

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R172-22

July 22, 2022

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

AUTHORITY: § 1, NRS 360.090, 372.385 and 372.725.

A REGULATION relating to taxation; revising provisions governing the application of sales and use taxes to the purchase or use of parts and materials for the repair or replacement of tangible personal property under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law imposes a sales tax on the gross receipts of a retailer from the retail sale of tangible personal property in this State and a use tax on the storage, use or consumption in this State of tangible personal property purchased from a retailer for storage, use or other consumption in this State in a transaction that would have been subject to the sales tax if it had occurred in this State. (NRS 372.105, 372.185, 374.110, 374.190) Under existing regulations, the furnishing of replacement parts or materials to repair or replace tangible personal property pursuant to a warranty or guaranty that is included in the contract of sale for the tangible personal property is a part of the sale of the tangible personal property and sales and use taxes do not apply to the purchase and use of such replacement parts or materials. (NAC 372.460)

This regulation provides that the purchase and use of replacement parts or materials to repair or replace tangible personal property pursuant to a warranty or guaranty that was included in the sale of the tangible personal property is excluded from sales and use taxes only if: (1) the warranty or guaranty was a mandatory part of the sale of the tangible personal property and the repair or replacement of the tangible personal property is an obligation or duty imposed on a party to that mandatory warranty or guaranty; and (2) the sales price of the tangible personal property included the value of the mandatory warranty or guaranty. This regulation further clarifies that sales and use taxes apply to the purchase and use of replacement parts or materials to repair or replace tangible personal property under circumstances other than the circumstances set forth in this regulation, including, without limitation, the purchase and use of replacement parts or materials to repair or replace tangible personal property pursuant to an optional warranty or guaranty or pursuant to a term of any warranty or guaranty providing for repairs, replacements or services to maintain or enhance customer goodwill or to provide gratuitous or promotional repairs, replacements or services.

Section 1. NAC 372.460 is hereby amended to read as follows:

372.460 1. The sale of tangible personal property by a retailer includes the furnishing of replacement parts or materials to repair or replace the tangible personal property pursuant to ~~the provisions~~ *a definite term* of a *mandatory* warranty or guaranty included in the contract of sale. Sales and use taxes do not apply to the purchase and use of replacement parts or materials by the retailer if ~~the~~ :

(a) *The purchase and use of those parts or materials was made for the repair or replacement of tangible personal property pursuant to ~~the provisions~~ a definite term of the mandatory warranty or guaranty* ~~;~~ *and*

(b) *The sales price of the tangible personal property being repaired or replaced included the value of the mandatory warranty or guaranty.*

2. *Sales and use taxes apply to the purchase and use of replacement parts or materials by a retailer unless sales and use taxes do not apply to the purchase and use of such replacement parts or materials pursuant to subsection 1.*

3. If a lessor leases or rents tangible personal property to a:

(a) Retailer who will furnish the tangible personal property to a customer; or

(b) Customer of a retailer,

↪ pursuant to ~~the provisions~~ *a definite term* of a *mandatory* warranty or guaranty included in a contract of sale, the lessor must not include the gross receipts from that lease or rental of the tangible personal property in the gross receipts that are subject to the ~~use~~ *sales* tax. The lessor shall maintain documentation that indicates that the tangible personal property was leased or rented to a retailer, or the customer of a retailer, pursuant to ~~the provisions~~ *a definite term* of a *mandatory* warranty or guaranty included in a contract of sale.

4. For the purposes of this section, a “definite term” of a mandatory warranty or guaranty is a provision of the mandatory warranty or guaranty that imposes a nondiscretionary duty or obligation on a party to the mandatory warranty or guaranty to perform an act or provide a service. The term does not include a provision of the mandatory warranty or guaranty that gives a party to the mandatory warranty or guaranty the discretion to determine whether or not to perform an act or provide a service, including, without limitation, a provision pursuant to which a manufacturer of tangible personal property reserves the right to repair or replace the tangible personal property or provide a service with respect to the tangible personal property that:

- (a) Is not required by a definite term of a mandatory warranty or guaranty;*
- (b) Is intended to enhance or maintain the goodwill of a customer; or*
- (c) Is offered on a gratuitous basis or as a promotion, including, without limitation, a repair or replacement of tangible personal property, or the provision of a service with respect to tangible personal property, that is performed outside the durational limits of a mandatory warranty or guaranty.*