

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R129-13

Effective October 24, 2014

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

AUTHORITY: §1, NRS 360.090 and 372.725.

A REGULATION relating to taxation; providing for the application of sales and use taxes when a vehicle dealer uses or loans a motor vehicle purchased for resale; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, a sale of tangible personal property is not subject to the sales tax if the purchase is made for the purpose of reselling the property in the ordinary course of business. (NRS 372.050) If the purchaser makes any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the purchaser must pay the use tax based on the sales price of the property to the purchaser. (NRS 372.170)

This regulation provides that the use or gratuitous loaning of a motor vehicle by a vehicle dealer who purchases the vehicle for the purpose of resale constitutes a taxable use of the vehicle unless each use or loan is: (1) exempt from taxation because the use or loan constitutes a loan or donation to certain public entities or nonprofit organizations; or (2) made for the purpose of retention, demonstration or display while holding the vehicle for sale in the regular course of business. Under this regulation, a loan of a vehicle will be presumed to be not subject to the use tax because the loan is for the purpose of retention, demonstration or display if: (1) the vehicle is being operated with dealer’s license plates issued by the Department of Motor Vehicles in accordance with existing law and regulations; (2) the cumulative period of all loans of the vehicle is less than 180 days; and (3) the dealer maintains and provides to the Department of Taxation upon request certain records concerning the vehicle and the dealer’s license plate.

Section 1. Chapter 372 of NAC is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsections 2 and 3, if a vehicle dealer who purchases and gives a resale certificate for a motor vehicle uses the motor vehicle or loans the motor

vehicle to any person, the use or loan of the motor vehicle is taxable to the dealer and the measure of the tax is the purchase price of the motor vehicle by the dealer.

2. A use or loan described in subsection 1 is not taxable to the dealer if each use or loan of the motor vehicle by the dealer is:

(a) Exempt from taxation pursuant to NRS 372.327; or

(b) Made for the purpose of retention, demonstration or display of the motor vehicle while holding it for sale in the regular course of business.

3. The loan of a motor vehicle by a vehicle dealer will be presumed to be made for the purpose of retention, demonstration or display of the motor vehicle while holding it for sale in the regular course of business if:

(a) The motor vehicle is being operated with a special license plate issued by the Department of Motor Vehicles in accordance with NRS 482.320 and 482.330 and NAC 482.032 to 482.048, inclusive;

(b) The cumulative period of all the loans of the motor vehicle by the dealer is less than 180 days; and

(c) The vehicle dealer maintains, and provides to the Department upon request, a written record stating:

(1) The vehicle identification number and stock number of the motor vehicle;

(2) The number of the special license plate; and

(3) Each date on which the special license plate was displayed on the motor vehicle.

4. If the motor vehicle is sold following its taxable use or loan pursuant to this section to a purchaser who receives delivery of the motor vehicle in this State, the sales tax applies to the

sales price of the motor vehicle to the purchaser without any deduction or credit for the use tax paid by the dealer pursuant to this section.

5. As used in this section:

(a) “Dealer” or “vehicle dealer” has the meaning ascribed to it in NRS 482.020.

(b) “Loan” means the gratuitous transfer of possession or control of a motor vehicle for a fixed or indeterminate term.

(c) “Motor vehicle” has the meaning ascribed to it in NRS 482.075.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R129-13

1. A clear and concise explanation of the need for the adopted regulation.

This regulation provides guidance to taxpayers in relation to application of Sales and Use Tax on use of motor vehicles originally bought for resale. It provides guidance as to the when the Department will interpret use of motor vehicle to have gone beyond retention, demonstration and display so that dealers can properly assess use tax

2. 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.

The Department of Taxation, as staff to the Nevada Tax Commission, solicited comment from the public by sending notice of workshops and hearings by electronic or regular mail as follows:

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop</u>	<u>Number Notified</u>
01/23/2014	Workshop	02/10/2014	322
03/25/2014	Adoption Hearing	05/05/2014	322

The mailing list included the interested parties list maintained by the Department. The Department also contacted taxpayer industry representatives directly. The Nevada Taxpayers Association (“NTA”) sent the questionnaire to the NTA list of interested taxpayers. Finally, the Department also contacted attorneys who represent Vehicle Dealerships in attempt to receive input regarding any potential significant and direct economic impact on small business. Notices were also posted at the Nevada State Library; various Department of Taxation locations throughout the state; and at the Main Public Libraries in counties where an office of the Department of Taxation is not located. Comments were also solicited by direct email to other interested parties list maintained by the Department.

See response to #5 for a summary of the public responses to the Regulation

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2030 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at mblanks@tax.state.nv.us.

3. The number of persons who:

- (a) **Attended each hearing:** 11 people attended the workshop; 77 people attended the adoption hearing.
- (b) **Testified at each hearing:** No one testified at the workshop; 1 person testified at the adoption hearing.
- (c) **Submitted written comments:** Written comments were obtained from one attendee after the workshop. None of the attendees for adoption hearing submitted any written comments after the hearings.

4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:

Testified at Adoption hearing:

John P. Sande III

Telephone number: 775-788-2201

Business address: Fennemore Craig Jones Vargas

300 East Second Street Suite 1510

Reno, NV 89501

E- Mail address: jpsande@fclaw.com

Organization: Nevada Franchised Dealers Association (NFADA).

Submitted written comments:

John P. Sande III

Telephone number: 775-788-2201

Business address: Fennemore Craig Jones Vargas

300 East Second Street Suite 1510

Reno, NV 89501

E- Mail address: jpsande@fclaw.com

Organization: Nevada Franchised Dealers Association (NFADA).

5. A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.

See response to #2 for description of how comments were solicited from affected business and an explanation on how interested persons may obtain a copy of the summary.

Summary of public responses:

The NFADA requested that the regulation be amended to allow for dealer's uses to be presumed for purpose of demonstration or display for a period of nine months rather than the six months that was proposed. They also requested that the regulation be amended to allow for dealers that

are required by their manufacturer to hold a vehicle as a loaner or service vehicle for a year to have an exemption for a year.

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6. 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 Regulation was adopted without changing any part of the proposed regulation. At the Adoption hearing, the NFADA withdrew its request and supported the regulation as drafted.

7. The estimated economic effect of the regulation on the business which it is to regulate and on the public.

(a) Estimated economic effect on the businesses which they are to regulate.

The proposed permanent regulations present no reasonably foreseeable or anticipated adverse economic effects to Vehicle Dealership Industry. The benefits of these regulations are that the industry along with the Department will be provided more clarity in NAC 372 and the industry will have a bright line rule to apply when self-assessing use tax for vehicles that it purchases for resale.

(b) Estimated economic effect on the public which they are to regulate.

The proposed permanent regulations present no reasonably foreseeable or anticipated adverse economic effects to public. The benefits of these regulations are that the public along with the Department will be provided more clarity in NAC 372.

8. The estimated cost to the agency for enforcement of the proposed regulation:

The proposed permanent regulations present no significant foreseeable or anticipated cost or decrease in costs for enforcement.

9. 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 regulations do not overlap or duplicate any regulation of other state or local governmental entities.

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

The Department is not aware of any similar federal regulations of the same activity in which the state regulations are more stringent.

11. 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 regulations do not include new or increases in existing fees.