PROPOSED REGULATION OF THE

NEVADA TAX COMMISSION

LCB FILE NO. R191-18I

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PROPOSED REGULATION OF

THE NEVADA TAX

COMMISSION

LCB File No. xxx

[Date]

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

AUTHORITY: §1, NRS 360.090, NRS 372.105, NRS 372.368, NRS 372.735

A REGULATION relating to taxation; concerning standards for calculating the actual cash value of repossessed automobiles for purposes of bad debt deductions; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law allows for a retailer to receive a deduction from his or her taxable sale as a bad debt deduction if the retailer is unable to collect all or part of the sales price of a sale. A bad debt may be claimed as a deduction on the return that covers the period during which the bad debt is written off in the business records of the retailer that are maintained in the ordinary course of the retailer's business and is, or would be, eligible to be claimed as a deduction pursuant to section 166 of the Internal Revenue Code (IRC). The amount of any deduction claimed must equal the amount of a deduction that may be claimed pursuant to section 166 of the IRC for that sale, minus the value of any property sold that has been repossessed by the retailer. A bad debt deduction is allowable only to the extent that the retailer sustains a net loss of gross receipts upon which tax has been paid.

This regulation provides standards for determining the actual cash value of an automobile and other tangible personal property that has been repossessed by the retailer in order to calculate the bad debt deduction and the required records needed to establish this value and substantiate the deduction.

Section 1. Chapter 372 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive of this regulation.

Sec. 2. ***1. Pursuant to NRS 372.268, a retailer may claim a bad debt deduction for overpaid sales tax based on the amount of the sales price the retailer was unable to recover,***

within 12 months following the month in which the bad debt has been charged off for

federal

income tax purposes or, if the dealer is not required to file federal income tax returns, within

12 months following the month in which the bad debt has been charged off in accordance with generally accepted accounting principles.

Sec. 3. *1. To determine the measure of the bad debt deduction, a retailer may claim only the remaining unpaid amount of the original sales price of the property upon which tax has been paid to the Department.*

(a) The measure of the bad debt deduction may not include interest charges or any expenses or charges for the items provided in NRS 372.368 subsection 3(a) through (d).

(b) If the property has been repossessed and retained by the retailer, the retailer must deduct the actual cash value (ACV) of the repossessed property from the measure of the bad debt deduction.

Sec. 4. *1. In the case of repossessed automobiles, the ACV can be determined by the published wholesale price for an automobile in good condition in industry-recognized price guides such as Kelly Blue Book at the time of repossession for that automobile.*

(a) If the automobile is in other than good condition, a retailer may use the published wholesale price for that condition.

(b) The costs of repossessing, reconditioning, or other expenses to bring the automobile to a better or saleable condition may not be deducted from the published wholesale price.

2. Documentation supporting the ACV of a repossessed automobile should be kept in the dealer jacket for the automobile and/or with the books and records of the business :

(a) Required documentation includes, but is not limited to, the following:

1) Commercially available valuation of the automobile (i.e. Kelly Blue Book or other industry-recognized guide) in its condition at the time of repossession for that automobile at a wholesale price;

2) Insurance check for partial loss of the automobile.

3) If sold through an auction or to a salvage yard, proof of payment from the auction house or salvage yard.

(b) Optional documentation to demonstrate the condition of the vehicle at the time of repossession includes, but is not limited to, the following:

1) Pictures documenting the condition of the automobile at the time of

repossession; and

2) Documented inspection by the retailer of the automobile supporting the condition of the automobile at the time of repossession

3. If the repossessed automobile is later sold by the retailer, the retailer must collect and remit sales tax on the sales price of the automobile, as applicable.

4. If a retailer receives full payment from an insurance company on an automobile that has been involved in an accident, the retailer cannot claim a deduction for the ACV of that automobile.

5. If the retailer is unable to repossess the automobile then the retailer may report the amount of taxable principal balance remaining on the loan as bad debt to the Department.

(a) If the retailer receives a payment on the automobile after claiming a bad debt, the payment must be allocated first to the taxable price (the measure of the sales tax) and sales tax thereon, and secondly to other charges.

(b) The tax on the amount collected must be reported on the return that covers the period in which the payment was received.

Sec. 5. *1. In the case of repossessed property other than automobiles including, but not limited to, jewelry, furniture, appliances, the ACV can be determined by the following:*

(a) When the retailer sells the repossessed property to a reseller in an arm's length transaction, the amount the retailer receives for the sale, less the direct cost of reconditioning the property prior to that sale and direct auction expenses paid to a third party.

(b) When the retailer places the repossessed property into resale inventory, the amount at which the property is recorded in resale inventory as its wholesale value which does not include any costs of repossessing, reconditioning, or other expense to put the merchandise in saleable condition.

2. Documents supporting the ACV of a repossessed property should be kept with the books and records of the business and include, but not limited to, the following:

(a) Sales invoices to an auction house or reseller for the repossessed property;

(b) Pictures documenting the condition of the property at the time of repossession;

(c) Documented inspection by the retailer of the property at the time of repossession listing any damage or missing parts;

(d) Third party receipts for reconditioning of the property prior to the resale.

(e) Third party receipts for direct auction expenses paid to a third party; or

(f) Retailer's accounting records documenting the recorded amount of the property at the time it is placed in the retailer's resale inventory.

Sec. 6. ***1. In addition to the records required to support the ACV in Section 3 and 4, a retailer claiming a bad debt deduction must be able to substantiate the validity of such deduction by also maintaining records of the following:***

(a) The name of the purchaser;

(b) The original date of sale or sales giving rise to the bad debt;

(c) The original taxable amount of the transaction;

(d) The amount of tax remitted to the Department on the original transaction;

(e) The amount of interest, finance or service charges incorporated in the debt;

(f) All payments or other credits applied to the account of the purchaser;

(g) The portion of the debt or account representing a charge that was not subject to tax on the original transaction;

(h) The date the bad debt was charged off for federal income tax purposes or, if the retailer is not required to file federal income tax returns, the date the bad debt was charged off in accordance with generally accepted accounting principles;

(i) The taxable amount charged off for federal income tax purposes or, if the retailer is not required to file federal income tax returns, the taxable amount charged off in accordance with generally accepted accounting principles;

(j) The amount of sales tax credit claimed for the bad debt;

(k) Any other evidence that the uncollectible portion on which tax was paid has been charged off as a bad debt for federal income tax purposes or, if the retailer is not required to file federal income tax returns, evidence that the uncollectible portion on which tax was paid has been charged off in accordance with generally accepted accounting principles.

2. These records must be maintained as required by NRS 372.735 and shall be made available to the Department upon request.