

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R058-02

May 27, 2002

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

AUTHORITY: §§1-5, NRS 360.090, 372.170, 372.240 and 372.725.

Section 1. Chapter 372 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. 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.

Sec. 3. 1. *If tangible personal property is sold, but the transaction is designated as a finance lease:*

(a) The transaction is a sale;

(b) The tax applies to the transaction in the same manner as a conditional sale described in NAC 372.050;

(c) The lessee is deemed to be the purchaser of the tangible personal property; and

(d) If applicable, the purchaser may elect, pursuant to NRS 372.170 or 372.240, to pay the tax on the use of that property as measured by the amount of the rental charged for the property rather than the cost of the acquisition of that property.

2. For the purposes of this section, a transaction is a finance lease if the only use of the tangible personal property that the lessee is authorized to make pursuant to the lease is the leasing of the tangible personal property as a sublessor to another party as a sublessee. If the lessee uses or has the right to use the tangible personal property in any other manner, the transaction is not a finance lease. The following factors indicate that a transaction is a finance lease:

(a) The lessee never had possession of the tangible personal property; and

(b) The lessee is required, pursuant to the lease, to:

(1) Pay any applicable fees assessed against the tangible personal property;

(2) Assume all risk of loss of the tangible personal property; and

(3) Maintain insurance on the tangible personal property.

3. As used in this section, "possession" does not include the maintenance, licensing or registration of the tangible personal property.

Sec. 4. 1. *If a lessor of tangible personal property elects to pay the tax on the use of that property as measured by the amount of the rental charged for the property rather than the cost of the acquisition of that property pursuant to NRS 372.170 or 372.240, the lessor shall notify the department of that election on a form prepared by the department. The lessor shall file a copy of the form with his records and make the copy available to the department for inspection upon request.*

2. A lessor who notifies the department of his election pursuant to subsection 1 may choose to apply the election:

(a) Separately to the item of tangible personal property that he identifies on the form and submit the form within 10 days after he acquires that item; or

(b) To all the tangible personal property he acquires within the next ensuing year and submit the form on an annual basis.

3. A lessor who applies the election to separate items of tangible personal property pursuant to paragraph (a) of subsection 2 may include more than one item of tangible personal property on the form if the form is submitted within 10 days after the earliest date of acquisition of an item of tangible personal property that is identified on the form.

4. The failure of a lessor to notify the department of his election pursuant to this section creates a rebuttable presumption that the lessor did not elect to pay the tax on the use of the tangible personal property rather than the cost of the acquisition of that property pursuant to NRS 372.170 or 372.240. The rebuttable presumption may be overcome if the lessor presents evidence that he intended to pay the tax on the use of the tangible personal property rather than the cost of the acquisition of that property pursuant to NRS 372.170 or 372.240.

Sec. 5. NAC 372.080 is hereby amended to read as follows:

372.080 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. ~~The~~ *Except as otherwise provided in section 2 of this regulation, 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.

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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.