

Chapter 372 of NAC

LCB File No. T033-07

ADOPTED TEMPORARY REGULATION OF
THE NEVADA TAX COMMISSION

Filed with the Secretary of State on June 12, 2007

PROPOSED AMENDMENT TO NAC 372.080

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

AUTHORITY: §§1-17, NRS 360.090, NRS 372.060.

NAC 372.080 Collection of tax when tangible personal property is purchased for lease or rental within State. (NRS 360.090, 372.385, 372.725)

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 *in this state, he shall:* ~~the tax applies to his gross lease or rental charges.~~
 - (1.) Pay the use tax due in this state measured by the cost of the property to him; or*
 - (2.) Pay the use tax measured by 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.

**NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T033-07**

The Nevada Tax Commission adopted temporary regulations assigned LCB File No. T033-07 which pertain to chapter 372 of the Nevada Administrative Code.

Temporary Regulations of the Nevada Tax Commission

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 372.080.

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

Notices of hearing for the adoption and amendment of the proposed temporary regulations were posted at the following locations: Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Nevada State Library, 100 Stewart Street, Carson City, Nevada; The Legislative Building, Capitol Complex, Carson City, Nevada; each County Main Public Library; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Las Vegas, Nevada; and Department of Taxation, 2550 Paseo Verde Parkway, Suite 180, Henderson, Nevada.

A copy of the notice of hearing and the proposed temporary regulations were placed on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed temporary regulations were also made available and placed on file at the Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation, 2550 Paseo Verde Parkway, Suite 180, Henderson, Nevada; Department of Taxation, 850 Elm Street, No. 2, Elko, Nevada; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours.

The hearing was held on March 21, 2007, at the Carson City Office of the Department of Taxation, 1550 College Parkway, Room 133, Carson City, Nevada, and teleconferenced to the Department of Taxation Henderson Office, 2550 Paseo Verde Parkway, Suite 100, Henderson, Nevada. It appears that due to the primarily procedural nature of the proposed temporary regulations, only affected or interested persons and businesses as set forth in #3 below responded to the proposed temporary regulations and testified at the hearing. A copy of the transcript of the hearing, for which a reasonable fee may be charged, may be obtained by calling the Nevada Department of Taxation at (775) 684-2096 or by writing to the Nevada Department of Taxation at 1550 East College Parkway, Suite 115, Carson City, Nevada, 89706.

The proposed temporary regulation, for practical purposes, was discussed at one workshop.

- 2. The number of persons who:**
- (a) **Attended the hearing:** 4
 - (b) **Testified at the hearing:** 4
 - (c) **Submitted to the Tax Commission written comments:** No written comments by the general public were submitted to, or received by, the Department of Taxation.

- 3. A description of how comment was solicited from affected and interested persons, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected and interested businesses and persons by the notices set forth in #1 above, by direct mail to all county assessors, and by direct mail to the approximately 240 interested businesses and persons on the Department of Taxation's mailing list.

Comments from the above-referenced industry in #2 were received relative to the original regulations and proposed draft of the temporary regulations with respect to the Department's sales/use tax collection methods for organizations that lease tangible personal property.

- 4. If the temporary regulations were adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the temporary regulations without change.**

The proposed temporary regulations were modified at public workshops prior to adoption, due to issues raised by the Department of Taxation and by the affected organizations that lease tangible personal property. The proposed temporary regulation was changed at the public hearing reflecting minor technical corrections raised by the affected industry.

- 5. The estimated economic effect of the adopted temporary regulations on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include: (a) Both adverse and beneficial effects; and (b) Both immediate and long-term effects.**

(a) Adverse and beneficial effects.

The proposed temporary regulations present no foreseeable or anticipated adverse economic effects to businesses or the public. However the temporary regulations will have a beneficial impact on the organizations that lease tangible personal property, for clarification and procedural purposes. That effect cannot be quantified at this time.

(b) Immediate and long-term effects.

Same as #5(a) above.

- 6. The estimated cost to the agency for enforcement of the adopted temporary regulations.**

The proposed temporary regulations present no significant foreseeable or anticipated cost or decrease in costs for enforcement. However, it appears that there may be some minor additional administrative costs for the Department of Taxation, which cannot be quantified at this time.

7. A description of any regulations of other state or governmental agencies which the temporary regulations overlap or duplicate and a statement explaining why the duplication or overlap is necessary. If the temporary regulations overlap or duplicate a federal regulation, the name of the regulating federal agency.

The proposed temporary regulations are particular to the Department of Taxation practices and procedures and do not appear to overlap or duplicate regulations of other state or local governmental agencies.

8. If the temporary regulations include provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no known federal regulations pertaining to state sales/use tax procedures, which are the subject of the proposed temporary regulations.

9. If the temporary regulations provide a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed temporary regulations do not provide a new fee or increase an existing fee.