
NEVADA DEPARTMENT OF TAXATION

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Tax Bulletin SUT 14-0001

Issue Date: June 25, 2014

Taxation of Leases and Subleases of Tangible Personal Property

Statutes and/or Regulations Referenced

NRS 372.105; NRS 372.050; NRS 360B.450; NRS 360B.080; NAC 372.936; NAC 372.938; NAC 372.940

Introduction

Pursuant to NRS 372.105, the sales tax applies to retail sales of tangible personal property. A "retail sale" is defined to include 'a sale for any purpose other than resale in the regular course of business" NRS 372.050(1).

A "retail sale" is also defined to include any lease or rental for any purpose other than resale, sublease or subrent. NRS 360B.067. A lease or rental¹ is defined as any "transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration." NRS 360B.450.

A seller is any person making sales, leases or rentals of tangible personal property. NRS 360B.080. When tangible personal property is sold at retail, it is subject to sales tax. NRS 372.105. When it is sold for resale, it is not subject to the tax because it is not a retail sale. The tax will be collected on the retail sale to the consumer. NRS 372.050(1). Similarly, when property is leased for any purpose other than sublease or subrent, it is taxable as a retail sale and must be reported as a sale, not as a use for use tax purposes. NAC 372.936(2).

For property purchased after June 15, 2005, NAC 372.938 provides guidance on the taxability of a lease or rental. The legal incidence of the sales tax falls on the person who leases or rents the tangible personal property from the "retailer." NAC 372.938(1). The sales tax must be "collected by the retailer from the consumer insofar as it can be done." NRS 372.110.

¹ The terms "lease" and "rental" are used interchangeably. NRS 360B.450.

Finally, when the retailer sells the property after its use as rental equipment, it is a separate sale and is taxable at the full retail value. No credit is received for tax paid on the rental charges or the tax paid on the original purchase. NAC 372.938(5).

I. Sales and Use Tax Treatment of Retailers Engaged in the Rental of Property in Nevada

The retailer has the option to remit the tax based on the acquisition cost of the property, or to remit the tax based on the amounts it collects for lease or rental. If the retailer chooses to pay the tax on the cost of the property, that retailer must have made that election by the date upon which the first tax return is due following the purchase of the property. If the retailer fails to make that election by that date, the retailer shall be deemed to have elected to collect and remit the tax measured by the gross lease or rental charges for the lease or rental of the property.

This rule is demonstrated as follows:

Party Rentals acquired 10 tables from a table manufacturer located in Salt Lake City, UT. The manufacturer was not registered in Nevada and did not collect any sales or use tax on the sale of the tables to Party Rentals. The manufacturer had the tables delivered, by common carrier, to Party Rentals in Las Vegas. Party Rentals purchased the tables for use in its business renting property to customers for various events. Following acquisition of the tables, Party Rentals intends to rent the tables to customers for use at events.

There are two acceptable methods of reporting and paying the sales and use tax attributable the acquisition of the tables by Party Rentals and their rental for use at the event.

Method #1. On its next sales and use tax return, Party Rentals reports the acquisition of the tables and pays a tax measured by the cost of the property to it. Having paid the tax on its acquisition cost, Party Rentals does not need to collect a tax on its rental activity. Consequently, the invoice of Party Rentals includes the charge for rental of the tables, but does not include any sales or use tax.

Method #2. Party Rentals does not pay a tax on acquisition of the tables and, instead, chooses to collect a tax measured by the rental charges derived from its rental of the tables. Under this alternative the invoice of Party Rentals includes the charge for rental of the tables and a tax assessed on the amount of the rental charge. Party Rentals would also collect and remit tax on all subsequent rentals of the tables.

A. Lease For Sublease

Party Rentals customers have invited more guests than expected and now need 15 tables for the event. Party Rentals has the 10 tables that it has already committed to the event and rents the additional 5 tables from Supply Warehouse. From the

discussion above we know there are two acceptable methods of reporting and paying the sales and use tax attributable to the acquisition of the 10 tables by Party Rentals and their rental for use at the event. This discussion addresses how Supply Warehouses rental of 5 tables to Party Rentals and its subsequent rental of the 5 tables for use at the event should be treated.

Supply Warehouses rental of the tables to Party Rentals should be treated as a sale for resale and, as such, would not be subject to tax. Instead, Party Rentals would be responsible for the sales and use tax attributable to its acquisition of the 5 tables and its lease of those 5 tables to its customer. Again, there are two acceptable methods of reporting and paying the sales and use tax.

Method #1. On its next sales and use tax return, Party Rentals reports the acquisition of the 5 tables and pays a tax measured by the cost of the property to it (i.e., the amount of the rent charged by Supply Warehouse). Having paid the tax on its acquisition cost, Party Rentals does not need to collect a tax on the rental of the 5 tables to its customer.

Method #2. Party Rentals does not pay a tax on acquisition of the 5 tables and, instead, chooses to collect a tax measured by the rental charges derived from its rental of the tables. Under this alternative the invoice of Party Rentals includes the charge for rental of the tables and a tax assessed on the amount of the rental charge.

B. Other considerations when a retailer pays tax on rental charges

1. The retailer is not required to pay tax on the parts or other equipment used on or to repair the rental property because the tax on the rental charge is deemed to cover the tax on the repair parts as well.
2. All mandatory charges are taxable whether or not they are separately stated on the rental agreement. Mandatory charges include fees for mileage, drop off fees, management fees, collection fees and more. A list of mandatory charges can be found in NAC 372.940(1).
3. Optional fees that are separately stated are not subject to tax. These may be fees for installation or assembly, charge for a person to operate or instruct another person how to operate the equipment, or a charge for a collision damage waiver. A list of these fees and other fees that are not considered part of the rental charges and therefore not taxable are listed in NAC 372.940 (2) and (3).
4. A retailer may discontinue charging sales tax on the lease payments once the lease is formally terminated. Evidence that a lease has been terminated includes repossession of the property, a formal notice of termination, proof that the property has been wrecked stolen or damaged, or a new lease of the same property. Any charges collected by the retailer as a result of breach of contract are not considered rental charges and are therefore not taxable.

C. Determining where sale takes place for tax rate purposes

1. Generally, for leases and rentals that include periodic payments, the first payment should be taxed at the county rate where the property is delivered. The rest of the payments should be at the rate where the property is actually located.
2. If the lease does not include period payments, the rate should be of the county where the customer picks up the property or has it delivered.
3. For lease and rentals of motor vehicles, trailers, semitrailers or aircraft that are not commercial transportation property, the statute is a little different than for other property. The tax rate of the county where the property is located should be selected for all periodic payments regardless of intermitted use of the property at a different location. If, however, there is only one payment the rate of the county where the property is delivered should be used.