
NEVADA DEPARTMENT OF TAXATION



NEVADA TAX NOTES

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TAXATION'S NEW EXECUTIVE DIRECTOR

On June 22, 2012, Governor Sandoval appointed Christopher G. Nielsen as the Department's Executive Director. Mr. Nielsen was the Department's Deputy Director and has previously served as General Counsel in the Office of Governor Jim Gibbon and as Senior Deputy Attorney General in the Office of the Attorney General for the state of Nevada.

Mr. Nielsen is a graduate of the University of Nevada, Reno, and holds a Juris Doctor from the University of the Pacific, McGeorge School of Law and a LL.M. in Taxation from the University of Washington School of Law.

Nielsen's institutional knowledge, experience with previous legislative sessions and testifying before committees uniquely qualifies him for the position.

TAX INCLUDED IN THE SALES PRICE

If you operate a business where it is expedient that you market your product at a price that includes tax (such as a bar that sells drinks for an even dollar amount) you need to be sure that this is properly communicated to your customers. NRS 372.120 states that tax must be displayed separately from the price unless the price is advertised on the premises or on the invoice. NAC 372.760 requires that the sign or notice state that the "price includes sales tax," or it may be printed on the customer receipt. Therefore, you can include tax in your final selling price if you properly inform the public. If you do not properly inform your customers, you may be assessed additional taxes, penalties and interest during a Sales Tax audit.

An additional reminder: NRS 372.115 prohibits any advertisement that states the tax will be paid, absorbed or assumed by the retailer. Any person violating any provision of this section is guilty of a misdemeanor.

MANUFACTURER EXTENDED WARRANTY AND GOODWILL REPAIRS

NAC 372.460 exempts from sales or use tax tangible personal property that is sold pursuant to the provisions of a warranty or guaranty included in the original contract of sale and, therefore, previously taxed. However, manufacturers and/or retailers cannot exempt "goodwill" or "promotional" use of tangible personal property for replacements and/or repairs under the warranty exemption after the original warranty has expired. The claim for exemption based upon an "extension of the base warranty" by a retailer on behalf of the manufacturer fails because it is separate from the original sale, and pursuant to NAC 372.460 was not included as part of the original contract of sale.

WHAT IS "USE TAX"?

Perhaps the most misunderstood and confusing tax for businesses in Nevada is "Use Tax." Many businessmen and bookkeepers have seen the "Use Tax" section on their Sales and Use Tax Returns, but don't know what it is, so they either ignore that section or assume it does not apply to their businesses. In reality, almost every business is periodically subject to "Use Tax."

Every business in Nevada is required to report and remit "Use Tax" on the storage, use or consumption in the State of Nevada of any tangible personal property purchased from any retailer who did not charge Sales Tax on the purchase transaction. (NRS 372.185, 374.190, 377.040, 377A.030 and 377B.110) This includes any purchase of tangible personal property that is not held for resale. To further define "Use Tax," it is also imposed on all personal property which was acquired from an out-of-state supplier in a transaction that would have been a taxable sale if it had occurred within this State. Every business in Nevada that purchases any tangible personal property such as equipment or supplies must be registered with the Nevada Department of Taxation and report and remit "Use Tax" on all such transactions and purchases if no sales tax was paid to its vendor. (NRS 372.220) "Use Tax" is calculated at exactly the same rate as the sales tax rate in your county.

Examples of “Use Tax” transactions:

1. An accountant purchases a new desktop computer from a catalog computer warehouse in New Jersey that does not assess and collect Nevada Sales Tax on the invoice when it is received. In this case the accountant should report and remit “Use Tax” on this computer’s purchase price.
 2. A shoe store owner removes a pair of shoes from his store inventory for his own personal use and makes a general ledger entry to adjust inventory for the removal of the shoes. In this case the store owner should declare and remit “Use Tax” on the cost of the shoes.
 3. A furniture store owner decides to give away a sofa & loveseat combo for promotional purposes at its grand opening. In this case the store owner should declare and remit “Use Tax” on the wholesale/cost value of the furniture being given away.
 4. A casino operator decides to give a free beverage to some of the guests. The casino should declare and remit “Use Tax” on each drink that is given away at the acquisition or wholesale cost of that drink since it will not be sold at retail.
 5. A newly graduated dentist from the UNLV Dental School buys a complete set-up of dental office equipment for his new office from a wholesaler in California that does not charge Nevada Sales Tax on the invoice. In this case the dentist should report and remit “Use Tax” on the purchase price of the equipment being shipped into Nevada.
- Exceptions to the Use Tax law could include items purchased and personally picked-up out of state for which sales tax was legitimately paid to that state. If the product was purchased specifically for use in Nevada, and the tax rate in the state where you purchased the product is less than the rate in Nevada, you may also be responsible to pay the difference between the two rates. If the paid tax rate is greater than ours, you have no further tax burden. Any entity holding a valid Nevada Sales Tax Exemption letter would not be required to pay “Use Tax.” Most service only businesses operating in Nevada will register with the Department for a “Consumer Certificate.” This account allows them to report any use tax obligation they incur on a monthly, quarterly or annual basis – depending on the size of the business.

One of the most common errors found by the State tax auditors at many Nevada businesses is the failure to report and remit “Use Tax.” You are encouraged to acquaint yourselves with the “Use Tax” statutes and requirements to avoid costly penalties and interest that could be assessed to your business because you did not properly report and remit “Use Tax.” Additional information can be found at the Department’s website at <http://tax.state.nv.us> or you may sign up for one of our free “Ask the Advisors” training classes.

SUCCESSOR’S LIABILITY

Taxpayers purchasing existing businesses are reminded of **Successor’s Liability** (NRS 360.525). When a person buys a business they may be liable for any tax or fees the business owes the Department. For this reason it is very important that the buyer of the business request a “Certificate of Amount due” from the Department of Taxation before the proceeds of the sale are released.

A buyer is required to withhold a sufficient portion of the purchase price to cover the seller’s liability of any tax or fee owed. If the buyer does not withhold any tax liability, the buyer will become liable for the payment of these taxes up to the extent of the consideration paid for the business or any stock of goods. If the buyer acquires the business through a business escrow service, the escrow officer will either obtain the necessary releases from the taxing authorities prior to closing escrow or withhold enough of the purchase price from the seller to pay any taxes that are due. Another option is to have the seller’s signature notarized on the form “ADM-01.17 Successors Liability – Release of information” issued by the Department. The form can be found on the website under the “Common Forms” tab.

A contract entered into where the buyer agrees to pay the tax liability due does not absolve the seller from the tax liabilities as the Department is not a party to the contract

MODIFIED BUSINESS TAX FINANCIAL INSTITUTIONS (MBT-FI)

For Modified Business Tax purposes a “financial institution” is defined as an institution/person licensed, registered or otherwise authorized to do business in this State pursuant to the provisions of NRS Chapters 604 (deferred deposit loans, high interest rate loans, title loans, and check cashing services), 645B (mortgage broker), 645E (mortgage bank), title 55 (Bank and other related organization) and title 56 (other financial institutions), and includes a similar institution chartered or licensed pursuant to federal law. It also includes a business engaged in other financial activities involving securities, commodity exchange, bonds, investments, management of money, loan, or credit card processing, and insurance. The term does not include a credit union organized under the provisions of chapter 678 of NRS or the Federal Credit Union Act.

Effective July 1, 2005, the definition excluded credit reporting companies, collection agencies, pawnbrokers, companies that extend credit for their own goods and services only, and agricultural credit associations. If you are an insurance agent who is licensed or registered to do business as described above you may be misclassified as a general business. The Department is currently reviewing accounts in an effort to identify accounts that have been misclassified as a general business when they are actually a financial institution. Notifications have been sent to several misclassified accounts and more are expected to be mailed out in the near future.

The Modified Business Tax rate for financial institutions is 2 % on gross wages less deductible health benefits paid by the employer.

BUSINESS RECORDS NEEDED FOR SALES AND USE TAX AND MODIFIED BUSINESS TAX AUDITS

Businesses should retain all basic records per NRS 372.735 for not less than four years for businesses registered with the Department, and not less than eight years for businesses not registered with the Department. Retaining proper records will expedite an audit if you are contacted for one. The following records are the minimum that should be retained by your business:

- Sales journal: This is an accounting device that records the monthly sales. It should be supported by individual sales invoices that show all parts of the sales transaction. Sales invoices should be pre-numbered and issued in sequential order. All documents used to file the monthly/quarterly Sales/Use Tax returns should be kept together.
- Purchase journal/cash disbursements journal: This is a listing of all items the business purchases whether for inventory, assets or operating expenses. The journal is supported by paid vendor invoices which are usually filed in alphabetic order by the vendor name.
- The payroll journal: This is a detailed listing of each employee's pay history and is required for all payroll-related taxes. Records regarding healthcare benefit payments made on behalf of the employees by the business should be available for the Modified Business Tax portion of the audit. Also, all Employment Security Division Reports (form NUCS 4072) should be available for the entire audit period.
- Bank records should include a check register, deposit receipt, bank statements, bank reconciliations, and, if available, cancelled checks. Business checks should be issued in sequential order.
- Monthly, quarterly and annual tax returns for State and local taxing authorities should be supported by all working papers and details related to filing returns.
- Accounting records can be completed in-house or by a bookkeeping/accounting service. If you use an outside service, you should be provided with the basic journals and ledgers in order to review your business's financial history. As your business grows, your accounting structure should be routinely re-evaluated. If you maintain records in a computer system, they should be complete and timely, so that they may be used in the audit process. A backup of computer records is also recommended, since it could be helpful in the audit process.

PENALTY FOR FAILURE TO MAINTAIN BUSINESS RECORDS

Pursuant to NRS 360.330, the Department must impose a 10% penalty on a deficiency resulting from negligence or intentional disregard of the requirements set forth in Title 32 of the Nevada Revised Statutes (Revenue and Taxation) or the authorized regulations of the Department (Nevada Administration Code). Negligence is defined in Blacks Law Dictionary as "The omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do". The Negligence penalty can be imposed for failure to maintain business records as required by NRS 372.735.

VOLUNTARY DISCLOSURE OF SALES, USE OR MODIFIED BUSINESS TAX

The State offers businesses, which are not registered and meet certain criteria, the opportunity to come forth and voluntarily disclose tax due. Businesses that report and pay the tax due in good faith will have the associated penalty and interest waived.

The manner in which the State requires voluntary disclosures of sales/use tax and/or business tax to be conducted is comprehensively described in the Nevada Administrative Code (NAC) NAC 360.440 - NAC 360.448.

Application materials necessary to establish the appropriate registration with the Department for sales/use tax or business tax reporting and/or participation in the Nevada voluntary disclosure program may be down-loaded from the Department's website or are available by mail upon request. The three (3) forms necessary are: Application For Voluntary Disclosure

Of Failure To File Return-01.01, the Nevada Business Registration-01.00 and the Nevada Department of Taxation Supplemental Information form plus any tax returns due. All forms must be fully executed, signed and submitted to the Department accompanied by the appropriate fee(s)/deposit

ESTIMATED BILLINGS

Sales and/or Use Tax Returns must be filed for each reporting period, even if no liability exists. If a person fails to file a return, the Department may compute and determine the amount to be paid upon the basis of any information in its possession or reasonable estimates of the amount (NRS 360.300). The Department is embarking upon a new automated process for sending out estimated billings based upon a taxpayer's filing history for any delinquent periods. A taxpayer will have 45 days to file an actual return for each reporting period with the correct amount due with payment which will over-ride the estimated billing; or, may accept and pay the estimated billing. If a taxpayer fails to do anything, the deficiency will become final and the Department will pursue normal collection actions.

“ASK THE ADVISORS” TRAINING WORKSHOPS

The Department will be presenting Basic Tax Training and Industry-Specific Training throughout the year. The Henderson Office will include additional presentations by the **Internal Revenue Service** – forms and filing requirements; and **SCORE** – resources available for businesses to guide them to success. **SCORE** is a non-profit organization sponsored by the Small Business Administration.

The Reno Office will include presentations by the **Internal Revenue Service**. These **free** workshops include training on Sales and Use Tax, Modified Business Tax, Live Entertainment Tax, collection of taxes, resale certificates, exemptions, how to prepare amended tax returns, how to prepare for an audit, your petition rights, etc.

SOUTHERN REGION – The following workshops will be held in the **Henderson Department of Taxation Office** located at 2550 Paseo Verde Parkway, Suite 180, and will begin at 9:00 a.m. and conclude at 12:00 p.m.:

Tuesday, October 16, 2012 - Basic Tax Training

NORTHERN REGION – The following workshop will be held in the **Reno Department of Taxation Office** located at 4600 Kietzke Lane, Bldg. B, Suite 111, and will begin at 9:00 a.m. and conclude at 12:00 p.m.:

Wednesday, October 17, 2012 - Basic Tax Training

Reservations are required as classes fill up quickly. Please call (702) 486-2354 for Henderson classes and (775) 687-9999 for Reno classes to reserve seating.

For those not able to attend “Ask the Advisors” training, you may access the Workshop Power Point presentations on this website by clicking on “Ask the Advisors.” At this site you may also view the workshops scheduled for the year.

HOLIDAY CLOSURES

The Department of Taxation District Offices will be closed the following days in the last Quarter of 2012:

Friday - October 26, 2012 Nevada Day
Monday - November 12, 2012 Veterans Day
Thursday - November 22, 2012 Thanksgiving
Friday - November 23, 2012 Family Day
Tuesday - December 25, 2012 Christmas

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