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Delaware Becomes Tax Haven for Art Collectors, Art Collectors Shrug

Despite massive tax loopholes, collectors are doing it for the love of the art.



BY STEVE MENDELSON *Managing Director, Thomson Reuters Checkpoint* [@scmendelsohn](#) **WRITE A COMMENT**



IMAGE: Getty Images

As tax forms start arriving in Americans' mailboxes, and accountants' schedules begin to become overrun, everyone is lamenting the impending arrival of April 15, scrambling to find a deduction that would limit the pain caused by the tax man. For some of the more fortunate, art collecting is a means to that end, thanks to some convenient shelters built into the tax code such as like-kind exchanges.

A like-kind exchange is a provision written into the tax code originally intended to ease the tax burden of farmers wanting to swap property. What it has become is a popular tactic for art collectors who want to delay or avoid paying federal taxes. The exchanges create a loophole that can allow investors to defer the 28 percent capital

gains tax on sales of art and other collectibles like stamps and coins, ultimately allowing some collectors to avoid paying millions of dollars in taxes.

But these exchanges are nothing compared to emergence of the state of Delaware as an unlikely tax "freeport" for art dealers looking to stash their investments to protect them from being taxed.

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Delaware has become a haven for art collectors because it is one of only five states without any sales or use tax. That means that a New York City-based collector who makes a multimillion dollar purchase would owe nothing by shipping the art to Delaware directly after buying it. Once there, the art can be bought and sold within a storage space without any tax on the transactions for as long as it remains in storage.

But for at least one art collector and her clients, collecting isn't about dodging taxes at all. It's all about an altruistic love for the art. I recently spoke to Karen Boyer, Principal at Elements in Play Fine Art Advisory, and she told me that while the initial tax bill gives some buyers sticker shock, it's nothing compared to opening themselves up to the risk of an audit.

"The first time someone buys a work of art, they're often surprised by the sales tax because they simply haven't thought about it," she said. "However, my clients are not interested in storing art forever just to avoid paying taxes. I don't think it's a good idea to get caught up in that. It's better to just pay the taxes and enjoy the art."

So what about stashing the art in The First State, hoping to slip the crunch of the tax man? Boyer says that, at least with her clients, it hasn't been something they've shown a lot of interest in.

"This whole Delaware thing is very new, but for the most part, my clients are looking for art to hang on their walls," she explained. "That's not to say they don't ever put it in storage, but thus far, I haven't had any clients who have said, 'I'm buying this for investment, I never want to see it again.'"

It's hard to imagine a savvy collector not showing much interest in the Delaware freeport, and Boyer says that eliminating some favorable loopholes like like-kind exchanges--something the Obama administration has sought to accomplish--wouldn't be popular. But Boyer explains that isn't a deal breaker, because collecting art is about more than just the tax implications. There's a cache that still exists in being a collector, and that is lost if the work is just sitting in storage somewhere collecting dust.

"I think people would be upset if like-kind exchanges were discontinued, but I don't think it would cause people to stop investing in art," she explained. "I don't think people view art as just another investment. It's a social thing, it's a status thing, and it's not the same as buying a stock. If it goes away, I don't think it will have a huge impact."

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PUBLISHED ON: JAN 27, 2016

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