

LCB File No. T033-02

ADOPTED TEMPORARY REGULATION OF THE
NEVADA TAX COMMISSION

Filed with the Secretary of State on 12/20/2002

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

AUTHORITY: NRS 360.090 and Senate Bill 362 of the 1999 Legislative Session.

Section 1. Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth as follows:

Credits and Refunds:

(1) In general, if a taxpayer has overpaid tax, pursuant to Nevada Revised Statutes 364A, 372, and 374, the taxpayer may file a claim with the department.

Claim for a Credit or Refund:

(1) A taxpayer may file a claim for a credit or refund within three (3) years after the date of an overpayment. The date of the overpayment is the due date of the original return or the date paid whichever is later. The department will not consider a claim unless it is filed within the three year period. Every claim must be in writing, witnessed by a notary public or contain an acknowledgment that it is signed under penalty of perjury and must state the specific grounds upon which the claim is founded. Documentation supporting the claim must be provided. If the overpayment is due to an error or omission in a previously filed return, the claim must be in the form of an amended return, as prescribed by the department, for each period in which the tax was originally reported. The amended return will specify the original amounts reported, the correct amounts, and the differences.

Who May Request a Credit or Refund:

(1) The person requesting the credit or refund must be the person, or their authorized representative, who is legally obligated to remit the tax to the Department of Taxation.

Credits:

(1) The department will issue a statement allowing a credit in the amount of any overpayment unless the taxpayer requests a refund on the claim. The credit may be applied to any tax liability owed to the Department of Taxation. If it is determined later that the person wants a refund, the credit may be refunded. The department will deduct the collection allowance, when applicable, from the amount to be credited or refunded.

Sec. 2. Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth as follows:

Returned Tangible Personal Property -Retailer:

(1) A retailer, pursuant to NRS 372.055 and 374.060, should deduct from the gross sales the full sales price of tangible personal property returned by a customer provided that such amount has been credited or refunded to the purchaser. Adequate records must be kept to disclose the essential facts.

Customer Refunds Before Tax Is Remitted by Retailer:

(1) If a retailer credits or refunds to a customer the full sales price of returned goods and has not yet remitted the sales tax to the department, the refund of the sales price shall not be included in the gross sales. If no tax is due, a return must be filed.

Customer Refunds After Tax Is Remitted by Retailer:

(1) If a customer erroneously pays sales tax to a retailer, the customer should seek a credit or refund from that retailer. If the customer attempts, but is unable to receive the credit or refund from the retailer, they may apply for it directly from the department; however, the department will deduct the collection allowance from the refund.

(2) If a retailer credits or refunds to a customer the full sales price of returned goods after the retailer has remitted the tax to the department, the refunded sales price may be deducted from gross sales on the retailer's return for the period in which the credit was given or refund made, as long as the tax rates in the two periods are the same. If they are not, amended returns for the period of the original sale must be submitted to the department. If a retailer has insufficient gross sales during the period in which a credit or refund has been made to a customer to offset the credit/refund issued, the retailer may take the refunded amount as a credit against gross sales and report a negative amount. The department will issue a credit statement that may be applied against future tax liability owed to the Department of Taxation or a refund may be requested.

Sales of Returned Goods:

(1) When any returned tangible personal property is resold, the sale is subject to the sales tax.

Sec. 3. Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth as follows:

Erroneous Refunds:

(1) The department may recover any credit or refund erroneously made or allowed in an action against the person legally obligated to remit the tax pursuant to NRS 372.705 and NRS 364A.320.

Extension Agreement:

(1) The taxpayer and the department may agree to extend the period allowed for filing a claim.

Sec. 4. Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth as follows:

Duty to File Returns: Sales and Use Tax:

(1) The following persons making sales or taxable use of tangible personal property in Nevada, or holding a sales and/or use tax permit, must file returns pursuant to Nevada Revised Statutes Chapter 372 and 374.

- (a) Any retailer located in Nevada;*
- (b) Any retailer maintaining a place of business in Nevada;*
- (c) Any retailer who has voluntarily filed an application for a permit and has been granted one pursuant to NAC 372.750;*
- (d) Any retailer making retail sales from outside this state to a destination within this state who has physical presence in this state pursuant to NRS 372.728;*
- (e) A purchaser making use of items obtained with an exemption certificate for other than the exempt purposes pursuant to NRS 372.350;*
- (f) A person upon whom NRS 372.185 imposes liability for use tax; and*
- (g) Any person holding a direct pay permit.*

Duty to File Returns: Business Tax:

(1) Any person conducting a business in Nevada as defined by NRS 364A.020, the performance of which is carried out by employees as defined by NRS 364A.040, must file returns pursuant to NRS 364A.140.

Failure to File:

(1) Any person who is required to file a return and fails to do so within the time prescribed by law or rule, or who files an incorrect, false, or fraudulent return, must, upon written demand of the Executive Director, or his designee, file the return required or the corrected return, as the case may be, within 10 days after the written demand for the return has been mailed to the person, and at the same time pay any tax due on the basis of the return.

Failure to Comply with Demand:

(1) If the person upon whom the written demand has been made fails to comply, the Executive Director, or his designee, through knowledge and information that is obtained through testimony or by any other means available to the Executive Director, or his designee, will prepare a return or corrected return and assess a tax on the basis of that return. The tax assessed must be paid within 45 days after the Executive Director, or his designee, has mailed to the person a written notice of the deficiency determination advising them of the amount assessed and the demand for its payment in accordance with NRS 360.360 or 10 days in accordance with NRS 360.414.

Res Judicata and Collateral Estoppel:

(1) If a person, files a return in response to a proposed deficiency determination, the department may accept the late filed return in accordance with NRS 360.360. The department's acceptance of a late filed return shall not be construed as a settlement or other resolution of the proposed deficiency determination sufficient to permit the taxpayer to evoke

the legal concepts of res judicata and collateral estoppel during a subsequent examination/audit of the taxpayer' records. If the late filed return is filed after the 45 day due date, the return will not be accepted by the department without verification of the return amounts, unless the differences between the proposed deficiency and the subsequent late filed return is diminimus.

**NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T033-02**

INFORMATIONAL STATEMENT

Revenue Compliance Section– Taxpayers Bill of Rights

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 360.

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

Notices of hearing for the adoption and amendment of the proposed temporary regulation were posted at the following locations: Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Nevada State Library, 100 Stewart Street, Carson City, Nevada; The Legislative Building, Capitol Complex, Carson City, Nevada; each County Main Public Library; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Las Vegas, Nevada.

A copy of the notice of hearing and the proposed temporary regulation were placed on file at the 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 temporary regulation were also made available and placed on file at the Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation, 850 Elm Street, No. 2, Elko, 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 hearing was held on December 6, 2002 at the Grant Sawyer State Office Building, 555 E. Washington Avenue, LCB Room 4401, Las Vegas, Nevada and Video Conference to the Nevada Legislative Building, 401 S. Carson Street, Room 4100, Carson City, Nevada. It appears that due to the primarily procedural nature of the proposed temporary regulation, only affected or interested persons and businesses as set forth in #3 below responded to the proposed temporary regulation and testified at the hearing. A copy of the transcript of the hearing, for which a reasonable fee may be charged, may be obtained by calling the Nevada Department of Taxation at (702) 687-4896, or by writing to the Nevada Department of Taxation at 1550 East College Parkway, Suite 115, Carson City, Nevada, 89706.

The proposed temporary regulation was submitted to the Legislative Counsel Bureau, which completed its review and minor revisions on July 31, 2001. Thus, the proposed temporary regulation, for practical purposes, was discussed at five workshops and has been heard and considered at one public hearing of the Nevada Tax Commission.

2. The number of persons who:

(a) Attended the hearing: 43

(b) Testified at the hearing: 1

(c) Submitted to the Tax Commission written comments: No written comments were submitted to, or received by, the Department of Taxation or the Nevada Tax Commission.

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 the notices set forth in #1 above, by direct mail to all county assessors, and by direct mail to the approximately 240 interested businesses and persons on the Department of Taxation's mailing list.

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

The proposed temporary regulation was not changed since no concerns were raised by the public, affected or interested businesses or persons, the Department of Taxation, the Attorney General's Office or Tax Commission Members, and the Tax Commission believed no changes other than those discussed and made at the workshops were necessary.

5. The estimated economic effect of the adopted temporary regulation on the business 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 (b) Both immediate and long-term effects.

(a) Adverse and beneficial effects.

The proposed temporary regulation presents no foreseeable or anticipated adverse economic effects to businesses or the public. There may be some beneficial economic effects to all taxpayers that are required to report to the Department through clarification of requirements as found in the temporary regulation. Those anticipated benefits are not quantifiable at this time.

(b) Immediate and long-term effects.

Same as #5(a) above.

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

The proposed temporary regulation presents no significant foreseeable or anticipated cost for enforcement. There may be some minor initial administrative costs for the Department, which are not quantifiable at this time.

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

The proposed temporary regulation is particular to the Department of Taxation practices and procedures and does not appear to overlap or duplicate regulations of other state or local governmental agencies.

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

There are no known federal regulations pertaining to state sales/use tax procedures, which are the subject of the proposed temporary regulation.

9. If the temporary 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 temporary regulation does not provide a new fee or increase an existing fee.