

AAA Team Sales Tax, LLC

April 10, 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,

Nevada Administrative Code (NAC) 372.938- Leasing/Rental Equipment -Election to pay sales tax or reported use tax on the purchase price of the equipment or collect sales tax off the rental stream.

Folks quite often asked me "Ron, what accounting course was the easiest for you in college?" My answer is always Governmental Accounting. That is when I learned the government can spend more than is in the bank account. To balance the books, they just make up an account called "Unfunded Liabilities". We know in the real world that if that happen, you do what is called "bankruptcy".

Now you ask "How does this relate to NAC 372.938?" Well, the Department did the same. They did not like the definition of retail sales provided by Nevada Revised Statute (NRS) 372.050, so they saw the Streamlined Sales Tax Agreement as a way to change the definition of a retail sale, so they convinced the Legislature into agreeing to make up NRS 360B.067. Commissioner (Professor) Lipman, you and I know having two different definitions of a retail sale would never pass FASB (Financial Accounting Standards Board) and/or Generally Accepted Accounting Principles (GAAP). You know that lease/rental revenue is not a retail sale. You may ask "Why did the Department want to change the definition of a retail sale?" The reason was because a resale certificate could only be used for sales tax liability not use tax liability. The language of the old Nevada Administrative Code (NAC) stated that the taxpayer could either pay sales tax or reported use tax on the cost of the purchase price of the equipment or report use tax on rental charges during the rental stream. The major problem for the Department came with subleases. I will not discuss the wrongness of having two different definitions for a retail sale or making up a definition but I am hoping Commissioner (Professor) Lipman or any other Commissioner will take this moment to enlighten us.

Since it takes the Legislature to get rid of NRS 360B, the root of the problem, How do we do a quick end around (hey, I am from Texas) to relieve the small business owner of the burden presented by the current version of the NAC that requires the taxpayer to make the election paying the tax liability on the equipment purchased by the first return? Allow the taxpayer to make the election at any time based on Nevada Revised (NRS) 372.185-Imposition and Rate. NRS 372 overrides NRS 360B and/or any NAC. NRS 372.185 would require use tax be paid on the purchase price of the equipment if sales tax was not paid. If the taxpayer did not report and pay use tax to the Department in the proper reporting period, the Department could still get interest and penalties. Now, I can see someone from the Department saying NRS 372.185 is for equipment acquired from out of state vendors. I will answer them in two ways. First, most equipment is purchased from out of state vendors. Secondly and most importantly, this would be a great opportunity for you to show fairness as required by the Nevada Taxpayers' Bill of Rights.

Thank You and Be Safe!

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