

# NEVADA DEPARTMENT OF TAXATION



# NEVADA TAX NOTES

*Official Newsletter of the Department of Taxation*

July 2012

<http://tax.state.nv.us>

ISSUE NO. 179

File and pay online at [www.nevadatax.nv.gov](http://www.nevadatax.nv.gov)

## DEPARTMENT OF TAXATION OFFICES

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### **MAIN OFFICE**

1550 College Parkway  
Carson City, Nevada 89706

Phone: (775) 684-2000  
Fax: (775) 684-2020

### **LAS VEGAS DISTRICT OFFICE**

Grant Sawyer Office Building  
555 E. Washington Avenue, Suite 1300  
Las Vegas, Nevada 89101

Phone: (702) 486-2300  
Fax: (702) 486-2373

### **HENDERSON FIELD OFFICE**

2550 Paseo Verde Parkway, Suite 180  
Henderson, Nevada 89074

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Fax: (702) 486-3377

### **RENO DISTRICT OFFICE**

Kietzke Plaza  
4600 Kietzke Lane Building L, Suite 235  
Reno, Nevada 89502

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## **EVENT AND PARTY PLANNERS**

Event or party planners (Planners) engage in the planning of parties and events both large and small, including:

- Birthdays
- Wedding Receptions
- Corporate Events
- Anniversary Celebrations

Planners often contract with local vendors to supply the catering, entertainment, transportation of guests to the event, etc. The person that collects the money directly from the customer is responsible for collecting the sales tax.

Many planners own and use an extensive inventory of linens, props, table accessories, banners, etc. for these events. The use or rental of these inventory items is a taxable event unless sales tax has already been paid on the items by the Planner per [NAC 372.920 through 372.946](#).

As Planners transact business that includes both taxable tangible personal property and services, they must be very careful to correctly charge and remit sales tax. Because of this, itemized invoices are preferred.

Itemized invoices enable Planners to charge sales tax only on the charges for taxable property and those services **necessary** to complete the sale. Necessary taxable services include services which may not be separately negotiated from the sale or rental of the taxable items per [NRS 360B.480](#). In other words, services which must take place for the transaction to occur. Necessary services include, but are not limited to:

- Set up and strike fees
- Wait staff fees
- Bartender fees
- Carving fees

Services or fees which are not considered a part of the taxable event are not subject to sales tax, as long as the charges for these services are separately stated. These services may include:

- Facility procurement charges
- Security or officiant fees
- Music or entertainment (Not including equipment rental. See [NAC 372.920 through 372.946](#).)
- Mandatory service charges which are given in full to employees as gratuity

Planners who do not itemize their customer invoices must charge sales tax on the entire charge to their clients.

### **PREPARED FOOD INTENDED FOR IMMEDIATE CONSUMPTION**

In Nevada, food for human consumption, such as grocery items, are exempt from sales and use tax. However, the sale of prepared food intended for immediate consumption is taxable. [NRS 360B.460](#) and [NAC 372.605](#) define prepared food intended for immediate consumption to be:

- 1) food sold in a **heated** state or heated by the seller;
- 2) two or more food ingredients **mixed or combined** by the seller for sale as a single item; and
- 3) food sold with **eating utensils** provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.

The prepared food being sold at retail need only fall into one of the 3 categories listed above to be considered prepared food intended for immediate consumption.

Example 1: A retailer sells hot coffee to a customer. This is a taxable transaction as the food (coffee) is sold in heated state making it prepared food intended for immediate consumption.

Example 2: A retailer sells submarine sandwiches made to order. This is a taxable transaction as the sandwich is comprised of two or more food ingredients mixed or combined by the seller for sale as a single item making it prepared food intended for immediate consumption.

Example 3: A retailer sells cut up fruit and provides plates, forks, and/or napkins to the customers. This is a taxable transaction as food (fruit) sold with eating utensils provided by the seller makes it prepared food intended for immediate consumption.

### **TAXABILITY OF MULTIPLE ITEMS SOLD FOR ONE PRICE (BUNDLED TRANSACTIONS)**

If a sale of tangible personal property includes taxable items and non-taxable items or a non-taxable service, the entire amount of the sales price is taxable if the items are not separately stated to the customer. This is called a bundled transaction pursuant to [NAC 372.045](#). Businesses that typically make sales that qualify as bundled transactions include wedding chapels, caterers, event planners, and repairmen.

There are some exceptions to this rule: If the true object of the transaction is really a service or the value of the taxable items is less than 10% of the entire transaction, then the retailer does not charge sales tax but pays sales tax on the cost of the taxable item to them. For example, you pay \$200 dollars to get your wedding vows renewed and it comes with a photo (value \$5) of the ceremony, the customer should not be charged sales tax on the \$200, but tax is due on items used to produce the photo.

If a non-itemized invoice is given on a transaction that includes food, drugs, or medical equipment and the value of the **taxable** items is less than 50%, then the transaction is also not considered a bundled transaction and the retailer does not charge sales tax to the buyer but pays sales tax on the cost of the taxable items to them.

If you have questions as to whether the products you are selling meet the definition of a bundled transaction contact the Department of Taxation by writing to the Department at any of the office addresses.

### **FLORISTS**

The sale of tangible personal property (TPP) is subject to Nevada sales tax if the **sale took place within the State**. In nearly every circumstance, this is determined to be at the point the purchaser takes possession of or receives the TPP per [NRS 360B.350](#).

However, sales by **florists** are an exception to this rule per [NAC 372.230](#). Florists must charge and collect Nevada sales tax on any **order received** from a customer, rather than on any order delivered in Nevada. This means that a Nevada florist who takes a customer's order by whatever means (via telephone, fax, online, etc.) must charge and collect Nevada sales tax on that order, even if it is to be delivered out of state and/or delivered by another florist. Nevada florists should **not** charge and collect sales tax on deliveries they make pursuant to instructions they receive from another florist. Basically, the florist that receives the payment for the flowers must collect and report the tax.

In addition, a florist's wire network service charge and any handling charges are considered to be a service necessary to complete the sale and are taxable whether or not they are separately stated per [NRS 360B.480](#). However, per [NAC 372.230](#), **separately stated** charges for transportation, shipping, or postage are not taxable.

### **LIVE ENTERTAINMENT FOR NON-GAMING ESTABLISHMENTS AND RECORDS REQUIRED**

Non-gaming establishments with occupancy over 199 persons that charge an admission charge for live entertainment may meet the criteria and be liable for the Live Entertainment Tax. Occupancy is determined by **maximum number** of people allowed in a venue not the number attending the event. Live entertainment pursuant to [NRS 368A.090](#) may consist of:

- Musicians, Vocalists, Dancers
- Actors, Comedians, Magicians, Illusionists, Entertainers
- Acrobats, Performers, Stunt Persons
- Animal Handlers / Trainers
- Athletic or Sporting Contests (some athletic and boxing events may be exempt)

For facilities with seating less than 7,500, Live Entertainment Tax must be remitted on the admission charge and all food, drinks and merchandise sold at the facility, at the rate of 10% of the charge. However, the LET is only applicable to the

periods when the facility is in "live entertainment status". Specifically under [NAC 368.120](#), live entertainment status commences when any customer is required to pay an admission charge before being allowed to enter the facility regardless of when the live entertainment actually commences. Live entertainment ceases at the later of:

- The conclusion of the live entertainment
- The facility is completely vacated by admitted patrons or the facility is opened to the general public free of admission charge.

For this reason, it is very important that records be kept indicating the conclusion of the entertainment events to determine the duration and amount of the LET liability. You should know that in the absence of any records that establishes the conclusion of live entertainment as well as accounting for charges during the live entertainment period, the LET may be assessed in an audit for the entire time admission charges are imposed regardless of the conclusion of the entertainment. The records must be kept for 4 years as required by [NRS 368A.160](#).

If you are engaged in this type of business but think you may be exempt from the LET please contact the Department at the toll- free number.

### **CONTRACTORS AND USE OF RESALE CERTIFICATES**

Contractors, be advised that unless you are registered with the Department for Sales Tax and have a valid Sales Tax Permit, you cannot use a Resale Certificate to purchase materials without sales tax in the State of Nevada. The purpose of a Resale Certificate is to exempt the purchase from sales tax because the material will be **resold** and the tax will be charged to the end buyer.

A construction contractor **may not purchase** construction materials, supplies, or tools which are ordinarily used by a construction contractor in the performance of a construction contract using a resale certificate unless he is actually engaged in the business of selling the property without previously using it. Under [NRS 372.175](#), improper use of a Resale Certificate constitutes a misdemeanor offense. Also, additional penalties may be applied to any Department determination per [NRS 360.330](#) and [NRS 360.340](#).

### **CHARCOAL, BRIQUETTES, AND PROPANE**

All gross receipts for charcoal, briquettes, and propane are taxable per [NRS 372.155](#) unless specifically exempt. Three instances occur in which propane is considered exempt from Sales and/or Use Tax:

- Propane delivered to customers through **mains, lines, or pipes** per [NRS 372.295](#).
- Propane purchased to produce **domestic** heat (not for commercial purposes) per [NRS 372.300](#).
- Propane used in an **internal combustion engine** per [NRS 372.275](#). Propane used as fuel can only be sold by a licensed special fuel dealer as designated by the DMV per [NRS 366.062](#). This propane is subject to a separate special fuel tax.

Propane sold in the small cylinders used for outdoor cooking do not meet any of the criteria shown above and are taxable. However, propane delivered to a storage tank on property near the customer's home to provide heat would be exempt pursuant to NRS 372.300.

### **WHITE PINE COUNTY TAX RATE INCREASE**

Effective July 1, 2012 the White Pine County tax rate will be **increasing** from 7.475% to 7.725%. The White Pine County Commission voted to reinstate the local option sales tax whose proceeds will go towards operation and maintenance of a public swimming pool for White Pine County.

Those who collect and remit sales and use tax will need to make changes to business processes as necessary in order to collect tax at the new rate. Businesses should be sure to file the most recently **updated tax return** forms. Filing [online](#) is the best option to take advantage of the most up to date tax rates. Tax Returns are also sent in the mail or can be located on our website under [Common Forms](#).

## **DID YOU RECEIVE A BILLING FOR MODIFIED BUSINESS TAX (MBT) RECENTLY?**

The [wages](#) required to be reported to the [Nevada Employment Security Division](#) (ESD) are also required to be reported for MBT per [NRS 363B.110](#). If a difference exists between the quarterly wages filed with ESD and those found in the Department of Taxation's records, a billing letter is issued.

If you received a billing letter because you failed to file a MBT return for that particular quarter, you can still claim a health care deduction by filing a MBT return showing the correct gross wages as reported on the NUCS 4072 and any qualified health care deductions claimed. To determine if the expenses you paid on behalf of your employees qualify, see [NRS 363B.115](#) for allowable deductions.

If the MBT billing notice corrected your filed return, there are instructions on the form which need to be followed. Compare the wages on the MBT return to line 3 on the NUCS 4072 that was filed with ESD. If you believe the wages you filed with ESD are incorrect, contact ESD immediately to amend your NUCS 4072. The Department of Taxation cannot amend your MBT billing without proof that the NUCS 4072 form has been amended. The MBT return can be found on the Department's website under the [Common Forms](#) tab. For more information on this topic see the [article dated May 7, 2012](#) on the Department's website.

## **PAYMENT PLANS FOR TAX DEBT**

Paying off your tax bill in full will reduce or eliminate the amount of interest you pay. However, if you're not financially able to pay your tax debt immediately you may apply for a payment plan with the Department per [NRS 360.2915](#) and [NAC 360.450 through NAC 360.462](#). Before you apply you should file all required tax returns, consider other sources to pay your tax debt in full, and estimate the largest monthly payment you can make.

As part of the payment plan you are agreeing to keep your account in good standing by filing and paying all subsequent tax returns with payments in full and on time. Your payment plan installment payments must also be made in full and on time. Interest will accrue, on the tax amount only, during the repayment period.

To apply for a Payment Plan you should contact your Revenue Officer at your local office to schedule an appointment. They will assist you in the process. You will need to submit:

1. A **letter** requesting the payment plan which includes a description of your business, the reason for the debt, the reason you are unable to make the payment in full, and the monthly payment you are requesting.
2. A signed **Payment Agreement Form** that specifies the terms.
3. A signed **Payment Guarantee Form** which makes you personally liable for the debt.
4. A [Personal Financial Statement](#) and a [Business Financial Statement](#) that your Revenue Officer will provide for you that you will need to complete with all required attachments.
5. The **initial payment** with the required documents.

You should also be aware that a payment plan requires the Department to place a lien on your assets.

## **RESPONSIBLE PERSON DETERMINATION**

When a business entity's tax liability remains outstanding, the Department of Taxation (Department) has the authority to pursue a determination known as "Responsible Person" per [NRS 360.297](#). In other words, the Department will try to establish the person(s) responsible for the non-payment of the tax. That person(s) will become **personally liable** for the tax if the determination is upheld by an Administrative Law Judge (ALJ). The process is a standard part of the Department's collection efforts but normally pursued only after the Department has exhausted all measures of collection efforts against the entity itself.

In investigating the responsible person, the Department will look for the officer, employee, member, or manager whose job or duty it was to collect, account for, or pay the tax. More than one individual may be determined to be the responsible person for an entity. The Department will give written notice of the date and time for the person(s) to appear at a hearing before an ALJ who will make the decision.

The hearing process, although informal, is similar to other hearings held in a court of law. Both the Department and the

person(s) will have the opportunity to present evidence and question witnesses. Since the Department requested the hearing, the Department has the burden of proving that the person was **responsible** and **willfully** made the decision to pay other expenses and not the taxes owed.

The ALJ will render a decision based on the evidence presented and the facts contained in the law. That decision may be appealed to the Nevada Tax Commission within 30 days. Once a finding of responsible person is final, the Department will pursue collection actions against that person, which may include liens on assets, withholds, and garnishments.

### **OFFERS IN COMPROMISE (OIC)**

Pursuant to [NRS 360.263](#), [NAC 360.437](#), and [NAC 360.438](#), the Nevada Tax Commission (NTC) may enter into a compromise with a taxpayer concerning the liability of the taxpayer for any tax, contribution, premium, fee, interest, or penalty that the Department has determined is owed. This includes all taxes administered by the Department with the exception of property tax.

A compromise is the acceptance of an amount that is less than the liability as full satisfaction of that liability. During the period of time the Department is processing the OIC, as long as the person signs a waiver of the statute of limitations, the Department will not take any further collection activity on the debt until the NTC has accepted or rejected the offer. The Offer in Compromise application form with [further explanations](#) is available on this website, along with the necessary financial forms that need to be completed.

There are three reasons a liability may be compromised:

1. **Doubt as to Collectability** -- These requests are from someone who feels they are unable to pay the full amount. The [Personal Financial Statement](#) and [Business Financial Statement](#) must be completed to process these requests.
2. **Doubt as to Liability** -- The person may request a compromise because they do not believe they owe the total amount of the liability. The person must describe in their written request why, in their judgment, they do not owe the tax liability and offer the correct amount of tax, penalty and interest owed instead. These do not have to do with whether or not the person has the ability to pay the liability.
3. **Consideration of Equity and Fairness** -- These are typically hardship situations but not necessarily financial hardships. There may be exceptional circumstances present that either caused a person not to pay the correct amount of tax, or payment of the full amount of the tax would create a hardship or would be unfair and inequitable. The financial statements and verification may be required with these requests depending on the exceptional circumstances present.

In all cases documentation must be presented to prove the circumstances. Acceptance of an OIC may depend on the person's history of compliance with all other applicable requirements. If the debt is due to an audit, the person must first exhaust their administrative petition rights before an offer is made. The NTC may accept an OIC that includes an installment agreement.

Once a liability has been compromised, and the amount of the offer has been paid, that person's debt is considered paid in full, but the NTC may still be able to collect the rest of the liability from any other liable person not part of the OIC.

### **PENALTY & INTEREST WAIVER REQUESTS**

Pursuant to [NRS 360.419](#) and [NAC 360.396 through NAC 360.398](#), the Department may waive or reduce penalty or interest if failure to make a timely return or payment is the result of **circumstances beyond the taxpayer's control and occurred despite the exercise of ordinary care and without intent**.

The request for waiver or reduction of interest and/or penalty must include the facts upon which the claim is based. The explanation should address above criteria mentioned and should include any documentation which supports the claim. The application form for this purpose, [Request for Waiver of Penalty and Interest](#) is found on the Department's website under the Common Forms menu item. The form must be signed under penalty of perjury.

All tax associated with the period requested **must be paid in full** before the Department will review any penalty & interest waiver request. It should be noted that the Department does not consider the poor economy an acceptable reason for

failure to timely remit sales tax that is collected from the public in trust.

### **CLOSING YOUR SELLERS PERMIT**

Since you are responsible for collecting and remitting sales tax, it is important for you to inform the Department when you are no longer engaged in business, you sell your business, or have a change to the type of ownership for your business. If you fail to notify the Department of Taxation of any changes in your business, you could become liable for tax, interest, and penalties incurred after you no longer own or operate your business. In some cases, the Department may estimate any unfiled returns based on the best information available.

If you sell, change partners, or close out your business, you should let us know the following information:

- The **date** you ceased business activity.
- The **reason** you are no longer engaged in the business.
- Your **current address** and **daytime telephone number**.
- The **date** of the last tax return filed and payment remitted.

Prior to closing out your permit, you should be sure you will no longer make any sales of unused inventory. Closing out your permit and filing your last return does not relieve you of any tax liability that may still be outstanding. You are required to pay all tax incurred for the period in which you were actively engaged in business. You may also be entitled to a refund of your security deposit which was secured by the Department at the time your sales tax permit was issued. You can call or visit any Department of Taxation location for assistance.

### **“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, July 17, 2012 — Basic Tax Training

Tuesday, August 21, 2012 — Basic Tax Training

Tuesday, September 18, 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, August 22, 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 our website by clicking on [“Ask the Advisors.”](#) 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 third Quarter of 2012:

- |           |   |                   |   |                      |
|-----------|---|-------------------|---|----------------------|
| Wednesday | • | July 4, 2012      | • | July 4 <sup>th</sup> |
| Monday    | • | September 3, 2012 | • | Labor Day            |