

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R105-09

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 and 372.725.

A REGULATION relating to taxes on retail sales; revising the provisions governing the application of the taxes to the lease or rental of tangible personal property and to the sale of such property for lease or rental; and providing other matters properly relating thereto.

Section 1. Chapter 372 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. 1. *Except as otherwise provided in subsection 2, the provisions of:*

(a) NAC 372.070 to 372.088, inclusive:

(1) Apply to tangible personal property purchased on or before June 15, 2005, for lease or rental in this State; and

(2) Do not apply to tangible personal property purchased after June 15, 2005, for lease or rental in this State.

(b) Sections 3 to 9, inclusive, of this regulation:

(1) Apply to tangible personal property purchased after June 15, 2005, for lease or rental in this State; and

(2) Do not apply to tangible personal property purchased on or before June 15, 2005, for lease or rental in this State.

2. If a person engaged in the lease or rental of tangible personal property acquired by that person after June 15, 2005, and before the effective date of this regulation has complied with the provisions of NAC 372.070 to 372.088, inclusive, with respect to that property before the effective date of this regulation, the provisions of NAC 372.070 to 372.088, inclusive, apply to that property and the provisions of sections 3 to 9, inclusive, of this regulation do not apply to that property.

Sec. 3. *As used in sections 3 to 9, inclusive, of this regulation, unless the context otherwise requires:*

1. "Lease or rental" has the meaning ascribed to it in NRS 360B.450.

2. "Retailer" includes every person who engages in the lease or rental of tangible personal property to another for any purpose other than sublease or subrent.

Sec. 4. *1. A lease or rental of tangible personal property shall be deemed to constitute a transaction in lieu of a transfer of title, exchange or barter pursuant to the provisions of subsection 2 of NRS 372.060.*

2. A lease or rental of tangible personal property for any purpose other than sublease or subrent constitutes a retail sale.

Sec. 5. *1. The legal incidence of the sales tax on a lease or rental of tangible personal property falls upon the person who leases or rents the property from the retailer.*

2. A retailer engaged in the lease or rental of tangible personal property shall collect and remit the sales tax measured by:

(a) The gross lease or rental charges for the lease or rental of that property; or

(b) The cost of that property to the retailer.

3. A retailer engaged in the lease or rental of tangible personal property who desires to pay the tax measured by the cost of the property to the retailer must make that election not later than the date upon which the first tax return is due following the purchase of that property for lease or rental. If the retailer fails to make that election by that date, the retailer shall be deemed to have elected to pay the tax measured by the gross lease or rental charges for the lease or rental of the property. An election pursuant to this subsection may not be changed after the date upon which the first tax return is due following the purchase of the property for lease or rental.

4. A retailer who elects to pay the tax measured by the gross lease or rental charges pursuant to this section is not required to pay the sales tax for the purchase of parts or other equipment for the tangible personal property which is committed to lease or rental use in this State if the retailer gives a resale certificate to the vendor from whom the retailer purchases the property.

5. If the property is sold following its use in lease or rental service to a purchaser who receives delivery of the property within this State, the tax applies to the sales price of the property without any deduction or credit for the tax paid on the original cost of the property or the taxes paid on the gross lease or rental charges.

Sec. 6. *For the purposes of section 5 of this regulation:*

1. The gross lease or rental charges for the lease or rental of tangible personal property include any mandatory charges, whether or not separately stated, for any service, activity or

function made in conjunction with the lease or rental of the tangible personal property. The term “mandatory charges” may include, for example and without limitation, any:

(a) Fee or charge for mileage.

(b) Fee or charge for the return of the property, commonly referred to as a “drop-off charge.”

(c) Fee or charge for the reinstatement of a lease or rental agreement.

(d) Reimbursement for fixed costs or expenses, including, without limitation, management fees, documentation fees, interest, financing fees and carrying charges, collection call charges, repossession charges and billing charges.

2. Optional charges made in connection with the lease or rental of tangible personal property, if separately stated on the applicable invoices, contracts or other documents, are not subject to the tax. The term “optional charge” may include, for example and without limitation, any:

(a) Fee or charge for the installation, erection, assembly or disassembly of the property.

(b) Charge for a collision damage waiver or a similar instrument that acts as a waiver of the lessor’s right to collect from the lessee for any damage to the property.

(c) Charge for the services of a person to operate or instruct another in the operation of the property.

(d) Charge for fuel used to operate the property.

(e) Fee or charge for the delivery, transportation or other handling of the property, including, without limitation, for the original delivery of the property.

(f) Fee or charge for maintaining, cleaning or altering the property. If maintenance of the property is required by the lease agreement and the lessee has any options regarding the person who may perform that maintenance, any charge for that maintenance shall be deemed to be optional and is not subject to the tax.

(g) Fee or charge for insurance, such as personal accident, extended protection or coverage for personal property.

(h) Legal fees for the negotiation of lease terms.

3. The gross lease or rental charges for the lease or rental of tangible personal property do not include any of the following charges, if separately stated on the applicable invoices, contracts or other documents:

(a) Any fee for access to an airport.

(b) Any charge for the reimbursement of property taxes.

(c) Any charge for the reimbursement of fees for filings made under the Uniform Commercial Code.

(d) Any late payment penalty.

(e) Any disposition fee.

4. Any charges assessed for damages for which the lessee is held responsible are exclusive of the original rental or lease contract, including those commonly referred to as a “charge-back fee” or “damage reimbursement.” The Department will treat such charges as a taxable sale of tangible personal property from either the person making the repair for the lessor or from the lessor for the responsible party.

5. The gross lease or rental charges for the lease or rental of tangible personal property between related or affiliated persons must be reported at fair market value. If a party to such a transaction significantly understates those charges, that action creates a rebuttable presumption that the party made that understatement with the intent to evade the payment of the tax, and the Department may, pursuant to NRS 360.300, compute the gross lease or rental charges at fair market value. As used in this subsection, “fair market value” means the amount for which property could be leased or rented in an open competitive market.

Sec. 7. *For the purposes of section 5 of this regulation:*

1. A retailer may discontinue charging sales tax on the basis of gross lease charges when a lease agreement is terminated. Periodic billing statements for amounts which are past due at the time the agreement is terminated may continue after termination for collection purposes.

2. Evidence that a lease agreement has been terminated includes:

(a) Documentation showing that the leased property has been repossessed or returned to the lessor.

(b) A formal notice of termination that has been personally served upon the lessee or served upon the lessee by certified mail, return receipt requested, or registered mail.

(c) Proof that the property has been wrecked, damaged, stolen or otherwise rendered unusable.

(d) A new agreement to lease the same property to the same or another lessee.

(e) Any other evidence or documentation which is acceptable to the Department and shows that a lease agreement has been terminated.

↪ *Such evidence must be maintained pursuant to NRS 372.735.*

3. Any payments, penalties or other charges or fees collected by a retailer upon termination of a lease and return of the property as a result of a breach of contract or a mutually agreed-upon early termination of the contract, if separately stated on the applicable invoices, contracts or other documents, are not subject to taxation as gross lease charges. Any portion of those payments, penalties, fees or other charges which represents sales or use taxes must be reported and remitted to the Department.

Sec. 8. If tangible personal property is sold, but the transaction is designated as a lease or rental for the purpose of retaining a security interest in the property, the transaction constitutes a sale and the tax applies to the transaction in the same manner as a conditional sale described in NAC 372.050. A security interest is created in the property if the transfer of possession or control of the property is made under:

1. A security agreement or plan for deferred payment that requires the transfer of title upon completion of the required payments; or

2. An agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of \$100 or 1 percent of the total required payments.

Sec. 9. 1. If tangible personal property is sold to an initial purchaser who then sells the property to a person who is in the business of leasing tangible personal property to others, that second purchaser then leases the property back to the initial purchaser within 180 days after the date of the initial sale of the property to the initial purchaser or within such a longer period as may be authorized by the Department, and these transactions are properly documented pursuant to subsection 2:

(a) That initial sale of the property to the initial purchaser constitutes a sale for the purpose of resale;

(b) That subsequent sale of the property to the second purchaser constitutes a sale for the purpose of resale;

(c) That lease of the property back to the initial purchaser constitutes a retail sale; and

(d) If the initial purchaser paid any sales or use tax on that initial sale of the property to that initial purchaser, that initial purchaser is entitled to a refund of the amount of the tax paid to this State.

2. To document properly the transactions described in subsection 1, the documentation must establish that:

(a) The initial purchaser:

(1) Gave a resale certificate to the vendor at the time of the initial sale and did not report and remit the applicable tax directly to the Department; or

(2) Paid the applicable tax to the vendor at the time of the initial sale or, if the vendor was located outside of this State and was not required to be registered in Nevada, reported and remitted the applicable tax directly to the Department;

(b) The initial purchaser sold the property to a second purchaser who is in the business of leasing tangible personal property and accepted the second purchaser's resale certificate; and

(c) The second purchaser leased the property back to the initial purchaser within 180 days after the date of the initial sale of the property to the initial purchaser or within such a longer period as may be authorized by the Department.