

610.0000 WORKS OF ART AND MUSEUM PIECES FOR PUBLIC DISPLAY —Regulation 1586

(a) IN GENERAL

610.0500 Exhibits as a Work of Art. A firm contracts to create an exhibit as part of a permanent collection of a museum. The exhibit consists of life-size, three-dimensional scenes. A review of the photographs and description of the proposed work indicates it contains elements of both a construction contract and the production of works of art.

The scenes themselves are best described as assemblages, the artistic components of which are works of art. On the other hand, if the walls, ceiling, or floor itself was a work of art such as a wall painted with a mural or fresco, it would be viewed as a work of art rather than part of a construction contract. Also, walls, partitions, or ceilings which are in the nature of shadow boxes to enclose the assemblage and set aside from other exhibits, or which are in the nature of backdrops, such as a stage set to establish a background or setting, would be considered part of the work of art. Otherwise, the rules of Regulation 1521 concerning materials and fixtures would apply to the walls, floors, and ceilings which become improvements to real property.

Items not part of the integral artistic components, such as electrical wiring, are not part of the work of art even though supportive of the assemblage (e.g., functioning as illumination). On the other hand, a period lighting fixture or lamp, which is an integral part of the artistic assemblage, is a part of the work of art.

Generally, shelving, display cabinets, and seating which are supportive of the work of art are part of the construction contract or are sales of tangible personal property. On the other hand, such items which are part of the three-dimensional scenes would qualify as part of the work of art.

In summary, some judgment must be exercised in determining what is integral to the work of art. Generally, the shell of the museum is part of the construction contract while the components of the assemblage (work of art) are works of art. Items supportive of the assemblages such as wiring, lighting, ducting, etc., are improvements to realty and part of the construction contract. 10/31/95.

610.0600 Flower Designs. A flower artist was hired to create flower designs for a museum for its non-profit auction. The artist sold centerpieces, large shapes, and a ladies room arrangement. The exemptions for the sale or purchase of works of art or museum pieces by or for donation to museums is provided by sections 6365 and 6366.3 and Regulation 1586. To qualify for exemption, the property in question must meet the definition of “art” contained in Regulation 1586 (b)(1) and be purchased to become part of a permanent collection of the museum. Regulation 1586 (c)(1)(b).

The flower designs were created with fresh flowers. A floral design which is only a display of fresh flowers is not “art” within the meaning of the sales tax exemption statute. Even if the “flower art” met the definition of “art” this particular display was not purchased to become part of the museum’s permanent collection but to decorate certain rooms. The sale is subject to sales tax measured by all amounts paid to the flower artist. 9/6/90.

610.0663 Screenplay with Sketches. A museum purchased a 35 page handwritten screenplay that was written by a person known as an artist and not as a playwright. The author made rough sketches in the margins on five pages to illustrate how scenery should be placed on the stage.

Under the statute, the classifications of a work of art depends on whether the object was “intended to provide aesthetic pleasure to the beholder and/or to express the emotions of the artist.” Historical significance may well determine whether an object is “important.” and worthy of purchase and display by a museum, but it does not determine whether an object is a work of art. In this situation, the author added sketches to the manuscript only to provide directions for placing scenery and not “to provide aesthetic pleasure to the beholder and/or to express the emotions of the artist.” Therefore, the manuscript is not a work of art for tax purposes and it does not qualify for the exemption. 5/1/96.

[610.0680](#) **Whales as Fixtures.** Although the sale and installation of two fiberglass life size model whales at an aquarium constitutes a contract to furnish and install fixtures, the aquarium, if it meets the criteria in Regulation 1586, would qualify as a museum and the sale of the models would be exempt from tax as works of art. Although a nominal charge is made for admission to the area where the whales are on exhibit, the exemption for the purchase is not disqualified because the majority of the museum's space is open to the public free of charge. 4/9/85.

(b) ORIGINAL WORKS OF ART

[610.0750](#) **Sculpture.** An artist was commissioned by a county to design, fabricate and install a piece of sculpture at a Health Service Complex. The sculpture is a three dimensional work of art which was designed for a specific site on the grounds of the complex.

In general, the sale and installation of a commissioned piece of sculpture is consistent with the definition of a construction contract per Regulation 1521. As such, the tax treatment depends upon the degree to which the artwork is integrated into or merged with a building. If a piece of sculpture maintains its integrity and identity even after installation, the sculpture is a fixture and the artist who furnished and installed the sculpture is a retailer. However, in this case since the sculpture is an original work of art purchased by a county and displayed in an area open to the public, the sale is exempt from tax pursuant to section 6365. 8/8/89.

[610.1750](#) **Works of Art.** An artist is the retailer of art work which is classified as a "fixture." Accordingly, an original work of art sold to a city and displayed in an area open to the public in a building is exempt pursuant to section 6365 notwithstanding that it is an improvement to realty. On the other hand, if the artwork is integrated into a building so as to become an integral and inseparable part of a building, such as a mosaic applied on a wall piece by piece, the artwork is "material." In this case the artist is the consumer of the material and must pay sales or use tax on the material. 7/24/90.

(c) MUSEUM PIECES

610.3500 **Purchase of Artwork for Display in France.** A California county purchased artwork as a gift for its "sister county" in France. The artwork was personally transported to France by members of the Board of Supervisors. The artwork, along with other items, was placed in an enclosed display case, located in France, in the "several hundred years old" county administration building which is open to the public.

This transaction does not qualify for the exemption provided in section 6365. In order to qualify pursuant to section 6365(b)(3), the "public place" must be located in California. It does not qualify under section 6365(b)(1) because the "county" administration building is not a "museum" despite the fact that it may be a historical landmark. A "museum" is "an institution for the acquisition, preservation, study, and exhibition of work of artistic, historical or scientific value." The building at issue is an administration building. 10/12/90.

[610.4750](#) **Sculpture.** An artist sold a sailplane sculpture to a foundation for display at an airport at no charge to the public or city. The foundation did not purchase the sculpture for donation to any governmental entities or nonprofit organizations listed in Regulation 1586(c)(1). The foundation also does not operate a public museum under contract with a state or local governmental entity and the sculpture was not purchased for display in a museum. Under these facts, tax applies to the sale of the sculpture to the foundation. 10/16/96.