

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB FILE NO. R123-18I

**The following document is the initial draft regulation proposed
by the agency submitted on 05/23/2018**

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LCB File No. xxx

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

AUTHORITY: §1, NRS 360.090, 360B.110, 372.385, 372.725

A REGULATION relating to taxation; concerning the taxability of charges for loss or replacement of tangible personal property associated with a rental or lease; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides that gross receipts from rentals or leases of tangible personal property must be reported and the tax paid in accordance with such regulations as the Department may prescribe. (NRS 372.385) Any charges that are assessed for damages for which the lessee is held responsible are treated as a taxable sale of tangible personal property. (NAC 372.940)

This regulation clarifies that loss and replacement charges are treated as a taxable sale of tangible personal property.

Section 1. NAC 372.940 is hereby amended to read as follows:

372.940. For the purposes of NAC 372.938:

1. The gross lease or rental charges for the lease or rental of tangible personal property include any mandatory charges, whether or not separately stated, for any service, activity or function made in conjunction with the lease or rental of the tangible personal property. The term “mandatory charges” may include, for example and without limitation, any:

- (a) Fee or charge for mileage.
- (b) Fee or charge for the return of the property, commonly referred to as a “drop-off charge.”
- (c) Fee or charge for the reinstatement of a lease or rental agreement.

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

2. Optional charges made in connection with the lease or rental of tangible personal property, if separately stated on the applicable invoices, contracts or other documents, are not subject to the tax. The term “optional charge” may include, for example and without limitation, any:

(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, including, without limitation, for the original delivery of the property.

(f) Fee or charge for maintaining, cleaning or altering the property. If maintenance of the property is required by the lease agreement and the lessee has any options regarding the person who may perform that maintenance, any charge for that maintenance shall be deemed to be optional and is not subject to the tax.

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

(h) Legal fees for the negotiation of lease terms.

3. The gross lease or rental charges for the lease or rental of tangible personal property do not include any of the following charges, if separately stated on the applicable invoices, contracts or other documents:

(a) Any fee for access to an airport.

(b) Any charge for the reimbursement of property taxes.

(c) Any charge for the reimbursement of fees for filings made under the Uniform Commercial Code.

(d) Any late payment penalty.

(e) Any disposition fee.

4. Any charges assessed for damages, *replacements or losses* 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,” *“loss charges,” “replacement charges”* 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.

5. The gross lease or rental charges for the lease or rental of tangible personal property between related or affiliated persons must be reported at fair market value. If a party to such a transaction significantly understates those charges, that action creates a rebuttable presumption that the party made that understatement with the intent to evade the payment of the tax, and the Department may, pursuant to NRS 360.300, compute the gross lease or rental charges at fair market value. As used in this subsection, “fair market value” means the amount for which property could be leased or rented in an open competitive market.