

**ADOPTED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R023-07**

Effective December 4, 2007

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

AUTHORITY: §1, NRS 360.090, 372.170, 372.240 and 372.725.

A REGULATION relating to taxation; revising the provisions governing payment of the state tax on the use of tangible personal property purchased for lease or rental in this State; and providing other matters properly relating thereto.

**Section 1.** NAC 372.080 is hereby amended to read as follows:

372.080 1. A person who purchases tangible personal property outside of this State for lease or rental within this State shall ~~£~~:

~~—(a) Pay~~ *pay* the use tax due in this State measured by ~~[the]~~ :

(a) *The* cost of the property to him; or

(b) ~~[Pay the use tax measured by his]~~ *His* gross lease or rental charges for the lease or rental of the property within this State.

2. A person who purchases tangible personal property within this State for lease or rental within this State shall:

(a) Pay the sales tax to his vendor on the sales price of the property to him; or

(b) Give the seller a resale certificate for the property and elect to pay the tax measured by the gross lease or rental charges for the lease or rental of the property within this State.

3. If a person who sells and rents or leases tangible personal property within this State gives a resale certificate to the vendor from whom he purchases property, when the property is:

(a) Sold, the tax applies to the sales price.

(b) Committed to lease or rental transactions ~~[, the tax applies to his]~~ *in this State, he shall*

*pay the use tax due in this State measured by:*

*(1) The cost of the property to him; or*

*(2) His* gross lease or rental charges.

4. If the purchaser:

(a) Pays the tax to his vendor on the sales price of the property to him, no further tax is due and tax must not be collected from the customer on the gross lease or rental charges.

(b) Elects to measure the use tax by his gross lease or rental charges, he may seek reimbursement for the tax from his customers measured by the lease or rental charges. Except as otherwise provided in NAC 372.075, the purchaser shall pay the tax in lieu of a customer if the customer is exempt from the tax or for any other reason is not required to pay the tax.

5. The tax applies to the sales price of the property within this State following its use in rental or lease service, without any deduction or credit for the tax paid on the original cost of the property or the taxes paid on the gross lease or rental charges.

6. A person who elects to pay the tax measured by his gross lease or rental charges pursuant to this section is not required to pay the sales tax for the purchase of parts or other equipment for the tangible personal property which is committed to lease or rental use in this State if he gives a resale certificate to the vendor from whom he purchases the property.

7. A person who initially elects to pay the tax measured by his gross lease or rental charges and later wishes to pay the use tax, may pay that tax measured by the cost of the property to him. The Department shall not grant a refund or credit for any taxes paid or due before he makes such an election.

8. Mandatory charges, whether or not separately stated, for any service, activity or function made in conjunction with the lease or rental of tangible personal property will be considered a part of the gross lease or rental charge and are subject to the tax. The term “mandatory charges” may include for example, without limitation:

(a) A fee or charge for mileage.

(b) A fee or charge for the return of the property, commonly referred to as a “drop-off charge.”

(c) A fee or charge for the reinstatement of a lease or rental agreement.

(d) Reimbursement for fixed costs or expenses, including, without limitation, management fees, interest, financing fees and carrying charges, collection call charges, repossession charges, and billing charges.

9. Optional charges, separately stated, made in connection with the lease or rental of tangible personal property are not subject to the tax. The term “optional charge” may include for example, without limitation, a:

(a) Fee or charge for the installation, erection, assembly or disassembly of the property.

(b) Charge for a collision damage waiver or a similar instrument that acts as a waiver of the lessor’s right to collect from the lessee for any damage to the property.

(c) Charge for the services of a person to operate or instruct another in the operation of the property.

(d) Charge for fuel used to operate the property.

(e) Fee or charge for the delivery, transportation or other handling of the property.

(f) Fee or charge for maintaining, cleaning or altering the property.

(g) Fee or charge for insurance, such as, personal accident, extended protection or coverage for personal property.

10. The Department will determine whether a charge is mandatory or optional according to the terms of the agreement under which the charges are paid.

11. The fee for access to an airport and the charge for reimbursement of property taxes will not be considered part of the gross lease or rental charge if separately stated.

12. A gross lease or rental charge must represent a fair market value of the leased or rented property.

13. Any charges assessed for damages for which the lessee is held responsible are exclusive of the original rental or lease contract, including those commonly referred to as a “charge-back fee” or “damage reimbursement.” The Department will treat such charges as a taxable sale of tangible personal property from either the person making the repair for the lessor or from the lessor for the responsible party.

14. A lessor may discontinue charging use tax on the basis of gross lease charges when a lease agreement is terminated. Periodic billing statements for amounts which are past due at the time the agreement is terminated may continue after termination for collection purposes.

15. Evidence that a lease agreement has been terminated includes:

(a) Documentation showing that the leased property has been repossessed or returned to the lessor.

(b) A formal notice of termination that has been personally served upon the lessee or served upon the lessee by certified mail, return receipt requested, or registered mail.

(c) Proof that the property has been wrecked, damaged, stolen or otherwise rendered unusable.

(d) A new agreement to lease the same equipment to the same or another lessee.

(e) Any other evidence or documentation which is acceptable to the Department and shows that a lease agreement has been terminated.

↪ Such evidence must be maintained pursuant to NRS 372.735.

16. Except as otherwise provided in subsection 17, if a lease is terminated and the property is returned, any payments, penalties or other charges or fees collected by the lessor as a result of a breach of contract are not subject to taxation as gross lease charges.

17. Any portion of the payments, penalties, fees or other charges described in subsection 14 which represents sales or use taxes must be reported and remitted to the Department.

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R023-07**

The Nevada Tax Commission adopted regulations assigned LCB File No. R023-07 which pertain to chapter 372 of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

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

Copies of the proposed regulations, notice(s) of workshop and notices of intent to act upon the regulation were sent by U.S. mail and email to persons who were known to have an interest in the subject of leasing tangible personal property as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Nevada Department of Taxation (“Department”), <http://tax.state.nv.us/>, and mailed to all county libraries in Nevada and posted at the following locations:

Department of Taxation  
1550 College Parkway, Suite 115  
Carson City, Nevada 89706

Department of Taxation  
4600 Kietzke Lane, Suite 235  
Reno, Nevada 89502

Department of Taxation  
555 E. Washington Avenue, Suite 1300  
Las Vegas, Nevada 89101

Department of Taxation  
2550 Paseo Verde Parkway, Suite 180  
Henderson, Nevada 89074

Department of Taxation  
1010 Ruby Vista Drive, Suite 102  
Elko, Nevada 89801

Legislative Building  
401 S. Carson Street  
Carson City, Nevada 89701

Nevada State Library  
100 Stewart Street  
Carson City, Nevada 89701

The Department of Taxation, as staff to the Nevada Tax Commission (“Commission”), solicited comment from the public by posting a notice of a workshop, dated September 5, to the locations listed above. A workshop was held on September 21, 2007. The minutes of that meeting may be obtained by writing to the Department of Taxation at 1550 College Parkway, Suite 115, Carson City, Nevada 89706. On or about August 30, 2007, the Executive Director of the Department of Taxation (“Executive Director”) issued a Notice of Intent to Act Upon a Regulation, with the intent to make T033-07 a permanent regulation. The Commission, on or about October 1, 2007, adopted said regulation.

A copy of the summary of the public response, if any, to the proposed regulation may be obtained from the Nevada Department of Taxation, 1500 College Parkway, Suite 115, Carson City, Nevada 89706, 775-684-2096, or email to **efierro@tax.state.nv.us**.

**2. The number persons who:**

(a) Attended each hearing/workshop: September 21, 2007 – 11;

(b) Testified at each hearing/workshop: September 11, 2007 – 11;

(c) Submitted to the agency written comments: One written comment was submitted by Susan Best of Enterprise Rent-A-Car.

**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 notices posted at the Nevada State Library; various Department locations throughout the state; and at the Main Public Libraries in counties where an office of the Department is not located.

The Department and the general public commented on all of the proposed language changes during the workshop process. Members of the NTC, Department, and general public commented during the Adoption Hearing.

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Department at (775) 684-2063 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at **efierro@tax.state.nv.us**.

**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.**

The permanent regulation was adopted on October 1, 2007, which did not make any changes to T033-07.

**5. The estimated economic effect of the adopted regulation 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**

The proposed regulations present no reasonably foreseeable or anticipated adverse economic effects to businesses or to the general public. It is anticipated that the regulations will clarify the taxability of the leasing of tangible personal property.

**(b) Both immediate and long-term effects.**

The proposed regulations present no reasonably foreseeable or anticipated immediate or long-term economic effects to businesses or to the general public.

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

The Department anticipates little, if any, additional cost to administer the regulations.

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

There are no known state or government agency regulations that the proposed amendments duplicate.

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

There are no known federal regulations regarding the leasing of tangible personal property under Chapter 372 of the Nevada Revised Statutes.

**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 Nevada Tax Commission is not aware of any provision in this regulation that provides for a new fee, or increases an existing fee.