

LCB File No. T010-04

**PROPOSED TEMPORARY REGULATION
OF THE NEVADA TAX COMMISSION**

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

AUTHORITY: NRS 360.090

NAC 372 & 374 - Direct Sales Organizations

1. For purposes of this temporary regulation, a direct sales organization is a business that uses a distribution system where independent salespersons sell products at retail away from a fixed location.

2. For purposes of this temporary regulation, an independent salesperson is a retailer and, except as provided in section 3, is responsible for reporting and remitting the tax due on his sales.

3. The department may enter into sales tax collection agreements with direct sales organizations authorizing the direct sales organizations to report and remit the tax due for their own sales and for the sales made by their independent salespersons. Sales tax collection agreements with direct sales organizations shall contain such terms and conditions as are appropriate to ensure that:

a. Products sold to an independent salesperson for his own use are taxed based on the actual sales price paid by the independent salesperson or, if the direct sales organization does not know whether the product was purchased for the independent salesperson's own use, on the price determined under subparagraph b.

b. Products sold by an independent salesperson to a retail customer are taxed based on the actual sales price paid by the retail customer or, if the direct sales organization does not have documentation indicating the actual sales price, on the suggested retail price.

c. The tax is computed using the tax rate in effect at the location of sale to the retail customer in Nevada or, if the direct sales organization does not have documentation indicating the location, the tax rate in effect at the location in Nevada where the direct sales organization ships the product.

d. The direct sales organization is entitled to the same deductions, allowances and collection credits as those which would be allowed to independent salespersons if they were reporting and remitting the tax.

e. The direct sales organization makes available to the department, upon request, such books and records as may be reasonably required by the department to conduct an audit of the direct sales organization.

4. To enter into a sales tax collection agreement, the direct sales organization must be registered with the department to report and remit tax. If a direct sales organization already holds a permit to remit and collect tax on its own behalf, it need not obtain a second permit in order to collect and remit tax on behalf of independent salespersons in accordance with a sales

tax collection agreement. Any sales tax collection agreement entered into with the direct sales organization must be approved by the Nevada Tax Commission.

5. Independent salespersons are not required to separately register with the department to report and remit sales or use tax on the sale, storage, use or other consumption of any product purchased from a direct sales organization if the product is covered by the provisions of a sales tax collection agreement with the department.

6. Registration with the department and entry into a sales tax collection agreement by a direct sales organization will not be considered as factors when determining whether the direct sales organization has nexus with the state for purposes of imposing any tax or tax collection obligation, other than the sales or use tax collected and remitted on behalf of independent salespersons in accordance with a sales tax collection agreement.

7. If the direct sales organization does not comply with a sales tax collection agreement, the agreement shall be terminated and the independent salespersons shall be required to register for a seller's permit and report and remit tax directly to the department.

8. If the department proposes to terminate a sales tax collection agreement in accordance with section 7, it must send notice of the proposed termination in the manner described in NRS 360.350. If the direct sales organization against whom the termination decision is made believes the termination is in error, the direct sales organization may petition the determination in the manner provided in NRS 360.360. The hearing, and any subsequent appeal to the Nevada Tax Commission, shall be subject to and conducted in accordance with the same conditions and requirements as are applicable to deficiency determinations rendered and adjudicated pursuant to the provisions of NRS 360.300 to NRS 360.400, inclusive.

9. Pending the final outcome of a petition filed by a direct sales organization concerning the proposed termination of a sales tax collection agreement, the direct sales organization shall continue to report and remit tax on products covered by the sales tax collection agreement. In the event that the direct sales organization fails to so report and remit tax on a product covered by the sales tax collection agreement, the department shall have the right to assess a deficiency against any independent sales person who sold, stored, used or otherwise consumed the product within the state. If the final outcome is to terminate the agreement, the independent salespersons shall be required to register for a seller's permit and remit the tax directly to the department.