

AAA Team Sales Tax, LLC
702-321-9245

April 16, 2024

Nevada Tax Commission
3850 Arrowhead Drive, 2nd Floor
Carson City, NV 89706

Subject: January 2024 Nevada Tax Notes-Auto Repair Shop Section, page 4-5 (see enclosure)

The Department's audit section interpretation of Nevada Administrative Code (NAC) 372.390 and NAC 372.400 violates Executive Order 2023-003

Hello Commissioners! You all need to inform the Department's audit section there is a new Governor (Sheriff) in town and his name is Joe Lombardo. I believe Governor Lombardo would not be happy with this section of the Tax Note because their interpretation of NAC 372.390 and NAC 372.400 violates the intent of Executive Order 2023-003. The violations are as follows:

1. The Department's audit section is negatively impacting the Economic Growth of small auto repair shop owners by telling them what they can charge for parts and labor. I will ask the Department's audit section "Do you all know more on how to operate an auto repair shop better than the owner?" If common sense is used, the answer is no. The Department's audit section is using the words "insubstantial" and "substantial" in an attempt to justify doing an improper estimated audit on a Taxpayer that has provided good accounting records but they think they know more than the owner on how to run the business because they do not like the owner's price strategy for part charges and labor charges. Again, the Department's audit section has no business telling the business owner what to charge for parts and labor. The Department's audit section is not authorized or better yet even qualified to do a price strategy audit of businesses. The Department's audit section is authorized to perform sales and use tax audits. In simple terms, compliance audits looking at retail sales that may subject to sales tax or purchases for personal use that are subject to use tax. They are not authorized to set price policy for the business.
2. The Department's audit section is violating the Harrah's Entertainment decision issued by the First Judicial District of the State of Nevada in Carson City. That decision stated that sales tax imposed pursuant to NRS 372.105 is only imposed on retail sale/retail sale price of tangible personal property. The Department's audit section is attempting to make the public believe sales tax is owed on a "fair retail selling price" which at the least is deceitful. They are trying to take away a business owner's sole right to give a discount to a very good customer. Because remember now, to be fair in they make believe business world, the owner would have to give the discount to all customers. Very crazy thinking by folks who have never worked in the real world of auto repair shops. The Department's audit section does not have the authorization by NRS 372 to decide what is fair. They are trying to use NAC 372 to over-ride NRS 372. The Nevada Supreme Court has said no to such attempt but the Audit Tax Manager keeps trying. The customers are the ones that decide if the part charge or labor charge is fair. Nevada sales tax is not owed on a "fair retail selling price" but on the retail sales/retail sale price. The retail sales price is defined in NRS 372.025. There is nothing in Nevada Revised Statute 372 that states "fair retail selling price.". That is a self-created definition by the Department's audit section.

The Department's audit section may be confused and in a mystery world but not the common-sense person. A resale certificate is used for purchases of inventory that will be resold. It cannot be used for personal purchases such as shop tools or expense items such as hand cleaner used in the shop.

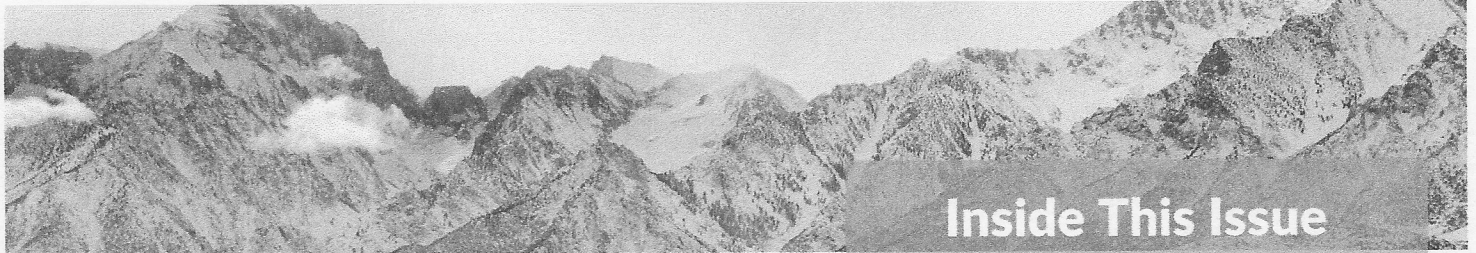
A sales tax and use tax audit of an auto repair shop is very simple to do. Confusion is caused when the Department's audit section tries to do a price strategy audit of part sales. Again, they are not qualified to do such an audit. The Department's audit section needs to use common sense as required by the Nevada Taxpayers' Bill of Right when doing an audit. Recommend the NTC bring back the previous version of NAC 372.390 because it made more common sense and does not violate Executive Order 2023-003.

Thank You and Be Safe!

Ron Voigt

NEVADA TAX NOTES

The Official Newsletter of the Department of Taxation

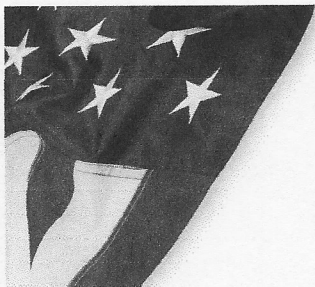


Inside This Issue

CARSON CITY OFFICE NEW ADDRESS
3850 Arrowhead Drive, 2nd Floor
Carson City, NV 89706

Upcoming Office Closures

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



Monday, January 15
Martin Luther King Day

Monday, February 19
President's Day

Federal Income Tax

As the new year begins, so does a new tax season. The Nevada Department of Taxation would like to remind you that it is not associated with the Internal Revenue Service (IRS) and cannot assist with or answer any federal income tax questions. The State of Nevada does not impose an individual or business income tax. The Department may ask for federal income tax returns as informational documents. Please direct your federal income tax inquiries to the IRS website, www.irs.gov. text

- New Tax Laws SB277 and AB430
- Medical Sales of Cannabis
- Penalty and Interest
- Consumer Use Tax
- Sales and Use Tax: General Repairs and Auto Repair Shops
- Ask the Advisor
- Tips to Taxpayers - Reminders!

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](#).



Call Center: (866) 962-3707 Monday - Friday 7:30AM - 5:00PM

Carson City
3850 Arrowhead Dr., 2nd Floor
Carson City, Nevada 89706
Phone: (775) 684-2000

Reno
4600 Kietzke Lane Bldg L, Ste. 235
Reno, Nevada 89502
Phone: (775) 687-9999

Las Vegas
700 E. Warm Springs Road 2nd Floor
Las Vegas, Nevada 89119
Phone: (702) 486-2300

Sales and Use Tax: General Repairs and Auto Repair Shops

There is often confusion and mystery surrounding when a repairer should give a resale card (or resale certificate) to its supplier. Generally, repairers may be considered a consumer or a retailer depending on whether the value of the parts and materials is "insubstantial" or "substantial" in relation to the total charge. This article provides definition and direction in this area.

Is the Repairer a Consumer or a Retailer?

Wrong Guidance

In general, a repairer is a consumer when the value of the parts and materials that are incorporated into to the repaired item are "insubstantial" in relation to the total charge. Examples of repairs as a consumer may include repairs to tires, tubes, clothing, watches, jewelry, shoes, and the repair of a table by filling a dent with wood putty or filler, if the value of the parts and materials is insubstantial. A resale card should not be provided and sales or use tax must be paid on the purchase of parts and materials of insubstantial value. The repairer, as a consumer, should not separate the materials on the sales invoice, and no sales tax should be charged. If the parts and materials are separated from the repair or installation labor on the sales invoice, the repairer must collect and remit the sales tax on the sales price of the parts and materials, even if the value is insubstantial.

A repairer is a retailer when the value of the parts and materials that are incorporated into the repair are "substantial" in relation to the total charge. Example of repairs as a retailer include repairs to motor vehicles, airplanes, machinery, appliances, farm machinery, boats, the repair of furniture involving expensive cushion filling or other materials for covering, where the value of the parts and materials is substantial. A resale card should be provided to the supplier when purchasing items that become a part of the repaired item. In accordance with NAC 372.390, the parts and materials must be stated separately from the untaxed labor at the fair retail-selling price on the sales invoice. The repairer, as a retailer, must collect and remit the sales tax on the sales price of the parts and materials. If the repair labor, parts, and materials are not stated separately on the sales invoice, the entire repair charge is subject to sales tax.

Auto Repair Shops

In the case of auto repair shops, parts and materials are substantial in value to the total charge. In accordance with NAC 372.390 and NAC 372.400, parts and materials and the repair labor must be separately stated at the fair retail selling price.

Shop Charges

Auto repair shops often include a "shop charge" (also "shop supplies" or "materials") item on a repair order or invoice which is subject to sales tax. Repair shops charge either a set dollar amount or a percentage of labor and/or parts. The shop charge typically includes incidental parts and materials that become part of the repaired item and thus sold to the customer. Examples include miscellaneous nuts and bolts, touch up paint, grease, marginal amounts of fluids (less than full containers), and similar. A resale card should be given to the supplier when purchasing items that become part of the taxable shop charge.

(continued)

Sales and Use Tax: General Repairs and Auto Repair Shops, Continued

Repair shops that include shop charges on a sales invoice should exercise caution and ensure that the taxable shop charge fairly represents the cost of the untaxed materials purchased for resale, and that it does not include consumables and reusable shop supplies that are not sold to the customers.

Consumables

Wrong Guidance

Purchases of consumables are subject to sales or use tax. Consumables are materials that are disposable or used up in the performance of the repair. Consumables are not purchased for resale and should not be included in the taxable shop charge. Examples include solvents, masking tape, stir sticks, sandpaper, and brake cleaner that do not become a part of the repaired item. The cost of consumables is an overhead expense of the business which may be recouped as part of markup on sales. A resale card should not be given to the supplier when purchasing consumables, and sales or use tax should be paid by the repair shop upon purchase of these items.

Reusable Shop Supplies

Purchases of reusable shop supplies are subject to sales or use tax. Reusable shop supplies are items that are purchased for use by the repair shop and do not become a part of the repaired item. Reusable shop supplies are not purchased for resale and should not be included in the taxable shop charge. Examples include items such as shop rags, shop coats, fender or body protection covers, and other items that are not disposable or otherwise used up in the performance of the repair. The cost of reusable shop supplies is an overhead expense of the business which, like consumables, may be recouped as part of the markup on sales. A resale card should not be given to the supplier when purchasing these shop supplies, and sales or use tax should be paid by the repair shop upon purchase of these items.

NRS 372.025, NRS 372.060, NAC 372.065, NRS 372.105, NRS 372.185, NRS 360B.480, NAC 372.390, NAC 372.400

Ask the Advisor Upcoming Class: Tuesday, January 16, 2024

The Department is hosting Ask the Advisor classes again to all taxpayers which focus on general information about Sales & Use Tax and Modified Business Tax. There are also rotating guest presenters from other state agencies, as well as local small business resources in Northern and Southern Nevada. These classes will be available online to reach more taxpayers and the next class will be Tuesday, January 16, 2024, at 9:00am. Please visit <https://NevadaTax.as.me/AsktheAdvisor> to sign up to attend the class. These classes will be offered the third Tuesday of each month, except in November and December.

