

Chapters 372 and 374 of NAC

LCB File No. T010-04

**ADOPTED TEMPORARY REGULATION
OF THE NEVADA TAX COMMISSION**

Filed with the Secretary of State on December 13, 2004

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

AUTHORITY: NRS 360.090

NAC 372 & 374 - Direct Sales Organizations

1. *For purposes of this temporary regulation, a direct sales organization is a business that uses a distribution system where independent salespersons sell products at retail away from a fixed location.*
2. *For purposes of this temporary regulation, an independent salesperson is a retailer and, except as provided in section 3, is responsible for reporting and remitting the tax due on his sales.*
3. *The department may enter into sales tax collection agreements with direct sales organizations authorizing the direct sales organizations to report and remit the tax due for their own sales and for the sales made by their independent salespersons. Sales tax collection agreements with direct sales organizations shall contain such terms and conditions as are appropriate to ensure that:*
 - a. *Products sold to an independent salesperson for his own use are taxed based on the actual sales price paid by the independent salesperson or, if the direct sales organization does not know whether the product was purchased for the independent salesperson's own use, on the price determined under subparagraph b.*
 - b. *Products sold by an independent salesperson to a retail customer are taxed based on the actual sales price paid by the retail customer or, if the direct sales organization does not have documentation indicating the actual sales price, on the suggested retail price.*
 - c. *The tax is computed using the tax rate in effect at the location of sale to the retail customer in Nevada or, if the direct sales organization does not have documentation indicating the location, the tax rate in effect at the location in Nevada where the direct sales organization ships the product.*
 - d. *The direct sales organization is entitled to the same deductions, allowances and collection credits as those which would be allowed to independent salespersons if they were reporting and remitting the tax.*

e. The direct sales organization makes 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.

4. To enter into a sales tax collection agreement, the direct sales organization must be registered with the department to report and remit tax. If a direct sales organization already holds a permit to remit and collect tax on its own behalf, it need not obtain a second permit in order to collect and remit tax on behalf of independent salespersons in accordance with a sales tax collection agreement. Any sales tax collection agreement entered into with the direct sales organization must be approved by the Nevada Tax Commission.

5. Independent salespersons are not required to separately register with the department to report and remit sales or use tax on the sale, storage, use or other consumption of any product purchased from a direct sales organization if the product is covered by the provisions of a sales tax collection agreement with the department.

6. Registration with the department and entry into a sales tax collection agreement by a direct sales organization will not be considered as factors when determining whether the direct sales organization has nexus with the state for purposes of imposing any tax or tax collection obligation, other than the sales or use tax collected and remitted on behalf of independent salespersons in accordance with a sales tax collection agreement.

7. If the direct sales organization does not comply with a sales tax collection agreement, the agreement shall be terminated and the independent salespersons shall be required to register for a seller's permit and report and remit tax directly to the department.

8. If the department proposes to terminate a sales tax collection agreement in accordance with section 7, it must send notice of the proposed termination in the manner described in NRS 360.350. If the direct sales organization against whom the termination decision is made believes the termination is in error, the direct sales organization may petition the determination in the manner provided in NRS 360.360. The hearing, and any subsequent appeal to the Nevada Tax Commission, shall be subject to and conducted in accordance with the same conditions and requirements as are applicable to deficiency determinations rendered and adjudicated pursuant to the provisions of NRS 360.300 to NRS 360.400, inclusive.

9. Pending the final outcome of a petition filed by a direct sales organization concerning the proposed termination of a sales tax collection agreement, the direct sales organization shall continue to report and remit tax on products covered by the sales tax collection agreement. In the event that the direct sales organization fails to so report and remit tax on a product covered by the sales tax collection agreement, the department shall have the right to assess a deficiency against any independent sales person who sold, stored, used or otherwise consumed the product within the state. If the final outcome is to terminate the agreement, the independent salespersons shall be required to register for a seller's permit and remit the tax directly to the department.

NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T010-04

The Nevada Tax Commission adopted temporary regulations assigned LCB File No. T010-04 which pertain to chapters 372/374 of the Nevada Administrative Code on December 13, 2004.

INFORMATIONAL STATEMENT

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 regulations 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; and Department of Taxation, 2550 Paseo Verde Parkway, Suite 180, Henderson, Nevada.

A copy of the notice of hearing and the proposed temporary regulations 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 regulations 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, 2550 Paseo Verde Parkway, Suite 180, Henderson, 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 October 4, 2004 at the Grant Sawyer State Office Building, Room 4412, 555 E. Washington Avenue, Las Vegas Nevada and Video Conferenced to the Nevada Legislative Building, Room 3137, 401 S. Carson Street, Carson City, Nevada. It appears that due to the primarily procedural nature of the proposed temporary regulations, only affected or interested persons and businesses as set forth in #3 below responded to the proposed temporary regulations 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 (775) 684-2096 or by writing to the Nevada Department of Taxation at 1550 East College Parkway, Suite 115, Carson City, Nevada, 89706.

The proposed temporary regulations, for practical purposes, was discussed at one workshop and as been heard and considered at one public hearing of the Nevada Tax Commission.

2. The number of persons who:

(a) Attended the hearing: 31

(b) Testified at the hearing: 2

(c) Submitted to the Tax Commission written comments: Written comments were submitted by the Direct Selling Association, a representative of Jones Day, and Legal Counsel for several direct marketers requesting the amendments to the administrative code prior to the hearing.

No other written comments by the general public 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 and interested persons, 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.

Comments from the above-referenced industry in #2 were received relative to the original regulations and proposed draft of the temporary regulations with respect to the Department's sales/use tax collection agreements with direct sales organizations.

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

The proposed temporary regulations were modified at public workshops prior to adoption, due to issues raised by the Department of Taxation and by the affected direct sales organizations. The proposed temporary regulations was changed at the public hearing reflecting minor technical corrections raised by the affected industry, the Department of Taxation or Tax Commission members, and the Tax Commission believed no changes other than those made were necessary.

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

(a) Adverse and beneficial effects.

The proposed temporary regulations present no foreseeable or anticipated adverse economic effects to businesses or the public. However, the temporary regulations will have a beneficial impact on the direct sales organizations for clarification and procedural purposes with regard to entering into agreements with the Department. That effect cannot be quantified 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 regulations.

The proposed temporary regulations present no significant foreseeable or anticipated cost or decrease in costs for enforcement. However, it appears that there may be some minor additional administrative costs for the Department of Taxation, which cannot be quantified at this time.

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

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

8. If the temporary regulations include 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 regulations.

9. If the temporary regulations provide 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 regulations do not provide a new fee or increase an existing fee.