

LCB File No. R106-09

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

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, particularly provisions governing resale certificates and good faith.

Section 1. Chapter 372 of NAC is hereby amended by adding thereto the provisions set forth in sections 2 through ___ of this regulation.

Sec. 2. 1. *A person who makes a sale of tangible personal property is relieved from the presumption that the gross receipts are subject to tax if they receive a resale or exemption certificate from the purchaser or obtain the data required to complete a resale or exemption certificate.*

2. The resale or exemption certificate shall be in a form prescribed by NAC 372.730.

3. A person may accept a paper resale or exemption certificate or may accept the resale or exemption certificate or the information necessary to complete a resale or exemption certificate in some other format. If a paper resale or exemption certificate is used it must be signed by the purchaser.

4. A seller is relieved of the tax otherwise applicable if the seller obtains a fully completed resale or exemption certificate or obtains the data elements required to complete a resale or exemption certificate. The seller shall have a minimum of 90 days subsequent to the date of sale to obtain the information.

5. If the seller has not obtained a resale or exemption certificate or all relevant data elements as provided in subsection 4 of this regulation, the seller may, subsequent to a request for substantiation by the Department, either prove that the transaction was not subject to tax by other means or obtain a fully completed resale or exemption certificate from the purchaser. The seller shall have a minimum of 120 days to obtain such proof.

6. If it is determined that the purchaser improperly claimed an exemption, the seller is relieved from the tax otherwise applicable if he followed the requirements of this regulation.

This relief from liability does not apply to

- a. A seller who fraudulently fails to collect tax; or*
- b. A seller who solicits purchasers to participate in the unlawful claim of an exemption.*

7. If it is determined that any portion of this regulation is invalid, taxpayers who followed the provisions of this regulation are relieved from the additional tax, if any, that would otherwise be applicable pursuant to the provisions of chapters 372 and 374.

Sec. 2. NAC 372.730 is hereby amended to read as follows:

1. ~~[Except as otherwise provided in NAC 372.640,]~~ The following forms of resale or exemption certificate *are* prescribed by the Commission pursuant to NRS 372.165, 372.235, 374.170, 374.240, *372.347, 374.352* and chapter 377 of NRS:

a. The uniform exemption certificate as adopted by the Streamlined Sales Tax Governing Board may be used as either a resale certificate or an exemption certificate.

b. The following form may be used as a general resale certificate:

I hereby certify that I hold valid seller's permit number issued pursuant to chapters 372, 374 and 377 of the Nevada Revised Statutes; that I am engaged in the business of

selling; and that the tangible personal property described in the second paragraph of this certificate, which I purchase from:, will be resold by me in the form of tangible personal property. I further certify that in the event any of the property is used for any purpose other than retention, demonstration or display while I am holding it for sale in the regular course of business, it is understood that I am required by chapters 372, 374 and 377 of the Nevada Revised Statutes to report it and pay the tax measured by the purchase price of the property.

Description of the property to be purchased:

.....
.....

Purchaser.....

Address

.....

Signature of Authorized Purchaser

.....

Dated: (day) of (month) of (year) at.....

c. The newspaper resale certificate provided in NAC 372.640.

d. A letter of exemption issued by the Department.

2. *If the general resale certificate provided for in subsection 1(b) is used,* for the description of the property to be purchased there may appear either:

a. An itemized list of the property to be purchased for resale; or

b. A general description of the kind of property to be purchased for resale.

3. If *the general resale certificate provided for in subsection 1(b) is used and* the seller is not required to hold a permit because he sells only property of a kind the sale of which is exempt from the tax, or because he makes no sales in this State, he should make an appropriate notation to that effect on the certificate in the space designated for the seller's permit number.

4. A separate certificate need not be taken for each sale. The Commission will recognize blanket certificates if given in advance to cover all orders except those orders which specify otherwise. A certificate which describes the property to be purchased pursuant to paragraph (b) of subsection 2 is valid as a blanket certificate until it is revoked in writing.

5. The certificates *or the data necessary to complete a certificate* must be maintained in the taxpayer's file.

6. The good faith of the seller will *not* be questioned if he has *complied with the provisions of this regulation* ~~[knowledge of facts which give rise to a reasonable inference that the purchaser does not intend to resell the property, such as knowledge that a purchaser of particular merchandise is not engaged in the business of selling that kind of merchandise].~~