

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R021-05

August 2, 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. Must obtain a permit to engage in or conduct business as a seller pursuant to NRS 372.125.

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.