

LCB File No. R032-03

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

(This proposed regulation was previously adopted as LCB File No. T033-02)

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.