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THOMAS SHEETS, *Chairman*
CINDY CREIGHTON, *President*

October 4, 2019

Jim Devolld, Chairman
Nevada Tax Commission
115 East College Parkway, Suite 115
Carson City, Nevada 89706

Dear Chairman Devolld:

The Nevada Taxpayers Association hereby submits the following comments regarding the proposed adoption of Regulation R002-17 on the Tax Commission agenda for October 7, 2019. We respectfully request the Commission refrain from adopting the proposed regulation based on two main areas of objection; the first is procedural and the second is substantive.

On the procedural issue, NRS 233B.040(4) provides that an agency “shall adopt a proposed regulation not later than 2 years” after the date the regulation was submitted to LCB for review. This regulation, R002-17, is the same regulation sent to the LCB in early 2017. It was up for adoption in the March 4, 2019, but was pulled following concern it was in violation of the two year rule.

On the substantive issues, first, it is important to remember that the policy of this State is that every regulation be “expressed in clear and concise language.” NRS 233B.062. The current regulation meets this standard, but the proposed regulation is convoluted and confusing. Adoption in its current form will create more problems than it will solve. This alone is cause to send the Proposed Regulation back for further consideration in workshop.

Second, the current regulation is inconsistent with statutory language providing that separately stated delivery charges for “transportation, shipping, postage, handling, crating and packing” are not taxable. NRS 360B.480(2). The proposed regulation fails to fix the inconsistency inherent in the current regulation. Instead, it continues to treat any charges for “handling, crating, or packing, whether or not separately stated” as taxable, when those same charges are expressly not taxable when separately stated pursuant to NRS 360B.480(2).

Third, the proposed amendment raises concern about “manufacturing, assembling or preparing” property during transportation or off-loading, but a charge for such activity is not a delivery charge, as defined by NRS 360B.425, and is probably already taxable pursuant to NRS 260B.480(c) (making taxable “[a]ny charges by the seller for any services necessary to complete the sale ...”). There is no reason “manufacturing, assembling, or preparing” activity should affect the tax treatment of delivery charges. Consequently, it is questionable whether this type of activity is a matter which should be addressed in the proposed regulation.

And fourth, the proposed regulation is itself inconsistent. Subsection 1 draws a distinction between two types of delivery charges: “transportation, shipping or postage” charges which, if separately stated are not subject to tax, and “handling, crating or packing,” charges which are subject to tax even if separately stated. But, subsection 2, refers to “delivery charges, including, without limitation, charges for postage or transportation or shipping.” The clause “without limitation” makes it clear the types of charges being addressed are not limited to those listed. Instead, it is applying the broader, statutory definition of delivery charges. In other words, charges for “handling, crating or packing” – charges which would clearly be taxable under subsection 1 – are not subject to tax if the requirements of subsection 2 are met.

In sum, the proposed regulation is inconsistent with statute and will create confusion for taxpayers who ship goods to consumers. We respectfully request the regulation pertaining to the sales tax treatment of delivery charges be sent back to workshop.

Sincerely,

A handwritten signature in black ink that reads "Cindy Creighton". The signature is written in a cursive style with a large initial "C".

Cindy Creighton
Nevada Taxpayers Association