

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R104-09

September 8, 2009

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-9, NRS 360.090, 360B.110, 372.725.

A REGULATION relating to taxes on retail sales; revising certain provisions governing the application of those taxes; and providing other matters properly relating thereto.

Section 1. NAC 372.019 is hereby amended to read as follows:

372.019 “Drug” has the meaning ascribed to it in NRS 360B.435 and includes, without limitation, injectable dermal fillers , ~~[prescribed by a physician,]~~ saline solutions, medical grade gases and insulin.

Sec. 2. NAC 372.027 is hereby amended to read as follows:

372.027 “Prosthetic device” has the meaning ascribed to it in NRS 360B.475 and includes, without limitation, breast implants, ~~[dialysis and]~~ feeding catheters, *medicine delivery catheters*, insulin pumps, cochlear implants, *orthodontic devices*, and amalgams, ceramics, porcelain and gold, silver and other metal alloys used to fill teeth.

Sec. 3. NAC 372.101 is hereby amended to read as follows:

372.101 1. Delivery charges included in the sale of tangible personal property are subject to sales and use taxes ~~[,]~~ *, including, but not limited to, any charges for:*

(a) Transportation, shipping or postage which are not stated separately on applicable invoices or other billing documents. Any charges for transportation, shipping or postage

which are stated separately on applicable invoices or other billing documents shall be deemed not to be included in such a sale and are not subject to sales and use taxes.

(b) Handling, crating or packing, whether or not separately stated.

~~2. [A delivery charge shall be deemed not to be included in the sale of tangible personal property if the charge:~~

~~—(a) Does not pertain to any preparation, handling, crating or packing services performed by the seller before shipment; and~~

~~—(b) Is stated separately on the invoice given to the purchaser.~~

~~—3.]~~ A delivery charge that is not connected with the sale of tangible personal property is a charge for a service and is not subject to sales and use taxes.

~~[4.]~~ **3.** If a shipment of tangible personal property which is sold to a purchaser includes both taxable and exempt property, the seller of the property shall comply with the provisions of NRS 360B.255.

Sec. 4. NAC 372.230 is hereby amended to read as follows:

372.230 1. The tax applies to the entire amount charged by a florist who receives an order from a customer for the delivery of flowers or other tangible personal property, including any charges for the delivery ~~[]~~ *except charges for transportation, shipping or postage which are stated separately on the applicable invoice or other billing document.* The tax applies to the florist whether or not:

(a) He instructs another florist to make the delivery.

(b) The order is to be delivered in Nevada.

2. The tax does not apply to:

(a) A separate charge made for a telegram.

(b) The amount received by a florist in Nevada who makes a delivery pursuant to instructions received from another florist, whether or not the other florist is located in Nevada.

Sec. 5. NAC 372.605 is hereby amended to read as follows:

372.605 **1.** As used in NRS 372.284, the Department will interpret the term “prepared food intended for immediate consumption” to ~~mean prepared food customarily sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins or straws. For the purposes of this section, “plates” does not include any containers or packaging used to transport food.~~:

(a) Mean prepared food, as defined in NRS 360B.460, which is intended for immediate consumption.

(b) Exclude, if sold without eating utensils provided by the seller:

(1) Two or more food ingredients mixed or combined by the seller for sale as a single item and sold:

(I) By a seller whose primary NAICS classification is within Subsector 311, Food Manufacturing; or

(II) In an unheated state by weight or volume as a single item.

(2) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danishes, cakes, tortes, pies, tarts, muffins, bars, cookies and tortillas.

2. For the purposes of this section, “NAICS classification” means classification under the North American Industry Classification System, 2007 Edition, which is hereby adopted by reference. A copy of that publication is available from the National Technical Information Service, Alexandria, Virginia 22312, or by telephone at (703) 605-6000 or (800) 553-6847, for

the price of \$59. A copy of that publication is also available, free of charge, from the U.S. Census Bureau at the Internet address <<http://www.census.gov/eos/www/naics/index.html>>.

Sec. 6. NAC 372.875 is hereby amended to read as follows:

372.875 1. The preparation of custom computer software constitutes the rendering of a professional service.

2. The tax does not apply to ~~the~~:

(a) The sale, lease, rental or licensing for use of custom computer software, regardless of the form in which the custom computer software is transferred.

(b) Any charges for future updates or upgrades to or support services for custom computer software.

3. The tax does not apply to the transfer of custom computer software, or to custom programming services performed in connection with the sale or lease of computer equipment, if the charges for the custom computer software or programming are separately stated.

Sec. 7. NAC 372.880 is hereby amended to read as follows:

372.880 1. Unless it is delivered electronically or by load and leave, prewritten computer software is tangible personal property. The tax applies to ~~the~~:

(a) The sale, lease, rental or licensing for use of such prewritten computer software.

(b) A mandatory computer software maintenance contract for such prewritten computer software.

(c) An optional computer software maintenance contract for such prewritten computer software which obligates the vendor to provide future updates or upgrades to the prewritten computer software. Except as otherwise provided in subsection 2, the tax does not apply to an

optional computer software maintenance contract for such prewritten computer software which only obligates the vendor to provide support services.

2. If an optional computer software maintenance contract is part of a bundled transaction which includes both taxable and nontaxable or exempt products that are not separately itemized on the invoice or similar billing document, the tax applies to the entire transaction.

3. For the purposes of this section:

(a) “Bundled transaction” has the meaning ascribed to it in NAC 372.045.

(b) “Computer software maintenance contract” means a contract that obligates a vendor of prewritten computer software to provide a customer with future updates or upgrades to prewritten computer software, support services with respect to prewritten computer software, or both.

(c) “Mandatory computer software maintenance contract” means a computer software maintenance contract that a customer is obligated by contract to purchase as a condition to the retail sale of prewritten computer software.

(d) “Optional computer software maintenance contract” means a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of prewritten computer software.

Sec. 8. NAC 372.885 is hereby amended to read as follows:

372.885 ~~[Charges]~~ *Except as otherwise provided in NAC 372.880, charges* for modifications to prewritten computer software are exempt from the tax if such charges are separately stated. The taxable basis for the prewritten computer software is the recognized retail sales price charged by the seller to develop the prewritten computer software for use by more

than one customer or the cost paid by the seller to purchase the prewritten computer software from another retailer, plus any markup.

Sec. 9. NAC 372.025 and 372.038 are hereby repealed.

TEXT OF REPEALED SECTIONS

372.025 “Prepared food” defined. (NRS 360.090, 360B.110, 372.725) “Prepared food” has the meaning ascribed to it in NRS 360B.460.

372.038 Resolution of conflicting provisions. (NRS 360.090, 372.725, 374.725) If any of the provisions of:

1. This chapter conflict with any of the provisions of chapter 374 of NAC, the provisions of this chapter shall be deemed to prevail.
2. This chapter or chapter 360B of NRS conflict with any of the provisions of chapter 372 of NRS, the provisions of chapter 372 of NRS shall be deemed to prevail.