



STATE OF NEVADA  
DEPARTMENT OF TAXATION

Web Site: <http://tax.state.nv.us>

1550 College Parkway, Suite 115  
Carson City, Nevada 89706-7937  
Phone: (775) 684-2000 Fax: (775) 684-2020

RENO OFFICE  
4600 Kietzke Lane  
Building L, Suite 235  
Reno, Nevada 89502  
Phone: (775) 687-9999  
Fax: (775) 688-1303

BRIAN SANDOVAL  
*Governor*  
ROBERT R. BARENGO  
*Chair, Nevada Tax Commission*  
WILLIAM CHISEL  
*Executive Director*

LAS VEGAS OFFICE  
Grant Sawyer Office Building, Suite 1300  
555 E. Washington Avenue  
Las Vegas, Nevada 89101  
Phone: (702) 486-2300 Fax: (702) 486-2373

HENDERSON OFFICE  
2550 Paseo Verde Parkway, Suite 180  
Henderson, Nevada 89074  
Phone: (702) 486-2300  
Fax: (702) 486-3377

October 18, 2011

Scott Peterson  
Executive Director  
Streamlined Sales Tax Governing Board  
4205 Hillsboro Pike, # 305  
Nashville, TN 37215-3339

Re: Nevada's 2011 Recertification

Dear Mr. Peterson:

This responds to your memorandum dated August 24, 2011, wherein you identified several issues concerning Nevada's compliance with the Streamlined Sales and Use Tax Agreement (the "Agreement"). The issues which you have raised, and our responses, are set forth below.

Issue No. 1: The taxability matrix shows oxygen delivery equipment and enteral feeding devices are exempt if provided with a prescription. The statutes and administrative code show them to be exempt only when paid by Medicare and Medicaid. Both are included in the Agreement definition of durable medical equipment.

Response: Oxygen delivery equipment and enteral feeding devices, when paid for or reimbursed by Medicare/Medicaid, fall within the scope of the exemption for sales of durable medical equipment to the federal government. See NRS 372.325, NRS 372.7285, NAC 372.020, and NAC 372.698. While NRS 372.283 provides an exemption for "prosthetic devices" when prescribed or applied by a licensed provider of health care, that exemption is limited to ". . . feeding catheters [and] medicine delivery catheters" and would not apply to other types of devices and equipment used for oxygen delivery or enteral feeding. Therefore, the matrix has been amended accordingly and is enclosed herewith.

Issue No. 2: The following citation is needed on the taxability matrix: Digital products-360B.485.

Response: The citation has been added to the sections concerning digital products and computer software. The amended matrix is enclosed herewith.

Issue No. 3: In Section 305, paragraph B, no citation was given for the provision related to the effective date for catalogue sales. Is this provision documented anywhere?

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Response: Paragraph B of Section 305 addresses rate changes as they pertain to catalog sales. According to the Agreement, rate changes for catalog sales may not take effect except upon 120 days notice. NRS 360B.310 provides a notice period of 60 days for all transactions including catalog sales. Nevada does not currently have an expanded notice requirement which is specific to catalog sales. The certificate of compliance has been amended accordingly and is enclosed herewith. It should be noted that the Nevada Legislature closed its 2011 session and will not meet again until 2013. The Legislature closed the 2011 session without enacting or authorizing any rate increases. This means that local sales/use tax rates cannot change until 2013 at the earliest. During the 2013 session, the Department will have an opportunity to request an amendment to NRS 360B.310 providing for the required 120-day notice period.

Issue No. 4: The state adopted direct mail sourcing provisions legislatively in 2011. The new statute provides that if a purchaser gives the seller a direct mail form or other written form or exemption certificate claiming direct mail, a seller who maintains a place of business in the state must collect tax to locations in the state where the direct mail is delivered. The Agreement provides that all sellers are relieved of any obligation to collect tax if they receive such documentation.

Response: Nevada's Sales and Use Tax Act was ratified by public referendum. Consequently, substantive provisions cannot be amended, added or repealed except by a direct vote of the people. Interpretive and procedural amendments have been made periodically through ordinary legislative processes. S.B. 34, as originally proposed by the Department, was rejected by legislative counsel because they deemed it to be substantive in nature, thus requiring approval by the voters. The version of S.B. 34, as enacted, was drafted and approved by legislative counsel for passage by the legislature. The bill authorizes the use of direct pay permits in connection with the sale of advertising materials distributed via direct mail. However, it does not relieve liability for "all sellers" but only for those without nexus. Direct pay permits allow consumers to pay sales or use tax directly to the state, thereby relieving the seller of the obligation to collect and remit sales or use tax, as applicable. Under Nevada law, a direct pay permit will rarely accomplish anything that could not be accomplished with a resale certificate. The sales and use tax is imposed upon the last transaction in the chain of commerce. In Nevada, this holds true for advertising materials, other than "primary advertising materials, when distributed via direct mail. See NAC 372.130. There are typically three parties in a direct mail scenario, an out-of-state seller/shipper, an in-state seller, and a customer, usually a small business owner. In the context of direct mail, the tax is imposed upon the transaction between the in-state seller and the small business owner. The out-of-state party may take a resale certificate from the in-state seller, thereby avoiding any collection obligation. A direct pay permit would serve no purpose in this context because the small business owner (i.e., the consumer) would rarely if ever be asked to pay the tax directly to the state. The Department considers the matter of S.B. 34 to be a minor issue which should not impact its ability to remain a full member under the Agreement.

Issue No. 5: The rounding rule does not contain a provision allowing the aggregation of state and local taxes.

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Response: The rounding rule appears at NRS 372.366 and NRS 374.371. Further, the rounding rule is incorporated by reference at NRS 377.040. Sales and use tax in Nevada is composed of the State Sales and Use Tax (imposed at the rate of 2% under NRS chapter 372), the Local School Support Tax (imposed at the rate of 2.6% under NRS chapter 374 and Statutes of Nevada), the City-County Relief Tax (imposed at the rate of 2.25% under chapter 377 of NRS), and several other local option taxes (imposed at various rates on a county-by-county basis). As noted above, the first three components of the tax are codified at chapters 372, 374 and 377 of NRS, respectively. The local option taxes are not codified but appear in various sections of the Statutes of Nevada, which are organized according to the legislative sessions at which the measures were adopted. As they pertain to local option taxes, the Statutes of Nevada consist of enabling legislation. Chapter 377 of NRS is also an example of enabling legislation. Enabling legislation authorizes local jurisdictions to impose local option taxes via county ordinance. By the terms of the enabling legislation, a county ordinance must contain provisions identical to those found in chapters 372 and/or 374 of NRS. For example, NRS 377.040 requires the adoption of “. . . [p]rovisions substantially identical to those of the Local School Support Tax, insofar as applicable.” Furthermore, all of the components of the tax are reported in the aggregate on a single return which is filed with the Nevada Department of Taxation. Because the rounding rule applies to each of the components of the tax, and given that the various components of the tax are reported in the aggregate, the rounding rule does indeed allow for rounding of the aggregate tax liability. To eliminate any confusion, the certificate of compliance has been amended to include the relevant citations to chapters 372, 374 and 377. As noted above, the amended version is enclosed herewith.

Issue No. 6: In Section 329, the statutes cited do not address effective dates for rate changes for services covering a period of time. Is this documented elsewhere?

Response: Nevada does not impose sales or use tax upon services unless they are rendered as part of the sale of tangible personal property, or in connection with bundled transactions. NRS 360.250 addresses rate increases as they pertain to sales of tangible personal property. Since taxable services cannot be rendered except in connection with sales of tangible personal property, NRS 360.250 sets forth the applicable 30-day grace period. Billing periods or cycles would not be relevant in this context because the transfer of the property is what triggers the obligation to pay sales or use tax, as applicable. Any tax liability on the value of associated services would accrue as of the date of the transfer. Accordingly, it appears that Section 329 is not applicable. The certificate of compliance has been amended accordingly.

Issue No. 7: In Section 330, the citation given for transactions including telecommunications services, Internet access, ancillary services or audio or video programming only defines bundled transactions.

Response: The certificate of compliance has been amended to include a citation to NAC 372.485. This provision adopts a default measure when the carrier or provider either fails to segregate charges for equipment or understates charges for equipment. Naturally, the seller's books and records would be used to determine the correct measure (i.e., cost).

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Issue No. 8: In Section 331, the citation given for relief for liability for purchasers does not address situations where the purchaser's seller or CSP relied on information in the state's data bases.

Response: The relevant provision is found at subsection 3 of NRS 360B.250: "[Opening paragraph] The Department shall . . . [Subsection 3] Waive any liability of a purchaser for any sum for which the liability of a registered seller or certified service provider is required to be waived pursuant to subsection 1 or 2 with regard to a transaction involving that purchaser."

I hope that the above responses are adequate to address your concerns. If not, my staff and I will be available at the upcoming meeting to answer any questions that may arise.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Nielsen", with a horizontal line extending to the right.

Christopher Nielsen  
Deputy Director