

LCB File No. R104-09

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

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

AUTHORITY: NRS 360.090, 360B.110, 360B.400 and 372.723.

A REGULATION relating to the implementation of the Streamlined Sales and Use Tax Agreement, and incorporating uniform definitions into the provisions governing the imposition and administration of the sales and use tax.

Section 1. NAC 372.019 is hereby amended to read as follows:

“Drug” has the meaning ascribed to it in NRS 360B.435 and includes, without limitation, injectable dermal fillers ~~prescribed by a physician~~, saline solutions, medical grade gases, and insulin.

Sec. 2. NAC 372.027 is hereby amended to read as follows:

“Prosthetic device” has the meaning ascribed to it in NRS 360B.475 and includes, without limitation, breast implants, ~~dialysis and~~ *medicine delivery* and feeding catheters, insulin pumps, cochlear implants and amalgams, *orthodontic devices*, ceramics, porcelain and gold, silver and other metal alloys used to fill teeth.

Sec. 3. NAC 372.038 is hereby amended to read as follows:

If any of the provisions of:

1. This chapter conflict with any of the provisions of chapter 374 of NAC, the provisions of this chapter shall be deemed to prevail.

2. ~~This e~~Chapter *372* or chapter ~~360B~~ *374* of NRS conflict with any of the provisions of chapter ~~372~~ *360B* of NRS, the provisions of chapter ~~372~~ *360B* of NRS shall be deemed to prevail.

3. *If it is determined that subsection 2 is invalid, taxpayers who followed the requirements of chapter 360B are relieved from the additional tax, if any, that would otherwise be applicable pursuant to the provisions of chapters 372 and 374.*

Sec. 4. NAC 372.101 is hereby amended to read as follows:

1. Delivery charges included in the sale of tangible personal property are subject to sales and use taxes *pursuant to NRS 360B.480.*

2. *“Delivery Charges” has the meaning ascribed to it in NRS 360B.425. ~~[A delivery charge shall be deemed not to be included in the sale of tangible personal property if the charge:~~*

~~(a) Does not pertain to any preparation, handling, crating or packing services performed by the seller before shipment; and~~

~~(b) Is stated separately on the invoice given to the purchaser.]~~

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 *if separately stated. Charges for handling, crating, and packing, whether or not separately stated are subject to sales and use tax.*

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

Sec. 5. NAC 372.605 is hereby amended to read as follows:

1. As used in NRS 372.284 *and 372.2841* the Department will interpret the term “prepared food intended for immediate consumption” ~~[to mean prepared food customarily sold with eating utensils provided be the seller, including including plates, knives, forks, spoons, glasses, cups, napkins or straws. For the purposes of this subsection, “plates” does not include any containers~~

~~or packaging used to transport food]~~ to have the meaning ascribed to “Prepared Food” in NRS 360B.460 which is intended for immediate consumption.

2. “Prepared food” does not include:

a. Two or more food ingredients mixed or combined by a retailer for sale as a single item, if the retailer’s primary classification in the North American Industry Classification System, 2002 edition published by the federal office of management and budget, is manufacturing under subsector 311.

b. Two or more food ingredients mixed or combined by a retailer for sale as a single item, sold unheated and sold by volume or weight.

c. Bakery items made by a retailer, including breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, and tortillas, if sold without eating utensils provided by the seller.

Sec. 6. NAC 372.045 is hereby amended to read as follows:

1. Except as otherwise provided by specific statute or regulation, the sales tax or use tax, as applicable, applies to the total amount of consideration received by a seller in connection with a bundled transaction.

2. For the purposes of this section:

(a) Except as otherwise provided in paragraph (b) *and (e)*, “bundled transaction” means the retail sale of two or more products, except real property and services to real property, where the products are:

(1) Otherwise distinct and identifiable; and

(2) Sold for one nonitemized price.

(b) “Bundled transaction” does not include:

(1) The sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(2) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service and is provided exclusively in connection with the service, and the true object of the transaction is the service.

(3) A transaction that includes taxable products and nontaxable products and regarding which the purchase price or sales price of the taxable products is de minimis. For the purposes of this subparagraph:

(I) “De minimis” means that the seller’s purchase price or sales price of the taxable products is 10 percent or less of the total purchase price or sales price of the bundled products.

(II) Sellers must use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis.

(III) Sellers must use the full term of a service contract to determine if the taxable products are de minimis.

(4) The retail sale of exempt tangible personal property and taxable tangible personal property, where:

(I) The transaction includes food, drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices or medical supplies; and

(II) The seller’s purchase price or sales price of the taxable tangible personal property is 50 percent or less of the total purchase price or sales price of the bundled tangible personal

property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property for the purpose of making this 50-percent determination for a transaction.

(c) “Distinct and identifiable” products do not include any:

(1) Packaging items, such as containers, boxes, sacks, bags and bottles, or other materials, such as wrapping, labels, tags and instruction guides, that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging items that are incidental or immaterial to the retail sale of the products include grocery sacks, shoeboxes, dry cleaning garment bags, and express delivery envelopes and boxes.

(2) Products provided free of charge with the required purchase of another product. For the purposes of this subparagraph, a product is “provided free of charge” if the sales price of the product purchased does not vary depending on the inclusion of the product “provided free of charge.”

(3) Items included in the sales price.

(d) “One nonitemized price” does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form, including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card or price list.

~~{(e) “Sales price” applies to the measure subject to sales tax.}~~

(e) An optional computer software maintenance contract in a bundled transaction in which both taxable and nontaxable or exempt products that are not separately itemized on the invoice or similar billing document shall be characterized as all taxable.

1. A computer software maintenance contract is a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software, or both and includes:

(a) Optional computer software maintenance contracts;

(b) Mandatory computer software maintenance contracts;

(c) Optional computer software maintenance contracts that do not include upgrades and updates delivered electronically, by load and leave, or both;

(d) Computer software maintenance contracts that only obligate a vendor of computer software to provide a customer with future updates or upgrades to computer software; and

(e) Computer software maintenance contracts that only obligate a vendor of computer software to provide a customer with support services with respect to computer software.

2. A mandatory computer software maintenance contract is a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software and is part of the sales price.

3. An optional computer maintenance contract is a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sales of computer software.

(a) If an optional computer software maintenance contract obligates the vendor to provide upgrades and updates to prewritten computer software, it will be characterized as a sale of prewritten computer software and will be included in the sales price.

(b) If an optional computer software maintenance contract only obligates the vendor to provide support services, it will be characterized as a sale of services and nontaxable

4. Custom computer software, its upgrades and updates, and agreements to maintain custom computer software, is characterized as a sale of a services and nontaxable.