

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R021-08

Effective April 17, 2008

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

AUTHORITY: §§1-25, 28, 29, 32-36, 38 and 40-43, NRS 360.090, 360B.110 and 372.725; §26, NRS 360.090, 372.725 and 374.725; §27, NRS 360.090, 360B.110, 372.725 and 374.725; §§30, 31, 37 and 39, NRS 360.090 and 372.725.

A REGULATION relating to taxes on retail sales; making various changes to the provisions governing the administration of sales and use taxes; and providing other matters properly relating thereto.

Section 1. Chapter 372 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 28, inclusive, of this regulation.

Sec. 2. *“Commission” means the Nevada Tax Commission.*

Sec. 3. *“Computer” has the meaning ascribed to it in NRS 360B.410.*

Sec. 4. *“Computer software” has the meaning ascribed to it in NRS 360B.415.*

Sec. 5. *“Custom computer software” means computer software which is not prewritten computer software.*

Sec. 6. *“Delivered electronically” has the meaning ascribed to it in NRS 360B.420.*

Sec. 7. *“Delivery charges” has the meaning ascribed to it in NRS 360B.425.*

Sec. 8. *“Department” means the Department of Taxation.*

Sec. 9. *“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. 10. *“Durable medical equipment” means equipment, including any repair and replacement parts therefor, which:*

- 1. Can withstand repeated use;*
- 2. Is primarily and customarily used to serve a medical purpose;*
- 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,*

↳ and includes, without limitation, abduction and orthotic pillows, anesthesia ventilators, bone growth stimulators, dialyzers and kidney dialysis machines.

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

Sec. 12. *“Food” has the meaning ascribed to it in NRS 360B.445.*

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

Sec. 14. *“Mobility enhancing equipment” means equipment, including any repair and replacement parts therefor, 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;*
- 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 manufacturer of motor vehicles,*

↳ and includes, without limitation, mobility enhancing car seats for children with a disability and swivel seats for persons with a disability.

Sec. 15. *“Prepared food” has the meaning ascribed to it in NRS 360B.460.*

Sec. 16. *“Prewritten computer software” has the meaning ascribed to it in NRS 360B.470.*

Sec. 17. *“Prosthetic device” has the meaning ascribed to it in NRS 360B.475 and includes, without limitation, breast implants, dialysis and feeding catheters, insulin pumps, cochlear implants, and amalgams, ceramics, porcelain and gold, silver and other metal alloys used to fill teeth.*

Sec. 18. *“Purchase price” means the measure subject to use tax and has the meaning ascribed to “sales price” in NRS 360B.480.*

Sec. 19. *“Purchaser” has the meaning ascribed to it in NRS 360B.063.*

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 in NRS 360B.095.*

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

Sec. 26. *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.

Sec. 27. *For the purpose of carrying out NRS 372.7285 and 374.731, the Department will construe the term “medical device” to include durable medical equipment and mobility enhancing equipment.*

Sec. 28. 1. *Except as otherwise provided by specific statute or regulation, the sales tax or use tax, as applicable, applies to the total amount of consideration received by a seller in connection with a bundled transaction.*

2. *For the purposes of this section:*

(a) *Except as otherwise provided in paragraph (b), “bundled transaction” means the retail sale of two or more products, except real property and services to real property, where the products are:*

(1) *Otherwise distinct and identifiable; and*

(2) *Sold for one nonitemized price.*

(b) *“Bundled transaction” does not include:*

(1) *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.*

(2) *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.*

(3) *A transaction that includes taxable products and nontaxable products and regarding which the purchase price or sales price of the taxable products is de minimis. For the purposes of this subparagraph:*

(I) *“De minimis” means that the seller’s purchase price or sales price of the taxable products is 10 percent or less of the total purchase price or sales price of the bundled products.*

(II) *Sellers must 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.

(III) Sellers must use the full term of a service contract to determine if the taxable products are de minimis.

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

(I) The transaction includes food, drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices or medical supplies; and

(II) The seller's purchase price or sales price of the taxable tangible personal property is 50 percent 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 for the purpose of making this 50-percent determination for a transaction.

(c) "Distinct and identifiable" products do not include any:

(1) Packaging items, 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 and are incidental or immaterial to the retail sale thereof. Examples of packaging items that are incidental or immaterial to the retail sale of the products include grocery sacks, shoeboxes, dry cleaning garment bags, and express delivery envelopes and boxes.

(2) Products provided free of charge with the required purchase of another product. For the purposes of this subparagraph, 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.

(d) “One nonitemized 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.

(e) “Sales price” applies to the measure subject to sales tax.

Sec. 29. NAC 372.010 is hereby amended to read as follows:

372.010 As used in this chapter, unless the context otherwise requires ~~§~~

~~1. “Commission” means the Nevada Tax Commission.~~

~~2. “Department” means the Department of Taxation.],~~ *the words and terms defined in sections 2 to 25, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 30. NAC 372.075 is hereby amended to read as follows:

372.075 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. *Any transfer of tangible personal property described in NRS 372.7283 or 372.7287 shall be deemed to constitute a sale of the tangible personal property and is exempt from taxation.*

3. 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 *subsection 2 or* 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. 31. NAC 372.080 is hereby amended to read as follows:

372.080 *Except as otherwise provided in NAC 372.075:*

1. A person who purchases tangible personal property outside of this State for lease or rental within this State shall pay the use tax due in this State measured by:

- (a) The cost of the property to him; or
- (b) 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 pay the use tax due in this

State measured by:

- (1) The cost of the property to him; or
- (2) 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 to read as follows:

372.101 1. ~~Except as otherwise provided in subsection 2, any charge for freight, transportation or delivery~~ *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 shall be deemed not to be* included in the sale of tangible personal property ~~is not taxable if:~~

~~—(a) It is~~ *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. ~~;~~ ~~and~~

~~—(b) 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 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. 33. NAC 372.210 is hereby amended to read as follows:

372.210 1. Construction contractors who are registered sellers in this State may give their suppliers resale certificates and report the use tax to the State in the tax period in which that tangible personal property is committed to the performance of a construction contract.

2. If the construction contractor, who is also a registered seller in this State, purchases tangible personal property from a vendor who does not have a valid Nevada seller's permit, the liability for the use tax arises when the property is committed to a use other than retention for sale in the regular course of business.

3. A construction contractor may not purchase construction materials, supplies  or tools which are ordinarily used by a construction contractor in the performance of a construction contract under a resale certificate unless he is actually engaged in the business of selling the property without previously using it.

4. The tax does not apply to construction contractors who issue valid resale certificates to vendors for tangible personal property which is purchased for subsequent incorporation into real property outside this State in the performance of a construction contract to improve the real property outside this State if the tangible personal property is not commingled with the tangible personal property which is purchased for use in the performance of a construction contract in this State.

5. If a construction contractor, who also holds a seller's permit, sells tangible personal property on which the sales or use tax has been paid on the *sales price or* purchase price but

which has not been used, he may obtain a credit for the tax which was paid by taking a deduction pursuant to NAC 372.780.

Sec. 34. NAC 372.220 is hereby amended to read as follows:

372.220 1. Dentists are the consumers of the materials, supplies, dental laboratory products and other tangible personal property which they use in performing their services. Except as otherwise provided in NRS 372.283 , ~~[and NAC 372.673,]~~ the tax applies to the sales price of their purchases of such property.

2. Dental laboratories are the retailers of the plates, inlays and other products which they manufacture for dentists or other consumers. Except as otherwise provided in NRS 372.283 , ~~[and NAC 372.673,]~~ the tax applies to the entire charge for such a product regardless of whether the prices of the materials and services are separately stated.

3. All dental work comprised of prosthetic devices is exempt from the tax.

Sec. 35. NAC 372.485 is hereby amended to read as follows:

372.485 1. The gross receipts from the retail sale of cellular telephones, pagers, satellite dishes and other similar types of telecommunications equipment are subject to the sales and use taxes.

2. When the retailer makes a retail sale of this equipment to a purchaser in a transaction together with the sale of telecommunications services which will be provided either by the retailer or a provider of the telecommunications services ~~[, which is commonly referred to as a bundled transaction,]~~ and:

(a) The price charged to the purchaser by the retailer for the telecommunications equipment is less than the price paid by the retailer to its supplier for the equipment; and

(b) The purchaser is required to subscribe to or purchase service from a provider of telecommunications services to obtain the equipment at the reduced price,
↳ the gross receipts from the retail sale of this type of equipment shall be deemed to be the sales price paid by the retailer to the supplier for that equipment. The Department will consider the cost of the telecommunications equipment as reflective of the true gross receipts from the retail sale of the tangible personal property in such a transaction.

3. The receipt given to the purchaser must separately state the amount of the gross receipts allocated to the telecommunications equipment pursuant to subsection 2 as well as the amount of sales tax using that price as the measure, together with such service credits or adjustments as are necessary to arrive at the net charge made to the purchaser at the time of the transaction.

4. The purchase of access to or a subscription to telecommunications services that is not made in connection with the purchase of telecommunications equipment is not subject to the tax.

Sec. 36. NAC 372.605 is hereby amended to read as follows:

372.605 ~~[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.] *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.

Sec. 37. NAC 372.620 is hereby amended to read as follows:

372.620 Retailers shall maintain records which separately indicate the amount of sales of *food* items exempt from and subject to the tax.

Sec. 38. NAC 372.760 is hereby amended to read as follows:

372.760 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
— .85 to — .99.....	— .06

AMOUNT OF SALE	TAX
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
4.08 to 4.23	.27

AMOUNT OF SALE	TAX
4.24 to 4.3828
4.39 to 4.5329
4.54 to 4.6930
4.70 to 4.8431
4.85 to 4.9932
5.00 to 5.1533

~~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 .2201
.23 to .3702
.38 to .5103
.52 to .6604
.67 to .8105
.82 to .9606
.97 to 1.1107

AMOUNT OF SALE	TAX
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
4.08 to 4.22	.28

AMOUNT OF SALE	TAX
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
.93 to 1.07.....	.07

AMOUNT OF SALE	TAX
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
3.93 to 4.07	.28

AMOUNT OF SALE	TAX
4.08 to 4.2129
4.22 to 4.3530
4.36 to 4.4931
4.50 to 4.6432
4.65 to 4.7833
4.79 to 4.9234
4.93 to 5.0735

~~and so forth.~~

~~5.] A taxpayer shall determine the amount of the sales or use tax due on a retail sale or purchase of tangible personal property as provided in NRS 360.299.~~

2. A retailer may include the tax in the sales price of an item , but if he does so, he shall notify ~~[the]~~ :

(a) ~~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

(b) ~~The customer by printing on the receipt for the item a statement that the sales tax is included in the sales price.~~

↳ 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. 39. NAC 372.827 is hereby amended to read as follows:

372.827 1. Each person who qualifies for the deferral of taxes pursuant to NRS 372.397 shall establish with the Department security that is equal to his tax liability.

2. The Department may accept as security pursuant to subsection 1:

(a) The security set forth in subsection 4 of NAC 372.825; or

(b) A perfected, first priority security interest that designates the State of Nevada as the secured party and is created pursuant to the provisions of NRS 104.9101 to ~~104.9507,~~ **104.9709**, inclusive, in personal property that is located in this State.

Sec. 40. NAC 372.875 is hereby amended to read as follows:

372.875 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~~ or licensing for use of custom ~~programs,~~ **computer software**, regardless of the form in which the ~~program~~ **custom computer software** is transferred.

3. The tax does not apply to the transfer of ~~a custom program,~~ **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 ~~program~~ **computer software** or programming are separately stated.

Sec. 41. NAC 372.880 is hereby amended to read as follows:

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

Sec. 42. NAC 372.885 is hereby amended to read as follows:

372.885 ~~[Modifications to standard prewritten programs]~~ *Charges for modifications to prewritten 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]~~ *prewritten computer software* for use by more than one customer or the cost paid by the seller to purchase the ~~[standard prewritten program]~~ *prewritten computer software* from another retailer, plus any markup.

Sec. 43. NAC 372.580, 372.610, 372.612, 372.615, 372.617, 372.673, 372.675, 372.850, 372.855, 372.860, 372.865 and 372.870 are hereby repealed.

TEXT OF REPEALED SECTIONS

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.

**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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

NOTICE OF ADOPTION OF REGULATION

The Nevada Tax Commission adopted regulations assigned LCB File No. R021-08, which pertain to chapter 372 of the Nevada Administrative Code

INFORMATIONAL STATEMENT

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

Copies of the proposed regulations, notice(s) of workshop and notices of intent to act upon the regulation were sent by U.S. mail and email to persons who were known to have an interest in the subject of late-filed appeals to the Tax Commission as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Nevada Department of Taxation (“Department”), <http://tax.state.nv.us/>, and mailed to all county libraries in Nevada and posted at the following locations:

Department of Taxation
1550 College Parkway, Suite 115
Carson City, Nevada 89706

Department of Taxation
4600 Kietzke Lane, Suite 235
Reno, Nevada 89502

Department of Taxation
555 E. Washington Avenue, Suite 1300
Las Vegas, Nevada 89101

Department of Taxation
2550 Paseo Verde Parkway, Suite 180
Henderson, Nevada 89074

Department of Taxation
1010 Ruby Vista Drive, Suite 102
Elko, Nevada 89801

Legislative Building
401 S. Carson Street
Carson City, Nevada 89701

Nevada State Library
100 Stewart Street
Carson City, Nevada 89701

The Department of Taxation, as staff to the Nevada Tax Commission (“Commission”), solicited comment from the public by posting a notice of a workshop, dated October 3, 2007, to the locations listed above. A workshop was held on October 18, 2007. The Department solicited comment from the public by posting a second notice of workshop, dated January 8, 2008, to the locations listed above. A second workshop was held on January 23, 2008. The minutes of those workshops may be obtained by writing to the Department of Taxation at 1550 College Parkway, Suite 115, Carson City, Nevada 89706. Thereafter, on or about February 1, 2008, the Executive Director of the Department of Taxation (“Executive Director”) issued a Notice of Public Hearing for the Adoption and Amendment of Permanent Regulations of the Nevada Department of

Taxation, which incorporated some of the proposed amendments or suggestions of the parties attending the workshops. The Commission, on or about March 3, 2008, adopted said regulation.

A copy of the summary of the public response, if any, to the proposed regulation may be obtained from the Nevada Department of Taxation, 1500 College Parkway, Suite 115, Carson City, Nevada 89706, 775-684-2096, or email to efierro@tax.state.nv.us.

2. The number persons who:

- (a) Attended each hearing/workshop: October 18, 2007 – 14 (approximately);
January 23, 2008 – 11 (approximately);
- (b) Testified at each hearing/workshop: several people testified at the October 18, 2007 workshops;
- (c) Submitted to the agency written comments: At least one (1) written comment was submitted.

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 notices posted at the Nevada State Library; various Department locations throughout the state; and at the Main Public Libraries in counties where an office of the Department is not located.

The Department and the general public commented on all of the proposed language changes during the workshop process. Members of the NTC, Department, and general public commented during the Adoption Hearing.

In sum, most people testifying were generally in favor of the Streamlined Sales and Use Tax Agreement and the proposed regulation. Both the Nevada Retail Association and the Nevada Taxpayers' Association testified as such. Other individuals testifying were concerned about the definition of "sale" and how leases would be treated with the adoption of this regulation.

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Department at (775) 684-2063 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at efierro@tax.state.nv.us.

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 permanent regulation was adopted on March 3, 2007 and included some of the changes suggested at the workshop.

Moreover, the Commission adopted R021-08 but with two (2) changes:

1. In section 31, paragraph 4(b), the Commission removed the second sentence: “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.”

2. In Section 32, the Commission deleted paragraph 2(c), which begins with the phrase: “Title to the property passes to the purchaser...” In doing so, the Commission substituted a semi-colon (“;”) for a period (“.”) at the end of paragraph 2(b) and removed the word “and.”

5. The estimated economic effect of the adopted regulation 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

The proposed regulations present no reasonably foreseeable or anticipated adverse economic effects to businesses or to the general public. It is anticipated the regulations promote the administrative appeal process by assisting certain taxpayers who, under certain circumstances, have failed to timely file an appeal to the Tax Commission.

(b) Both immediate and long-term effects.

The proposed regulations present no reasonably foreseeable or anticipated immediate or long-term economic effects to businesses or to the general public.

6. The estimated cost to the agency for enforcement of the adopted regulation.

The Department anticipates little, if any, additional cost to administer the regulations.

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

There are no known state or government agency regulations that the proposed amendments duplicate.

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

There are no known federal regulations regarding Nevada’s sales and use tax laws.

- 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 Nevada Tax Commission is not aware of any provision in this regulation that provides for a new fee, or increases an existing fee.