

AAA Team Sales Tax, LLC

September 15, 2023

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

Subject: Additional Comments on Blackout Inc.

Hello Commissioners,

If Blackout Inc does not appeal to Nevada District Court, you still have recourse during the settlement process to make things right. Make it clear during the meeting for approval of the settlement that the wrong decision was reached in the first meeting.

Remember when the Tax Audit Manager interrupted you after the decision was made in the Rebel Kitchen case that involved the issue of "food for immediate consumption". He got upset and was not happy with your decision. He was looking to have some sort of precedent set so he could have the audit section go after more similar small businesses. Well, he is doing the same thing in this case. I have already heard from small business owners that the audit section is going full steam on service charges. In fact, during the August "Ask The Advisors" zoom presentation, they did not provide complete guidance on service charges to the Taxpayers. They do not want to debate the words "immediate" or "necessary" because they know they will lose on those points before the courts. In fairness to the public at large, have them first go after the sports stadiums and movie theatres and see what happens before going after small businesses. I am sure those businesses will take it to the Nevada Supreme Court if needed.

Below are my additional comments:

1. Would the Department allow netting when a Taxpayer completes the Nevada Sales and Use Tax Return? The answer is no. What is netting? Combining two financial obligations to achieve a reduced financial obligation. For instance, Is the Department going to allow a Taxpayer to convert a credit issued by the Department into a taxable sales amount and then reduce the amount that is recorded in Column A, Column B, or Column C. I don't think so.
2. In opinions written by judges in the Nevada courts (Administrative Law Judge to the Nevada Supreme Court), they refer to the term "Gross Receipts/Total Retail Sales Price. The reason why is that they realize that Gross Receipts defined by NRS 372.025 does not include such as but not limited to wholesale sales, construction contractor sales (progress payments), personal chef services, eyeglasses furnished by an optometrist (NRS 372.055), dry cleaning services, knitting sewing services, and etc. Examples of the term are provided in the Sparks Nugget vs the Nevada Department of Taxation opinion and Western Nevada Supply vs the Nevada Department of Taxation opinion issued by the Nevada Supreme Court.
3. Why did the Department not mention **NRS 360B.480(1)(c)**? My belief is they wanted to box you into a corner. They did not want you to have the option of considering the word "necessary". If they did this on purpose, something needs to be done.
4. Think of NRS 372.060 as the manufacturer's sales price, NRS 372.065 as the wholesale sales price, and NRS 372.025 as the retail sale price.
5. An example of when a separately stated service charge is considered part of a sale of tangible personal property: Fabrication labor provided by a retailer. An end-user customer purchases a piece of steel and wants it bent into a U figure. Another example, an end-user customer purchases pieces of steel from you and also wants you to weld them together. The fabricating is permanent and actually becomes part of the tangible personal property that is sold. It is not producing any new tangible personal property. When dealing with a retail sales transaction, do not confuse installation labor and repair labor with fabrication labor. There are folks in the Department that like to quote NRS 372.060 but that is not the applicable section. The applicable sections are NRS 372.025 and Nevada Administrative Code (NRS) 372.380. NAC 372.380 is used for the administration of NRS 372.025.

6. An example when service is taxable due to a charge by seller for service necessary to complete a sale of tangible personal property: Mailing List service charge that is necessary to complete the sales of printed advertising materials. The applicable sections are NRS 372.025 and NRS360B.480(1)(c).
7. From my own experience, the Department makes it very tough in getting clear written guidance on a Nevada sales tax question. The public would be better served if the Department would issue Technical Bulletins.

Thank You and Be Safe!

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