

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R021-05

Effective October 31, 2005

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

AUTHORITY: §§1-8; NRS 360.090 and 372.725.

A REGULATION relating to direct sales organizations; providing that the Department of Taxation may enter into an agreement with a direct sales organization by which the direct sales organization shall collect and remit the sales tax due on sales made by an independent salesman; and providing other matters properly relating thereto.

Section 1. Chapter 372 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 8, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Direct sales organization” means a business in which an independent salesperson sells at retail tangible personal property obtained from the business and not at a location owned by the business.*

Sec. 4. *“Independent salesperson” means a person who sells at retail tangible personal property obtained from a direct sales organization and not at a location owned by the direct sales organization.*

Sec. 5. *“Sales tax collection agreement” means an agreement entered into pursuant to section 7 of this regulation between the Department and a direct sales organization in which*

the direct sales organization agrees to report and remit taxes due for the sales made by independent salespersons of tangible personal property obtained from the direct sales organization.

Sec. 6. *Except as otherwise provided in section 7 of this regulation, 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 obtain a permit to engage in or conduct business as a seller pursuant to NRS 372.125.

3. Shall obtain a license to conduct business in this State pursuant to NRS 360.780.

Sec. 7. *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.

(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 sales person; 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. 1. *If a direct sales organization does not comply with the terms of a sales tax collection agreement, the Department may terminate the sales tax collection agreement.*

2. Before terminating a sales tax collection agreement pursuant to subsection 1, the Department shall send to the direct sales organization a notice of the proposed decision to terminate the sales tax collection agreement in the manner described in NRS 360.350.

3. A direct sales organization may petition the determination to terminate a sales tax collection agreement in the manner described in NRS 360.360. Any hearing and subsequent appeal to the Nevada Tax Commission must be conducted in accordance with the provisions of NRS 360.300 to 360.400, inclusive.

4. Until a sales tax collection agreement is finally terminated pursuant to this section, the direct sales organization shall continue to comply with the terms of the sales tax collection agreement and continue to report and remit the tax on the tangible personal property that is the subject of the sales tax collection agreement. If the direct sales organization does not comply with the terms of the sales tax collection agreement or fails to continue to report and remit the tax on the tangible personal property that is the subject of the sales tax collection agreement, the Department may assess a deficiency determination pursuant to NRS 360.300 against an independent salesperson who sold, stored, used or otherwise consumed tangible personal property that is the subject of the sales tax collection agreement.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R021-05**

The Nevada Tax Commission adopted regulations assigned LCB File No. R021-05 which pertain to chapter 372 of the Nevada Administrative Code on September 19, 2005.

Notice date: 8/16/2005
Hearing date: 9/19/2005

Date of adoption by agency: 9/19/2005
Filing date: 10/31/2005

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

A copy of the notice of hearing and the proposed 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 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, 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 September 19, 2005 video conferenced between the Nevada Legislative Building, 401 S. Carson Street, Room 3138, Carson City, Nevada and the Grant Sawyer State Office Building, 555 E. Washington Avenue, Room 4401, Las Vegas, Nevada. It appears that due to the primarily procedural nature of the proposed regulation, only affected or interested persons and businesses as set forth in #3 below responded to the proposed 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 (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 regulation was submitted to the Legislative Counsel Bureau, which completed its review and minor revisions on August 2, 2005. Thus, the proposed regulation, for practical

purposes, was discussed at one workshop 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: 39

(b) Testified at the hearing: 2

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

Section 6 of the proposed regulation was slightly modified prior to adoption, due to issues raised by the Department of Taxation and by affected or interested businesses and persons. The remaining sections of the proposed regulation were not changed since no concerns were raised by the public, affected or interested businesses or persons, 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 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 regulation presents no foreseeable or anticipated adverse economic effects to businesses or the public. There may be some beneficial economic effects to direct sales organizations which are the subject of the adopted 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 regulation.

The proposed regulation presents no significant foreseeable or anticipated cost for enforcement. There may be some minor 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 regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed 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 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 direct sales organizations, which is the subject of the proposed regulation.

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