

**THIRD REVISED PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R002-17

May 23, 2018

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

AUTHORITY: §1, NRS 360.090, 360B.480, 372.025 and 374.070.

A REGULATION relating to taxation; revising provisions governing the application of sales and use taxes to charges for postage or the transportation or shipping of tangible personal property in connection with a sale of that property; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law *does not* exclude~~{s}~~ from sales and use taxes a charge for the delivery of tangible personal property if the charge is part of or included in the sale of the tangible personal property. *(NRS 372.065) Delivery is an umbrella term that includes of a variety of charges and multiple components.* Under existing law: *(1) When separately stated on applicable invoices or billing documents for the sale of the tangible personal property, the portion of the delivery charge that is solely transportation, shipping or postage is excluded from the taxable measure; and (2) a handling charge and charges for similar components of delivery are* ~~{(1) a delivery charge is not included in the sale of tangible personal property and is not subject to sales and use taxes if the charge is separately stated on applicable invoices or billing documents for the sale of the tangible personal property; and (2) a handling charge is}~~ subject to sales and use taxes, whether or not the charge is separately stated on applicable invoices or billing documents for the sale of the tangible personal property. (NRS 360B.480, 372.025, 374.070; NAC 372.101)

This regulation revises provisions governing the application of sales and use taxes to certain types of charges for postage or the transportation or shipping of tangible personal property in connection with the retail sale of the property. Under this regulation: (1) if any manufacturing, assembling or preparing of tangible personal property occurs during the transportation or shipping of the property to a location designated by the purchaser, a charge for the transportation or shipping is deemed to be a handling charge and is subject to sales and use taxes unless the retailer includes on applicable invoices or billing documents a separately stated charge for handling and a separately stated charge for only transportation or shipping; and (2) a charge which is separately stated on applicable invoices or billing documents as a charge for transporting or shipping tangible personal property to the retailer’s place of business or any other location from which the tangible personal property will be subsequently delivered to the purchaser is subject to sales and use taxes.

Section 1. NAC 372.101 is hereby amended to read as follows:

372.101 1. Delivery charges included in the *retail* sale of tangible personal property are subject to sales and use taxes, including, but not limited to, any charges for:

(a) Transportation, shipping or postage which are not stated separately on applicable invoices or other billing documents. ~~[Any]~~ *Except as otherwise provided in this section, any* charges for transportation, shipping or postage which are stated separately on applicable invoices or other billing documents shall be deemed not to be included in such a sale and are not subject to sales and use taxes. *If any manufacturing, assembling or preparing of tangible personal property occurs during the transportation or shipping of tangible personal property or at the time that the tangible personal property is off-loaded to a location designated by the purchaser, a charge for the transportation or shipping shall be deemed not to be a charge for transportation or shipping which is separately stated on applicable invoices or other billing documents and is subject to sales and use taxes, unless the retailer includes on applicable invoices or other billing documents a separately stated charge for the handling of the tangible personal property and a separately stated charge for only transportation or shipping. For the purposes of this paragraph, tangible personal property is manufactured, assembled or prepared during transportation or shipping if the tangible personal property is produced, made ready for use or made through a combination of products during such transportation or shipping.*

(b) Handling, crating or packing, whether or not separately stated.

2. *Unless there is documentation such as a purchase order from the seller and/or bill of lading from the shipping company providing that the retailer's location was the destination designated by the purchaser and not designated by the retailer for purposes of tax avoidance, if a retailer includes on applicable invoices or other billing documents any separately stated*

delivery charges, including, without limitation, charges for postage or the transportation or shipping of tangible personal property to the retailer's place of business or any other location from which the tangible personal property will subsequently be delivered to a location designated by the purchaser, such charges shall be deemed to be included in the calculation of gross receipts for the purposes of paragraph (c) of subsection 1 of NRS 372.025 and are subject to sales and use taxes.

3. A delivery charge that is not connected with the sale of tangible personal property is a charge for a service and is not subject to sales and use taxes.

~~[3.]~~ 4. If a shipment of tangible personal property which is sold to a purchaser includes both taxable and exempt property, the seller of the property shall comply with the provisions of NRS 360B.255.