

## AAA Team Sales Tax, LLC

March 31, 2023

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

**Subject: Governor Joe Lombardo's executive order to improve state regulations.**

Hello Commissioners,

1. The Department needs to explain to the public, the difference between the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC). The Nevada Revised Statute (NRS) is "Tax Law" while the Nevada Administrative Code (NAC) is the Department's viewpoint of the NRS. The NAC has been overruled during the taxpayer's appeal process on a number of occasions. The most important occasions to date dealt with NRS 372.284-Food for Human Consumption for the sales and use tax (Sparks Nugget Inc vs Nevada Department of Taxation) and the appeal of NRS 360.203 for the Modified Business Tax (Legislature v. Settelmeyer). I do believe a better out-reach program by the Department will not only produce more revenue for the State but it will also create a fairer environment for small businesses.
2. Discussions about the Governor's executive order needs to be held in public hearings before the Nevada Tax Commission that are run by industry experts (example: small businesses). Allowing the Department to run a workshop is like letting the "Fox guard the Chicken Coop". Only bad things will happen for the taxpayer. The Department needs help from the industry experts (example: small business owners). In my thirty (30) years of working within the audit realm, the most productive audits were the result of learning from the auditee (example small business owner). The owner knew the business environment better than myself. During separate occasions at recent NTC meetings, Commissioner Brown and Commissioner Johnson asked the Tax Audit Manager a question about the auditee's internal controls. Each time, the Tax Audit Manager failed to clearly answer the question. The reason is because he does not require his staff (Tax Managers, Audit Supervisors, and auditors) to learn the auditee's business environment. The current audit staff does very little communicating with the taxpayer during the audit and have a "I know it all attitude". Now, I will ask you, how do they know it all, if they have never operated or own a small business and felt and lived the responsibilities that come with it. The Tax Audit Manager likes to have his audit staff refer to Nevada Administrative Code (NAC) 360.130-Burden of proof; presentation of evidence in an attempt to shift responsible for the audit to the taxpayer (example: small business owner). Commissioners, I know you will agree that is a flawed audit approach. I will say it again "The owner knows the business environment better than the Department. It is very important the Department be willing to learn from the auditee (small business owner) in order to be fair to the auditee (small business owner). I will give another example as it relates to your Commission. Each of you bring a unique background. In fact, in my opinion, that is what makes you better than an audit committee at a major corporation. If Commissioner Byram had not remembered the Sparks Nugget Inc case, a great injustice may of happen in the Rebel Kitchen case. If not for Commissioner Witt sharing his knowledge of farming, a fair outcome for Solace Enterprises LLP may not occur. The questions asked by Commissioner Brown and Commissioner Johnson concerning internal controls came from their business world experience. Commissioner Lipman, your opportunity will come when an answer about accounting practices or how something is recorded on a federal tax return would be helpful. Having industry experts (example' small business owners) run the process during public hearings will result in better state regulations. How? Because it offers the Department an opportunity to learn the small business world.
3. Since the format for the workshop on April 7, 2023 and April 21,2023 have already been set, below are my recommended changes to the Nevada Administrative Code (aka NAC). They are stated in order of importance:
  - A. NAC 360.130-Burden of proof; presentation of evidence - Change the burden requirement to the preponderance of the evidence which is what you find in civil suits in our country. The current language puts too much of a burden on the taxpayer (example: small business owner) in many ways.

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- First, the financial cost of getting a lawyer or a Certified Public Accountant (CPA). By the way, there are many lawyers and CPAs that do not know Nevada sales and use tax. It is a unique area to specialize in. Secondly, the emotional side. How many people are really ready to talk before a Administrative Law Judge (ALJ) or the Nevada Tax Commission. It can be scary. The NAC needs to be re-written to where the Department employee (example: audit staff or revenue staff) needs to be required to do more of an oral communication presentation with written supporting documentation. The current language is that the taxpayer is guilty until he or she proves otherwise. I believe in our country, it is "You are presumed innocent until proven guilty". Which brings another question "Is the current language in violation of federal law"? This is just a question for thought!
- B. NAC 372.605 and 372.607 Food for Immediate Consumption – If there is any NAC that has been more messed up, it is this one. The wording needs to go back to when I joined the Department in 2002. The Nevada Supreme Court, Nevada Tax Commission, and the Administrative Law Judge (ALJ) have already ruled that the streamline sales tax agreement has nothing to do with taxability. The bible for the taxability of food is NRS 372.284 Food for Human Consumption. If for some reason you decide to keep the current language then add a phrase that the streamline sales tax agreement has nothing to do with taxability. Hopefully that will help avoid rogue auditors.
- C. NAC 372.200 Construction contractors: Tangible personal property purchased for performance of a contract - Again we need to go back to the previous language that we had a few years ago. There needs to be a phrase that states "When a construction contractor uses a resale certificate to purchase materials ex-tax that does not automatically make that construction contractor a retailer". It is how that material is used that determines how it is to be reported. If the material was used for a construction contract where installment labor was also provided, then use tax is owe on the cost of the materials purchased from the vendor. If the material is sold to an end user and no installation labor is provided the sales tax needs to be collected on the retail price of the material sold to the end user. Again, hopefully it will help avoid rogue auditors.

Thank You and Be Safe!

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