

LCB File No. E002-07

**EMERGENCY¹ REGULATION OF THE
NEVADA TAX COMMISSION**

(Effective for 120 days from December 5, 2007)

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

AUTHORITY: NRS 360.090, 360B.110, 360B.400 and 372.723.

A REGULATION relating to the implementation of the Streamlined Sales and Use Tax Agreement, and incorporating uniform definitions into the provisions governing the imposition and administration of the sales and use tax.

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

Sec. 2. *As used in chapter 372 of NAC, unless the context otherwise requires, the words and terms defined in sections 3 to 41, inclusive, of this regulation shall have the meanings ascribed to them in those sections. Any conflicts between the regulations contained in Chapters 372 and 374 of the NAC should be construed in favor of the regulations contained in Chapter 372 of the NAC. Any conflicts between the statutes contained in Chapters 360B and 372 and the regulation contained in Chapter 372 of the NAC shall be construed in favor of NRS 372.*

Sec. 3. 1. *“Bundled transaction” means the retail sale of two or more products, except real property and services to real property, where:*

(a) The products are otherwise distinct and identifiable; and

(b) The products are sold for one non-itemized price

¹ The “Statement of Emergency” is found at the end of the text of this Emergency Regulation.

2. A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

3. “As used in subsection 1:

(a) “Distinct and identifiable products” does not include:

(1) Packaging – such as containers, boxes, sacks, bags, and bottles – or other materials – such as wrapping, labels, tags, and instruction guides – that accompany the retail sale of the products or are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes.

(2) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge.

(3) Items included in the sales price.

(b) “One non-itemized price” does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

4. A transaction that otherwise meets the definition of a “bundled transaction” as defined in this section, is not a “bundled transaction” if it is:

(a) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; or

(b) The retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or

(c) A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis where:

(1) De minimis means the seller's "purchase price" or the "sales price" of the taxable products is ten (10%) or less of the total "purchase price" or "sales price" of the bundled products.

(2) Sellers use either the "purchase price" or the "sales price" of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the "purchase price" and "sales price" of the products to determine if the taxable products are de minimis.

(3) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(d) The retail sale of exempt tangible personal property and taxable tangible personal property where:

(1) the transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices or medical supplies; and

(2) Where the seller's "purchase price" or "sales price" of the taxable tangible personal property is fifty percent (50%) or less of the total "purchase price" or "sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent (50%) determination for a transaction.

Sec. 4. *"Computer" has the meaning ascribed to it in NRS 360B.410.*

Sec. 5. *"Computer software" has the meaning ascribed to it in NRS 360B.415.*

Sec. 6. *"Custom computer software" means computer software which is not prewritten computer software.*

Sec. 7. *"Delivered electronically" has the meaning ascribed to it in NRS 360B.420.*

Sec. 8. *"Delivery charges" has the meaning ascribed to it in NRS 360B.425.*

Sec. 9. *"Drug" has the meaning ascribed to it in NRS 360B.435.*

Sec. 10. *"Durable medical equipment" means equipment, including repair and replacement parts, which:*

- 1. Can withstand repeated use; and*
- 2. Is primarily and customarily used to serve a medical purpose; and*
- 3. Generally is not useful to a person in the absence of illness or injury; and*
- 4. Is not worn in or on the body.*

Sec. 11. *"Electronic" has the meaning ascribed to it in NRS 360B.440.*

Sec. 12. *"Food" and "food ingredients" have the meanings ascribed to them in NRS 360B.445.*

Sec. 13. *“Load and leave” means delivery of computer software to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.*

Sec. 14. *“Medicine” has the meaning ascribed to it in NRS 360B.455.*

Sec. 15. *“Mobility enhancing equipment” means equipment, including repair and replacement parts, which:*

- 1. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; and*
- 2. Is not generally used by persons with normal mobility; and*
- 3. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.*

Sec. 16. *“Prepared food” has the meaning ascribed to it in NRS 360B.460.*

Sec. 17. *“Prewritten computer software” has the meaning ascribed to it in NRS 360B.470.*

Sec. 18. *“Prosthetic device” has the meaning ascribed to it in NRS 360B.475.*

Sec. 19. *“Purchase price” applies to the measure subject to use tax and has the same meaning as sales price.*

Sec. 20. *“Retail sale” has the meaning ascribed to it in NRS 360B.067.*

Sec. 21. *“Sales price” has the meaning ascribed to it in NRS 360B.480.*

Sec. 22. *“Sales tax” has the meaning ascribed to it in NRS 360B.070.*

Sec. 23. *“Seller” has the meaning ascribed to it in NRS 360B.080.*

Sec. 24. *“Tangible personal property” has the meaning ascribed to it NRS 360B.095.*

Sec. 25. *“Use tax” has the meaning ascribed to it in NRS 360B.100.*

Sec. 26. *The sales tax or use tax, as applicable, applies to the total amount of consideration received by the seller in connection with a bundled transaction.*

Sec. 27. *As used in NRS 372.7285 and 374.731, “medical device” shall be construed to include durable medical equipment and mobility enhancing equipment.*

Sec. 28. 1. *As used in NRS 372.284 and 374.289, the term “prepared food intended for immediate consumption” shall be construed to include, but not limited to, prepared food which is sold for consumption on the premises where the prepared food is sold.*

2. If a seller of prepared food provides facilities for consumption on the premises, all prepared food sold by that seller shall be deemed sold for consumption on the premises.

3. If a person operates more than one business in the same building and each business is confined to defined boundaries, such as a bakery within a restaurant or a food kiosk within a grocery store, the Department will consider the person to have two separate and distinct business premises for the purpose of administering this section.

Sec. 29. *In administering the exemptions set forth at NRS 372.325, 372.326, 374.330 and 374.3305, the Department shall apply the exemptions to include leases or rentals of tangible personal property to governmental entities and to religious, charitable and educational organizations.*

Sec. 30. NAC 372.080 is hereby amended as provided in section 31 of this regulation.

Sec. 31. 1. A person who purchases tangible personal property outside of this State for lease or rental within this State shall:

(a) Pay the use tax due in this State measured by the cost of the property to him; or

(b) Pay the use tax measured by his gross lease or rental charges for the lease or rental of the property within this State.

2. A person who purchases tangible personal property within this State for lease or rental within this State shall:

(a) Pay the sales tax to his vendor on the sales price of the property to him; or

(b) Give the seller a resale certificate for the property and elect to pay the tax measured by the gross lease or rental charges for the lease or rental of the property within this State.

3. If a person who sells and rents or leases tangible personal property within this State gives a resale certificate to the vendor from whom he purchases property, when the property is:

(a) Sold, the tax applies to the sales price.

(b) Committed to lease or rental transactions, the tax applies to his gross lease or rental charges.

4. If the purchaser:

(a) Pays the tax to his vendor on the sales price of the property to him, no further tax is due and tax must not be collected from the customer on the gross lease or rental charges.

(b) Elects to measure the use tax by his gross lease or rental charges, he may seek reimbursement for the tax from his customers measured by the lease or rental charges. ~~Except as otherwise provided in NAC 372.075, the purchaser shall pay the tax in lieu of a customer if the customer is exempt from the tax or for any other reason is not required to pay the tax.~~

5. The tax applies to the sales price of the property within this State following its use in rental or lease service, without any deduction or credit for the tax paid on the original cost of the property or the taxes paid on the gross lease or rental charges.

6. A person who elects to pay the tax measured by his gross lease or rental charges pursuant to this section is not required to pay the sales tax for the purchase of parts or other equipment for

the tangible personal property which is committed to lease or rental use in this State if he gives a resale certificate to the vendor from whom he purchases the property.

7. A person who initially elects to pay the tax measured by his gross lease or rental charges and later wishes to pay the use tax, may pay that tax measured by the cost of the property to him. The Department shall not grant a refund or credit for any taxes paid or due before he makes such an election.

8. Mandatory charges, whether or not separately stated, for any service, activity or function made in conjunction with the lease or rental of tangible personal property will be considered a part of the gross lease or rental charge and are subject to the tax. The term “mandatory charges” may include for example, without limitation:

(a) A fee or charge for mileage.

(b) A fee or charge for the return of the property, commonly referred to as a “drop-off charge.”

(c) A fee or charge for the reinstatement of a lease or rental agreement.

(d) Reimbursement for fixed costs or expenses, including, without limitation, management fees, interest, financing fees and carrying charges, collection call charges, repossession charges, and billing charges.

9. Optional charges, separately stated, made in connection with the lease or rental of tangible personal property are not subject to the tax. The term “optional charge” may include for example, without limitation, a:

(a) Fee or charge for the installation, erection, assembly or disassembly of the property.

(b) Charge for a collision damage waiver or a similar instrument that acts as a waiver of the lessor’s right to collect from the lessee for any damage to the property.

(c) Charge for the services of a person to operate or instruct another in the operation of the property.

(d) Charge for fuel used to operate the property.

(e) Fee or charge for the delivery, transportation or other handling of the property.

(f) Fee or charge for maintaining, cleaning or altering the property.

(g) Fee or charge for insurance, such as, personal accident, extended protection or coverage for personal property.

10. The Department will determine whether a charge is mandatory or optional according to the terms of the agreement under which the charges are paid.

11. The fee for access to an airport and the charge for reimbursement of property taxes will not be considered part of the gross lease or rental charge if separately stated.

12. A gross lease or rental charge must represent a fair market value of the leased or rented property.

13. Any charges assessed for damages for which the lessee is held responsible are exclusive of the original rental or lease contract, including those commonly referred to as a “charge-back fee” or “damage reimbursement.” The Department will treat such charges as a taxable sale of tangible personal property from either the person making the repair for the lessor or from the lessor for the responsible party.

14. A lessor may discontinue charging use tax on the basis of gross lease charges when a lease agreement is terminated. Periodic billing statements for amounts which are past due at the time the agreement is terminated may continue after termination for collection purposes.

15. Evidence that a lease agreement has been terminated includes:

(a) Documentation showing that the leased property has been repossessed or returned to the lessor.

(b) A formal notice of termination that has been personally served upon the lessee or served upon the lessee by certified mail, return receipt requested, or registered mail.

(c) Proof that the property has been wrecked, damaged, stolen or otherwise rendered unusable.

(d) A new agreement to lease the same equipment to the same or another lessee.

(e) Any other evidence or documentation which is acceptable to the Department and shows that a lease agreement has been terminated.

↪ Such evidence must be maintained pursuant to NRS 372.735.

16. Except as otherwise provided in subsection 17, if a lease is terminated and the property is returned, any payments, penalties or other charges or fees collected by the lessor as a result of a breach of contract are not subject to taxation as gross lease charges.

17. Any portion of the payments, penalties, fees or other charges described in subsection 14 which represents sales or use taxes must be reported and remitted to the Department.

Sec. 32. NAC 372.101 is hereby amended as set forth in section 33 of this regulation.

Sec. 33. *1.* Except as otherwise provided in subsection 2, *or in subsections 6 and 7 of NAC 372.360, [~~any charge for freight, transportation or~~ delivery charges* included in the sale of tangible personal property *is are* subject to sales and use taxes.

2. A [~~charge for freight, transportation or~~ delivery charge included in the sale of tangible personal property is not taxable if:

(a) The charge does not pertain to preparation, handling, crating or packing services performed by the seller prior to shipment; and

~~[(a)]~~ (b) It is stated separately on the invoice given to the purchaser; and

~~[(b)]~~ (c) Title to the property passes to the purchaser, as determined pursuant to NRS 104.2401, before shipment pursuant to a written agreement which clearly states that it is the intention of the parties that title to the property pass to the purchaser before shipment.

3. A ~~[charge for freight, transportation or]~~ delivery *charge* that is not connected with the sale of tangible personal property is a charge for a service and is not subject to sales and use taxes.

4. If a shipment of tangible personal property includes both taxable and exempt property, the seller of the property shall allocate the delivery charges in the manner provided by NRS 360B.255.

Sec. 34. NAC 372.875 is hereby amended as set forth in section 35 of this regulation.

Sec. 35. 1. The preparation of custom ~~[programs]~~ *computer software* constitutes the rendering of a professional service.

2. The tax does not apply to the sale, lease, rental, or licensing for use of custom *computer software* ~~[programs]~~, regardless of the form in which the ~~[program]~~ *software* is transferred.

3. The tax does not apply to the transfer of a custom *computer software* ~~[program]~~, or custom programming services performed in connection with the sale or lease of computer equipment, if the charges for the custom ~~[program]~~ *computer software* or programming are separately stated.

Sec. 36. NAC 372.880 is hereby amended as set forth in section 37 of this regulation.

Sec. 37. ~~[Standard]~~ *Unless it is delivered electronically or by means of load and leave,* prewritten ~~[programs are]~~ *computer software* is tangible personal property. The tax applies to the sale, lease, rental, or licensing for use of ~~[standard]~~ *all such* prewritten *computer software* ~~[programs.]~~

Sec. 38. NAC 372.885 is hereby amended as set forth in section 39 of this regulation.

Sec. 39. *Charges for [M]modifications to [standard] prewritten [programs] computer software* are exempt from the tax if such charges are separately stated. The taxable basis for the prewritten *[program] computer software* is the recognized retail sales price charged by the seller to develop the *[program] software* for use by more than one customer or the cost paid by the seller to purchase the *[standard] prewritten [program] computer software* from another retailer, plus any markup.

Sec. 40. NAC 372.760 is hereby amended as set forth in section 41 of this regulation.

Sec. 41. ~~[1. Unless a retailer uses the alternative procedure described in subsection 5, he shall compute the combined state and local sales tax upon his gross receipts by using the bracket card schedule provided by the Department if his gross receipts are not more than the amount shown on the bracket card. If his gross receipts are more than that amount, he shall compute the tax to the nearest cent at the applicable rate.~~

~~—2. The following bracket system must be used for the collection of the tax in counties where the rate is 6 1/2 percent:~~

AMOUNT OF SALE	TAX
-	-
—0.01 to— \$0.07.....	—\$0.00
— .08 to — .23.....	— .01
— .24 to — .38.....	— .02
— .39 to — .53.....	— .03
— .54 to — .69.....	— .04
— .70 to — .84.....	— .05

AMOUNT OF SALE	TAX
-	-
.85 to .99.....	.06
1.00 to 1.15.....	.07
1.16 to 1.30.....	.08
1.31 to 1.46.....	.09
1.47 to 1.61.....	.10
1.62 to 1.76.....	.11
1.77 to 1.92.....	.12
1.93 to 2.07.....	.13
2.08 to 2.23.....	.14
2.24 to 2.38.....	.15
2.39 to 2.53.....	.16
2.54 to 2.69.....	.17
2.70 to 2.84.....	.18
2.85 to 2.99.....	.19
3.00 to 3.15.....	.20
3.16 to 3.30.....	.21
3.31 to 3.46.....	.22
3.47 to 3.61.....	.23
3.62 to 3.76.....	.24
3.77 to 3.92.....	.25
3.93 to 4.07.....	.26

-	AMOUNT OF SALE	TAX
-	-	-
-	4.08 to 4.23.....	.27
-	4.24 to 4.38.....	.28
-	4.39 to 4.53.....	.29
-	4.54 to 4.69.....	.30
-	4.70 to 4.84.....	.31
-	4.85 to 4.99.....	.32
-	5.00 to 5.15.....	.33
-	and so forth.	-

~~3. The following bracket system must be used for the collection of the tax in counties where the rate is 6 3/4 percent:~~

-	AMOUNT OF SALE	TAX
-	-	-
-	\$0.01 to \$0.07.....	\$0.00
-	.08 to .22.....	.01
-	.23 to .37.....	.02
-	.38 to .51.....	.03
-	.52 to .66.....	.04
-	.67 to .81.....	.05
-	.82 to .96.....	.06

-	AMOUNT OF SALE	TAX
-	-	-
-	.97 to 1.11.....	.07
-	1.12 to 1.25.....	.08
-	1.26 to 1.40.....	.09
-	1.41 to 1.55.....	.10
-	1.56 to 1.70.....	.11
-	1.71 to 1.85.....	.12
-	1.86 to 1.99.....	.13
-	2.00 to 2.14.....	.14
-	2.15 to 2.29.....	.15
-	2.30 to 2.44.....	.16
-	2.45 to 2.59.....	.17
-	2.60 to 2.74.....	.18
-	2.75 to 2.88.....	.19
-	2.89 to 3.03.....	.20
-	3.04 to 3.18.....	.21
-	3.19 to 3.33.....	.22
-	3.34 to 3.48.....	.23
-	3.49 to 3.62.....	.24
-	3.63 to 3.77.....	.25
-	3.78 to 3.92.....	.26
-	3.93 to 4.07.....	.27

-	AMOUNT OF SALE	TAX
-	-	-
-	4.08 to 4.22.....	.28
-	4.23 to 4.37.....	.29
-	4.38 to 4.51.....	.30
-	4.52 to 4.66.....	.31
-	4.67 to 4.81.....	.32
-	4.82 to 4.96.....	.33
-	4.97 to 5.11.....	.34
-	and so forth.	-

~~4. The following bracket system must be used for the collection of the tax in counties where the rate is 7 percent:~~

-	AMOUNT OF SALE	TAX
-	-	-
-	\$0.01 to \$0.07.....	\$0.00
-	.08 to .21.....	.01
-	.22 to .35.....	.02
-	.36 to .49.....	.03
-	.50 to .64.....	.04
-	.65 to .78.....	.05
-	.79 to .92.....	.06

AMOUNT OF SALE	TAX
-	-
.93 to 1.07	.07
1.08 to 1.21	.08
1.22 to 1.35	.09
1.36 to 1.49	.10
1.50 to 1.64	.11
1.65 to 1.78	.12
1.79 to 1.92	.13
1.93 to 2.07	.14
2.08 to 2.21	.15
2.22 to 2.35	.16
2.36 to 2.49	.17
2.50 to 2.64	.18
2.65 to 2.78	.19
2.79 to 2.92	.20
2.93 to 3.07	.21
3.08 to 3.21	.22
3.22 to 3.35	.23
3.36 to 3.49	.24
3.50 to 3.64	.25
3.65 to 3.78	.26
3.79 to 3.92	.27

-	AMOUNT OF SALE	-TAX
-	-	-
-	3.93 to 4.07.....	.28
-	4.08 to 4.21.....	.29
-	4.22 to 4.35.....	.30
-	4.36 to 4.49.....	.31
-	4.50 to 4.64.....	.32
-	4.65 to 4.78.....	.33
-	4.79 to 4.92.....	.34
-	4.93 to 5.07.....	.35
-	and so forth.	-

~~5.]~~ *In determining the amount of sales or use tax due on the retail sale or purchase of tangible personal property, a taxpayer shall apply the applicable tax rate or tax rates in the manner prescribed by NRS 360.299.* A retailer may include the tax in the sales price of an item but if he does so, he shall notify the public by posting a sign which is visible to all customers and states that the sales tax is included in the sales price *or such notice is printed on the receipt*. In the absence of such a notification, the total amount charged to the customer shall be deemed to be the price of the item.

Sec. 42. NAC 372.075, 372.580, 372.605 to 372.617, inclusive, 372.673, 372.675, and 372.850 to 372.870, inclusive, are hereby repealed.

TEXT OF REPEALED SECTIONS

NAC 372.075 When lease of tangible personal property of certain exempt entities constitutes sale. (NRS 360.090, 372.385, 372.725)

1. If a lease of tangible personal property to an entity exempt from taxation pursuant to NRS 372.325 or 372.326 constitutes a sale pursuant to NAC 372.070, the sale is exempt from taxation.

2. If a lease of tangible personal property to an entity exempt from taxation pursuant to NRS 372.325 or 372.326 does not constitute a sale pursuant to NAC 372.070, the original sale of the tangible personal property to the lessor is not exempt from taxation and the lessor must pay the tax.

NAC 372.580 “Food” defined. (NRS 360.090, 372.284, 372.725)

1. Foods include, but are not limited, to the following:

(a) Bread and products made from flour.

(b) Candy and confectionery, including gum and mints.

(c) Cereal and products made from cereal.

(d) Cocoa and products made from cocoa.

(e) Coffee and substitutes for coffee.

(f) Food substitutes.

(g) Eggs and products made from eggs.

(h) Fish, seafood, and products made from fish and seafood.

(i) Frozen foods.

(j) Fruits and products made from fruit, including juices.

(k) Ice which is sold in a package or block weighing less than 10 pounds, bottled water and carbonated water.

(l) Meat and products made from meat.

(m) Milk and products made from milk, including packaged ice cream.

(n) Oleomargarine, butter, and shortening.

(o) Soft drinks and sodas sold in containers sealed at the plant.

(p) Spices, condiments, extracts, and artificial food coloring.

(q) Sugar, products made from sugar, and substitutes for sugar.

(r) Tea.

(s) Vegetables and products made from vegetables.

2. Products which are not food include, but are not limited, to the following:

(a) Supplies for pets.

(b) Housewares and other supplies for the home.

(c) Products made from paper.

(d) Soaps, detergents, and other cleaners.

(e) Tobacco in any form.

(f) Cosmetics.

(g) Toiletries.

- (h) Soft drinks sold in containers not sealed at the plant.
- (i) Food supplements.
- (j) Ice which is sold in a package or block weighing 10 pounds or more.

3. As used in this section:

(a) "Food substitute" means a product which is consumed in place of a meal or in addition to a meal and provides sustenance such as drinks designed to replace meals and aid in weight loss or gain. The term does not include a product which is sold in the form of a pill, capsule, or tablet.

(b) "Food supplement" means a product which is not intended to be consumed in place of a meal but is intended to be consumed to:

- (1) Remedy a dietary deficiency; or
- (2) Supplement the level of vitamins or minerals existing in the body of a person.

(c) "Soft drinks" include alcoholic beverages which contain less than one-half of 1 percent of alcohol by volume.

NAC 372.605 Food: "Prepared food intended for immediate consumption" interpreted.
(NRS 360.090, 372.284, 372.725)

1. As used in NRS 372.284, except as otherwise provided in NAC 372.610, 372.612, or 372.617, the Department will interpret the term "prepared food intended for immediate consumption" to include, but not be limited to:

(a) Food and beverages which are heated in any manner and are sold or are intended to be sold at a temperature which is warmer than the temperature of the place where the food or beverage is sold.

(b) Food and beverages which are sold if the food, beverage, or ingredients of the food or beverage is removed from its original package and:

- (1) Warmed;
- (2) Cooled;
- (3) Defrosted;
- (4) Cooked;
- (5) Mixed;
- (6) Prepared;
- (7) Cut;
- (8) Handled; or
- (9) Dispensed,

↳ at or adjacent to the place where the food is sold.

(c) Except as otherwise provided in paragraph (b) of subsection 2, food and beverages prepared or dispensed by the seller or the customer to the order of the customer.

2. Except as otherwise provided in subsection 3 of NAC 372.610, the term does not include:

(a) The raw meat from any animal or uncooked fish or seafood if it is prepared by a person whose occupation is:

- (1) The processing of animals, fish, or seafood; or
- (2) The dressing or wrapping of slaughtered raw meat or uncooked fish or seafood.

(b) Cheese or cooked meat which is dispensed by the seller in a quantity ordered by the customer.

(c) Bulk food items which are sold in bins or barrels.

(d) Candy.

3. The tax applies to cheese or cooked meat which is prepared by the seller and sold on a tray on which it is intended to be served.

NAC 372.610 Food: Application of exemption to food served to patients at institutional residence; application of tax to food sold through or by restaurants or certain vendors. (NRS 360.090, 372.284, 372.725)

1. The exemption provided in section 56.2 of chapter 397, Statutes of Nevada 1955 (NRS 372.284), applies to any foods and beverages purchased, prepared and served to patients by any institutional residence as part of a comprehensive service which includes the provision of the basic necessities of life, food and shelter.

2. The exemption does not apply to any foods and beverages intended for immediate consumption and sold through or by:

- (a) Stores selling "fast food."
- (b) Vendors of hot food.
- (c) Mobile vending stands.
- (d) Restaurants.
- (e) Lunch counters.

3. The tax applies to the amount paid for prepared food which is intended for immediate consumption when it is furnished by a:

(a) Restaurant, cafeteria, eating house, hotel, drugstore, diner or other similar place, whether or not the place regularly serves prepared food to the public.

(b) Club, boardinghouse, private eating house, bed and breakfast, or any other similar place when a separate charge is made for the food. Where no separate charge or specific amount is paid for the food but a charge for the food is included in the regular dues for membership or the charges for room and board, then the club, boardinghouse, bed and breakfast, or other place is the consumer of the food.

NAC 372.612 Food: Application of exemption to produce sold by grocery store. (NRS 360.090, 372.284, 372.725) The tax does not apply to produce which is sold by a grocery store even though the grocery store cools, prepares, cuts, or handles the produce unless the grocery store:

- 1. Warms, defrosts, cooks, or dispenses the produce; or
- 2. Combines or mixes the produce with any other variety or kind of produce or food.

NAC 372.615 Food: Application of exemption to items obtained with food stamps. (NRS 360.090, 372.284, 372.725) As used in paragraph (d) of subsection 2 of NRS 372.284, for the purposes of administration, the definition of prepared foods intended for immediate consumption does not include items which are obtained with food stamps.

NAC 372.617 Food: Application of exemption when more than one business is operated in same establishment. (NRS 360.090, 372.284, 372.725)

1. If a person engages in more than one business in the same establishment, such as a bakery with a restaurant or a grocery store with a restaurant, the Department will consider the person to have two separate and distinct businesses for the purpose of applying NRS 372.284.

2. If a bakery provides facilities for consumption on the premises, it will be considered to be a restaurant subject to the provisions of NAC 372.610 unless it inquires, for each sale, whether

the customer intends to consume the baked goods on the premises. If the bakery does make the required inquiry for each sale, the baked goods are:

(a) Taxable if the purchaser indicates that he intends to consume the baked goods on the premises; and

(b) Not taxable if the purchaser indicates that he does not intend to consume the baked goods on the premises.

3. If a grocery store operates a bakery and provides facilities for consumption on the premises and the baked goods are:

(a) Not paid for at the bakery, the baked goods are not taxable.

(b) Paid for at the bakery, the bakery will be considered to be a restaurant subject to the provisions of NAC 372.610 unless it inquires, for each sale, whether the customer intends to consume the baked goods on the premises. If the bakery does make the required inquiry for each sale, the baked goods are:

(1) Taxable if the purchaser indicates that he intends to consume the baked goods on the premises; and

(2) Not taxable if the purchaser indicates that he does not intend to consume the baked goods on the premises.

NAC 372.673 “Prosthetic device” defined. (NRS 360.090, 372.283, 372.725)

1. As used in NRS 372.283 and NAC 372.220, “prosthetic device” means an artificial device used to replace a missing part of the human body including teeth.

2. The term includes:

(a) Complete upper dentures.

(b) Complete lower dentures.

(c) Partial plates.

(d) Bridges.

(e) Single replacement teeth.

(f) Crowns.

(g) Caps.

3. The term does not include:

(a) Amalgams, gold, silver, other metal alloys, ceramics, porcelain, or other material used to fill teeth.

(b) Hearing aids.

(c) Eyeglasses.

(d) Contact lenses.

NAC 372.675 Prosthetic devices, orthotic appliances, ambulatory casts and other supports and casts. (NRS 360.090, 372.283, 372.725)

1. As used in NRS 372.283, the Department shall construe the term:

(a) “Ambulatory cast” to mean a cast made of materials such as plaster, metal or plastic which is worn on the leg, ankle or foot to support or correct a weakened joint or limb to permit the person wearing it to walk, with or without additional support.

(b) “Orthotic appliance” to mean an artificial support or brace used to brace or support or as correction for weakened or abnormal joints or limbs to be worn by a person.

(c) “Other supports and casts” to mean items to be worn by a person that have a function similar to or to complement the function of orthotic appliances and ambulatory casts.

2. The sale, storage, use or other consumption of prosthetic devices, orthotic appliances, ambulatory casts and other supports and casts for human use, including replacement parts for such devices, appliances and casts, are exempt from sales and use taxes if prescribed or applied by a licensed provider of health care who is acting within the scope of his practice. Each of these items shall be deemed to be dispensed by prescription, whether or not the item is furnished by a registered pharmacist, if the item is furnished pursuant to the written order of a licensed provider of health care who is acting within the scope of his practice.

3. Examples of orthotic appliances which are exempt pursuant to paragraph (a) of subsection 1 of NRS 372.283 include, without limitation:

- (a) Abdominal binders.
- (b) Ankle braces.
- (c) Cervical supports.
- (d) Neck collars.
- (e) Cervical traction devices.
- (f) Clavicular splints.
- (g) Postsurgical corsets.
- (h) Elbow supports.
- (i) Head halters.
- (j) Pelvic traction devices.
- (k) Postoperative knee immobilizers.
- (l) Slings.
- (m) Stump shrinkers.
- (n) Rib belts and immobilizers.
- (o) Trusses.
- (p) Wrist and arm braces.

4. Examples of other supports and casts which may be exempted pursuant to paragraph (a) of subsection 1 of NRS 372.283 include, without limitation:

- (a) Ace bandages.
- (b) Antiembolism stockings.
- (c) Casts and cast components.
- (d) Support hose and garter belts to hold such hose in place.
- (e) Similar items to be worn by a person.

5. Orthotic appliances, ambulatory casts and other supports and casts do not include canes, crutches, wheelchairs, beds, orthodontic devices, or orthopedic shoes and other supportive devices for the foot unless they are custom-made biomechanical foot orthoses or an integral part of a leg brace or artificial leg.

NAC 372.850 Definitions. (NRS 360.090, 372.725) As used in NAC 372.850 to 372.885, inclusive, unless the context otherwise requires, the words and terms defined in NAC 372.855 to 372.870, inclusive, have the meanings ascribed to them in those sections.

NAC 372.855 “Custom program” defined. (NRS 360.090, 372.725) “Custom program” means software which is:

- 1. Developed pursuant to the special order of a customer;
- 2. Produced by a provider exclusively for a specific user; and
- 3. Of an original, one-of-a-kind nature.

↳ The term includes preexisting routines or prewritten components of a program created specifically to be integrated into a larger custom program.

NAC 372.860 “Preexisting routines” and “prewritten components of a program” defined. (NRS 360.090, 372.725) “Preexisting routines” and “prewritten components of a program” mean those portions of a custom program which cannot function separately as “stand-alone” software.

NAC 372.865 “Software” defined. (NRS 360.090, 372.725) “Software” means programs, procedures, rules, and any associated documentation pertaining to the operation of a computer system.

NAC 372.870 “Standard prewritten program” defined. (NRS 360.090, 372.725) “Standard prewritten program,” sometimes referred to as “canned” or “off-the-shelf” software, means software which is not originally developed and produced for the user.

NEVADA TAX COMMISSION'S STATEMENT OF EMERGENCY

WHEREAS, the Nevada Tax Commission (“Commission”) has convened this public meeting for the purpose of considering the adoption of the foregoing Emergency Regulation, which interprets NRS 372.723 in such a manner as it relates to the implementation of the Streamlined Sales and Use Tax Agreement, and incorporating uniform definitions into the provisions governing the imposition and administration of the sales and use tax.

WHEREAS, the Commission finds that an emergency exists insofar as:

1. Beginning in 2001, the Nevada Legislature declared that, among other things, that a simplified sales and use tax system will reduce, and over time, eliminate the burden and cost for all vendors to collect this state’s sales and use tax. The Legislature also declared that Nevada should enter into an agreement with one or more states to simplify and modernize sales and use tax administration to reduce substantially the burden of tax compliance for all sellers and for all types of commerce.
2. Following 2001, the Nevada Legislature, in each successive session, has added various definitions to the Nevada Revised Statutes so as to allow the Commission to enter into an agreement with one or more states. Most of these definitions and rules are codified in Chapter 360B of the NRS.
3. In 2005, state of Nevada, the Commission, and the Department became an associate member in the Streamlined Sales and Use Tax Agreement (“Agreement”).
4. After Nevada became an associate member under the Agreement, numerous out-of-state sellers began voluntarily registering under the Agreement (and designating Nevada as one of the states where sales of tangible personal property are shipped), resulting in new sales/use tax money being remitted to Nevada.
5. To date, there are approximately 700 registered sellers who have voluntarily registered as a seller in Nevada, which results in approximately \$40,000 in tax revenue to Nevada each month.
6. Currently, there are two bills before Congress that propose, inter alia, to overturn the *Quill* decision and make registration for certain sellers mandatory under the Agreement.
7. In its most recent form, the Agreement requires that each associate member be accepted by the Streamlined Governing Board (“Governing Board”) as a full member no later than January 1, 2008. If not accepted by January 1, 2008, Nevada will lose its status as an associate member. While Nevada may re-petition the Governing Board at a later date, Nevada stands to lose tax revenue from the sellers who are currently registered under the Agreement if Nevada does not become full member.

8. Earlier this year, Nevada petitioned the Governing Board for full membership. This fall, the Governing Board decided to delay their vote in part because they had concerns about whether Nevada's statutory and regulatory scheme substantially complied with the requirements for full membership under the Agreement. A vote will be held in mid-December.

9. To help illustrate that Nevada was in fact statutorily in compliance, the Department commenced the rule-making process and held a regulation workshop in an attempt to tie together certain definitions contained in Chapter 372 and 360B of the Nevada Revised Statutes. Due to the noticing and timing requirements under Chapter 233B, however, a permanent regulation could not be in place by January 1, 2008. Consequently, the Commission believes that an emergency exists with respect to promulgating the foregoing regulation, which will provide evidence to the Governing Board that Nevada is in compliance with the terms of the Agreement.

NOW THEREFORE, the Commission hereby adopts the foregoing Emergency Regulation.

December 3rd, 2007.

FOR THE COMMISSION:

/S/
DINO DICIANNO
Executive Director
Nevada Department of Taxation

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GOVERNOR'S ENDORSEMENT

I, Governor Jim Gibbons, endorse the Nevada Tax Commission's foregoing Statement of Emergency.

December 5, 2007.

/S/
JIM GIBBONS
Governor