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Nevada Tax Commission
3850 Arrowhead Drive, 2nd Floor
Carson City, NV 89706

Subject: Leases

Hello Commissioners,

I would like to discuss the Departments PowerPoint presentation on Lease that can be found on their website:

1. The Great Citizens of Nevada **voted down** Question No. 4 which appeared on the November 4, 2008 General Ballot. This question would of allowed Nevada Legislature to amend or repeal any provision of the Sales and Use Tax Act of 1955 without a direct vote of the people. Nevada Revised Statute (NRS) 372 is made up from the Sales and Use Tax Act of 1955.
2. Although a prior Nevada Tax Commission, made NRS 360B part of Nevada Administrative Code (NAC) 372, it does not override NRS 372.
3. The Wayfair vs South Dakota decision by the United States Supreme Court makes NRS 360B (Streamlined Sales Tax Agreement) less relevant from a compliance audit standpoint. I do not think the Nevada Legislative intended for NRS 360B is be used to change the definition of retail sales as defined in NRS 372.050. When issuing their decisions, the Nevada Supreme Court reference NRS 372.050 or NRS 372.105.

I also do not think the Nevada Legislative or even some folks on the Nevada Tax Commission would agree with the Department's presentation statement "Leases or rental means Applies "regardless of whether a transaction is characterized as a lease or rental under Generally Accepted Accounting Principles (GAAP). That is a bold statement and I would ask Executive Director Hughes from what NRS does the Department use to make such a bold statement? Does not an organization need some type of rules for their accounting? NRS 353.3076 requires the State of Nevada to follow Generally Accepted Accounting Principles which for a government agency means Governmental Accounting Standards Board. If I read this correctly, the person who put the presentation together is saying the State of Nevada has to follow Generally Accepted Accounting Principles but that the NRS that deals with taxation does not. Remember now taxation results into revenue for the State of Nevada. Do you see a problem? I do. Lastly, the Department viewpoint on this matter has not been tested before the Nevada Supreme Court. Hopefully soon, someone will get an opportunity for their viewpoint to be tested before the Nevada Supreme Court.

4. The resale certificate listed on the Nevada Department of Taxation website refers to Chapter 360 of the Nevada Revised Statute. Chapter 360 or 360B does not mention resale certificates. Nevada Administrative Code (NAC) 372.640 Newspapers: Resale certificates mentions chapters NRS 372, 374, and 377 of the Nevada Revised Statutes. NRS 372.165 and NRS 372.170 supports the way leases were treated before the existence of NRS 360B and that is as a use tax issue. If we were to follow GAAP, a resale certificate could not be used for a rental expense as the Department would like the public to do. A resale certificate is only for the actual resale of inventory.
5. Bring back the version of the NAC for leases before the existence of NRS 360B. It followed NRS 372, made more common sense, and did not violate GAAP.

Thank You and Be Safe!

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STATE OF NEVADA
DEPARTMENT OF TAXATION



LEASES

Leases in General

Lease or rental means

- “Any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration”
- Applies “regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles...” (GAAP)

NRS 360B.450

Summary of Lease Statutes and Regulations

- * Tax burden on Lessee, not lessor
- * Resale certificates can be accepted for re-rentals
- * Each re-rental is a new 'sale' and taxable
- * Rentals between related parties must be at fair market value
- * Considered a sales tax and reportable as a sale (*collection allowance*)
- * And.....

Summary of Lease Statutes and Regulations

- Since leases/rents are considered a sale
- And since sales to Nevada exempted entities are tax-free
- Therefore, no sales tax is due by either the lessor or the lessee when the lessee is an exempt entity!
- NAC 372.934 through NAC 372.947 cover leasing after 11/25/2009.

NRS 360B.067 “Retail sale” defined. “Retail sale” means any sale, lease or rental for any purpose other than for resale, sublease or subrent.

NRS 372.050 “Retail sale” and “sale at retail” defined.

1. “Retail sale” or “sale at retail” means a sale for any purpose other than resale in the regular course of business of tangible personal property.

NRS 353.3076 “Generally accepted accounting principles” defined. “Generally accepted accounting principles” means generally accepted accounting principles for government as prescribed by the Governmental Accounting Standards Board



NEVADA RESALE CERTIFICATE

I hereby certify that I hold valid seller's permit number _____ issued pursuant to chapter 360 of the Nevada Revised Statutes; that I am engaged in the business of selling _____; and that the tangible personal property described in the second paragraph of this certificate, which I purchase from: _____, will be resold by me in the form of tangible personal property. I further certify that in the event any of the property is used for any purpose other than retention, demonstration or display while I am holding it for sale in the regular course of business, it is understood that I am required by chapters 372, 374 and 377 of the Nevada Revised Statutes to report it and pay the tax measured by the purchase price of the property.

Description of the property to be purchased:

Dated _____

at _____

Purchaser _____

Address _____

Signature of Authorized Purchaser