

**ADOPTED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R104-09**

Effective November 25, 2009

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

AUTHORITY: §§1-9, NRS 360.090, 360B.110, 372.725.

A REGULATION relating to taxes on retail sales; revising certain provisions governing the application of those taxes; and providing other matters properly relating thereto.

**Section 1.** NAC 372.019 is hereby amended to read as follows:

372.019 “Drug” has the meaning ascribed to it in NRS 360B.435 and includes, without limitation, injectable dermal fillers, ~~[prescribed by a physician,]~~ saline solutions, medical grade gases and insulin.

**Sec. 2.** NAC 372.027 is hereby amended to read as follows:

372.027 “Prosthetic device” has the meaning ascribed to it in NRS 360B.475 and includes, without limitation, breast implants, ~~[dialysis and]~~ feeding catheters, *medicine delivery catheters*, insulin pumps, cochlear implants, *orthodontic devices*, and amalgams, ceramics, porcelain and gold, silver and other metal alloys used to fill teeth.

**Sec. 3.** NAC 372.101 is hereby amended to read as follows:

372.101 1. Delivery charges included in the sale of tangible personal property are subject to sales and use taxes ~~[,]~~, *including, but not limited to, any charges for:*

*(a) Transportation, shipping or postage which are not stated separately on applicable invoices or other billing documents. Any charges for transportation, shipping or postage*

*which are stated separately on applicable invoices or other billing documents shall be deemed not to be included in such a sale and are not subject to sales and use taxes.*

*(b) Handling, crating or packing, whether or not separately stated.*

~~2. [A delivery charge shall be deemed not to be included in the sale of tangible personal property if the charge:~~

~~—(a) Does not pertain to any preparation, handling, crating or packing services performed by the seller before shipment; and~~

~~—(b) Is stated separately on the invoice given to the purchaser.~~

~~—3.]~~ A 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.]~~ **3.** If a shipment of tangible personal property which is sold to a purchaser includes both taxable and exempt property, the seller of the property shall comply with the provisions of NRS 360B.255.

**Sec. 4.** NAC 372.230 is hereby amended to read as follows:

372.230 1. The tax applies to the entire amount charged by a florist who receives an order from a customer for the delivery of flowers or other tangible personal property, including any charges for the delivery ~~[.]~~ *except charges for transportation, shipping or postage which are stated separately on the applicable invoice or other billing document.* The tax applies to the florist whether or not:

(a) He instructs another florist to make the delivery.

(b) The order is to be delivered in Nevada.

2. The tax does not apply to:

(a) A separate charge made for a telegram.

(b) The amount received by a florist in Nevada who makes a delivery pursuant to instructions received from another florist, whether or not the other florist is located in Nevada.

**Sec. 5.** NAC 372.605 is hereby amended to read as follows:

372.605 **1.** As used in NRS 372.284, the Department will interpret the term “prepared food intended for immediate consumption” to ~~[mean prepared food customarily sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins or straws. For the purposes of this section, “plates” does not include any containers or packaging used to transport food.]~~:

*(a) Mean prepared food, as defined in NRS 360B.460, which is intended for immediate consumption.*

*(b) Exclude, if sold without eating utensils provided by the seller:*

*(1) Two or more food ingredients mixed or combined by the seller for sale as a single item and sold:*

*(I) By a seller whose primary NAICS classification is within Subsector 311, Food Manufacturing; or*

*(II) In an unheated state by weight or volume as a single item.*

*(2) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danishes, cakes, tortes, pies, tarts, muffins, bars, cookies and tortillas.*

*2. For the purposes of this section, “NAICS classification” means classification under the North American Industry Classification System, 2007 Edition, which is hereby adopted by reference. A copy of that publication is available from the National Technical Information Service, Alexandria, Virginia 22312, or by telephone at (703) 605-6000 or (800) 553-6847, for*

*the price of \$59. A copy of that publication is also available, free of charge, from the U.S.*

*Census Bureau at the Internet address <<http://www.census.gov/eos/www/naics/index.html>>.*

**Sec. 6.** NAC 372.875 is hereby amended to read as follows:

372.875 1. The preparation of custom computer software constitutes the rendering of a professional service.

2. The tax does not apply to ~~the~~:

*(a) The sale, lease, rental or licensing for use of custom computer software, regardless of the form in which the custom computer software is transferred.*

*(b) Any charges for future updates or upgrades to or support services for custom computer software.*

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

**Sec. 7.** NAC 372.880 is hereby amended to read as follows:

372.880 1. Unless it is delivered electronically or by load and leave, prewritten computer software is tangible personal property. The tax applies to ~~the~~:

*(a) The sale, lease, rental or licensing for use of such prewritten computer software.*

*(b) A mandatory computer software maintenance contract for such prewritten computer software.*

*(c) An optional computer software maintenance contract for such prewritten computer software which obligates the vendor to provide future updates or upgrades to the prewritten computer software. Except as otherwise provided in subsection 2, the tax does not apply to an*

*optional computer software maintenance contract for such prewritten computer software which only obligates the vendor to provide support services.*

*2. If an optional computer software maintenance contract is part of a bundled transaction which includes both taxable and nontaxable or exempt products that are not separately itemized on the invoice or similar billing document, the tax applies to the entire transaction.*

*3. For the purposes of this section:*

*(a) “Bundled transaction” has the meaning ascribed to it in NAC 372.045.*

*(b) “Computer software maintenance contract” means a contract that obligates a vendor of prewritten computer software to provide a customer with future updates or upgrades to prewritten computer software, support services with respect to prewritten computer software, or both.*

*(c) “Mandatory computer software maintenance contract” means a computer software maintenance contract that a customer is obligated by contract to purchase as a condition to the retail sale of prewritten computer software.*

*(d) “Optional computer software maintenance contract” means a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of prewritten computer software.*

**Sec. 8.** NAC 372.885 is hereby amended to read as follows:

372.885 ~~[Charges]~~ *Except as otherwise provided in NAC 372.880, charges* for modifications to prewritten computer software are exempt from the tax if such charges are separately stated. The taxable basis for the prewritten computer software is the recognized retail sales price charged by the seller to develop the prewritten computer software for use by more

than one customer or the cost paid by the seller to purchase the prewritten computer software from another retailer, plus any markup.

**Sec. 9.** NAC 372.025 and 372.038 are hereby repealed.

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**TEXT OF REPEALED SECTIONS**

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**372.025 “Prepared food” defined. (NRS 360.090, 360B.110, 372.725)** “Prepared food” has the meaning ascribed to it in NRS 360B.460.

**372.038 Resolution of conflicting provisions. (NRS 360.090, 372.725, 374.725)** If any of the provisions of:

1. This chapter conflict with any of the provisions of chapter 374 of NAC, the provisions of this chapter shall be deemed to prevail.
2. This chapter or chapter 360B of NRS conflict with any of the provisions of chapter 372 of NRS, the provisions of chapter 372 of NRS shall be deemed to prevail.

**NOTICE OF ADOPTION OF PROPOSED REGULATION**  
**LCB File No. R104-09**

The Nevada Tax Commission adopted regulations assigned LCB File No. R104-09 which pertain to chapter 372 of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 372.

**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 regulation were posted at the following locations: Department of Taxation, 1550 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; Department of Taxation, 2550 Paseo Verde Parkway, Suite 180, Henderson, Nevada.

A copy of the notice of hearing and the proposed regulation 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 regulation were also made available and placed on file at the Department of Taxation, 1550 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 November 16, 2009 via video conference between the Public Utilities Commission, 1150 E. Williams Street, Room A, Carson City, Nevada and the public Utilities Commission, 101 Convention Drive, Suite 250, Room A, Las Vegas, Nevada. It appears that due to the primarily procedural nature of the proposed regulation, only affected or interested persons and businesses as set forth in #3 below responded to the proposed regulation 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 College Parkway, Suite 115, Carson City, Nevada, 89706.

The proposed regulation was submitted to the Legislative Counsel Bureau, which completed its review and minor revisions on September 8, 2009. Thus, the proposed regulation, for practical

purposes, was discussed at two workshops and has been heard and considered at one public hearing of the Nevada Tax Commission.

**2. The number of persons who:**

**(a) Attended the hearing: 52**

**(b) Testified at the hearing: 5**

**(c) Submitted to the Tax Commission written comments:** Written comments were submitted to, or received by, the Department of Taxation or the Nevada Tax Commission by the Equipment Leasing and Finance Association in favor of the proposed changes in line with the Streamlined Agreement.

**3. A description of how comment was solicited from affected businesses, 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 250 interested businesses and persons on the Department of Taxation's mailing list.

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

The proposed regulation was not changed at the public hearing since no concerns were raised by the public, affected or interested businesses or persons, the Department of Taxation or Tax Commission members, and the Tax Commission believed no changes were necessary.

**5. The estimated economic effect of the adopted regulation on the business 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 regulation presents no foreseeable or anticipated adverse economic effects to businesses or the public. There may be some beneficial economic effects to those directly affected based on the Streamlined Agreement. Those anticipated benefits are not quantifiable 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 regulation.**

The proposed regulation presents no significant foreseeable or anticipated cost for enforcement. There may be some minor initial administrative costs for the Department, which are not quantifiable at this time.



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

The proposed regulation is particular to the Department of Taxation practices and procedures and does not appear to overlap or duplicate regulations of other state or local governmental agencies.

**8. If the regulation includes 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's sales and use tax procedures, which are the subject of the proposed regulation.

**9. If the regulation provides 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 regulation does not provide a new fee or increase an existing fee.