

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R081-97

September 28, 1997

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

AUTHORITY: NRS 360.090, 372.335 AND 372.725.

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

1. When a sale occurs in this state, the sales or use tax, if otherwise applicable, is not rendered inapplicable solely because that sale follows a movement of the property into this state from a point beyond its borders, or precedes a movement of the property from within this state to a point outside its borders. Such movements prevent application of the tax only when conditions exist under which the application of the tax to the sale or the gross receipts therefrom is precluded by a statutory exemption or prohibited by the United States Constitution. If title to the property sold passes to the purchaser at a point outside this state, or if for any other reason the sale occurs outside this state, the sales tax does not apply, regardless of the extent of the retailer's participation in this state in relation to the transaction. The retailer has the burden of proving facts establishing the right to an exemption.

2. Except as otherwise provided in subsection 4, sales tax applies when the property sold is delivered to the purchaser or the purchaser's representative in this state, whether or not the disclosed or undisclosed intention of the purchaser is to transport the property to a point

outside this state, and whether or not the property is actually so transported. When the property is delivered to the purchaser in this state, it is immaterial that the: (a) Contract of sale called for the shipment by the retailer of the property to a point outside this state.

(b) Property was made to specifications for out-of-state jobs.

(c) Prices quoted included transportation charges to out-of-state points.

(d) Goods are delivered to the purchaser in this state via a route a portion of which is outside this state.

3. Regardless of the documentary evidence held by the retailer to show delivery of the property was made to a carrier for shipment to a point outside the state, the tax will apply if the property is diverted in transit to the purchaser or his representative in this state, or for any other reason the property is not delivered outside this state.

4. Sales tax does not apply when the property pursuant to the contract of sale is required to be shipped and is shipped to a point outside this state by the retailer, by means of:

(a) Facilities operated by the retailer; or

(b) Delivery by the retailer to a carrier, customs broker or forwarding agent, whether hired by the purchaser or not, for shipment to the out-of-state point.

5. As used in subsection 4, the term:

(a) "Carrier" means a person or firm regularly engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers, and the United States Mail.

(b) "Forwarding agent" means a person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment.

6. *A person or firm not otherwise so engaged does not become a “carrier” or “forwarding agent” within the meaning of this section solely by being designated by a purchaser to receive and ship goods to a point outside this state.*

7. *When property is delivered to a point outside this state to a purchaser known by the retailer to be a resident or doing business in this state, the retailer must obtain a written statement from the purchaser or the purchaser’s authorized representative that the property is not being purchased for storage, use or other consumption in this state. The sale is subject to the sales tax if the retailer does not obtain such a statement or provide other satisfactory evidence to the department establishing that the property was not purchased for storage, use or other consumption in this state.*