



Tray Abney
Nevada State Director

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Yvonne M. Nevarez-Goodson
Chief Deputy Executive Director
Nevada Department of Taxation
1550 College Parkway
Carson City, Nevada 89701

Re: Proposed Amendment to NAC 372.938

Dear Ms. Nevarez-Goodson:

Thank you for responding to our request that the Tax Commission amend NAC 372.938. Our proposal does not alter the general rule that a lease or rental of tangible personal property constitutes a retail sale. It would merely delete the “deemed election” found in subsection 3 of NRS 372.938. As we previously noted, this “deemed election” can be a trap for the unwary.

Your letter suggests our proposal may impact compliance with the Streamline Sales and Use Tax Agreement (“SSUTA”), but that is not the case. To comply with the SSUTA, the Legislature adopted the Simplified Sales and Use Tax Administration Act found in Chapter 360B. There was, however, a concern that there was a conflict between the provisions adopted in Chapter 360B and the Sales and Use Tax Act found in Chapter 372. Specifically, under NRS 372.060, the lease or rental of tangible personal property is only characterized as a sale if the transaction is in lieu of a transfer of title. The statute and regulations drew a distinction between a true lease which was not subject to sales tax and a sale transaction disguised as a lease which was subject to sales tax. However, under NRS 360B.450, the distinction between a true lease and a disguised sale is not recognized. Instead, virtually all lease or rental transactions are characterized as a sale. The Tax Commission attempted to reconcile the conflict by adopting NAC 372.934 to 372.946.

The reconciliation of these provisions did not require the “deemed election” included in subsection 3 of NAC 372.938. Furthermore, our proposed deletion of the “deemed election” will not change the characterization of a lease or rental of tangible personal property as a “sale.” Simply put, the removal of the “deemed election” will not jeopardize continued compliance with the SSUTA.

We were pleased to see that Governor Lombardo issued Executive Order 2023-003. It addresses a concern that some regulations have unintended consequences and place an unnecessary burden on business. In fact, we believe that this is just the type of regulation that Governor Lombardo is directing

agencies to fix. As such, we respectfully recommend that our proposed change be submitted by the Department of Taxation as one of the ten regulations for suggested repeal.

As we previously noted, a taxpayer who fails to make the election provided for in NAC 372.938 on the first return following the purchase of the property should be able to remedy their mistake by later filing the return and paying the tax. The State would be made whole in this situation because in addition to paying the tax, the taxpayer would be required to pay interest and penalties. However, the "deemed election" does not allow a taxpayer to correct their mistake. Instead, they are deemed to have elected to pay sales tax on their rental charges. When this happens the taxpayer is unlikely to know they made a "deemed election" and when it is discovered, possibly years later, the liability is likely to force them out of business. Our proposal would eliminate the "deemed election."

We believe the "deemed election" in subsection 3 of NAC 372.938 is the type of regulatory provision the Executive Order is intended to address. Our proposed amendment eliminates the tax trap, ensures the State receives the tax, interest and penalties it is entitled to, and does not inhibit economic growth or unduly burden business. We look forward to working with you to see this change implemented.

Thank you,



Tray Abney

Nevada State Director, NFIB

cc: Tony Wren, Chair, Nevada Tax Commission

Shellie Hughes, Executive Director, Nevada Department of Taxation

Cindy Creighton, Nevada Taxpayers Association