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October 13, 2015

Val Gibson
730 South Sleep Ridge Drive, Suite 210
Orem, Utah 84058

Re: Recent correspondence regarding delivery of concrete

Dear Mr. Gibson:

I am writing to respond to a variety of claims that you have made to my staff, our counsel at the Attorney General's office and the Streamline Board. The State of Nevada Department of Taxation ("Department") agrees that there is an element of transportation involved in the delivery of concrete. If the transportation, shipping and/or postage ("transportation element") is separately stated, it is not subject to tax pursuant to NRS 360B.425, NRS 360B.290 and NAC 372.101. However, when handling, crating, packing and other such charges are included in the separately stated delivery charge, the charge is taxable. This has been the position of the Department as well as the Attorney General's office from the beginning. The issue at hand with Nevada Ready Mix and Service Rock is whether the amount that is being separately stated includes anything other than "transportation" which the Department has maintained, it does.

In order to resolve this matter for the entire industry and not just these two taxpayers, the Department has suggested, on multiple occasions, to both you and counsel for Service Rock and Nevada Ready Mix, that the matter go through the regulatory process in order to establish the actual costs for the transportation element that would not be subject to tax.

If you have any questions or concerns, please do not hesitate to contact Deputy Attorney General Vivienne Rakowsky.

Sincerely,

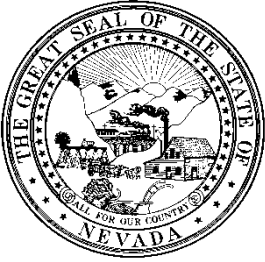
A handwritten signature in black ink that reads "Deonne E. Contine".

DEONNE CONTINE
Executive Director

cc: Craig Johnson, Executive Director - Streamlined Sales Tax Governing Board, Inc.
Vivienne Rakowsky, Deputy Attorney General

NEVADA DEPARTMENT OF TAXATION

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



Tax Bulletin SUT 15-0002 (Revised) Issue Date: October 5, 2015 Shipping/Delivery Charge/Handling

Introduction

This bulletin provides sales tax information regarding the taxability of delivery charges.

Statutes and/or Regulations referenced

NRS 360B.255, NRS 360B.290, NRS 360B.425, NRS 360B.480, NRS 372.025, NRS 372.065, NRS 372.255, NRS 372.258, NRS 372.335, NRS 372.7263, NAC 372.017 NAC 372.101, NAC 372.230, NAC 372.938, NAC 372.940

Overview:

Delivery charges are subject to Nevada sales tax when they are charged as part of the retail sale of tangible personal property; however, transportation, shipping or postage charges that are stated separately on the invoice, billing or other document given to the purchaser are not subject to Nevada's sales tax. See NRS 360B.480(1)(c) and 360B.290(2)(a). Delivery charges are "charges by a seller of personal property for the preparation and delivery of the property to a location designated by the purchaser of the property, including, but not limited to, charges for transportation, shipping, postage, handling, crating and packing, except that the term does not include any charges for transportation, shipping or postage which are stated separately." See NRS 360B.425. Simply put, a charge solely for transportation, shipping or postage that is separately shown on an invoice, billing or other document given to the purchaser is not taxable. **However, as noted above, the law does not exempt all charges which are commonly referred to as "delivery charges."** It only exempts transportation, shipping or postage charges that are shown separately on the invoice, billing or other document given to the purchaser.

Disallowed "Delivery Charges":

If the separately stated "delivery charge" includes any of the following components, the delivery charge is taxable: handling, crating, preparing for mailing or delivery and packaging. Packaging and crating usually involve the transfer of tangible personal property such as a crate, wrapping paper, bubble wrap or a pallet. Even if a retailer chooses to separately state those charges, they are necessary to complete the sale. See NRS 360B.480. Handling charges are also taxable if they include preparation, assembly or packaging charges (*i.e.*, not limited to transportation, shipping or postage charges). The term "shipping and handling" can be particularly misleading because it is difficult to know if that charge is limited to transportation, shipping or postage. The

seller's books and records should be maintained to validate the "shipping and handling" costs are limited to transportation, shipping or postage to deliver a product to a customer.

Examples of Taxable Delivery Charges:

- a. A company sells large quantities of rock which the company delivers to its customers. The stated "delivery charge" on the invoice, billing or other document is not limited to transportation, shipping or postage; it also includes the seller's costs to load the material. The fact that the delivery charge is separately stated on the invoice does not make it exempt from taxation. Those charges identified as delivery charges are taxable because they exceed charges solely for transportation, shipping and/or postage.
- b. A company sells concrete. The separate ingredients of the concrete are put in a concrete mixing transport truck and the truck mixes the components together to make the concrete while it is being delivered. The 'delivery charge' potentially includes charges for not only delivering the product, but also processing the product. If so, this is another example of a delivery charge that is not limited to transportation, shipping or postage. Therefore, when computing the cost of the fuel used to transport the material, the fuel used to process and continuously mix the concrete must be excluded from any separately stated transportation charge so as to not subject the transportation charge to Nevada's sales tax. See NAC 372.380.
- c. Any delivery charges passed on to the buyer that the retailer paid to a supplier to obtain the property sold to its customers are taxable regardless of whether or not they are separately shown on the invoice. This is commonly referred to as "freight in". See NRS 360B.480(1)(b).
- d. "Fuel Surcharges" and similar charges that do not cover actual transportation costs, but are imposed to recover overhead or administrative costs.

Documenting Transportation, Shipping or Postage Costs:

The following is a partial list of documents which the Department will review in order to ascertain if a separately stated charge is only for transportation, shipping or postage:

- Bills of lading
- Freight invoices
- Parcel post receipts
- Sales invoices showing transportation charges and shipping instructions
- Mileage logs, driver time sheets and expense vouchers supporting seller's own transportation costs (when the seller uses his or her own vehicles for delivery)
- Fuel purchases

Examples of Exempt (Non-Taxable) Delivery Charges

- a. Charges correctly labeled as transportation, shipping, or postage that are shown separately on the invoice or similar billing document given to the purchaser.

- b. The seller passes through to the purchaser the amount it paid to UPS, FedEx or the U.S. Postal Service (no markup).
- c. A purchaser can assume any delivery charges passed on to the purchaser from a third-party or common carrier, and charged separately on the invoice, are exempt shipping charges.
- d. Delivery charges for purchases made by exempt organizations, the United States, State or political subdivisions.

Bundled Taxable and Nontaxable Property:

If a shipment of tangible personal property includes both taxable and exempt property, the seller must allocate the charges for the handling, crating or packing to the taxable items using a percentage based on corresponding costs of the items or weight and apply the tax to that percentage of the handling, crating or packing only. See NAC 372.101 and NRS 360B.255.

Nevada						
Statement of the issues	SSUTA section and/or rule reference	State authority	State's written comments	BAC/ public comments	Staff comment	CRIC decision
Issue 1: Effective date for rate changes from catalog sales						
Nevada has not adopted the provision related to local rate changes for catalog sales. This issue was brought up in prior years and the state explained that local governments cannot change the rate without enabling legislation from the State Legislature. Because Nevada's legislature only meets every other year, it was not possible for the rate to change; thus, this issue is moot (and the rule could not be violated) until the Nevada Legislature meets in 2017.	SSUTA Section 305		The Department will enact a regulation dealing with local rate changes and catalog sales			N/A