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

November 25, 2022

Jeff Rodefer
Commissioner and Chairman
Nevada Tax Commission
1550 College Parkway
Carson City, Nevada 89701

Shellie Hughes
Executive Director
Department of Taxation
1550 College Parkway
Carson City, Nevada 89701

Re: Proposed Amendment to NAC 372.938

Dear Mr. Rodefer and Ms. Hughes:

I am writing on behalf of the Nevada Taxpayers Association to support the request to amend NAC 372.938 made by the National Federation of Independent Businesses ("NFIB"). The NFIB is correct; the "deemed" election in subsection 3 of NAC 372.938 can be a punitive tax trap for the unwary and should be amended.

NAC 372.938 allows a taxpayer to elect to report tax measured by (i) the gross receipts from the lease or rental of the property or (ii) the cost of acquiring the property. The election, however, must be made by the date their next tax return is due. If the election is not timely made, subsection 3 mandates that the taxpayer pay tax measured by the gross receipts from the lease or rental of the property. This "deemed" election will not necessarily result in the imposition of the correct tax and may well impose a tax so punitive that it forces the business to close.

Instead of a "deemed" election, the taxpayer and the Department should be able to choose the measure which is consistent with the practice within the industry in which the taxpayer operates. If businesses in a particular industry typically chose to report tax measured by their cost of acquiring the property, a taxpayer in that industry who failed to timely report their acquisition of property should be allowed to file a late use tax return. The State is made whole in this situation because in addition to tax, the taxpayer would be required to pay penalties and interest. But currently NAC 372.938 does not allow this result.

As currently worded the regulation ties the hands of the taxpayer, the Department and the administrative law judges by mandating a "deemed" election. On the other hand, the amendment proposed by NFIB provides all parties the flexibility to determine the appropriate measure.

For the foregoing reasons we support NFIB's request that the proposed amendment of NAC 372.938 be placed on the next agenda of the Tax Commission.

Thank you.

Sincerely,

Cindy Creighton, President

