

Indirect/Sales/Use:

New York: Fine Art Purchased in Co-Ownership and Then Leased to Co-Owner is an Exempt Resale

Decision DTA No. 828673, N.Y. Tax App. Trib. (2/28/22). The New York Tax Appeals Tribunal (Tribunal) reversed an administrative law judge (ALJ) ruling [see *Determination DTA No. 828673*, N.Y. Div. Tax App., ALJ Div. (2/18/21) for details on the ALJ ruling] to hold that a limited liability company's purchase of a one-half interest in a fine art painting that was subsequently leased to the painting's other co-owner (an unrelated entity) under a written one-year lease agreement, automatically renewable for additional one-year periods provided that neither party terminated prior to the end of the then current term, qualified for exemption from sales tax as a purchase for resale under N.Y. Tax Law § 1101 (b) (4). Unlike the ALJ ruling, which concluded that the company's factual case for resale exemption fell short when the transaction was "examined in its entirety," the Tribunal explained that even the ALJ had found the underlying lease "valid in all respects," and that such finding of a valid lease sufficiently establishes that the company intended to and did resell (*i.e.*, lease) its interest in the painting at the time of purchase. Furthermore, the Tribunal explained that no factual evidence in the record showed any use or intended use of the painting by the company other than its lease to the co-owner, and the ALJ was wrong to conclude that just because the company "might, at some point, divert a leased piece of art into its own collection" it had such an intent at the time it purchased the painting. Accordingly, the Tribunal held that the company met its burden under N.Y. Tax Law § 1132 (c) to show that it purchased its interest in the painting exclusively for the purpose of resale. Please contact us with any questions.

URL: <https://www.dta.ny.gov/pdf/decisions/828673.dec.pdf>

URL: <https://www.dta.ny.gov/pdf/determinations/828673.det.pdf>

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