

**PROPOSED REGULATION OF
THE NEVADA TAX COMMISSION**

LCB File No. R191-18

September 14, 2018

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

AUTHORITY: §§1-3 and 5, NRS 360.090, 372.368, 372.725, 374.373 and 374.725; §4, 6 and 7, 360.090, 372.368, 372.725, 372.735, 374.373, 374.725 and 374.740.

A REGULATION relating to sales tax; establishing a time limit for claiming a deduction for a bad debt; requiring a retailer who claims a deduction for a bad debt to retain certain records; establishing the method for determining the value of certain repossessed property for the purpose of calculating the amount of a deduction for bad debt; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes a retailer who is unable to collect all or part of the sales price of a sale to receive a deduction from his or her taxable sales for that bad debt. (NRS 372.368, 374.373)

Section 3 of this regulation provides that a retailer is only authorized to make a claim for a sales tax deduction for a bad debt within 12 months after the last day of the month in which the retailer: (1) writes off the debt in the retailer’s business records and becomes eligible for a deduction for the bad debt on his or her federal income tax return; or (2) if the retailer is not required to file a federal income tax return, the retailer writes off the debt from his or her records or books of account in accordance with generally accepted accounting principles. **Section 4** of this regulation requires a retailer who claims a deduction from his or her taxable sales for a bad debt to keep a record of certain information regarding the debt and the sale giving rise to the debt and to make such records available to the Department of Taxation upon request.

Existing law requires the amount of a bad debt deduction to be reduced by the value of any property sold that was repossessed by the retailer. (NRS 372.368, 374.373) **Section 5** of this regulation provides that the value of property sold that has been repossessed by the retailer is the actual cash value of the property. **Section 6** of this regulation establishes the method for determining the actual cash value of property, other than a motor vehicle, that has been repossessed. **Section 7** of this regulation establishes the method for determining the actual cash value of a motor vehicle that has been repossessed. **Sections 6 and 7** also require a retailer to retain certain records substantiating the actual cash value of the property at the time of repossession.

Section 1. Chapter 372 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. *As used in sections 3 to 7, inclusive, of this regulation, unless the context otherwise requires, “bad debt deduction” means the deduction from the taxable sales of a retailer provided pursuant to NRS 372.368 and 374.373 for the amount of the sales price of a sale which the retailer is unable to collect.*

Sec. 3. *A retailer who wishes to claim a bad debt deduction must claim the deduction on a return filed with the Department not later than 12 months after the last day of the month in which:*

1. The retailer wrote off the bad debt in the business records of the retailer that are maintained in the ordinary course of the retailer’s business and became eligible to claim a deduction for the bad debt pursuant to section 166 of the Internal Revenue Code, 26 U.S.C. § 166, if the retailer is required to file a federal income tax return; or

2. The bad debt was written off in the records and books of account of the retailer in accordance with generally accepted accounting principles, if the retailer is not required to file a federal income tax return.

Sec. 4. 1. *Pursuant to NRS 372.735 and 374.740, a retailer who claims a deduction for a bad debt deduction shall maintain a record of the following information relating to the bad debt:*

(a) The name of the debtor.

(b) The date on which the bad debt was incurred.

(c) The taxable sales price of the sale of tangible personal property giving rise to the bad debt.

(d) The amount of sales tax remitted to the Department on the sale of tangible personal property giving rise to the bad debt.

(e) The portion of the bad debt representing:

(1) Interest;

(2) Any finance charge;

(3) Any service charge; and

(4) Any other amount charged as part of the sale which was not subject to sales tax.

(f) If the retailer is required to file a federal income tax return:

(1) The date on which the retailer wrote off the bad debt in the business records of the retailer that are maintained in the ordinary course of the retailer's business and became eligible to claim a deduction for the bad debt pursuant to section 166 of the Internal Revenue Code, 26 U.S.C. § 166;

(2) The amount of the deduction claimed for the bad debt pursuant to section 166 of the Internal Revenue Code; and

(3) Any other evidence that the retailer claimed a deduction pursuant to section 166 of the Internal Revenue Code for the uncollectable portion of the bad debt on which sales tax was originally paid.

(g) If the retailer is not required to file a federal income tax return:

(1) The date on which the debt was written off the records and books of account of the retailer in accordance with generally accepted accounting principles;

(2) The amount of the debt written off the records and books of account of the retailer on which sales tax was originally paid; and

(3) Any other evidence that the uncollectable portion of the debt was written off the records and books of account of the retailer in accordance with generally accepted accounting principles.

(h) The amount of the bad debt deduction claimed by the retailer for each bad debt.

2. Upon request by the Department, a retailer shall provide to the Department a record maintained by the retailer pursuant to subsection 1.

Sec. 5. For the purposes of NRS 372.368 and 374.373, the value of property sold that has been repossessed by the retailer is the actual cash value of the repossessed property.

Sec. 6. 1. Except as otherwise provided in section 7 of this regulation, for the purposes of NRS 372.368 and 374.373 and section 5 of this regulation, the actual cash value of property which has been repossessed is:

(a) If the retailer sells the repossessed property in an arm's length transaction, the sales price of the repossessed property, less the direct cost of refinishing or restoring the property to saleable condition before the sale and any direct auction expenses paid to a third party; or

(b) If the retailer places the repossessed property into his or her resale inventory, the wholesale value of the property as recorded by the retailer in the records of the retailer's resale inventory, less the direct cost to repossess the property and the direct cost of refinishing or restoring the property to saleable condition.

2. Except as otherwise provided in section 7 of this regulation, if a retailer repossesses property sold by the retailer, the retailer must retain with the books and records of the retailer documentation sufficient to substantiate the actual cash value of the property at the time it was repossessed, including, without limitation:

- (a) If the property is sold at auction or to a person who purchases the property for the purpose of resale, sales invoices for that sale;*
- (b) Pictures documenting the condition of the property at the time of repossession;*
- (c) Inspection documents prepared by the retailer at the time of repossession documenting any damage to the property or any parts missing from the property;*
- (d) Any receipts from a third party for the refinishing or restoring of the property to saleable condition before resale;*
- (e) Any receipts from a third party for direct auction expenses; and*
- (f) If the property is placed in the resale inventory of the retailer, accounting records documenting the recorded wholesale value of the property at the time it is placed in the resale inventory of the retailer.*

Sec. 7. 1. For the purposes of NRS 372.368 and 374.373 and section 5 of this regulation, the actual cash value of a motor vehicle that has been repossessed by a retailer is the wholesale price published in a price guide recognized in the retailer's industry for a motor vehicle of the same make, model and year which is in the same condition as the actual condition of the motor vehicle at the time the motor vehicle was repossessed.

2. The cost to repossess or improve the condition of a motor vehicle which has been repossessed may not be deducted from the actual cash value of the motor vehicle.

3. A retailer who claims a bad debt deduction for a motor vehicle that has been repossessed by the retailer shall retain, in the dealer jacket for the motor vehicle and with the books and records of the retailer, documentation substantiating the actual cash value of the motor vehicle at the time it was repossessed, including, without limitation:

(a) A copy of the published wholesale price which was used to determine the actual cash value of the motor vehicle pursuant to subsection 2.

(b) If the retailer receives a check from an insurer for the partial loss of the motor vehicle, a copy of that check.

(c) If the motor vehicle is sold at auction or to a salvage yard, proof of payment from that sale.

(d) If the actual cash value of the motor vehicle was determined pursuant to subsection 1, documentation demonstrating the condition of the motor vehicle at the time of repossession which may include, without limitation:

(1) Pictures documenting the condition of the motor vehicle at the time of repossession;
or

(2) Inspection documents prepared by the retailer of the motor vehicle substantiating the condition of the motor vehicle at the time of repossession.

4. If a motor vehicle that was repossessed by a retailer is sold by the retailer, the retailer must collect and remit sales tax on the sales price of the motor vehicle from the new sale.

5. If a retailer receives full payment from an insurance company on a debt for a motor vehicle that has been involved in an accident, the retailer may not claim a bad debt deduction for the sale of the motor vehicle.