

**PROPOSED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R123-18**

October 11, 2019

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

AUTHORITY: §§1 and 2, NRS 360.090, 360B.110, 372.385 and 372.725.

A REGULATION relating to taxation; clarifying, for purposes of the sales tax, provisions concerning certain charges assessed against a person who rents or leases tangible personal property; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Under existing law, for the purposes of the sales tax, the gross receipts from rentals or leases of tangible personal property must be reported and the tax paid in accordance with such regulations as the Department of Taxation may prescribe. (NRS 372.385) Existing regulations provide that, if a lessee of tangible personal property is held responsible for damages to the property, any charges assessed against the lessee for those damages are exclusive of the original rental or lease contract for purposes of the sales tax. Instead, the Department will treat such charges as a taxable sale of tangible personal property from the person who makes the repair for the lessor or from the lessor for the responsible party. (NAC 372.922, 372.940) This regulation clarifies that the provisions applicable to charges for damages to rented or leased property also apply to charges assessed against a lessee who is held responsible for the loss of the rented or leased property. Thus, the Department will treat such charges as a taxable sale from the person who provides a replacement for the property to the lessor in the same manner as from a person who makes a repair for the lessor. **Section 1** of this regulation makes this clarification applicable to tangible personal property that is acquired for lease or rental on or before June 15, 2005. **Section 2** of this regulation makes this clarification applicable to tangible personal property that is acquired for lease or rental after June 15, 2005.

**Section 1.** NAC 372.922 is hereby amended to read as follows:

372.922 Except as otherwise provided in NAC 372.932:

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 the person; or

(b) The person's 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 the person's vendor on the sales price of the property to him or her; 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 or she 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 or she shall pay the use tax due in this State measured by:

(1) The cost of the property to him or her; or

(2) His or her gross lease or rental charges.

4. If the purchaser:

(a) Pays the tax to his or her vendor on the sales price of the property to him or her, 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 or her gross lease or rental charges, the purchaser may seek reimbursement for the tax from his or her customers measured by the lease or rental charges.

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 or her 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 the person gives a resale certificate to the vendor from whom he or she purchases the property.

7. A person who initially elects to pay the tax measured by his or her 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 or her. The Department shall not grant a refund or credit for any taxes paid or due before he or she 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 *or loss* 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} fee,”~~ “damage ~~{reimbursement.} reimbursement,”~~ “*loss charge*” or “*replacement charge.*” The Department will treat such charges as a taxable sale of tangible

personal property from either the person making the repair *or providing the replacement* 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. 2.** NAC 372.940 is hereby amended to read as follows:

372.940 For the purposes of NAC 372.938:

1. The gross lease or rental charges for the lease or rental of tangible personal property include any mandatory charges, whether or not separately stated, for any service, activity or function made in conjunction with the lease or rental of the tangible personal property. The term “mandatory charges” may include, for example and without limitation, any:

(a) Fee or charge for mileage.

(b) Fee or charge for the return of the property, commonly referred to as a “drop-off charge.”

(c) Fee or charge for the reinstatement of a lease or rental agreement.

(d) Reimbursement for fixed costs or expenses, including, without limitation, management fees, documentation fees, interest, financing fees and carrying charges, collection call charges, repossession charges and billing charges.

2. Optional charges made in connection with the lease or rental of tangible personal property, if separately stated on the applicable invoices, contracts or other documents, are not subject to the tax. The term “optional charge” may include, for example and without limitation, any:

(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, including, without limitation, for the original delivery of the property.

(f) Fee or charge for maintaining, cleaning or altering the property. If maintenance of the property is required by the lease agreement and the lessee has any options regarding the person who may perform that maintenance, any charge for that maintenance shall be deemed to be optional and is not subject to the tax.

(g) Fee or charge for insurance, such as personal accident, extended protection or coverage for personal property.

(h) Legal fees for the negotiation of lease terms.

3. The gross lease or rental charges for the lease or rental of tangible personal property do not include any of the following charges, if separately stated on the applicable invoices, contracts or other documents:

(a) Any fee for access to an airport.

(b) Any charge for the reimbursement of property taxes.

(c) Any charge for the reimbursement of fees for filings made under the Uniform Commercial Code.

(d) Any late payment penalty.

(e) Any disposition fee.

4. Any charges assessed for damages *or loss* 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 fee*,” “damage ~~reimbursement~~ *reimbursement*,” “*loss charge*” or “*replacement charge*.” The Department will treat such charges as a taxable sale of tangible personal property from either the person making the repair *or providing the replacement* for the lessor or from the lessor for the responsible party.

5. The gross lease or rental charges for the lease or rental of tangible personal property between related or affiliated persons must be reported at fair market value. If a party to such a transaction significantly understates those charges, that action creates a rebuttable presumption that the party made that understatement with the intent to evade the payment of the tax, and the Department may, pursuant to NRS 360.300, compute the gross lease or rental charges at fair market value. As used in this subsection, “fair market value” means the amount for which property could be leased or rented in an open competitive market.





STEVE SISOLAK  
Governor

JAMES DEVOLLD  
Chair, Nevada Tax Commission  
Melanie Young  
Executive Director

STATE OF NEVADA  
DEPARTMENT OF TAXATION

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Posted 02/6/2020

**NOTICE OF INTENT TO ACT UPON A REGULATION**

**Notice of Hearing for the Adoption of**

**LCB File No. R123-18**

**Nevada Tax Commission**

The Nevada Tax Commission will hold a Public Hearing at **9:00 a.m. on Monday, March 9, 2020** at the Nevada Legislative Building 401 S. Carson Street, Room 2135, Carson City, NV & Video Conferenced at Legislative Counsel Bureau Grant Sawyer State Office Building 555 E. Washington Ave., Room 4412, Las Vegas, NV. The purpose of the hearing is to receive comments from all interested parties regarding the adoption of a regulation that pertains to LCB File No. R123-18.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. Need and purpose of the proposed regulations or amendments

The need and purpose of this proposed regulation is to clarify as to the different charges associated with a rental or lease that the Department will treat as a taxable sale of tangible personal property from either the person making the repair or providing the replacement for the lessor or from the lessor for the responsible party.

2. How to obtain the approved or revised text of regulations prepared by LCB

You may obtain a copy of the proposed regulation by writing to the Nevada Department of Taxation, 1550 College Parkway, Carson City, Nevada, 89706; or by calling their office at (775) 684-2059. The Revised Proposed Regulation is also available for review and down load on the Department of Taxation website: <https://tax.nv.gov/> and the Legislature website: <https://www.leg.state.nv.us/Register/2018Register/R123-18P.pdf>

3. Methods used in determining the impact on a small business

The Department used informed, reasonable judgment in determining that there will not be a negative impact on small businesses due to the nature of the regulation changes.

4. Estimated economic effect of regulations on business and the public

a. Adverse and beneficial effects

The proposed permanent regulation presents no reasonably foreseeable or anticipated adverse economic effects to businesses or to the general public.

b. Immediate and long-term effects

The proposed permanent regulation presents no reasonably foreseeable or anticipated immediate or long-term effects to businesses or to the general public.

5. Cost for enforcement of the regulations

There is no anticipated cost for enforcement is to be determined.

6. Overlap or duplication of other state or local governmental agencies

The proposed regulation does not overlap or duplicate any regulation of other state or local governmental entities.

7. Regulation required by federal law

Not applicable.

8. More stringent than federal regulations

The Department is not aware of any similar federal regulations of the same activity in which the state regulations are more stringent.

9. New or increases in existing fees

The proposed regulations do not include new or increase in existing fees.

Persons wishing to comment on the proposed action of the Nevada Tax Commission may appear at the above scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Nevada Tax Commission, 1550 E. College Parkway, Suite 115, Carson City, Nevada 89706. Written submissions must be received at least two weeks prior to the above scheduled public hearing.

A copy of this notice and the proposed permanent regulations to be adopted and amended will be on file at the Nevada 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 permanent regulations to be adopted and amended will be available at the Department of Taxation, 1550 College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building L, Suite 235,

Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Las Vegas, Nevada; Department of Taxation- 2550 Paseo Verde Parkway, Suite 180, Henderson, 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 text of the proposed permanent regulations will include the entire text of any section of the Nevada Administrative Code, which is proposed for amendment or repeal. Copies will be mailed to members of the public upon request. A reasonable fee may be charged for copies if deemed necessary.

Under NRS 233B.064(2), when adopting any regulation, the Agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporation, and its reason for overruling the consideration urged against its adoption.

 Management Analyst III for  
Shellie Hughes, Chief Deputy Executive Director  
February 6, 2020

Members of the public who are disabled and require accommodations or assistance at the meeting are requested to notify the Department of Taxation in writing or by calling 775-684-2030 no later than five working days prior to the meeting.

**Notice has been posted at the following locations:** The Department of Taxation - 1550 College Parkway, Carson City, Nevada. Notice was mailed to each County Public Library for posting.

**Notice has been EMAILED for posting at the following locations:** Department of Taxation - 4600 Kietzke Lane, Building L, Suite 235, Reno, Nevada; Department of Taxation - 555 E. Washington Avenue, Grant Sawyer Office Building, Las Vegas, Nevada; Department of Taxation - 2550 Paseo Verde Parkway, Suite 180, Henderson; The Legislative Building, Capitol Complex, Carson City, Nevada; and the Nevada State Library, 100 Stewart Street, Carson City, Nevada, Interested Parties Group & Mailing List maintained by the Department. Notice of this meeting was posted on the Internet through the Department of Taxation website <https://tax.nv.gov/>, on the Legislative website at [www.leg.state.nv.us](http://www.leg.state.nv.us), and at the Nevada Public Notice Website <https://notice.nv.gov/>.

**SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY  
NRS 233B.0608**

**LCB File No. R123-18**

**1. Background**

Under existing law, for the purpose of sales tax, the gross receipts from rentals or leases of tangible personal property must be reported and the tax paid in accordance with such regulations as the Department of Taxation may prescribe. (NRS 372.385) Existing regulations provide that, if a lessee of tangible personal property is held responsible for damages to the property, any charges assessed against the lessee for those damages are exclusive of the original rental or lease contract for purpose of sales tax. The Department will treat such charges as a taxable sale of tangible personal property from the person who makes the repair for the lessor or from the lessor for the responsible party. (NAC 372.922, 372.940) This regulation clarifies that the provisions applicable to charges for damages to rented or leased property also apply to charges assessed against a lessee who is held responsible for the loss of the rented or leased property. Thus, the Department will treat such charges as a taxable sale from the person who provides a replacement for the property to the lessor in the same manner as from a person who makes a repair for the lessor. Section 1. of this regulation makes this clarification applicable to tangible personal property that is acquired for lease or rental on or before June 15, 2015. Section 2. of this regulation makes this clarification applicable to tangible personal property that is acquired for lease or rental after June 15, 2015.

The Department of Taxation has drafted Proposed Regulation R123-18, to provide clarity as to the different charges associated with a rental or lease that the Department will treat as a taxable sale of tangible personal property from either the person making the repair or providing the replacement for the lessor or from the lessor for the responsible party.

**2. A description of the manner in which comment was solicited from affected small businesses, a summary of their responses, and an explanation of the manner in which other interested persons may obtain a copy of the summary.**

The Department of Taxation prepared and disseminated a questionnaire seeking information from small businesses regarding the possible impact of LCB File No R123-18. The proposed language and questionnaire was dispersed to the following:

- Emailed by the Department to 210 members of its interested parties list.
- Emailed by the Nevada Taxpayers Association to its list of interested taxpayers.

No response was received for LCB File No. R123-18.

**3. The manner in which the analysis was conducted, including the methods used to determine the impacts of the proposed regulation on small business.**

The Department analyzed the LCB Draft of Proposed Regulation R123-18 prior to mailing out the Small Business Impact Questionnaire and used informed, reasonable judgment in determining that there will not be an impact on small businesses due to the nature of the regulatory changes.

No response was received for the LCB Draft of Proposed Regulation R123-18. The proposed regulation provides clarification for the taxability for assessed charges on the rental or lease contract. The Department has determined that these revisions will not impact small businesses.

**4. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate:**

**Direct and indirect adverse effects**

The Department finds that there is no reasonable, foreseeable or anticipated direct or indirect adverse economic effect on small businesses.

**Direct and indirect beneficial effects**

The Department finds that there is no reasonable, foreseeable or anticipated direct or indirect beneficial economic effect on small businesses.

**5. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.**

The proposed permanent regulation presents no reasonable, foreseeable or anticipated adverse impact to small businesses; therefore no efforts were required to reduce the impact on small businesses.

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

The proposed permanent regulation presents no significant foreseeable or anticipated cost or decrease in costs for enforcement.

- 7. If the proposed 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 permanent regulation does not include new fees or increase an existing fee.

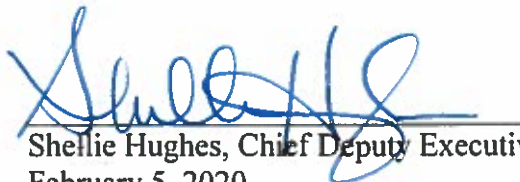
- 8. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.**

The proposed regulation does not overlap or duplicate any regulation of federal, state or local government entities.

- 9. The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.**

The Department has determined that there will be no adverse impacts to small businesses based on its analysis.

**I hereby certify, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that this statement was properly prepared and the information contained herein is accurate.**



Shellie Hughes, Chief Deputy Executive Director  
February 5, 2020

# LCB File No. R123-18

## Background:

- We drafted this regulation to provide guidance and clarity for taxpayers on the taxability of damage charges.
- Existing regulations treat damage charges for which the lessee is held responsible as taxable sales of tangible personal property from the person making the repair for the lessor or from the lessor for the responsible party.
- This charge is sometimes referred to as “charge-back fee” or “damage reimbursement.”

# Purpose of R123-18

## **This regulation:**

- \* Clarifies that charges for “loss” are also taxable sales of tangible personal property.**
- \* Clarifies that the person who provides the replacement is the person making the taxable sale.**
- \* Clarifies that this charge can also be referred to as a “loss charge” or a “replacement charge.”**



# Contents of R123-18

## Section 1 - subsection 13

- Adds that charges for loss, referred to as a “loss charge” or “replacement charge” will be treated as a taxable sale from the person providing the replacement.

## Section 2 - subsection 4

- Adds identical language