

**ADOPTED REGULATION OF
THE NEVADA TAX COMMISSION**

LCB File No. R085-26

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

AUTHORITY: §§ 1, 2 and 5-8, NRS 360.090 and 372.725; § 3, NRS 360.090, 360B.110, 372.284 and 372.725; § 4, NRS 360.090, 372.195 and 372.725.

A REGULATION relating to taxation; combining into one section of the Nevada Administrative Code certain rules governing the furnishing of tangible personal property by a mortician; clarifying the application of sales and use taxes to the entire charge by a dispensing optician for eyeglasses and related products furnished in filling a prescription; revising a calculation used to determine the circumstances under which food sold by a retailer is subject to sales and use tax as prepared food intended for immediate consumption; revising the information that a retailer is required to include on a receipt provided to a purchaser of tangible personal property; updating references to sections of the Nevada Revised Statutes that have been reorganized; repealing a provision providing that sales tax does not apply when an owner of property bids on that property at an auction; removing provisions governing an application for an obsolete sales and use tax exemption for aircraft and major components of aircraft; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law imposes a sales tax on the gross receipts of a retailer from the retail sale of tangible personal property in this State. (NRS 372.105, 374.110, 374.111) Under existing law, with certain exceptions, a retailer who makes a retail sale of tangible personal property in this State is required to collect the sales tax from the purchaser at the time of the purchase. (NRS 372.110, 374.115) Existing law also imposes a use tax on the storage, use or consumption of tangible personal property in this State. (NRS 372.185, 374.190, 374.191)

Existing regulations establish rules governing the applicability of sales and use taxes on tangible personal property furnished by a mortician in connection with the services provided by the mortician. (NAC 372.280-372.300) **Section 8** of this regulation repeals rules governing the applicability of such taxes to tangible personal property furnished by a mortician when a death occurs in this State but burial occurs outside this State, when a death occurs outside this State but burial occurs in this State and when the funeral expenses are paid by the United States or any other governmental entity. (NAC 372.290, 372.300) **Section 1** of this regulation reenacts these rules in an existing section of the Nevada Administrative Code. Thus, **sections 1 and 8** combine into one section the rules governing the applicability of sales and use taxes to tangible personal property furnished by a mortician in connection with the services provided by the mortician.

Under existing regulations, when a dispensing optician furnishes eyeglasses and related products in filling a prescription, the sale is considered a retail sale of tangible personal property and the entire charge by the dispensing optician is subject to sales tax. (NAC 372.320) **Section 2** of this regulation clarifies that the sales tax applies to the furnishing of eyeglasses and related products whether or not a licensed dispensing optician sells the eyeglasses and related products.

Existing law exempts from sales and use tax food for human consumption except that sales and use tax is imposed on prepared food intended for immediate consumption. (NRS 372.284, 374.289) Under existing law, food that is sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins or straws, is prepared food intended for immediate consumption and, thus, subject to sales and use tax. (NRS 360B.460) Existing regulations establish different criteria for determining whether food is sold with eating utensils provided by the seller, and the criteria applicable to a seller is based on the percentage of the total dollar value of food sold by a seller that is prepared food. (NAC 372.607) **Section 3** of this regulation removes dietary supplements from this calculation. Under existing law, dietary supplements are not considered to be food and, thus, are subject to sales and use tax. (NRS 360B.445, 360B.495, 372.284, 374.289)

Existing law includes in the sales price used to calculate sales and use tax the amount of certain price reductions or discounts for which the seller receives reimbursement from a third party. Among other criteria required for such a price reduction or discount to be included in the sales price, existing law requires the price reduction or discount to be identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser. (NRS 360B.480) **Section 4** of this regulation amends the requirements of existing regulations for the information that must be included on a receipt given to a purchaser to additionally require the receipt to state separately the amount of any manufacturer's rebate, any buy down of a sales price by a supplier of the retailer or any third-party price reduction or discount. (NAC 372.770)

Existing law requires a person conducting business in this State as a seller of tangible personal property to register with, or obtain a permit from, the Department of Taxation to collect sales and use tax in this State. (NRS 360.5971) Senate Bill No. 441 of the 2021 Legislative Session consolidated into one provision multiple provisions of law governing such registrations and permits. (Chapter 342, Statutes of Nevada 2021, at page 2007) **Sections 5-7** of this regulation update references in existing regulations to those provisions of law governing registration and permits to collect sales and use tax in this State.

In 1997, the Nevada Supreme Court held that a sales and use tax exemption for the gross receipts from the sale of aircraft and major components of aircraft to an air carrier that maintains its central office and bases a majority of its aircraft in Nevada was unconstitutional because it discriminated against interstate commerce. (*Worldcorp v. State, Dep't of Taxation*, 113 Nev. 1032 (1997)) Assembly Bill No. 161 of the 2015 Legislative Session repealed this exemption and related provisions governing the administration of the exemption. (Section 12 of Assembly Bill No. 161, chapter 406, Statutes of Nevada 2015, at page 2336) **Section 8** removes an obsolete regulation requiring an air carrier which desires to qualify for this exemption to file a written application on a form prescribed by the Department and submit evidence of its eligibility for the exemption. (NAC 372.715)

Section 8 also repeals an existing regulation that provides that sales tax does not apply when an owner delivers property to an auctioneer and bids on that property at the auction. (NAC 372.110)

Section 1. NAC 372.280 is hereby amended to read as follows:

372.280 1. Morticians are the retailers of the tangible personal property which they furnish in connection with rendering their services. The tax applies to the sale by the mortician of all tangible personal property so furnished.

2. The tax applies to:

(a) The fair retail value of clothing, boxes, vaults and any other property furnished in addition to that customarily furnished with standard service.

(b) Acknowledgment cards and appreciation cards, when furnished as part of the regular service, or when the family is charged for them.

(c) All other items of tangible personal property which are furnished by the mortician, computed upon 50 percent of the remainder of the charge for the funeral, except as provided in subsection 3.

3. If the items of tangible personal property are segregated in the billings to customers and specific charges are made, the tax applies to the charges.

4. The tax does not apply to accommodation cash advances for such items as cemetery charges, newspaper notices, railroad tickets, ministerial fees and flowers.

5. When death occurs in this State and burial is to occur in another state, the casket and other personal property purchased in this State for the preparation and delivery of the body to its ultimate burial destination are subject to Nevada sales tax.

6. Where burial occurs in this State, through ashes in urn, entombment in mausoleum or ground burial, the casket, urn or other materials purchased outside this State are not purchased for use in Nevada and are not subject to use tax. The taxable use has occurred outside this State.

7. If a portion of the expense of a funeral is paid by the United States directly to the mortician, the transaction is regarded as a sale to the United States and is exempt from the tax to the extent of the payment.

8. Payment to a relative or other person as reimbursement for a portion of the funeral expense is not a sale to the United States and is not exempt from the tax.

9. In cases where the family assigns the death benefits due from the Department of Veterans Affairs or the Social Security Administration to the mortician, the United States is not considered the purchaser and no part of the transaction is considered a tax-exempt sale to the United States.

10. Only when the governmental agency makes a payment directly to the mortician is that portion of the funeral expense considered exempt from the tax.

Sec. 2. NAC 372.320 is hereby amended to read as follows:

372.320 1. Oculists and optometrists are the consumers of ophthalmic materials including eyeglasses, frames and lenses used or furnished in the performance of their professional services in the diagnosis, treatment or correction of conditions of the human eye. The tax applies to the sale of the materials to oculists and optometrists.

2. The tax applies to the entire charge made by a dispensing optician for eyeglasses and related products furnished in filling a prescription ~~H~~, *whether or not the dispensing optician is licensed in this State pursuant to chapter 637 of NRS.*

Sec. 3. NAC 372.607 is hereby amended to read as follows:

372.607 For the purpose of determining whether food sold at retail by a seller is a food sold with eating utensils provided by the seller pursuant to subsection 3 of NRS 360B.460 and NAC 372.605:

1. Except as otherwise provided in subsection 2, a seller who made retail sales of prepared food during a tax year or business fiscal year, whichever is selected by the seller, as soon as practicable after accounting records for that tax year or business fiscal year, as applicable, are available to the seller but not later than 90 days after the beginning of the seller's next tax year or business fiscal year, as applicable, shall calculate a percentage by:

(a) Calculating the sum of:

(1) The total dollar value of all retail sales of food which is described in subsection 1 of NRS 360B.460 and which was sold at retail by the seller during the immediately preceding tax year or business fiscal year, as applicable;

(2) The total dollar value of all retail sales of food which is described in subsection 2 of NRS 360B.460 and which was sold at retail by the seller during the immediately preceding tax year or business fiscal year, as applicable; and

(3) The total dollar value of all retail sales of food which is incapable of being transferred to the purchaser without the use of a plate, bowl, glass or cup, including, without limitation, soft drinks dispensed from a fountain and food dispensed at a salad bar, and which was sold at retail by the seller during the immediately preceding tax year or business fiscal year, as applicable; and

(b) Dividing the amount calculated pursuant to paragraph (a) by the total dollar value of all retail sales of food by the seller, including, without limitation, prepared food, candy ~~H~~ and soft drinks . ~~and dietary supplements.~~

↪ If, during a tax year or business fiscal year, as applicable, a seller made retail sales of any type of food described in paragraph (a) at more than one establishment, the seller must perform the calculation required by this subsection for each establishment and, for the purposes of this

section, use the average of those calculations as the percentage of the seller's sales of food that were sales of prepared food.

2. If a seller did not make any retail sales of prepared food during the immediately preceding tax year or business fiscal year, whichever is selected by the seller, or is a new business and the seller intends to make retail sales of prepared food during the seller's current tax year or business fiscal year, the seller must calculate a percentage by:

(a) Calculating the sum of:

(1) An estimate of the total dollar value of all retail sales of food which is described in subsection 1 of NRS 360B.460 and which the seller expects to sell at retail during the current tax year or business fiscal year, as applicable;

(2) An estimate of the total dollar value of all retail sales of food which is described in subsection 2 of NRS 360B.460 and which the seller expects to sell at retail during the current tax year or business fiscal year, as applicable; and

(3) An estimate of the total dollar value of all retail sales of food which is incapable of being transferred to the purchaser without the use of a plate, bowl, glass or cup, including, without limitation, soft drinks dispensed from a fountain and food dispensed at a salad bar, and which the seller expects to sell during the current tax year or business fiscal year, as applicable; and

(b) Dividing the amount calculated pursuant to paragraph (a) by an estimate of the total dollar value of all retail sales of food, including, without limitation, prepared food, candy ~~and~~ **and** soft drinks , ~~and dietary supplements,~~ which the seller expects to make during the current tax year or business fiscal year, as applicable.

↪ If a seller described in this subsection intends to make retail sales of any type of food described in paragraph (a) at more than one establishment, the seller must perform the calculation required by this subsection for each such establishment and, for the purposes of this section, use the average of those calculations as the percentage of the seller's sales of food that will be sales of prepared food. If the actual retail sales of prepared food by a seller described in this subsection during the first three months of such sales materially affect the calculation required by this subsection, the seller must perform the calculation required by this subsection using reasonable revised estimates and, for the purposes of this section, use that calculation as the percentage of the seller's sales of food that will be sales of prepared food.

3. If the percentage calculated by a seller pursuant to subsection 1 or 2, as applicable, is 75 percent or less, food sold at retail by the seller is deemed to be food sold with eating utensils provided by the seller:

(a) If the practice of the seller for sales of that food, as represented by the seller, is to directly give or hand a utensil to the purchaser to use to consume the food being sold; or

(b) If the food being sold is incapable of being transferred without the use of a plate, bowl, glass or cup and the practice of the seller, as represented by the seller, is to make plates, bowls, glasses or cups available to the purchaser of such food, including, without limitation, by permitting a purchaser to obtain such plates, bowls, glasses or cups at a kiosk or common area.

4. If the percentage calculated by a seller pursuant to subsection 1 or 2, as applicable, is more than 75 percent, food sold at retail by the seller is deemed to be food sold with eating utensils provided by the seller if the seller:

(a) Directly gives or hands a utensil to the purchaser to use to consume the food being sold; or

(b) Makes utensils available to the purchaser, including, without limitation, by permitting the purchaser to obtain utensils at a kiosk or common area.

5. A seller who makes retail sales of prepared food shall maintain records in accordance with NRS 372.735 which are adequate to substantiate the calculations made by the seller pursuant to this section.

Sec. 4. NAC 372.770 is hereby amended to read as follows:

372.770 1. Each retailer who is required or authorized to collect sales or use tax from purchasers must give a receipt to each purchaser for the amount of the tax collected.

2. The receipt must show the following:

(a) The name and place of business of the retailer;

(b) The date on which the property was sold;

(c) The sales price of the property; ~~and~~

(d) *The amount of any manufacturer's rebate, any buy down of the sales price received from a supplier of the retailer or any third-party price reduction or discount; and*

(e) The amount of tax collected by the retailer from the purchaser.

3. A sales invoice which contains the data required in subsection 2 and evidence of payment constitutes a receipt.

4. Each purchaser is liable for the payment of the tax to the Commission unless ~~he or she~~ *the purchaser* obtains and retains for inspection the receipts which are required by this section.

Sec. 5. NAC 372.780 is hereby amended to read as follows:

372.780 A retailer who takes a deduction pursuant to section 12 of chapter 397, Statutes of Nevada 1955, (NRS 372.025) for property which was resold after being purchased for a purpose other than resale ~~shall:~~ *must:*

1. Hold a valid permit issued pursuant to NRS ~~{372.135;}~~ *360.5973 or be registered with the Department pursuant to NRS 360B.200;*

2. Take the deduction on the retailer's tax return which covers the period in which ~~he or she~~ *the retailer* resold the property; and

3. Maintain complete records which are adequate to substantiate the deduction.

Sec. 6. NAC 372.908 is hereby amended to read as follows:

372.908 Except as otherwise provided in NAC 372.910, an independent salesperson who sells tangible personal property obtained from a direct sales organization to a customer at retail:

1. Is considered a retailer with respect to such sales and the gross receipts from those sales are subject to the sales tax.

2. ~~{Shall}~~ *Must* obtain a permit to engage in or conduct business as a seller pursuant to NRS ~~{372.125;}~~ *360.5971 or register with the Department pursuant to NRS 360B.200.*

3. ~~{Shall}~~ *Must* obtain a state business ~~{registration}~~ *license* to conduct business in this State pursuant to NRS 76.100.

Sec. 7. NAC 372.910 is hereby amended to read as follows:

372.910 1. The Department may enter into a sales tax collection agreement with a direct sales organization.

2. A sales tax collection agreement must provide that:

(a) Before a direct sales organization may report and remit taxes due for the sales made by independent salespersons of tangible personal property obtained from the direct sales organization, the direct sales organization will obtain a permit to engage in or conduct business as a seller pursuant to NRS ~~{372.125;}~~ *360.5971 or register with the Department pursuant to NRS 360B.200.*

(b) Tangible personal property sold to an independent salesperson for personal use is taxed based on:

- (1) The actual sales price paid by the independent salesperson; or
- (2) If the direct sales organization does not have evidence that the tangible personal property was purchased for personal use by the independent salesperson, the sales price determined pursuant to paragraph (c).

(c) Tangible personal property obtained from a direct sales organization and sold by an independent salesperson at retail is taxed based on:

- (1) The actual sales price paid by the retail customer; or
- (2) If the direct sales organization does not have evidence as to the actual sales price paid by the retail customer, the suggested retail price.

(d) The tax due on the sale of tangible personal property is computed at:

- (1) The tax rate in effect at the location of the sale to the retail customer; or
- (2) If the direct sales organization does not have evidence as to the actual location of the sale to the retail customer, the tax rate in effect at the location to which the tangible personal property is shipped or delivered.

(e) The direct sales organization is entitled to the same deductions, allowances and collection credits to which an independent salesperson would be entitled if the sales tax collection agreement were not in effect.

(f) The direct sales organization will make available to the Department, upon request, such books and records as may be reasonably required by the Department to conduct an audit of the direct sales organization.

3. The Department shall not regard a sales tax collection agreement as a factor in determining whether or not the direct sales organization has a nexus with this State for the purpose of imposing any tax or tax collection obligation except for the sales or use tax collected by the direct sales organization pursuant to the sales tax collection agreement.

Sec. 8. NAC 372.110, 372.290, 372.300 and 372.715 are hereby repealed.

TEXT OF REPEALED SECTIONS

372.110 Auctions when owner bids on his or her property. (NRS 360.090, 372.725)

Sales tax does not apply when an owner of property delivers it to an auctioneer for auction and bids on his or her own property at the auction.

372.290 Morticians: Transactions with other states. (NRS 360.090, 372.725)

1. When death occurs in this State and burial is to occur in another state, the casket and other personal property purchased in this State for the preparation and delivery of the body to its ultimate burial destination are subject to Nevada sales tax.

2. Where burial occurs in this State, through ashes in urn, entombment in mausoleum or ground burial, the casket, urn or other materials purchased outside this State are not purchased for use in Nevada and are not subject to use tax. The taxable use has occurred outside this State.

372.300 Morticians: Funeral expenses paid by United States. (NRS 360.090, 372.325, 372.725)

1. If a portion of the expense of a funeral is paid by the United States directly to the mortician, the transaction is regarded as a sale to the United States and is exempt from the tax to the extent of the payment.

2. Payment to a relative or other person as reimbursement for a portion of the funeral expense is not a sale to the United States and is not exempt from the tax.

3. In cases where the family assigns the death benefits due from the Veterans' Administration or Social Security to the mortician, the United States is not considered the purchaser and no part of the transaction is considered a tax-exempt sale to the United States.

4. Only when the governmental agency makes a payment directly to the mortician is that portion of the funeral expense considered exempt from the tax.

372.715 Application by air carrier. (NRS 360.090, 372.317, 372.725, 374.725) An air carrier which desires to be exempt from the tax imposed pursuant to chapter 372, 374, 377, or 377A of NRS must file a written application on a form prescribed by the Department and submit evidence of its eligibility for the exemption. Upon approval of the application, the Department will issue a certificate of exemption.