

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R106-09

September 24, 2009

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

AUTHORITY: §§1, 2 and 4, NRS 360.090, 360.200, 360B.110, 372.725 and 374.725; §3, NRS 360.090 and 374.725.

A REGULATION relating to taxes on retail sales; making various changes regarding the administration of exemptions from such taxes; and providing other matters properly relating thereto.

Section 1. Chapter 372 of NAC is hereby amended by adding thereto a new section to read as follows:

1. To establish that the gross receipts from a sale of tangible personal property or the sales price of such property is not subject to the sales or use tax, a seller may:

(a) Not later than 90 days after the date of the pertinent sale, obtain from the purchaser:

(1) A copy of the appropriate letter of exemption issued by the Department;

(2) A fully completed certificate of exemption; or

(3) The information required to complete fully a certificate of exemption; or

(b) Not later than 120 days after receiving a request for substantiation from the Department:

(1) Obtain from the purchaser a fully completed certificate of exemption; or

(2) Prove by other means that the transaction was not subject to the tax.

2. A certificate of exemption need not be provided in a paper format. If provided in a paper format, the document must be signed by the purchaser.

3. A separate certificate of exemption need not be obtained for each sale. The Commission will recognize blanket certificates of exemption if given in advance to cover all orders except those orders which specify otherwise.

4. A fully completed certificate of exemption or the information required to complete fully a certificate of exemption must be maintained by the seller and provided to the Department upon request.

5. If a purchaser improperly claims an exemption:

(a) The purchaser is liable for the payment of the applicable tax; and

(b) A seller who complies with the provisions of this section is not liable for the payment of the applicable tax unless:

(1) The purchaser fails to pay the tax; and

(2) The seller fraudulently failed to collect the tax or solicited the purchaser to participate in an unlawful claim of an exemption.

6. For the purposes of this section, “certificate of exemption” means any form for a certificate of exemption which the Department has determined:

(a) Satisfies the requirements of the Streamlined Sales and Use Tax Agreement; and

(b) Is suitable for this State.

↪ The term does not include a certificate claiming an exemption on the basis that the property is purchased for resale.

Sec. 2. NAC 372.730 is hereby amended to read as follows:

372.730 1. ~~[Except as otherwise provided in NAC 372.640, the following form of resale certificate is prescribed by the]~~ *The* Commission , pursuant to NRS 372.165, 372.235, 374.170 ~~[]~~ and 374.240 ~~[]~~ and chapter 377 of NRS ~~[]~~, *prescribes for use as a resale certificate:*

(a) The following general form:

I hereby certify that I hold valid seller’s permit number issued pursuant to chapters 372, 374 and 377 of the Nevada Revised Statutes; that I am engaged in the business of selling; and that the tangible personal property described in the second paragraph of this certificate, which I purchase from:, will be resold by me in the form of tangible personal property. I further certify that in the event any of the property is used for any purpose other than retention, demonstration or display while I am holding it for sale in the regular course of business, it is understood that I am required by chapters 372, 374 and 377 of the Nevada Revised Statutes to report it and pay the tax measured by the purchase price of the property.

Description of the property to be purchased:

.....
.....

Purchaser.....

Address

.....

Signature of Authorized Purchaser

Dated: (day) of (month) of (year)

at

(b) Any form which:

(1) Indicates that property is to be purchased for resale; and

(2) The Department determines:

(I) Satisfies the requirements of the Streamlined Sales and Use Tax Agreement; and

(II) Is suitable for this State.

(c) The form set forth in NAC 372.640, if applicable.

2. For the purposes of using a form prescribed pursuant to paragraph (a) of subsection 1:

(a) For the description of the property to be purchased there may appear either:

~~***(a)***~~ ***(1)*** An itemized list of the property to be purchased for resale; or

~~***(b)***~~ ***(2)*** A general description of the kind of property to be purchased for resale.

~~***(3)***~~ ***(b)*** If the seller is not required to hold a permit because he sells only property of a kind

the sale of which is exempt from the tax, or because he makes no sales in this State, he should make an appropriate notation to that effect on the certificate in the space designated for the seller's permit number.

3. For the purposes of NRS 372.155, 372.170, 372.225, 374.160, 374.175 and 374.230 and chapter 377 of NRS, a seller shall be deemed to have received a resale certificate from a purchaser if:

(a) Not later than 90 days after the date of the pertinent sale, the seller obtains from the purchaser:

(1) A fully completed resale certificate; or

(2) The information required to complete fully a resale certificate; or

(b) Not later than 120 days after receiving a request for substantiation from the Department, the seller obtains from the purchaser a fully completed resale certificate.

4. A resale certificate need not be provided in a paper format. If provided in a paper format, the document must be signed by the purchaser.

5. A separate resale certificate need not be taken for each sale. The Commission will recognize blanket certificates if given in advance to cover all orders except those orders which specify otherwise. A resale certificate in the form prescribed pursuant to paragraph (a) of subsection 1 which ~~describes the~~ contains a general description of the kind of property to be purchased ~~pursuant to paragraph (b) of subsection 2~~ for resale is valid as a blanket certificate until it is revoked in writing.

~~[5.—The certificates]~~

6. A fully completed resale certificate or the information required to complete fully a resale certificate must be maintained in the taxpayer's file ~~[-~~

~~6.—The good faith of the seller will be questioned if he has knowledge of facts which give rise to a reasonable inference that the purchaser does not intend to resell the property, such as knowledge that a purchaser of particular merchandise is not engaged in the business of selling that kind of merchandise.] and provided to the Department upon request.~~

Sec. 3. NAC 374.010 is hereby amended to read as follows:

374.010 ~~[1.]~~ For verification of the acceptance of a vehicle taken in trade on the purchase of another vehicle, the dealer shall have the buyer complete a notarized affidavit on a form prescribed by the Department. The dealer shall remit one copy of the affidavit to the Department and retain one copy of the affidavit in his permanent record for the period specified in NRS 374.740.

~~[2.— As used in NRS 374.030, the term “farm machinery or equipment” includes items such as tractors, combines, hay balers, forage harvesters, windrowers, fertilizer or manure spreaders, loaders and seeders which are commonly accepted for trade in on like items. The term does not include items which are not exclusively designed and used for the purpose of farming or cultivation of land such as lawnmowers, chainsaws and rototillers, or hand implements.]~~

Sec. 4. NAC 372.565, 374.130, 374.135, 374.140, 374.145, 374.150, 374.155, 374.160, 374.165 and 374.170 are hereby repealed.

TEXT OF REPEALED SECTIONS

372.565 Containers: Requirements for sale of baling wire or twine. (NRS 360.090, 372.290, 372.725, 374.295, 374.725)

1. If a retailer does not collect the taxes imposed by chapters 372 and 374 of NRS on a sale of baling wire or twine, the retailer shall obtain from the purchaser of that baling wire or twine a sworn statement, on a form prescribed by the Department, stating that the baling wire or twine will be resold as a nonreturnable container with contents. One sworn statement obtained by a retailer from a purchaser pursuant to this subsection may apply to all purchases of baling wire and twine by the purchaser from the retailer during the calendar year in which the purchaser signs the sworn statement.

2. The Department shall make the form required by subsection 1 available at its office and on its Internet website.

3. A retailer who obtains from a purchaser the sworn statement described in subsection 1:

(a) Is not required to collect any taxes from the purchaser pursuant to chapters 372 and 374 of NRS on any sale of baling wire or twine to which the sworn statement applies, unless the retailer obtains the sworn statement with intent to defraud the Department or to evade the payment of those taxes.

(b) Shall file the sworn statement with his records and make the statement available to the Department for inspection upon request.

374.130 Interpretation of terms used in NRS 374.286. (NRS 360.090, 374.286, 374.725)

As used in NRS 374.286, the Department shall interpret the term:

1. “Machinery or equipment only incidentally employed for the agricultural use of real property” to mean any item the direct and primary function of which is a use other than the agricultural use of real property.

2. “Implement of husbandry” not to include tools, shop equipment, communication equipment, material for the construction of stationary fencing, building material and supplies used in the construction of farm buildings or household equipment used for residential purposes, including, without limitation, lawn mowers and snowblowers.

3. “Part used in the repair or maintenance of farm machinery and equipment” not to include an item that is consumed through the regular use of such machinery and equipment, including, without limitation, fuel, oil, cleaning agents and solutions.

374.135 Affidavit from purchaser required when tax not collected on farm machinery and equipment; availability to Department of affidavits retained by retailer. (NRS 360.090, 374.286, 374.725)

1. If a retailer does not collect the taxes imposed by chapter 374 of NRS on a sale of farm machinery and equipment, he shall obtain from the purchaser of the farm machinery and equipment an affidavit, on a form prescribed by the Department, stating that the farm machinery and equipment will be employed for the agricultural use of real property pursuant to NRS 374.286. One affidavit obtained by the retailer from the purchaser may apply to all purchases of farm machinery and equipment employed in the agricultural use of real property made:

- (a) By the purchaser from the retailer; and
- (b) Not later than one year after the date of the affidavit.

2. The retailer shall file the affidavit required to be obtained pursuant to subsection 1 with his records and make the affidavit available to the Department for inspection upon request.

3. If the retailer has knowledge of facts which give rise to a reasonable inference that a purchaser of farm equipment and machinery will not employ that equipment and machinery in

the agricultural use of real property as required pursuant to NRS 374.286, the retailer must collect the tax imposed pursuant to chapter 374 of NRS on the sale of that equipment and machinery.

374.140 “Fine art for public display” defined. (NRS 374.291, 374.2911, 374.725) As used in NAC 374.140 to 374.170, inclusive, unless the context otherwise requires, “fine art for public display” has the meaning ascribed to it in paragraph (a) of subsection 4 of NRS 374.291.

374.145 Interpretation of terms used in NRS 374.2911. (NRS 374.291, 374.2911, 374.725) For the purposes of NRS 374.2911, the Department shall interpret:

1. “Direct costs of owning and exhibiting the fine art” to:

(a) Except as otherwise provided in paragraph (a) of subsection 5 of NRS 374.2911, include, without limitation:

(1) Interest payments at a rate that does not exceed the rate set forth in NRS 99.040 made by the taxpayer, or a subsidiary or affiliated entity of the taxpayer, on secured or unsecured indebtedness used to acquire the work of fine art during the fiscal year for which the taxpayer is claiming an exemption for the work of fine art if the taxpayer complies with the provisions of NAC 374.150.

(2) Insurance payments for the work of fine art, including, without limitation, insurance which provides a guaranty on the authenticity of the work of fine art.

(3) Costs related to the repair, maintenance and conservation of the work of fine art, including, without limitation, cleaning and framing.

(4) Costs related to the moving and storage of the work of fine art in the immediate area of the facility in which the work of fine art is displayed.

(5) Salaries and employee benefits for persons employed to work in the facility in which the work of fine art is displayed, including, without limitation, gallery managers, curators, security personnel, reservations agents and admissions personnel.

(6) Costs related to the operation and maintenance of the facility in which the work of fine art is displayed, including, without limitation, environmental control systems, lighting and security systems that are specific to such a facility.

(7) Rent or other lease obligations for the facility in which the work of fine art is displayed.

(8) Personal property taxes assessed for the work of fine art, except penalties or interest assessed on such taxes.

(9) Real and personal property taxes assessed for the facility in which the work of fine art is displayed, except penalties or interest assessed on such taxes.

(10) Allowable depreciation pursuant to subsection 4 of NRS 361.227 for furniture or fixtures in the facility in which the work of fine art is displayed.

(11) Allowable depreciation pursuant to paragraph (b) of subsection 1 of NRS 361.227 for real property on which the facility in which the work of fine art is displayed is located and improvements to such a facility.

(12) Communication devices that are used exclusively for informing visitors to the facility about the work of fine art.

(13) Costs for uniforms that persons who are employed by the facility in which the work of fine art is displayed are required to wear, including, without limitation, costs of laundering the uniforms.

(14) Costs associated with cleaning the facility in which the work of fine art is displayed.

(15) Commissions paid to credit card companies for the use of credit cards to pay admission fees.

(16) Advertising costs to notify the public of the display of the work of fine art.

(b) Not include any rent pursuant to an agreement for the lease or loan of a work of fine art for public display.

2. “Fees collected for exhibiting the fine art” to include, without limitation, fees paid by visitors to the facility for the rental of communication devices that inform them about the work of fine art.

3. “Resident” to mean a person who lives in this state and possesses a valid driver’s license or other identification issued by this state.

374.150 Calculation of interest payments on art indebtedness. (NRS 374.291, 374.2911, 374.725)

1. For a work of fine art that was acquired with a portion of the proceeds of a secured or unsecured indebtedness, the amount of the interest on the total indebtedness that the taxpayer may claim as interest payments made on the art indebtedness pursuant to subparagraph (1) of paragraph (a) of subsection 1 of NAC 374.145 must be calculated for the fiscal year for which the taxpayer is claiming an exemption for the work of fine art by applying the applicable rate or rates of interest to the amount of the art indebtedness. The interest payments must be recalculated each time that:

(a) A payment is made towards the principal of the total indebtedness;

(b) A draw is made against the principal of the total indebtedness; or

(c) The principal of the total indebtedness is increased or decreased in any other manner.

2. For the purposes of the calculations required by subsection 1:

(a) If the principal of the total indebtedness is reduced by a principal payment or in some other manner, the principal of the art indebtedness must be reduced as follows:

Total amount of the art indebtedness before payment or other reduction		Amount of principal payment made or other reduction of the principal of		Reduction in the principal on the art indebtedness
_____	X	the total amount of the indebtedness	=	
Total amount of the principal of the indebtedness before payment or other reduction				

(b) The amount of the interest payments for the art indebtedness must be determined as follows, after reducing the total amount of the art indebtedness by any reduction in principal calculated pursuant to paragraph (a), reducing the total amount of the principal of the indebtedness by the principal payment or other reduction and increasing the total amount of the principal of the indebtedness by the amount of any increase in the total amount of the principal of the indebtedness:

Total amount of the art
indebtedness

$$\underline{\hspace{2cm}} \times \begin{array}{l} \text{Interest accrued on the total} \\ \text{amount of the indebtedness} \end{array} = \begin{array}{l} \text{Amount of interest accrued} \\ \text{on the art indebtedness} \end{array}$$

Total amount of the principal
of the indebtedness

3. If a taxpayer, or a subsidiary or affiliated entity of the taxpayer, incurs interest expenses on indebtedness, a portion of the proceeds of which were used to acquire a work of fine art, the burden for appropriately allocating the principal payments and interest expenses for the work of fine art between the taxpayer and the subsidiary or affiliated entity of the taxpayer and between the work of fine art and the other items acquired with the proceeds of the indebtedness is on the taxpayer who is claiming an exemption for the work of fine art pursuant to NRS 374.291.

4. If, for the purposes of claiming an exemption pursuant to NRS 374.291, a taxpayer acquires a work of fine art using the proceeds of an indebtedness, the taxpayer must incur the indebtedness for the work of fine art within 120 days after the acquisition of the work of fine art unless the Department agrees to an extension of time.

5. To qualify or remain eligible for an exemption pursuant to NRS 374.291, a taxpayer who wishes to refinance the outstanding amount of the indebtedness incurred to purchase the work of fine art must be able to trace the new debt directly to the repayment of the prior debt.

6. As used in this section, “art indebtedness” means the amount of the principal of the total indebtedness attributable to the acquisition of the work of fine art.

374.155 Apportionment of direct costs when works of art consist of more than fine art. (NRS 374.291, 374.2911, 374.725) If an exhibition does not consist solely of fine art for public display owned by the taxpayer, the Department will apportion the direct costs of owning and exhibiting the fine art based on the percentage that the value of the fine art for public display owned by a taxpayer bears to the value of all the works of art included in the exhibition.

374.160 Requirements to receive credit for donations to certain museums. (NRS 374.291, 374.2911, 374.725) For a taxpayer to receive a credit for a donation to a museum that provides exhibits specifically related to nature or a museum that provides exhibits specifically related to children, such a museum must be operated by an organization that:

1. Qualifies for exemption from taxation pursuant to section 501(c)(3) of the Internal Revenue Code; and
2. The net earnings of which do not inure to the benefit of any private shareholder or other person.

374.165 Determination of value. (NRS 374.291, 374.2911, 374.725) To determine the value of a work of fine art for public display for the purposes of sub-subparagraph (II) of subparagraph (1) of paragraph (a) of subsection 4 of NRS 374.291, the Department shall consider:

1. For an arm's-length transaction, documentation of the sale, including, without limitation, the purchase price, the name of the seller or seller's agent, the date of the sale and any other documentation that the taxpayer provides.
2. For any other transaction, a written appraisal which has been completed by an independent and qualified appraiser of fine art not more than 3 years before the date on which an

exemption pursuant to NRS 374.291 is filed and any additional documentation that the taxpayer provides.

374.170 Provision of poster to school or parent of child who receives in-home

instruction. (NRS 374.291, 374.2911, 374.725) Upon receiving a request for a poster pursuant to subsection 3 of NRS 374.291, the taxpayer shall select which poster to provide to the school or parent.