

AAA Team Sales Tax, LLC

April 13, 2023

Nevada Tax Commission
1550 College Parkway, Suite 115
Carson City, NV 89706

Subject: Accountability for Incorrect Nevada Tax Notes - Vending Machines- Nevada Tax Notes Issue 195, April 2023 (see enclosed) – Consider making a Nevada Administrative Code (NAC) to serve as an interpretation of Nevada Revised Statute (NRS) 360.291- Nevada Taxpayers' Bill of Rights.

Hello Commissioners,

I would like to ask the folks behind writing the article a question? Do you really understand what you wrote? If you are honest with yourself, the answer is no. If there is a vending machine that provides a hot sandwich, you would still have the issue of immediate consumption. For example, I still would want to put ketchup, mustard, and other dressings on my sandwich. Also, it is coming packaged. I have never seen a packaged item of food dispensed with a utensil by a vending machine. You may be thinking of ice cream but that is in a sealed container and still needs to be thawed before eating. As for a food item prepared by the vending machine by combining two or more ingredients, unless there is a vending machine that has artificial intelligence, I don't know how this can happen.

Even after the judicial courts, past Nevada Tax Commissions, and the Administrative Law Judges (ALJ) have ruled against them, some folks in the Department are still trying to unfairly influence Nevada Revised Statute (NRS) 372.284 by way of a Nevada Administrative Code (NAC). Ok, there was one hiccup by the Administrative Law Judge (ALJ) in the Rebel Kitchen Inc case but that was corrected by you at the December 2022 NTC meeting. Again, thank goodness for Commissioner Byram's memory of the Sparks Nugget Inc case. Also, Nevada Revised Statute (NRS) trumps NAC.

Even after your decision in the Rebel Kitchen Inc case, the Department continues to publish INCORRECT INFORMATION". The Department uses the phrase "Some food items are exempt from sales tax in certain circumstances" in the tax note (see enclosed). This phrase will not be found in Nevada Revised Statute (NRS) 372.284 or Nevada Administrative Code (NAC) 372.500. In fact, the NAC that imposed sales tax on sales of foods and beverage sold for immediate consumption through vending machines was repealed. Also, as odd it may seem, we could have the issue of a resale certificate being used. It would be interesting to see if the Department shared this information with the ALJ who presided over the Rebel Kitchen Inc case or the taxpayer representative.

The Streamlined Sales Tax Agreement focuses on improving sales and use tax administration systems for all remote sellers and for all types of internet commerce in reaction to the U.S. Supreme court decision in Quill Corp vs North Dakota. It was an attempt to offer businesses a way to voluntarily collect sales tax for states where they did not have nexus (a physical presence). Now with the South Dakota vs Wayfair decision by the U.S. Supreme Court, this agreement becomes irrelevant. The agreement has never had anything to do with sales transactions that occur within a state's border. Particularly in a storefront location. Take a look at their website and they make very clear that the agreement does not override a State's Tax Laws. Unfortunately for the taxpayers in this State, there has been an effort by the Department to make the public think otherwise. The Legislature was ill-informed by the Department when they passed NRS 360B (Streamlined Sales and Use Tax Agreement). I do believe if the Legislature was aware of how the Department's wrong use of NRS 360B hurts small businesses, they would be very upset. Vending machines owners and a small business owner like Rebel Kitchen Inc. are an example of what I am talking about. See how far fetch the audit section has gone in the last few years.

AAA Team Sales Tax, LLC

When I stated accountability for an incorrect tax note, I mean each incorrect tax note has resulted in small businesses collecting too much sales tax. The same can be said on how an incorrect audit has the same affected. The Nevada Taxpayers' Bill Rights states that taxpayers are only required to pay their fair share. When it is shown that the Department supplied the wrong tax information, the small business is told "too bad" and told that the customer is due the sales tax refund. If you are a small business, that is a lot of time wasted to correct a wrong created by the Department. I ask that when the Department continues to provide incorrect information on a certain subject (example: Food for Immediate Consumption) through a tax note, that the Department be held accountability. The Department needs to spend more time educating the public on procedural items like the appeal process instead of trying to score audit points (which in the long run has never worked out when taken through the appeal process but it is the time wasted by the small business owner that is of the most concern). As a top priority, the Department needs to publish a Technical Bulletin as required by NRS 360.133 on food. That way, the Department would have real skin in the debate.

The Nevada Tax Commission needs to consider making a Nevada Administrative Code (NAC) for sanctions against the Department when they purposely continue to publish incorrect tax notes or perform an incorrect audit after there has been judicial decision, Nevada Tax Commission decisions, and Administrative Law Judge (ALJ) decisions that went against the Department position in an audit. This NAC serve as an interpretation of Nevada Revised Statute (NRS) 360.291- Nevada Taxpayers' Bill of Rights.

Thank You and Be Safe!

Ron Voigt, Consultant, 702-321-9245

NEVADA TAX NOTES

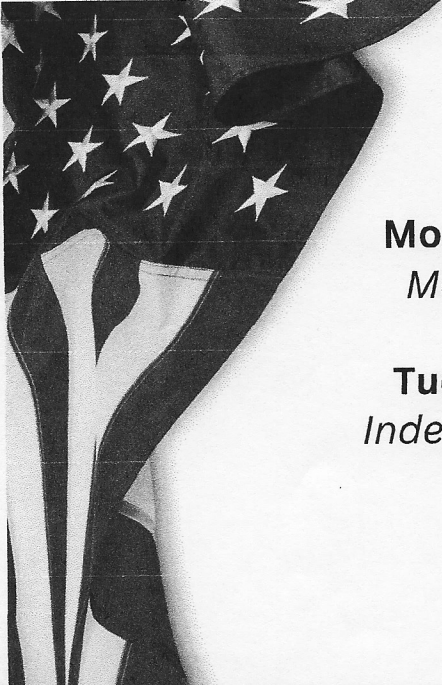
The Official Newsletter of the Department of Taxation

Inside This Issue

- Asset Sales, Garage Sales, Occasional Sales, and Sales Tax
- Vending Machines
- Public Records Requests
- Tips to Taxpayers
- Approved Regulations

Upcoming Office Closures

The Nevada Department of Taxation will be closed on the following dates.



Monday, May 29
Memorial Day

Tuesday, July 4
Independence Day

The Department of Taxation is hiring! We are recruiting for multiple positions in our Northern and Southern Nevada offices. If you are interested in applying, check out the Department's [careers page](#).



Hiring

Call Center: (866) 962-3707 Monday - Friday 6:30AM - 5:00PM

Carson City

Reno

Las Vegas

1550 College Parkway, Ste. 115

4600 Kietzke Lane Bldg. L, Ste. 235

700 E. Warm Springs Road 2nd Floor

Vending Machines

Vending machines dispense tangible personal property such that the gross receipts from the retail sales of this property may be subject to sales tax under NAC 372.500 and NAC 372.520.

Vending machine operators who sell taxable tangible personal property must obtain a sales tax permit. Such operators are required to report the gross receipts from the sales from these vending machines and remit the sales tax on those sales to the Department.

If the vending machine operator chooses to include the tax as part of the sales price for items, then there must be a notice on the machine stating, in substantial form: "The sales price of any item sold through this machine includes applicable Nevada Sales and Local Sales Tax."

Retail sales from vending machines of items other than food are taxable. Some food items are exempt from sales tax in certain circumstances.

Food items sold in vending machines are not taxable if they are not considered prepared food for immediate consumption, where the item is not sold in a heated state, where the actual vending machine process does not combine two or more ingredients, or where utensils are not provided. Examples of taxable food items include, but are not limited to, a dispensed cup of hot coffee, a soda dispensed in a cup, a hot sandwich, a packaged item of food dispensed with a utensil, or a food item prepared by the vending machine by combining two or more ingredients.

NRS 360B.095; 360B.460; and 372.085

NAC 372.500; 372.520; 372.605 and 372.607

Public Records Requests

The Department of Taxation (Department) provides access to or copies of public records pursuant to Nevada's Public Records Act. Public records include all documents and other records prepared and maintained by the Department that

Upon receipt of a public records request, the Department will determine whether it possesses responsive records and whether any such records are confidential. The Department will allow inspection or produce copies of any records that are not confidential.

Many records of the Department are confidential as a matter of law. With a few exceptions, records concerning the administration or collection of any tax, fee, assessment, or other amount required by law to be collected or the imposition of disciplinary action are confidential and privileged. In other words, most taxpayer information is confidential. If the Department determines it has a confidential record in response to a public records request, it will either redact the confidential information from the record or withhold the record in its entirety. The Department will inform the requester of the basis of such confidentiality.

The Public Information Officer for the Department responds to all public records requests submitted to the Department. The Public Information Officer will acknowledge receipt of a request within five business days and produce the requested record within that same timeframe or inform the requester of the additional time necessary to review and produce any responsive records.

In addition to public records requests, members of the public may also submit requests for information to the Public Information Officer. The Public Information Officer will track requests for information and provide responses as soon as the requested information can be researched, gathered, and verified by the Department.

Requests for public records and requests for information can be made to the Department's Public Information Officer by email, postal mail, or through this [link](#).