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NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption of

LCB File No. R002-17

Nevada Tax Commission

The Nevada Tax Commission will hold a Public Hearing at 9:00 a.m. on **Monday, October 7, 2019** at the **Nevada Legislative Building at 401 S. Carson Street, Room 2135, Carson City Nevada, 89701** & video conferenced at the **Legislative Counsel Bureau, Grant Sawyer State Office Building, 555 E. Washington Ave., Room 4412, Las Vegas Nevada, 89101**. The purpose of the hearing is to receive comments from all interested parties regarding the adoption of a regulation that pertains to LCB File No. R002-17.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. Need and purpose of the proposed regulations or amendments

The need and purpose of the proposed regulation is to revise provisions governing the application of sales and use taxes to certain types of charges for postage or the transportation or shipping of tangible personal property in connection with the sale of the property.

2. How to obtain the approved or revised text of regulations prepared by LCB

You may obtain a copy of the proposed regulation by writing to the Nevada Department of Taxation, 1550 College Parkway, Carson City, Nevada, 89706; or by calling their office at (775) 684-2059. The Department Draft Third Revised Proposed Regulation is also available for review and download on the Department of Taxation website:

https://tax.nv.gov/Home/Features/Delivery_Charges_Proposed_Regulation_R002-17/

3. Methods used in determining the impact on a small business

The Department used informed, reasonable judgment in determining that there will not be a negative impact on small businesses due to the nature of the regulation changes. Initially the Department conducted its own analysis by considering the extent of the regulatory provisions contained in LCB File No. R002-17.

The Department emailed out the small business impact questionnaire to 223 members on the interested parties list and to the Nevada Taxpayers Association. Three responses were received, and the concerns were addressed in subsequent drafts of the regulation.

The Department held a workshop on July 16, 2018. No correspondence was received at the workshop and one member of the public testified at the workshop.

- Joshua Hicks with the McDonald Carano law firm testified that the regulation has gotten better through revisions but that he still had some concerns regarding language he perceived as inconsistent or vague.

4. Estimated economic effect of regulations on business and the public

a. Adverse and beneficial effects

The proposed permanent regulation presents no reasonably foreseeable or anticipated adverse or beneficial economic effects to businesses or to the general public.

b. Immediate and long-term effects

The proposed permanent regulation presents no reasonably foreseeable or anticipated immediate or long-term effects to businesses or to the general public.

5. Cost for enforcement of the regulations

The proposed permanent regulation presents no significant foreseeable or anticipated cost or decrease in costs for enforcement.

6. Overlap or duplication of other state or local governmental agencies

The proposed permanent regulation does not overlap or duplicate any regulation of other state or local governmental entities.

7. Regulation required by federal law

Not applicable.

8. More stringent than federal regulations

The Department is not aware of any similar federal regulations of the same activity in which the state regulations are more stringent.

9. New or increases in existing fees

The proposed regulations do not include new fees or an increase in existing fees.

Persons wishing to comment on the proposed action of the Nevada Tax Commission may appear at the above scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Nevada Tax Commission, 1550 E. College Parkway, Suite 115, Carson City, Nevada 89706. Written submissions must be received at least two weeks prior to the above scheduled public hearing.

A copy of this notice and the proposed permanent regulations to be adopted and amended will be on file at the Nevada State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed permanent regulations to be adopted and amended will be available at the Department of Taxation, 1550 College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building L, Suite 235, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Las Vegas, Nevada; Department of Taxation- 2550 Paseo Verde Parkway, Suite 180, Henderson, Nevada; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours. The text of the proposed permanent regulation will include the entire text of any section of the Nevada Administrative Code, which is proposed for amendment or repeal. Copies will be mailed to members of the public upon request. A reasonable fee may be charged for copies if deemed necessary.

Under NRS 233B.064(2), when adopting any regulation, the Agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporation, and its reason for overruling the consideration urged against its adoption.



Shellie Hughes, Chief Deputy Executive Director
September 5, 2019

Members of the public who are disabled and require accommodations or assistance at the meeting are requested to notify the Department of Taxation in writing or by calling 775-684-2030 no later than five working days prior to the meeting.

Notice has been posted at the following locations: The Department of Taxation - 1550 College Parkway, Carson City, Nevada. Notice was mailed to each County Public Library for posting.

Notice has been EMAILED for posting at the following locations: Department of Taxation - 4600 Kietzke Lane, Building L, Suite 235, Reno, Nevada; Department of Taxation - 555 E. Washington Avenue, Grant Sawyer Office Building, Las Vegas, Nevada; Department of Taxation - 2550 Paseo Verde Parkway, Suite 180, Henderson; The Legislative Building, Capitol Complex, Carson City, Nevada; and the Nevada State Library, 100 Stewart Street, Carson City, Nevada, Interested Parties Group & Mailing List maintained by the Department. Notice of this meeting was posted on the Internet through the Department of Taxation website <https://tax.nv.gov/>, on the Legislative website at www.leg.state.nv.us, and at the Nevada Public Notice Website <https://notice.nv.gov/>.

**SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY
NRS 233B.0608**

LCB File No. R002-17

1. Background

Delivery is an umbrella term that includes of a variety of charges and multiple components. Under existing law: (1) When separately stated on applicable invoices or billing documents for the sale of the tangible personal property, the portion of the delivery charge that is solely transportation, shipping or postage is excluded from the taxable measure; and (2) a handling charge and charges for similar components of delivery are subject to sales and use taxes, whether or not the charge is separately stated on applicable invoices or billing documents for the sale of the tangible personal property.

The Department of Taxation has drafted Proposed Regulation R002-17, to provide clarity as to when a delivery charge will be considered part of the taxable measure. Under this regulation: (1) if any manufacturing, assembling or preparing of tangible personal property occurs during the transportation or shipping of the property to a location designated by the purchaser, a charge for the transportation or shipping is deemed to be a handling charge and is subject to sales and use taxes unless the retailer includes on applicable invoices or billing documents a separately stated charge for handling and a separately stated charge for only transportation or shipping; and (2) a charge which is separately stated on applicable invoices or billing documents as a charge for transporting or shipping tangible personal property to the retailer's place of business or any other location from which the tangible personal property will be subsequently delivered to the purchaser is subject to sales and use taxes.

2. A description of the manner in which comment was solicited from affected small businesses, a summary of their responses, and an explanation of the manner in which other interested persons may obtain a copy of the summary.

The Department of Taxation prepared and disseminated a questionnaire seeking information from small business regarding the possible impact of LCB File No R002-17 in its original form. The proposed language and questionnaire was dispersed to the following:

- Emailed by the Department to 223 members of its interested parties list.
- Emailed by the Nevada Taxpayers Association to its list of interested taxpayers.

The content of the responses can be summarized into the following major themes:

- 2 responses express concern of the ambiguity of what is a reasonable or customary markup charge.
- 1 response asked for transportation, shipping and delivery to be defined.

- 2 responses asked for manufacturing, assembling and preparing to be defined.
- 2 responses feel that the proposed regulation run contrary to NRS 360B.480.

Anyone interested in obtaining a copy of the summary of responses can contact:

Sean Crowley
Nevada Department of Taxation
1550 College Parkway Carson City, NV 89706
Phone: (775) 684-2030
Fax: (775) 684-2020
scrowley@tax.state.nv.us

The Department submitted a Department Draft of Second Revised Proposed Regulation R002-17 dated May 23, 2018 addressing the issue “of what is a reasonable or customary markup charge” by removing it from the proposed regulation.

3. The manner in which the analysis was conducted, including the methods used to determine the impacts of the proposed regulation on small business.

The Department analyzed the questionnaires received and used informed, reasonable judgment in determining that there will not be an impact on small businesses due to the nature of the regulatory changes.

While the responses from the questionnaires did not indicate an impact on small businesses, the responses did seek further clarification on terms used in the regulation. The Department revised the language of the proposed permanent regulation to address these responses. The Department has determined that these revisions will not impact small businesses.

4. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate:

Direct and indirect adverse effects

The Department finds that there is no reasonably foreseeable or anticipated direct or indirect adverse economic effect on small business.

Direct and indirect beneficial effects

The Department finds that there is no reasonably foreseeable or anticipated direct or indirect beneficial economic effect on small business.

- 5. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.**

The proposed permanent regulation presents no reasonably foreseeable or anticipated adverse impact to small business; therefore no efforts were required to reduce the impact on small businesses.

- 6. The estimated cost to the agency for enforcement of the proposed regulation.**

The proposed permanent regulation presents no significant foreseeable or anticipated cost or decrease in costs for enforcement.

- 7. If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The proposed permanent regulation does not include new fees or increase an existing fee.

- 8. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.**

The proposed regulation does not overlap or duplicate any regulation of other federal, state or local government entities.

- 9. The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.**

The Department has determined that there will be no adverse impacts to small businesses based on its analysis of comment received.

I hereby certify, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that this statement was properly prepared and the information contained herein is accurate.



William D. Anderson, Executive Director

June 26, 2018

**THIRD REVISED PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R002-17

May 23, 2018

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

AUTHORITY: §1, NRS 360.090, 360B.480, 372.025 and 374.070.

A REGULATION relating to taxation; revising provisions governing the application of sales and use taxes to charges for postage or the transportation or shipping of tangible personal property in connection with a sale of that property; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law *does not* exclude~~[s]~~ from sales and use taxes a charge for the delivery of tangible personal property if the charge is part of or included in the sale of the tangible personal property. *(NRS 372.065) Delivery is an umbrella term that includes of a variety of charges and multiple components.* Under existing law: *(1) When separately stated on applicable invoices or billing documents for the sale of the tangible personal property, the portion of the delivery charge that is solely transportation, shipping or postage is excluded from the taxable measure; and (2) a handling charge and charges for similar components of delivery are* ~~[(1) a delivery charge is not included in the sale of tangible personal property and is not subject to sales and use taxes if the charge is separately stated on applicable invoices or billing documents for the sale of the tangible personal property; and (2) a handling charge is]~~ subject to sales and use taxes, whether or not the charge is separately stated on applicable invoices or billing documents for the sale of the tangible personal property. (NRS 360B.480, 372.025, 374.070; NAC 372.101)

This regulation revises provisions governing the application of sales and use taxes to certain types of charges for postage or the transportation or shipping of tangible personal property in connection with the retail sale of the property. Under this regulation: (1) if any manufacturing, assembling or preparing of tangible personal property occurs during the transportation or shipping of the property to a location designated by the purchaser, a charge for the transportation or shipping is deemed to be a handling charge and is subject to sales and use taxes unless the retailer includes on applicable invoices or billing documents a separately stated charge for handling and a separately stated charge for only transportation or shipping; and (2) a charge which is separately stated on applicable invoices or billing documents as a charge for transporting or shipping tangible personal property to the retailer's place of business or any other location from which the tangible personal property will be subsequently delivered to the purchaser is subject to sales and use taxes.

Section 1. NAC 372.101 is hereby amended to read as follows:

372.101 1. Delivery charges included in the *retail* 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]~~ *Except as otherwise provided in this section, 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. *If any manufacturing, assembling or preparing of tangible personal property occurs during the transportation or shipping of tangible personal property or at the time that the tangible personal property is off-loaded to a location designated by the purchaser, a charge for the transportation or shipping shall be deemed not to be a charge for transportation or shipping which is separately stated on applicable invoices or other billing documents and is subject to sales and use taxes, unless the retailer includes on applicable invoices or other billing documents a separately stated charge for the handling of the tangible personal property and a separately stated charge for only transportation or shipping. For the purposes of this paragraph, tangible personal property is manufactured, assembled or prepared during transportation or shipping if the tangible personal property is produced, made ready for use or made through a combination of products during such transportation or shipping.*

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

2. *Unless there is documentation such as a purchase order from the seller and/or bill of lading from the shipping company providing that the retailer's location was the destination designated by the purchaser and not designated by the retailer for purposes of tax avoidance, if a retailer includes on applicable invoices or other billing documents any separately stated*

delivery charges, including, without limitation, charges for postage or the transportation or shipping of tangible personal property to the retailer's place of business or any other location from which the tangible personal property will subsequently be delivered to a location designated by the purchaser, such charges shall be deemed to be included in the calculation of gross receipts for the purposes of paragraph (c) of subsection 1 of NRS 372.025 and are subject to sales and use taxes.

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.

~~[3.]~~ 4. 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.