

**ADOPTED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R203-08**

Effective October 15, 2010

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

AUTHORITY: §§1 and 2, NRS 360.090, 372.510, 372.725 and 374.515; §3, NRS 360.090, 372.397, 372.510 and 372.725.

A REGULATION relating to taxation; revising provisions governing the security that a person who holds a permit to collect sales tax must deposit with the Department of Taxation; and providing other matters properly relating thereto.

**Section 1.** NAC 372.825 is hereby amended to read as follows:

372.825 1. Except as otherwise provided in subsection ~~[3]~~ *2* and NRS 377B.210, a person who obtains a permit to collect sales tax after July 1, 1985, shall deposit with the Department security in an amount equal to twice the estimated average tax due quarterly ~~[, or]~~ *if the person files returns for quarterly periods*, three times the estimated average tax due monthly if ~~[he]~~ *the person* files ~~[monthly returns, but not less than \$100.~~

~~—2.— Any person holding a permit in good standing on July 1, 1985, who becomes delinquent or files a late return or whose check tendered as payment is dishonored, shall deposit additional security with the Department pursuant to subsection 1.~~

~~—3.— Unless habitually delinquent, an organization which obtains a permit to collect sales tax will not be required to deposit with the Department the security required by subsection 1 if the Department determines that it is entitled to the exemption from tax on its purchases of tangible~~

~~personal property pursuant to NRS 372.326.]~~ *returns for monthly periods or four times the estimated average tax due annually if the person files returns for annual periods.*

2. *A person is not required to deposit security with the Department pursuant to subsection 1 if the amount of security required pursuant to subsection 1 does not exceed \$1,000.*

3. *The Department may reexamine the amount of security required by subsection 1 after a business has been in operation for at least 6 months to determine if the original estimated average tax due is accurate. If the Department determines that the original estimated average tax due is not accurate, the Department may adjust the amount of security required pursuant to subsection 1.*

4. *Except as otherwise provided in subsection 5, after a business that files returns for quarterly or monthly periods has been in operation for at least 12 months, the Department shall not increase the amount of security required pursuant to subsection 1 based solely on business volume or an increase in the tax rate.*

5. *If the Department determines that a person knowingly made false statements relating to sales volume to minimize the amount of security required pursuant to subsection 1, the Department may increase the amount of security required pursuant to subsection 1 based on the actual tax due quarterly, monthly or annually.*

6. The Department shall require ~~[such an organization which]~~ *any person who* is habitually delinquent to deposit with the Department *additional* security ~~[in an amount equal to three times the average actual tax due quarterly if the organization files its returns quarterly, or five times the average actual tax due monthly if the organization files its returns for monthly periods. —4.]~~ *pursuant to NRS 372.510 and 374.515.*

*7. If a person who files returns for quarterly periods becomes habitually delinquent, the Department shall require the person to file returns for monthly periods.*

*8. A person may, if the person's business has been in operation for at least 12 months, submit a written request to the Department for a reexamination of the person's tax-filing history to determine if a reduction in security is warranted pursuant to subsection 1.*

9. The Department will accept as security pursuant to this section only:

(a) Cash.

~~(b) [Time certificates or certificates of deposit that are issued or confirmed by a bank, savings bank or savings and loan association situated in this State.~~

~~—(c) Passbook savings accounts located in a bank, savings bank or savings and loan association situated in this State.~~

~~—(d)]~~ Surety bonds executed by an insurance company.

~~[(e) Bearer bonds of the United States, except savings bonds.~~

~~—(f)]~~ (c) Liens upon real property created by a recorded instrument vesting the lien in the State of Nevada.

~~[(g)]~~ (d) Irrevocable letters of credit which are issued or confirmed by a bank, savings bank , *credit union* or savings and loan association situated in the State of Nevada upon the conditions prescribed by the Department.

*10. A person may submit a request for a waiver of the security required by this section to the Director, who shall forward the request to the Commission. The Commission will consider the request and may grant such a waiver if the person satisfies the following requirements:*

*(a) If the person is not a corporate taxpayer, the person must have a satisfactory payment record.*

*(b) If the person is a corporate taxpayer, the person must have a satisfactory payment record and substitute for any other form of security required by this section:*

*(1) The personal surety of not less than two principals of the corporate taxpayer; or*

*(2) If the corporate taxpayer consists of only one principal, the personal surety of that principal in his or her individual capacity.*

*11. A waiver granted by the Commission pursuant to this section may be cancelled if the person becomes habitually delinquent.*

*12. If a business structure changes through incorporation or otherwise, but the principals or officers of the business remain substantially the same, the Department shall consider the reporting history of the previous business structure in determining the security requirements applicable to the new business structure.*

*13. As used in this section, unless the context otherwise requires:*

*(a) “Corporate taxpayer” includes, without limitation, a corporation, limited-liability company, business trust and limited partnership, including a partnership that consists of corporations.*

*(b) “Satisfactory payment record” means a record of tax payments that includes not more than one delinquency, late return, returned check or return filed without full payment of the tax due during the immediately preceding 36-month period.*

**Sec. 2.** NAC 372.826 is hereby amended to read as follows:

372.826 As used in NRS 372.510 and NAC 372.825, the Commission will interpret the term “habitually delinquent” to mean having two or more delinquencies, late payments , ~~for~~ returned checks *or returns showing tax due that were filed without payment of the full tax due, or any*

*combination thereof*, in the 12 consecutive months immediately preceding the date on which the Department investigates the matter.

**Sec. 3.** NAC 372.827 is hereby amended to read as follows:

372.827 1. Each person who qualifies for the deferral of taxes pursuant to NRS 372.397 shall establish with the Department security that is equal to his tax liability.

2. The Department may accept as security pursuant to subsection 1:

(a) The security set forth in subsection ~~4~~ 9 of NAC 372.825; or

(b) A perfected, first priority security interest that designates the State of Nevada as the secured party and is created pursuant to the provisions of NRS 104.9101 to 104.9709, inclusive, in personal property that is located in this State.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY  
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066**

**LCB FILE R203-08**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 372.

- 1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

Copies of the proposed regulations, notice(s) of workshop and notices of intent to act upon the regulation were sent by U.S. mail and email to persons who were known to have an interest in the subject of leasing tangible personal property as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Nevada Department of Taxation (“Department”), <http://tax.state.nv.us/>, and mailed to all county libraries in Nevada and posted at the following locations:

Department of Taxation  
1550 College Parkway, Suite 115  
Carson City, Nevada 89706

Department of Taxation  
4600 Kietzke Lane, Suite 235  
Reno, Nevada 89502

Department of Taxation  
555 E. Washington Avenue, Suite 1300  
Las Vegas, Nevada 89101

Department of Taxation  
2550 Paseo Verde Parkway, Suite 180  
Henderson, Nevada 89074

Department of Taxation  
1010 Ruby Vista Drive, Suite 102  
Elko, Nevada 89801

Legislative Building  
401 S. Carson Street  
Carson City, Nevada 89701

Nevada State Library  
100 Stewart Street  
Carson City, Nevada 89701

The Department of Taxation, as staff to the Nevada Tax Commission (“Commission”), solicited comment from the public by posting notices of a workshop, dated September 7, 2009 to the locations listed above. One workshop was held on October 2, 2009. The minutes of that meeting may be obtained by writing to the Department of Taxation at 1550 College Parkway, Suite 115, Carson City, Nevada 89706. On May 24, 2009, the Executive Director of the Department of Taxation (“Executive Director”) issued a Notice of Intent to Act Upon a Regulation, with the intent to adopt R203-08 as a permanent regulation. The Commission, on June 24, 2010, adopted said regulation.

A copy of the summary of the public response, if any, to the proposed regulation may be obtained from the Nevada Department of Taxation, 1500 College Parkway, Suite 115, Carson City, Nevada 89706, 775-684-2096, or email to **efierro@tax.state.nv.us**.

**2. The number persons who:**

(a) Attended each hearing/workshop: October 2, 2009 –6 persons.

(b) Testified at each hearing/workshop: A few individuals testified at the workshop/hearing.

(c) Submitted to the agency written comments: One written comment was submitted.

**3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected and interested businesses and persons, by notices posted at the Nevada State Library; various Department locations throughout the state; and at the Main Public Libraries in counties where an office of the Department is not located.

The Department and the general public commented on all of the proposed language changes during the workshop process. In summary, no members of the public testified in opposition to the proposed changes. One individual group submitted written correspondence that had concerns over the proposed regulation; namely, the group was concerned that a personal surety bond was not a good way to secure a sales tax permit.

Moreover, members of the Nevada Tax Commission and staff to the Department commented during the Adoption Hearing.

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Department at (775) 684-2063 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at **efierro@tax.state.nv.us**.

**4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The permanent regulation was adopted on June 24, 2010, which did not include any changes to the draft dated May 12, 2010 that was provided to the Department by LCB Legal.

**5. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**

**(a) Both adverse and beneficial effects; and**

The proposed regulations present no reasonably foreseeable or anticipated adverse economic effects to businesses or to the general public. It is anticipated that the modified regulations will assist taxpayers to obtain a sales tax bond in order to secure a sales tax permit. It will also streamline the process for when taxpayers can receive a bond waiver.

**(b) Both immediate and long-term effects.**

The proposed regulations present no reasonably foreseeable or anticipated immediate or long-term economic effects to businesses or to the general public.

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

The Department anticipates little, if any, additional cost to administer the regulations.

**7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no known state or government agency regulations that the proposed regulation duplicates.

**8. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

There are no known federal regulations regarding the request for a closed hearing.

**9. If the 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 Nevada Tax Commission is not aware of any provision in this regulation that provides for a new fee, or increases an existing fee.