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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, the proposed 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). Second, the proposed regulation fails to fix the inconsistency inherent in the current regulation, which purports to make taxable any charges for “handling, crating, or packing, whether or not separately stated” when those same charges are expressly not taxable when separately stated pursuant to NRS 360B.480(2). Third, it is unnecessary to use a regulation to make taxable activities such as “manufacturing, assembling or preparing” property during transportation or off-loading, as such activities are already taxable pursuant to NRS 260B.480(c) (making taxable “[a]ny charges by the seller for any services necessary to complete the sale ...”). And fourth, any seller may have rational business reasons to keep confidential the amounts it charges its customers for various charges related to the sale, such as manufacturing or assembly. There is no statutory requirement to segregate such charges, and the Department does have audit authority to investigate if it believes that a seller is misstating charges to avoid a lawful tax.

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,

Cindy Creighton
Nevada Taxpayers Association