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Gagosian Gallery to Pay New York State $4.3 Million

By RANDY KENNEDY

The Gagosian Gallery, one of the most successful art dealerships in the world, failed to pay New York State sales tax on hundreds of art transactions over a decade, according to Eric T. Schneiderman, the New York State attorney general, who on Tuesday announced an agreement to collect $4.28 million in back taxes, interest and penalties from the business.

Larry Gagosian

"Those who evade art taxes potentially deprive the state of millions of dollars," Mr. Schneiderman said, "and ordinary New Yorkers are stuck footing the bill."

Investigators found that the gallery's affiliate in California, Pre-War Art Inc., sold and shipped nearly $40 million worth of art to customers in New York from 2005 to 2015 and should have paid sales tax on those sales, according to the attorney general's office. The investigators said that a "substantial nexus" exists between the gallery and the California company. Larry Gagosian, the gallery's founder, is president of Pre-War as well as president of companies that control the rest of the gallery's operations, and Pre-War maintained an active bank account in New York.

The investigation, which found no evidence of criminal activity, also concluded that the gallery failed to

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pay tax on the sale of other works in New York that were shipped out of state from 2012 to 2015. Mr. Schneiderman said that state law requires sales tax to be paid when possession of a good is transferred to a buyer within New York State and that the gallery, in handing over art to shipping companies that were not common carriers like FedEx or the United States Postal Service, was legally transferring possession to the buyer at that point.

As part of the settlement with the attorney general's office, the gallery has agreed to set up a new shipping company of its own, so that it can comply with the letter of the law, and has also agreed that Pre-War will provide information to authorities for the next six years about its sales to New York.

The investigation, conducted with help from the New York State Department of Taxation and Finance, is the result of a more aggressive stance being taken recently by the state toward the flourishing art market, which generates billions of dollars in annual sales and for which New York City and London are the primary hubs.

In May, the New York real-estate developer and art collector Aby J. Rosen agreed with Mr. Schneiderman to a $7 million settlement for failing to pay taxes on $80 million in works, by artists like Andy Warhol, Jean-Michel Basquiat and Roy Lichtenstein, that he had bought since 2002. At the same time, the attorney general's office announced a separate $210,000 tax settlement with Victoria Gelfand, an art dealer who is a director of the Gagosian Gallery, though the settlement involved works that she had bought over the past eight years through her own company, not Gagosian.

Officials in the attorney general's office said that the settlement with Gagosian was the largest it had reached in a case involving an art gallery, though for a business as successful and sprawling as Gagosian — with locations in major cities around the world and tens of millions of dollars in annual sales — the amount will not be a body blow. (At the Art Basel art fair last month, the gallery offered a 1983 Gerhard Richter painting for $20 million.) The attorney general's office added that investigators believed other large art galleries in New York might also be avoiding sales tax through similar practices, but officials declined to discuss whether other settlements were being pursued.

Joshua Rubenstein, a New York lawyer whose clients include art collectors, said he was surprised Mr. Schneiderman took the position that possession in art sales is transferred to a buyer when an artwork is handed to a contract carrier being paid by the buyer. "It very well may be that the attorney general has the law on its side," said Mr. Rubenstein, the national chairman of the trusts and estates practice for the Katten Muchin Rosenman law firm. "But it's a new interpretation."

Mr. Rubenstein, who was not involved in the Gagosian case but was apprised of its details, added: "This has huge implications for doing business in a way that everyone thought was acceptable." Along with art galleries, dealers of high-end furniture and other sellers of luxury goods could be affected, he said.

The Gagosian Gallery declined to answer questions about the settlement beyond a statement: "Although we cannot comment on these findings, we accept and will fully comply with the terms of the settlement to bring closure to this matter."

The settlement comes amid another effort focused on art galleries, by the Manhattan district attorney's office. Last year, that office began issuing subpoenas to galleries, requesting sales and shipping records, according to lawyers for the galleries, an action that seemed to focus on whether the galleries were paying sales tax for art sold in New York, the lawyers said. That effort has not yielded criminal accusations.

The district attorney's initiative is reminiscent of a 2002 investigation by Robert M. Morgenthau, then the Manhattan district attorney, which led to the indictment of L. Dennis Kozlowski, the former chief executive of Tyco International, on charges of evading sales tax on art he bought from New York and London dealers. Mr. Kozlowski, who served more than eight years in prison after being convicted of theft of corporate funds from Tyco, paid $3.2 million in sales tax and interest as part of the art settlement.