

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R123-18

October 11, 2019

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1 and 2, NRS 360.090, 360B.110, 372.385 and 372.725.

A REGULATION relating to taxation; clarifying, for purposes of the sales tax, provisions concerning certain charges assessed against a person who rents or leases tangible personal property; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, for the purposes of the sales tax, the gross receipts from rentals or leases of tangible personal property must be reported and the tax paid in accordance with such regulations as the Department of Taxation may prescribe. (NRS 372.385) Existing regulations provide that, if a lessee of tangible personal property is held responsible for damages to the property, any charges assessed against the lessee for those damages are exclusive of the original rental or lease contract for purposes of the sales tax. Instead, the Department will treat such charges as a taxable sale of tangible personal property from the person who makes the repair for the lessor or from the lessor for the responsible party. (NAC 372.922, 372.940) This regulation clarifies that the provisions applicable to charges for damages to rented or leased property also apply to charges assessed against a lessee who is held responsible for the loss of the rented or leased property. Thus, the Department will treat such charges as a taxable sale from the person who provides a replacement for the property to the lessor in the same manner as from a person who makes a repair for the lessor. **Section 1** of this regulation makes this clarification applicable to tangible personal property that is acquired for lease or rental on or before June 15, 2005. **Section 2** of this regulation makes this clarification applicable to tangible personal property that is acquired for lease or rental after June 15, 2005.

Section 1. NAC 372.922 is hereby amended to read as follows:

372.922 Except as otherwise provided in NAC 372.932:

1. A person who purchases tangible personal property outside of this State for lease or rental within this State shall pay the use tax due in this State measured by:

(a) The cost of the property to the person; or

(b) The person's gross lease or rental charges for the lease or rental of the property within this State.

2. A person who purchases tangible personal property within this State for lease or rental within this State shall:

(a) Pay the sales tax to the person's vendor on the sales price of the property to him or her; or

(b) Give the seller a resale certificate for the property and elect to pay the tax measured by the gross lease or rental charges for the lease or rental of the property within this State.

3. If a person who sells and rents or leases tangible personal property within this State gives a resale certificate to the vendor from whom he or she purchases property, when the property is:

(a) Sold, the tax applies to the sales price.

(b) Committed to lease or rental transactions in this State, he or she shall pay the use tax due in this State measured by:

(1) The cost of the property to him or her; or

(2) His or her gross lease or rental charges.

4. If the purchaser:

(a) Pays the tax to his or her vendor on the sales price of the property to him or her, no further tax is due and tax must not be collected from the customer on the gross lease or rental charges.

(b) Elects to measure the use tax by his or her gross lease or rental charges, the purchaser may seek reimbursement for the tax from his or her customers measured by the lease or rental charges.

5. The tax applies to the sales price of the property within this State following its use in rental or lease service, without any deduction or credit for the tax paid on the original cost of the property or the taxes paid on the gross lease or rental charges.

6. A person who elects to pay the tax measured by his or her gross lease or rental charges pursuant to this section is not required to pay the sales tax for the purchase of parts or other equipment for the tangible personal property which is committed to lease or rental use in this State if the person gives a resale certificate to the vendor from whom he or she purchases the property.

7. A person who initially elects to pay the tax measured by his or her gross lease or rental charges and later wishes to pay the use tax may pay that tax measured by the cost of the property to him or her. The Department shall not grant a refund or credit for any taxes paid or due before he or she makes such an election.

8. Mandatory charges, whether or not separately stated, for any service, activity or function made in conjunction with the lease or rental of tangible personal property will be considered a part of the gross lease or rental charge and are subject to the tax. The term “mandatory charges” may include for example, without limitation:

(a) A fee or charge for mileage.

(b) A fee or charge for the return of the property, commonly referred to as a “drop-off charge.”

(c) A fee or charge for the reinstatement of a lease or rental agreement.

(d) Reimbursement for fixed costs or expenses, including, without limitation, management fees, interest, financing fees and carrying charges, collection call charges, repossession charges and billing charges.

9. Optional charges, separately stated, made in connection with the lease or rental of tangible personal property are not subject to the tax. The term “optional charge” may include for example, without limitation, a:

- (a) Fee or charge for the installation, erection, assembly or disassembly of the property.
- (b) Charge for a collision damage waiver or a similar instrument that acts as a waiver of the lessor’s right to collect from the lessee for any damage to the property.
- (c) Charge for the services of a person to operate or instruct another in the operation of the property.
- (d) Charge for fuel used to operate the property.
- (e) Fee or charge for the delivery, transportation or other handling of the property.
- (f) Fee or charge for maintaining, cleaning or altering the property.
- (g) Fee or charge for insurance, such as personal accident, extended protection or coverage for personal property.

10. The Department will determine whether a charge is mandatory or optional according to the terms of the agreement under which the charges are paid.

11. The fee for access to an airport and the charge for reimbursement of property taxes will not be considered part of the gross lease or rental charge if separately stated.

12. A gross lease or rental charge must represent a fair market value of the leased or rented property.

13. Any charges assessed for damages *or loss* for which the lessee is held responsible are exclusive of the original rental or lease contract, including those commonly referred to as a “charge-back ~~{fee”-or} fee,”~~ “damage ~~{reimbursement.} reimbursement,”~~ “*loss charge*” or “*replacement charge.*” The Department will treat such charges as a taxable sale of tangible

personal property from either the person making the repair *or providing the replacement* for the lessor or from the lessor for the responsible party.

14. A lessor may discontinue charging use tax on the basis of gross lease charges when a lease agreement is terminated. Periodic billing statements for amounts which are past due at the time the agreement is terminated may continue after termination for collection purposes.

15. Evidence that a lease agreement has been terminated includes:

(a) Documentation showing that the leased property has been repossessed or returned to the lessor.

(b) A formal notice of termination that has been personally served upon the lessee or served upon the lessee by certified mail, return receipt requested, or registered mail.

(c) Proof that the property has been wrecked, damaged, stolen or otherwise rendered unusable.

(d) A new agreement to lease the same equipment to the same or another lessee.

(e) Any other evidence or documentation which is acceptable to the Department and shows that a lease agreement has been terminated.

↪ Such evidence must be maintained pursuant to NRS 372.735.

16. Except as otherwise provided in subsection 17, if a lease is terminated and the property is returned, any payments, penalties or other charges or fees collected by the lessor as a result of a breach of contract are not subject to taxation as gross lease charges.

17. Any portion of the payments, penalties, fees or other charges described in subsection 14 which represents sales or use taxes must be reported and remitted to the Department.

Sec. 2. NAC 372.940 is hereby amended to read as follows:

372.940 For the purposes of NAC 372.938:

1. The gross lease or rental charges for the lease or rental of tangible personal property include any mandatory charges, whether or not separately stated, for any service, activity or function made in conjunction with the lease or rental of the tangible personal property. The term “mandatory charges” may include, for example and without limitation, any:

(a) Fee or charge for mileage.

(b) Fee or charge for the return of the property, commonly referred to as a “drop-off charge.”

(c) Fee or charge for the reinstatement of a lease or rental agreement.

(d) Reimbursement for fixed costs or expenses, including, without limitation, management fees, documentation fees, interest, financing fees and carrying charges, collection call charges, repossession charges and billing charges.

2. Optional charges made in connection with the lease or rental of tangible personal property, if separately stated on the applicable invoices, contracts or other documents, are not subject to the tax. The term “optional charge” may include, for example and without limitation, any:

(a) Fee or charge for the installation, erection, assembly or disassembly of the property.

(b) Charge for a collision damage waiver or a similar instrument that acts as a waiver of the lessor’s right to collect from the lessee for any damage to the property.

(c) Charge for the services of a person to operate or instruct another in the operation of the property.

(d) Charge for fuel used to operate the property.

(e) Fee or charge for the delivery, transportation or other handling of the property, including, without limitation, for the original delivery of the property.

(f) Fee or charge for maintaining, cleaning or altering the property. If maintenance of the property is required by the lease agreement and the lessee has any options regarding the person who may perform that maintenance, any charge for that maintenance shall be deemed to be optional and is not subject to the tax.

(g) Fee or charge for insurance, such as personal accident, extended protection or coverage for personal property.

(h) Legal fees for the negotiation of lease terms.

3. The gross lease or rental charges for the lease or rental of tangible personal property do not include any of the following charges, if separately stated on the applicable invoices, contracts or other documents:

(a) Any fee for access to an airport.

(b) Any charge for the reimbursement of property taxes.

(c) Any charge for the reimbursement of fees for filings made under the Uniform Commercial Code.

(d) Any late payment penalty.

(e) Any disposition fee.

4. Any charges assessed for damages *or loss* for which the lessee is held responsible are exclusive of the original rental or lease contract, including those commonly referred to as a “charge-back ~~fee~~ *or fee*,” “damage ~~reimbursement~~ *reimbursement*,” “*loss charge*” or “*replacement charge*.” The Department will treat such charges as a taxable sale of tangible personal property from either the person making the repair *or providing the replacement* for the lessor or from the lessor for the responsible party.

5. The gross lease or rental charges for the lease or rental of tangible personal property between related or affiliated persons must be reported at fair market value. If a party to such a transaction significantly understates those charges, that action creates a rebuttable presumption that the party made that understatement with the intent to evade the payment of the tax, and the Department may, pursuant to NRS 360.300, compute the gross lease or rental charges at fair market value. As used in this subsection, “fair market value” means the amount for which property could be leased or rented in an open competitive market.