paid to the seller!
- Handle all directions to carrier internally. That means gather all relevant delivery information from buyer and provide it to carrier. Do not rely on buyer to set up delivery with carrier or otherwise take the responsibility of directing the carrier. Avoid any likelihood that the carrier could be deemed an “Agent” of the buyer.
- Require carrier to provide us with draft bills of lading (BOLs) and airway bills (AWBs) to review and approve prior to shipping.
- Advise buyer not to contact carrier directly and to direct all inquiries regarding shipment to the seller.
- Advise carriers not to contact buyer directly or alter delivery destination from the approved BOL.
- Follow up on deliveries by obtaining a signed BOL from the carrier showing an out of state delivery address. Make this a habit for every delivery and create a file for your records. Expect to get audited 3 years after a tax year but keep those records indefinitely.

SOURCE: [NYS Dep't of Taxation & Finance Sales Tax Advisory Opinion TSB-A-96 \(23\)S](#)

