

AAA Team Sales Tax, LLC
702-321-9245

April 16, 2024

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

Subject: Public Comments on Initial Draft Proposed Regulations of the Nevada Tax Commission
LCB File No. R043-24I
Proposed change to Nevada Administrative Code (NAC) 372.320 (2) violates Executive Order 2023-003

Hello Commissioners,

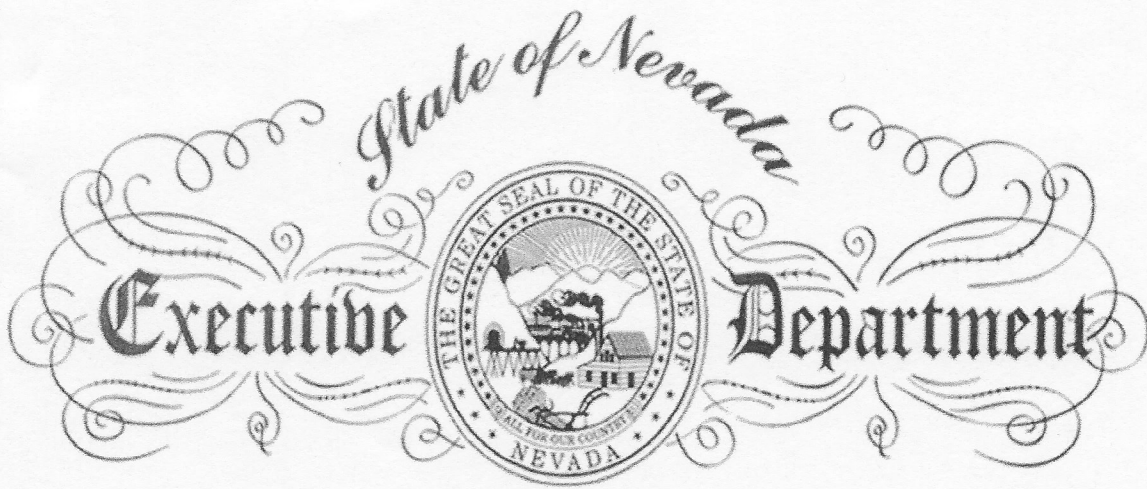
Please decline the proposed change (see enclosure) to NAC 372.320(2) because it violates the purpose of Executive Order 2023-03 signed by Governor Lombardo on January 12, 2023 in the following ways:

1. The Nevada Legislature requires opticians to be licensed in order to protect the public from incompetent and unsafe safe vision care. This statement is supported in Nevada Revised Statute (NRS) 637 and NAC 637 (see enclosure). This is also an exception listed in the Executive Order (see enclosure).
2. The proposed change hurts the economic growth of locally privately owned optometrist practices. The Department is giving a big business operating advantage to online dispensing opticians located in another State. Locally owned small businesses in Nevada have been greatly hurt by online businesses located in another State. This is also an exception listed in the Executive Order.
3. The Department is encouraging an increase in illegal businesses. I know you have recently heard about sad stories of unlicensed construction contractors' effects on some of the great citizens in Nevada. The same thing will happen in the eyecare industry if unlicensed opticians are being allowed to work in our State. This is not only listed in the Executive Order as an exception but also just common sense.

The Department has used NAC 372.320 (2) to mislead locally privately owned optometrist practices to pay improper audit billings. They believe there is no difference between an optometrist and a dispensing optician. The Nevada State Board of Optometry and Nevada Board of Dispensing Opticians would strongly disagree with the Department's viewpoint. The previous version of NAC 372.320 (2) contained the following phrase "The tax applies to the entire charge made by a dispensing optician for eyeglasses and related products furnished in filling a prescription of an oculist or optometrist". The section "prescription of an oculist or optometrist" clearly showed a dispensing optician was not an optometrist. This section was taken out a few years ago and the Department believes that allows them to treat an optometrist as a dispensing optician. I strongly disagree because **Nevada Revised Statute (NRS) 372.055(3)** clearly states an Optometrist is not a retailer and along with **NAC 372.320 (1)** clearly states an Optometrist is the consumer of ophthalmic materials including eyeglasses, frames and lenses used or furnished in the performance of their professional services in the diagnosis, treatment or correction of conditions of the human eye. A Dispensing Optician provides no such professional services. NAC 372.320(1) goes on and states "The tax applies to the sale of the materials to oculists and optometrists". It is deceit on the part of the Department to want the public (example: Taxpayer, NTC, and the Courts) to ignore NRS 372.055(3) and NAC 372.320(1) and just accept their interpretation of NAC 372.320(2) which at best is not easily understood because it does not clearly define its purpose. Its purpose would still be wrong based on NRS 372.055(3) and NAC 372.320(1).

Thank You and Be Safe!

Ron Voigt



EXECUTIVE ORDER 2023-003

Order Freezing the Issuance of New Regulations and Requiring a Review of Existing Regulations by All Executive Branch Agencies, Departments, Boards and Commissions

WHEREAS, state regulations should protect workers, consumers and the environment, while promoting entrepreneurship and economic growth; and

WHEREAS, state regulations can become outdated, result in unintended consequences, create conflicts or impose an unnecessary burden on citizens, businesses or government entities; and

WHEREAS, it is in the best interest of the state of Nevada that its regulatory environment be concise, transparent, stable, balanced, predictable and thoughtfully constructed; and

WHEREAS, Nevada's current regulatory structure is too often unfocused and inefficient, contains regulations that are obsolete and includes regulations that are unnecessarily onerous, thereby limiting the economic potential of the State; and

WHEREAS, Article 5, Section 1 of the Nevada Constitution provides that, "The Supreme Executive Power of this State shall be vested in a Chief Magistrate who shall be Governor of the State of Nevada;

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and laws of the State of Nevada, it is hereby ordered as follows:

SECTION 1

Every executive branch department, agency, board and commission shall undertake a comprehensive review of the regulations subject to its enforcement. On or before, May 1, 2023 each department, agency, board and commission shall provide a report to the Governor's office detailing how the regulation subject to its enforcement can be streamlined, clarified, reduced or otherwise improved to ensure those regulations provide for the general welfare of the State without unnecessarily inhibiting economic growth.

SECTION 2:

As part of its report, every executive branch department, agency, board and commission shall provide a list of not less than ten (10) regulations recommended for removal, ranking them in descending order of priority.

SECTION 3:

Prior to submitting their respective reports, every executive branch department, agency, board and commission shall hold a public hearing, after having provided reasonable notice consistent with Chapter 233B of the Nevada Revised Statutes, to key industry stakeholders, to: (i) vet their recommended changes; (ii) solicit input as to the merits of those changes and (iii) identify other regulatory changes stakeholders feel are worthy of consideration. Stakeholder input shall be reflected in the summary of findings and recommendations included in each submitted report.

SECTION 4:

Unless specifically exempt from this Executive Order as set forth in Section 5, no new regulations shall be proposed, approved or acted on by any executive branch agency, department, board or commission until such time as this Executive Order is rescinded.

SECTION 5:


The following regulations are not subject to the suspension set forth in Section 4:

- (a) Regulations that affect public health;
- (b) Regulations that affect public safety and security;
- (c) Regulations that are necessary in the pursuit of federal funds and certifications;
- (d) Regulations that affect the application of powers, functions and duties essential to the operation of the executive branch agency, department, board or commission at issue;
- (e) Regulations that affect pending judicial deadlines; and
- (f) Regulations necessary to comply with federal law.

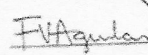
Until the suspension of this Executive Order, each executive branch department, agency, board and commission that intends to continue with the enactment of a proposed regulation under an exception to the freeze set forth in Section 4 shall submit a report to the Governor's office identifying which exemption the proposed regulation falls within and detailing the problem the regulation addresses or the value to the public of the regulation, how the regulation addresses the problem or the benefits provided by the regulation, why alternate forms of regulation are insufficient to address the problem and whether other regulations currently address the problem.



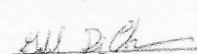
IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 12th day of January, in the year two thousand twenty-three.



Governor



Secretary of State



Deputy

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB FILE NO. R043-24I

**The following document is the initial draft regulation proposed
by the agency submitted on 03/04/2024**

Informational Report – Executive Order 2023-003

Section 1 - Comprehensive Review of Regulations

CHAPTER 372 - SALES AND USE TAXES

APPLICATION OF TAX

- 1. The citation of the regulation with clear indication of the proposed modification in blue italics and matters to be omitted in red and bracketed.**

NAC 372.320 Oculists, optometrists and dispensing opticians. (NRS 360.090, *372.055, 372.725*)

1. Oculists and optometrists are the consumers of ophthalmic materials including eyeglasses, frames and lenses used or furnished in the performance of their professional services in the diagnosis, treatment or correction of conditions of the human eye. The tax applies to the sale of the materials to oculists and optometrists.

2. The tax applies to the entire charge made by a dispensing optician for eyeglasses and related products furnished in filling a prescription, *whether the dispensing optician is licensed or not.*

[Tax Comm'n, Combined Sales and Use Tax Ruling No. 10, eff. 3-1-68]

- 2. A clear and concise explanation on why such change should occur.**

Amend to clarify that the tax applies to the entire charge made by a dispensing optician for eyeglasses and related products furnished in filling a prescription, whether the dispensing optician is licensed or not.

- 3. Information for each public meeting held to discuss the proposed regulation change, as mandated by Section 3 of Executive Order 2023-003, which must include:**

- a. The date of the meeting(s) and the number of persons who attended (not including Department staff or Commissioners):**

Workshop – 4/7/23 (11 people attended)

Hearing – 4/21/23 (12 people attended)

- b. Information for each person who provided public oral or written comment or testimony on the regulation:**

There was no public comment, either made orally or in writing for this regulation.

- 4. The estimated impact on any business, person, or agency if the change is to occur, which must include:**

Exhibit 372.2-A

- a. **The adverse and beneficial effects;**
- b. **The positive or negative economic impact; and**
- c. **Cost savings to the state or agency.**

The amendment to this regulation presents no foreseeable or anticipated impact on any business, person, or agency if this change is to occur.



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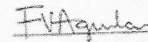
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Governor



Secretary of State



Deputy

NRS 637.022 “Ophthalmic dispensing” defined.

1. “Ophthalmic dispensing” means the design, verification and delivery to the intended wearer of lenses, frames and other specially fabricated optical devices upon prescription.
2. The term includes:
 - (a) The taking of measurements to determine the size, shape and specifications of the lenses, frames or contact lenses;
 - (b) The preparation and delivery of work orders to laboratory technicians engaged in grinding lenses and fabricating eyewear;
 - (c) The verification of the quality of finished ophthalmic products;
 - (d) The adjustment of lenses or frames to the intended wearer’s face or eyes;
 - (e) The adjustment, replacement, repair and reproduction of previously prepared ophthalmic lenses, frames or other specially fabricated ophthalmic devices; and
 - (f) The fitting of contact lenses and the dispensing of prepackaged contact lenses pursuant to a written prescription, when done by a dispensing optician or apprentice dispensing optician who is authorized to do so pursuant to the provisions of this chapter.
3. The term does not include any act for which a license is required pursuant to chapter 630 or 636 of NRS, and the provisions of this chapter do not authorize a dispensing optician or apprentice dispensing optician to perform any such act.

(Added to NRS by 1987, 601; A 2003, 2011)

NRS 637.090 Active license required for practice of ophthalmic dispensing or management of business engaged in ophthalmic dispensing. A person shall not engage in the practice of ophthalmic dispensing or manage a business engaged in ophthalmic dispensing without holding a valid, active license issued as provided by this chapter. [3:216:1951; A 1953, 554]—(NRS A 1979, 1196; 1987, 604)

NAC 637.140 License required to provide ophthalmic products directly to public; authorized scope of practice of laboratory personnel. (NRS 637.070, 637.090)

1. Except as otherwise provided by specific statute, a person who does not hold a license as a dispensing optician, a limited license as a dispensing optician or a license as an apprentice dispensing optician shall not provide any ophthalmic products directly to the public.
2. Laboratory personnel, including, without limitation, laboratory technicians, shall be deemed not to be engaged in the practice of ophthalmic dispensing and are not required to be licensed pursuant to NRS 637.090 if the laboratory personnel:
 - (a) Except as otherwise provided in subsection 3, do not perform any of the acts described in subsection 1 or 2 of NRS 637.022; and
 - (b) Provide ophthalmic products only and directly to licensed dispensing opticians, licensed ophthalmologists and licensed optometrists.
3. Without obtaining a license pursuant to this chapter and chapter 637 of NRS, a laboratory technician may perform any act to the fullest extent for which a license is not required pursuant to this chapter and chapter 637 of NRS, including, without limitation, grinding lenses or fabricating eyewear, as described in paragraph (b) of subsection 2 of NRS 637.022.
4. As used in this section, “ophthalmic products” includes, without limitation:

(a) Ophthalmic lenses for sunglasses, dive masks, sports goggles and occupational goggles;

(b) Ophthalmic prescription lenses;

(c) Ophthalmic devices that have dioptric power and are attached to eyeglasses; and

(d) All prescription and nonprescription contact lenses, including, without limitation, prepackaged contact lenses, individual contact lenses, cosmetic contact lenses and theatrical contact lenses.

(Added to NAC by Bd. of Dispensing Opt. by R042-02, eff. 8-29-2002; A by R108-04, 12-1-2004; R073-12, 6-3-2013)

TAKEN FROM STATE OF NEVADA BOARD OF DISPENSING OPTICIANS WEBSITE

Answers for Public and New Applicants section

Why are opticians required to be licensed to work in Nevada?

The Nevada Legislature requires opticians to be licensed in order to protect the public from incompetent and unsafe vision care. The Board's licensing requirements ensure patients receive the expert guidance essential to making correct and effective choices in prescription eyewear.