

## 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.

## AAA Team Sales Tax, LLC

- 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!

Ron Voigt  
Consultant  
702-321-9245

AAA Team Sales Tax, LLC

April 13, 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,

NAC 372.200 Construction contractors: Tangible personal property purchased for performance of a contract

Either added the below paragraph as a separate paragraph under NAC 372.200 or like before have it as a separate NAC titled as Construction Contractor with a Sales Permit.

A construction contractor may be registered as a retailer. A construction contractor may be registered as a retailer. As a retailer, the contractor may use a resale certificate for purchases, and report the tax when the materials are used in a job or sold at retail. A retailer construction contractor may NOT use a resale certificate for purchases of tools or supplies which are used in the trade. A retailer construction contractor may NOT use a resale certificate for purchases of tools or supplies which are used in the trade.

CONSTRUCTION CONTRACTORS Resale Certificates NAC 372.210

Thank You and Be Safe!

Ron Voigt, Consultant  
702-321-9245

April 14, 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,

NAC 372.605 and 372.607 Food for Immediate Consumption

The current wording of NAC 372.605 violates the order given by the Legislature to the Nevada Tax Commission. In fact, they integrated wording from the Streamlined Sales Tax Agreement into a NAC meant for the Nevada Revised Statute (NRS) 372. Remember the Streamlined Sales Tax Agreement has nothing to do with Taxability. I don't think the Legislature would approve of such an act if they really knew the difficulties it has created for small business owners.

The Legislature recognized that it would be impossible to create a list of all the items intended to fall within the food exemption so they gave the Department the mission to give guidance by issuing a regulation (Nevada Administrative Code). They would not approve of the current version of the NAC because it does not contain any attempt to list items that fall within the food exemption. Without a list of items, you really have no guidance. The old version of NAC 372.605 (see enclosed) and NAC 372.580 (see enclosed) had a list of items and provided good guidance to the public. The current version allows an auditor to be subjective not objective. That has created big problems not only for public but you too. Even after losing at the Nevada Supreme Court, District Court, and recently before you, the Department continues its assault on small business owners.

Nevada law requires the food in question to be both prepared and intended for immediate consumption to be subject to sales tax. The Supreme Court found that the intent of the Legislature with regard to NRS 372.284 is to capture transactions in which the "product is being prepared with the intention of it being consumed contemporaneously with the purchase. Accordingly, the Nevada rule regarding consumption is immediate depends on its proximity in time, or temporal relationship, to the sale of the food. District Court has decided and the Nevada Supreme Court agreed that in deciding the intent for immediate consumption type of and preparation of the food and the size of the container needs to be considered. This is the main reason that some sort of item list needs to be available for the public to use for guidance. Again, no list allows the auditor to be very subjective which is not good for the public.

Thank You and Be Safe!

Ron Voigt, Consultant  
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**NAC 372.500 Vending machines: Operator to obtain permit, report and pay tax; stickers required.**

1. Each person who operates vending machines which dispense tangible personal property of a kind the gross receipts from the retail sale of which are subject to tax shall obtain a permit to engage in the business of selling tangible personal property and shall report and pay to the state the tax upon the gross receipts from the sales made through the machines.

2. One permit is sufficient for all the machines of one operator.

3. A sticker showing the name of the vendor and Nevada sales tax permit number must be affixed in a conspicuous place upon each vending machine.

[Tax Comm'n, Combined Sales and Use Tax Ruling part No. 25, eff. 6-14-68]

**NAC 372.510 Vending machines: Records; reports.**

1. Adequate and complete records must be kept by each operator of vending machines showing the location and serial number of each of the machines operated by him, all purchases and inventories of merchandise bought for sale through the machines and the gross receipts derived from the operation at each location.

2. Each person making a sale of tangible personal property of a kind the gross receipts from the retail sale of which are taxable, to an operator of vending machines to be resold through the machines, shall notify the commission of the name and address of each operator who fails to furnish a valid resale certificate. In the event the person fails to so notify the commission, or desires to assume tax liability for the operations of particular vending machines, the operators are regarded as the agents of the persons from whom they obtain the tangible personal property, and the persons are regarded as the retailers of the property for the purposes of that law, and are required to return the tax to the state, measured by the receipts from the retail sale of the property.

[Tax Comm'n, Combined Sales and Use Tax Ruling part No. 25, eff. 6-14-68]

**NAC 372.520 Vending machines: Sales price; computation of tax.** Each operator of vending machines shall establish the sales price of the items in the machines with the commission and if the commission is satisfied that the sales price does not include the tax imposed, he may compute his tax on the basis of that sales price. If permission is granted to compute the tax on this basis, he shall post a notice on each vending machine notifying the public of this fact. The notice must be in substantially the following form:

"The sales price of any item sold through this machine includes applicable Nevada State and Local Sales Taxes."

[Tax Comm'n, Combined Sales and Use Tax Ruling part No. 25, eff. 6-14-68]

**NAC 372.530 Producers of X-ray film for diagnostic use.** Producers of X-ray film for diagnostic use are the consumers of the materials and supplies used in the production of the film. The tax applies to the sale of the materials and supplies to the laboratory which produces the film whether it is operated by a physician, surgeon, dentist, or other person.

[Tax Comm'n, Combined Sales and Use Tax Ruling No. 14, 3-1-68]

## EXEMPTIONS

**NAC 372.540 Seeds and plants.**

1. The tax does not apply to sales of seeds, the products of which will be used as feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of the purchaser's business.

2. The tax applies to sales of nonannual plants, such as fruit trees and berry vines, whether or not the products will be sold or used as food for human consumption, unless the plants themselves, as distinguished from their products, are purchased for resale.

[Tax Comm'n, Combined Sales and Use Tax Ruling part No. 29, eff. 3-1-68]

**NAC 372.550 Fertilizer; herbicides and insecticides.**

1. For the purposes of this section and section 56 of chapter 397, Statutes of Nevada 1955, (NRS 372.280), the term "fertilizer" includes commercial fertilizer, agricultural minerals and manures. The term does not include chemical insecticides or herbicides.

2. The tax applies to fertilizer sold to enrich land for growing flowers, shrubs, lawns and plants, the products of which are not food for human consumption.

3. If a chemical insecticide or herbicide is mixed with a fertilizer in one product and the proportions are shown on the label or container, the seller may determine the proportion which is fertilizer and exempt that amount from the tax. If the proportions are not shown on the label or container, the tax applies to the entire amount for which the product is sold.

[Tax Comm'n, Combined Sales and Use Tax Ruling part No. 30, eff. 3-1-68; A 8-1-68]

**NAC 372.580 "Food" defined.**

1. Foods include, but are not limited, to the following:

(a) Bread and products made from flour.

(b) Candy and confectionery, including gum and mints.

(c) Cereal and products made from cereal.

(d) Cocoa and products made from cocoa.

(e) Coffee and substitutes for coffee.

(f) Food substitutes.

(g) Eggs and products made from eggs.

(h) Fish, seafood, and products made from fish and seafood.

(i) Frozen foods.

(j) Fruits and products made from fruit, including juices.

(k) Ice which is sold in a package or block weighing less than 10 pounds, bottled water and carbonated water.

(l) Meat and products made from meat.

(m) Milk and products made from milk, including packaged ice cream.

(n) Oleomargarine, butter, and shortening.

(o) Soft drinks and sodas sold in containers sealed at the plant.

(p) Spices, condiments, extracts, and artificial food coloring.

(q) Sugar, products made from sugar, and substitutes for sugar.

(r) Tea.

(s) Vegetables and products made from vegetables.

2. Products which are not food include, but are not limited, to the following:

(a) Supplies for pets.

(b) Housewares and other supplies for the home.

(c) Products made from paper.

(d) Soaps, detergents, and other cleaners.

(e) Tobacco in any form.

(f) Cosmetics.

(g) Toiletries.

(h) Soft drinks sold in containers not sealed at the plant.

(i) Food supplements.

(j) Ice which is sold in a package or block weighing 10 pounds or more.

3. As used in this section:

(a) "Food substitute" means a product which is consumed in place of a meal or in addition to a meal and provides sustenance such as drinks designed to replace meals and aid in weight loss or gain. The term does not include a product which is sold in the form of a pill, capsule, or tablet.

(b) "Food supplement" means a product which is not intended to be consumed in place of a meal but is intended to be consumed to:

(1) Remedy a dietary deficiency; or

(2) Supplement the level of vitamins or minerals existing in the body of a person.

(c) "Soft drinks" include alcoholic beverages which contain less than one-half of 1 percent of alcohol by volume.

[Tax Comm'n, Combined Sales and Use Tax Ruling part No. 77, eff. 6-21-79; A 8-6-80; 8-19-82]—(NAC A 1-8-86; 4-18-88; 1-12-96, eff. 7-1-96)

**NAC 372.585 Food: Application of tax to items sold in containers.** If otherwise exempt food is sold:

1. In the same container as taxable tangible personal property, all items in the container are taxable unless the price of the otherwise exempt food is separately stated.

2. In a container to which the retailer purchased and added the food, the container is taxable. The otherwise exempt food is also taxable unless the price of the food is separately stated.

3. In a container to which the manufacturer added the food, the container is taxable if the retail price of the container is more than the retail price of the food. The otherwise exempt food is also taxable unless the price of the food is separately stated.

(Added to NAC by Tax Comm'n, 1-12-96, eff. 7-1-96)

**NAC 372.605 Food: "Prepared food intended for immediate consumption" interpreted.**

1. As used in NRS 372.284, except as otherwise provided in NAC 372.610, 372.612, or 372.617, the department will interpret the term "prepared food intended for immediate consumption" to include, but not be limited to:

(a) Food and beverages which are heated in any manner and are sold or are intended to be sold at a temperature which is warmer than the temperature of the place where the food or beverage is sold.

(b) Food and beverages which are sold if the food, beverage, or ingredients of the food or beverage is removed from its original package and:

- (1) Warmed;
- (2) Cooled;
- (3) Defrosted;
- (4) Cooked;
- (5) Mixed;
- (6) Prepared;
- (7) Cut;
- (8) Handled; or
- (9) Dispensed,

at or adjacent to the place where the food is sold.

(c) Except as otherwise provided in paragraph (b) of subsection 2, food and beverages prepared or dispensed by the seller or the customer to the order of the customer.

2. Except as otherwise provided in subsection 3 of NAC 372.610, the term does not include:

(a) The raw meat from any animal or uncooked fish or seafood if it is prepared by a person whose occupation is:

- (1) The processing of animals, fish, or seafood; or
- (2) The dressing or wrapping of slaughtered raw meat or uncooked fish or seafood.

(b) Cheese or cooked meat which is dispensed by the seller in a quantity ordered by the customer.

(c) Bulk food items which are sold in bins or barrels.

(d) Candy.

3. The tax applies to cheese or cooked meat which is prepared by the seller and sold on a tray on which it is intended to be served.

(Added to NAC by Tax Comm'n, 1-12-96, eff. 7-1-96)

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April 13, 2023

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1550 College Parkway, Suite 115  
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**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!

Ron Voigt, Consultant  
702-321-9245



AAA Team Sales Tax, LLC

April 13, 2023

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

Subject: Accountability for Incorrect Nevada Tax Notes - Vending Machines- Nevada Tax Notes Issue 195, April 2023 (see enclosed) – Consider making a Nevada Administrative Code (NAC) to serve as an interpretation of Nevada Revised Statute (NRS) 360.291- Nevada Taxpayers' Bill of Rights.

Hello Commissioners,

I would like to ask the folks behind writing the article a question? Do you really understand what you wrote? If you are honest with yourself, the answer is no. If there is a vending machine that provides a hot sandwich, you would still have the issue of immediate consumption. For example, I still would want to put ketchup, mustard, and other dressings on my sandwich. Also, it is coming packaged. I have never seen a packaged item of food dispensed with a utensil by a vending machine. You may be thinking of ice cream but that is in a sealed container and still needs to be thawed before eating. As for a food item prepared by the vending machine by combining two or more ingredients, unless there is a vending machine that has artificial intelligence, I don't know how this can happen.

Even after the judicial courts, past Nevada Tax Commissions, and the Administrative Law Judges (ALJ) have ruled against them, some folks in the Department are still trying to unfairly influence Nevada Revised Statute (NRS) 372.284 by way of a Nevada Administrative Code (NAC). Ok, there was one hiccup by the Administrative Law Judge (ALJ) in the Rebel Kitchen Inc case but that was corrected by you at the December 2022 NTC meeting. Again, thank goodness for Commissioner Byram's memory of the Sparks Nugget Inc case. Also, Nevada Revised Statute (NRS) trumps NAC.

Even after your decision in the Rebel Kitchen Inc case, the Department continues to publish INCORRECT INFORMATION". The Department uses the phrase "Some food items are exempt from sales tax in certain circumstances" in the tax note (see enclosed). This phrase will not be found in Nevada Revised Statute (NRS) 372.284 or Nevada Administrative Code (NAC) 372.500. In fact, the NAC that imposed sales tax on sales of foods and beverage sold for immediate consumption through vending machines was repealed. Also, as odd it may seem, we could have the issue of a resale certificate being used. It would be interesting to see if the Department shared this information with the ALJ who presided over the Rebel Kitchen Inc case or the taxpayer representative.

The Streamlined Sales Tax Agreement focuses on improving sales and use tax administration systems for all remote sellers and for all types of internet commerce in reaction to the U.S. Supreme court decision in Quill Corp vs North Dakota. It was an attempt to offer businesses a way to voluntarily collect sales tax for states where they did not have nexus (a physical presence). Now with the South Dakota vs Wayfair decision by the U.S. Supreme Court, this agreement becomes irrelevant. The agreement has never had anything to do with sales transactions that occur within a state's border. Particularly in a storefront location. Take a look at their website and they make very clear that the agreement does not override a State's Tax Laws. Unfortunately for the taxpayers in this State, there has been an effort by the Department to make the public think otherwise. The Legislature was ill-informed by the Department when they passed NRS 360B (Streamlined Sales and Use Tax Agreement). I do believe if the Legislature was aware of how the Department's wrong use of NRS 360B hurts small businesses, they would be very upset. Vending machines owners and a small business owner like Rebel Kitchen Inc. are an example of what I am talking about. See how far fetch the audit section has gone in the last few years.

## AAA Team Sales Tax, LLC

When I stated accountability for an incorrect tax note, I mean each incorrect tax note has resulted in small businesses collecting too much sales tax. The same can be said on how an incorrect audit has the same affected. The Nevada Taxpayers' Bill Rights states that taxpayers are only required to pay their fair share. When it is shown that the Department supplied the wrong tax information, the small business is told "too bad" and told that the customer is due the sales tax refund. If you are a small business, that is a lot of time wasted to correct a wrong created by the Department. I ask that when the Department continues to provide incorrect information on a certain subject (example: Food for Immediate Consumption) through a tax note, that the Department be held accountability. The Department needs to spend more time educating the public on procedural items like the appeal process instead of trying to score audit points (which in the long run has never worked out when taken through the appeal process but it is the time wasted by the small business owner that is of the most concern). As a top priority, the Department needs to publish a Technical Bulletin as required by NRS 360.133 on food. That way, the Department would have real skin in the debate.

The Nevada Tax Commission needs to consider making a Nevada Administrative Code (NAC) for sanctions against the Department when they purposely continue to publish incorrect tax notes or perform an incorrect audit after there has been judicial decision, Nevada Tax Commission decisions, and Administrative Law Judge (ALJ) decisions that went against the Department position in an audit. This NAC serve as an interpretation of Nevada Revised Statute (NRS) 360.291- Nevada Taxpayers' Bill of Rights.

Thank You and Be Safe!

Ron Voigt, Consultant, 702-321-9245

# NEVADA TAX NOTES

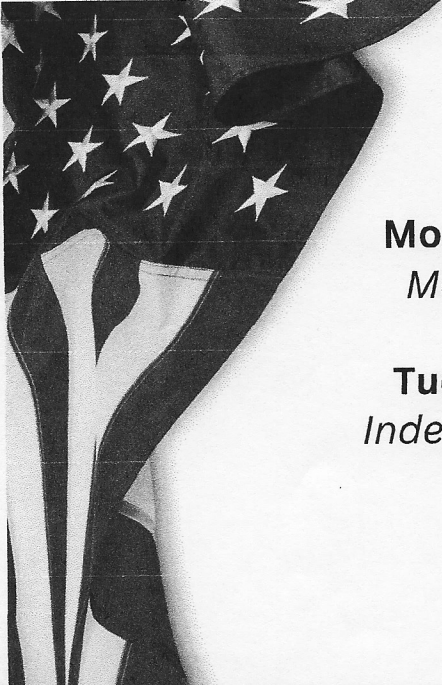
The Official Newsletter of the Department of Taxation

## Inside This Issue

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- Vending Machines
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## Upcoming Office Closures

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



**Monday, May 29**  
*Memorial Day*

**Tuesday, July 4**  
*Independence Day*

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](#).



**Hiring**

Call Center: (866) 962-3707 Monday - Friday 6:30AM - 5:00PM

Carson City

Reno

Las Vegas

1550 College Parkway, Ste. 115

4600 Kietzke Lane Bldg. L, Ste. 235

700 E. Warm Springs Road 2nd Floor



## Vending Machines

Vending machines dispense tangible personal property such that the gross receipts from the retail sales of this property may be subject to sales tax under NAC 372.500 and NAC 372.520.

Vending machine operators who sell taxable tangible personal property must obtain a sales tax permit. Such operators are required to report the gross receipts from the sales from these vending machines and remit the sales tax on those sales to the Department.

If the vending machine operator chooses to include the tax as part of the sales price for items, then there must be a notice on the machine stating, in substantial form: "The sales price of any item sold through this machine includes applicable Nevada Sales and Local Sales Tax."

Retail sales from vending machines of items other than food are taxable. Some food items are exempt from sales tax in certain circumstances.

Food items sold in vending machines are not taxable if they are not considered prepared food for immediate consumption, where the item is not sold in a heated state, where the actual vending machine process does not combine two or more ingredients, or where utensils are not provided. Examples of taxable food items include, but are not limited to, a dispensed cup of hot coffee, a soda dispensed in a cup, a hot sandwich, a packaged item of food dispensed with a utensil, or a food item prepared by the vending machine by combining two or more ingredients.

**NRS 360B.095; 360B.460; and 372.085**

**NAC 372.500; 372.520; 372.605 and 372.607**

## Public Records Requests

The Department of Taxation (Department) provides access to or copies of public records pursuant to Nevada's Public Records Act. Public records include all documents and other records prepared and maintained by the Department that

Upon receipt of a public records request, the Department will determine whether it possesses responsive records and whether any such records are confidential. The Department will allow inspection or produce copies of any records that are not confidential.

Many records of the Department are confidential as a matter of law. With a few exceptions, records concerning the administration or collection of any tax, fee, assessment, or other amount required by law to be collected or the imposition of disciplinary action are confidential and privileged. In other words, most taxpayer information is confidential. If the Department determines it has a confidential record in response to a public records request, it will either redact the confidential information from the record or withhold the record in its entirety. The Department will inform the requester of the basis of such confidentiality.

The Public Information Officer for the Department responds to all public records requests submitted to the Department. The Public Information Officer will acknowledge receipt of a request within five business days and produce the requested record within that same timeframe or inform the requester of the additional time necessary to review and produce any responsive records.

In addition to public records requests, members of the public may also submit requests for information to the Public Information Officer. The Public Information Officer will track requests for information and provide responses as soon as the requested information can be researched, gathered, and verified by the Department.

Requests for public records and requests for information can be made to the Department's Public Information Officer by email, postal mail, or through this [link](#).

AAA Team Sales Tax, LLC

April 13, 2023

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

Subject: U.S. Supreme Court empowers bids to curb authority of federal agencies

Hello Commissioners,

Attached is a recent decision (see enclosed) about the use of in-house judges (example Administrative Law Judges) at the federal level. We have the same situation here at the state level with the Nevada Department of Taxation. During my career at the Nevada Department of Taxation, I thought the Administrative Law Judge (ALJ) did a very good job even when I did not agree with their decision. Ok, we have the one hiccup in the Rebel Kitchen decision but you corrected that moment of elapse judgment by the ALJ. Also, I had already left the Department. Your bigger problem is with the Tax Audit Manager where the appeal process starts with a "petition for redetermination". This is not the "request for hearing". This is where taxpayers get confused, and eventually in many cases, have to fight for months or even years to get back the right to appeal. It gets really crazy at times. That is where you will see he is "prosecutor, judge, and jury. Now, should that person be involved in the making a decision during the appeal process? The answer is no. That is why the ALJs are seeing more cases dealing with food, you are seeing more cases dealing with food, and since the Nevada Tax Notes has been revived in the last year, an article about food has always been included. It is his pet project. For the appeal process, the control needs to be taken away from anyone in the audit section. In a way, you can look at it as a separate of internal controls issue.

Thank You and Be Safe!

Ron Voigt, Consultant, 702-321-9245

# U.S. Supreme Court empowers bids to curb authority of federal agencies

**Andrew Chung and John Kruzel**

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WASHINGTON (Reuters) - The U.S. Supreme Court on Friday made it easier to challenge the regulatory power of federal agencies in two important rulings backing Axon Enterprise Inc's bid to sue the Federal Trade Commission and a Texas accountant's gripe with the Securities and Exchange Commission.

A 9-0 ruling by the justices revived Axon's lawsuit contesting the constitutionality of the FTC's structure in a bid to counter an antitrust action related to the Scottsdale, Arizona-based company's acquisition of a rival, overturning a lower court's decision to dismiss the case.

The justices also unanimously upheld a lower court's decision allowing the accountant, Michelle Cochran, to sue the SEC, challenging the legality of its in-house judges, after the agency faulted her audits of publicly traded companies.

At issue in both cases was whether targets of an agency's enforcement action may challenge its structure or processes in a federal district court or must first endure the agency's administrative proceeding, which may be costly and time consuming.

Two laws, the Federal Trade Commission Act and the Securities Exchange Act, funnel judicial review of adverse agency orders to federal appeals courts only after those orders become final.

"We now conclude that the review schemes set out in the Exchange Act and the FTC Act do not displace district court jurisdiction over Axon's and Cochran's far-reaching constitutional claims," liberal justice Elena Kagan wrote in the ruling.

The FTC's role is to protect consumers against anticompetitive and fraudulent business practices. The SEC's job is to maintain fair, orderly markets and enforce investor protection laws.

Paring back the regulatory authority of federal agencies - which can enforce laws and rules in important areas such as energy, the environment, climate policy and workplace safety - has been a major goal of many business and conservative groups, which complain about what they call the "administrative state."

The Supreme Court's conservative justices have signaled wariness toward expansive federal regulatory power and the previously recognized duty of judges, under Supreme Court precedent, to give deference to that authority.

This skepticism was reflected in separate concurring opinions issued on Friday by conservative Justices Clarence Thomas and Neil Gorsuch.

Federal agencies have had their powers curtailed in recent Supreme Court rulings.

A ruling last year limited the Environmental Protection Agency's authority to issue sweeping regulations to reduce carbon emissions from existing coal- and gas-fired power plants under the landmark Clean Air Act anti-pollution law. A 2021 ruling

made it harder for the FTC to force scam artists and companies that engage in deceptive business practices to return ill-gotten gains to consumers.

Axon sued the FTC in 2020 in federal court in Arizona following an investigation by the agency into its 2018 acquisition of Viewu, a rival body-camera provider.

The company said the agency acts as "prosecutor, judge and jury" in violation of the U.S. Constitution's Fifth Amendment guarantees of due process and equal protection under the law, and that its administrative law judges are unlawfully insulated from the president's power to control executive branch officers under the Constitution's Article II.

The San Francisco-based 9th U.S. Circuit Court of Appeals in 2021 threw out Axon's case, ruling that under the FTC Act the company must raise its claims in the administrative proceeding first.

In Cochran's case, an SEC judge found that she failed to comply with auditing standards, fined her \$22,500 and banned her from practicing as an accountant before the commission for five years. Cochran sued in 2019 to stop the enforcement action, like Axon contesting the SEC's in-house judges under Article II.

A federal judge in Texas threw out Cochran's challenge, but the New Orleans-based 5th U.S. Circuit Court of Appeals in 2021 revived the case.