

July 9, 2024

Nevada Department of Taxation
3850 Arrowhead Drive, 2nd Floor
Carson City, Nevada 89706
Attn: Sarah Glazner, Management Analyst III

Via Electronic Mail: sglazner@tax.state.nv.us

RE: Comments to Proposed Regulation No. R044-24

Dear Ms. Glazner:

Please accept these comments submitted on behalf of taxpayer Go Trek USA LLC (TID 1016598823) in response to the Nevada Department of Taxation's (the "Department's") proposed regulation **LCB File No. R044-24**, relating to the Department's administration and collection of the transportation connect excise tax ("TCT") administered under NRS 372B.010-372B.260.

The following comments are submitted pursuant to NRS 233B.061(1)-(2), which requires that "[a]ll interested persons must be afforded a reasonable opportunity to submit data, views or arguments upon a proposed regulation, orally or in writing," and requires the Department to "conduct at least one workshop to solicit comments from interested persons on...topics to be addressed in a proposed regulation[.]"

In addition to these comments, the taxpayer submitted a response to the Department's small business impact questionnaire under NRS 233B.0608, describing the adverse impacts the proposed regulation will have on small businesses in Nevada who have been or will be assessed TCT liability contrary to the plain language and intent of NRS Chapter 372B. Before adopting the proposed regulation, the Department should comply with the procedures outlined for proposed regulations likely to impose a direct and significant economic burden on a small business.¹

1. Federal Law Preempts the Proposed Regulation – NRS 233B.0609(1)(g)

NRS 233B.0609(1)(g) requires the Department's Small Business Impact Statement to discuss, among other things, whether or not "the proposed regulation includes provisions which duplicate or are more stringent than federal, state, or local standards regulating the same activity," and provide an "explanation of why such duplicative or more stringent standards are necessary."

The Department's impact statement for R044-24 states that "the proposed regulation does not overlap or duplicate any regulation of other federal, state or local government entities."² The Department's impact statement fails to reference or discuss federal law expressly preempting state-level taxation on interstate passenger transportation under 49 U.S.C. § 14505, which provides that:

¹ NRS 233B.0608(2)(a)-(d).

² Nev. Dept. of Tax'n., Small Business Impact Statement, LCB File No. R044-24 (June 20, 2024), at 3.

A State or political subdivision thereof may not collect or levy a tax, fee, head charge or other charge on:

- (1) A passenger traveling in interstate commerce by motor carrier;
- (2) The transportation of a passenger traveling in interstate commerce by motor carrier;
- (3) The sale of passenger transportation in interstate commerce by motor carrier; or
- (4) The gross receipts derived from such transportation.³

Federal law plainly and expressly preempts the Department from collecting or levying any tax or fee on interstate transportation. As currently proposed, R044-24 does not distinguish between intrastate and interstate passenger transportation. A transportation “connection” that occurs between a passenger and a service provider in Nevada, for the purpose of interstate transportation, will be subject to the tax despite federal law plainly prohibiting such an assessment.

Accordingly, the Department must revise its proposed regulation to specify throughout that the tax is assessed only on “*intrastate*” passenger transportation services, to comport with federal law. The following language is respectfully offered for the Department’s consideration:

Section 1. NAC 372B.100 is hereby amended to read as follows:

372B.100 As used in this chapter, unless the context otherwise requires, “excise tax on *the connection to intrastate* passenger transportation” means the taxes imposed by NRS 372B.140, 372B.145, 372B.150 and 372B.160.

Similar language is used in other jurisdictions. For example, the State of Arizona’s tax code (Title 42 of the Arizona Revised Statutes) specifies that, for state taxation purposes, “[t]he transporting classification is comprised of the business of transporting for hire persons, freight or property by motor vehicle, railroads or aircraft from one point to another point in this state.”⁴ Here, too, the Department’s proposed regulation must specify that the tax does not apply to interstate transportation.

2. The Department Has Never Properly Approved TCT Penalties – NRS 360.417

If the Department intends to clarify and amend its TCT regulations under NAC Chapter 372B, it should also adopt a penalty schedule to apply to TCT administration, as statute requires before the Department may assess a penalty on delinquent TCT amounts.

NRS 360.417 plainly requires that “[t]he amount of any penalty imposed must be based on a graduated schedule adopted by the Nevada Tax Commission which takes into consideration the length of time the tax or fee remained unpaid.” To date, however, the Nevada Tax Commission has never adopted a graduated penalty schedule for NRS Chapter 372B’s transportation connection tax. The Department’s current TCT return form states that the 10% penalty for unpaid TCT is based on NAC 360.395, but NAC 360.395 makes no mention whatsoever of NRS Chapter 372B. Instead,

³ 49 U.S.C. § 14505. A true and correct copy of the federal statute is attached for reference to this comment letter.

⁴ Ariz. Rev. Stats. 42-5062(A) (emphasis added). A true and correct copy of Arizona’s statute is attached for reference to this comment letter.

NAC 360.395 establishes a graduated schedule expressly and exclusively for taxes assessed under specifically enumerated statutes, namely, “the late payment of tax provided for in chapter 362, 363A, 363B, 363C, 369, 370, 372, 372A, 377, 377A, 444A or 585 of NRS or any fee provided for in NRS 432.313.”⁵ The most recent amendment to NAC 360.395 was on June 28, 2016, when the Department included a reference to the Commerce Tax statute, and acknowledged that “under existing law, the penalty for failure to pay the tax within the period required by law must be based on a graduated schedule adopted by the Nevada Tax Commission.”⁶ To date, the Department has never amended NAC 360.395 to apply to the TCT, and it is silent as to penalties for TCT amounts owed under NRS Chapter 372B.

Under NRS 360.417, unless and until a penalty schedule is adopted specifically to apply to the TCT tax (*i.e.*, “the tax” that is purportedly unpaid), the Department may not assess a penalty for any such unpaid TCT liability. If the Department wishes to assess such a penalty, it must ensure that its TCT regulation amendments provide for such a penalty, as statute requires.

3. The Proposed Regulation Highlights Ambiguities Undermining the Department’s Enforcement of the TCT – NRS 360.291(1)(o)

Nevada’s Taxpayer Bill of Rights guarantees that every Nevada taxpayer “has the right...to have statutes imposing taxes and any regulations adopted pursuant thereto construed in favor of the taxpayer if those statutes are of doubtful validity or effect, unless there is a specific statutory provision that is applicable.”⁷

The Department’s proposed amendment highlights the existing uncertainty and ambiguity inherent in the current TCT regulatory language under NAC Chapter 372B. Existing regulations do not reference whatsoever the “connection on passenger transportation.” This is a new, substantive change to existing regulation which the Department now proposes. The Department’s Small Business Impact Statement acknowledges this uncertainty, explaining that the impetus for the proposed change is the Governor’s Executive Order No. 2023-003, directing the Department to “suggest amendments to other regulations...that could be streamlined, clarified, reduced, or otherwise improved.”⁸

To the extent that the Department has previously attempted to assess and enforce the TCT “on the connection” of passengers to transportation providers, the Department’s proposed amendment confirms that its existing regulations do not support the Department’s interpretation and enforcement efforts.⁹ The Department’s proposed amendment to NAC Chapter 372B further confirms that a change is needed to the Department’s regulations to justify assessing TCT on “the connection to passenger transportation.” Taxpayers who have been subjected to TCT assessments and purported TCT liability based on the Department’s interpretation, which has not yet been

⁵ NAC 360.395.

⁶ LCB File No. 123-15 (June 28, 2016) at 3 (accessible at <http://www.leg.state.nv.us/Register/2015Register/R123-15A.pdf>)

⁷ NRS 360.291(1)(o).

⁸ Nev. Dept. of Tax’n., Small Business Impact Statement, LCB File No. R044-24 (June 20, 2024), at 3 (emphasis added).

⁹ See, e.g., *Adventure Photo Tours, Inc. v. State Dept. of Taxation*, Nev. Supreme Court Case No. 86170 (March 2, 2023) (submitted for decision May 8, 2024).



codified in NAC Chapter 372B, are entitled to have existing regulatory language interpreted in their favor.

In short, Nevada taxpayers should not be subject to TCT liability based on ambiguous language the Department acknowledges requires clarification.

Thank you for your attention to these comments respectfully submitted for the Department's consideration. Please do not hesitate to contact the undersigned with any questions regarding this comment letter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Matt Morris', enclosed within a blue oval scribble.

Joseph G. Went, Esq.

Matt Morris, Esq.

of Holland & Hart LLP

MCMorris@hollandhart.com

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1994 Ed. and Supplement V (1/23/2000)

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Text contains those laws in effect on January 23, 2000

From Title 49-TRANSPORTATION

SUBTITLE IV-INTERSTATE TRANSPORTATION

PART B-MOTOR CARRIERS, WATER CARRIERS, BROKERS, AND FREIGHT FORWARDERS

CHAPTER 145-FEDERAL-STATE RELATIONS

Jump To:[Source Credit](#)**§14505. State tax**

A State or political subdivision thereof may not collect or levy a tax, fee, head charge, or other charge on-

- (1) a passenger traveling in interstate commerce by motor carrier;
- (2) the transportation of a passenger traveling in interstate commerce by motor carrier;
- (3) the sale of passenger transportation in interstate commerce by motor carrier; or
- (4) the gross receipts derived from such transportation.

(Added Pub. L. 104–88, title I, §103, Dec. 29, 1995, 109 Stat. 904 .)

VIEW DOCUMENT

The Arizona Revised Statutes have been updated to include the revised sections from the 56th Legislature, 1st Regular Session. Please note that the next update of this compilation will not take place until after the conclusion of the 56th Legislature, 2nd Regular Session, which convenes in January 2024.

DISCLAIMER

This online version of the Arizona Revised Statutes is primarily maintained for legislative drafting purposes and reflects the version of law that is effective on January 1st of the year following the most recent legislative session. The official version of the Arizona Revised Statutes is published by Thomson Reuters.

42-5062. Transporting classification

A. The transporting classification is comprised of the business of transporting for hire persons, freight or property by motor vehicle, railroads or aircraft from one point to another point in this state. The transporting classification does not include:

1. Transporting for hire persons, freight or property by:

(a) Motor carriers subject to a fee prescribed in title 28, chapter 16, article 4.

(b) Light motor vehicles subject to a fee under title 28, chapter 15, article 4.

(c) Transportation network companies subject to a fee prescribed pursuant to section 28-9552.

(d) Transportation network company drivers on transactions involving transportation network services as defined in section 28-9551.

(e) Vehicle for hire companies that are issued permits pursuant to section 28-9503.

(f) Vehicle for hire drivers operating under a company permit issued pursuant to section 28-9503 on transactions involving vehicle for hire services.

2. The business of transporting for hire persons traveling in air commerce by aircraft if taxation of the business is preempted by federal law.

3. Ambulances or ambulance services provided under title 48 or certified pursuant to title 36, chapter 21.1 or provided by a city or town in a county with a population of less than one hundred fifty thousand persons as determined in the most recent United States decennial census.

**Transportation Connection Tax
Common Carrier, Taxicabs, Transportation Networks**

For Department Use Only

MAIL ORIGINAL TO: NEVADA DEPARTMENT OF TAXATION
3850 ARROWHEAD DR., 2nd FLOOR
CARSON CITY, NV 89706

Return for month ending

Due on or before

Date paid

If the address as shown is incorrect, please make any corrections before mailing the return.

**IF POSTMARKED AFTER DUE DATE,
PENALTY AND INTEREST WILL APPLY**

COMMON MOTOR CARRIERS OF PASSENGERS

1. TOTAL FARES CHARGED THIS MONTH

1.

TAXICAB

2. TOTAL FARES CHARGED THIS MONTH

2.

TRANSPORTATION NETWORK COMPANY

3. TOTAL FARES CHARGED THIS MONTH

3.

4. TOTAL COMBINED FARES CHARGED THIS MONTH- (Line 1 + Line 2 + Line 3)

4.

5. TOTAL CALCULATED TAX [Line 4 x 3% (0.03)]

5.

6. CREDITS (Overpayments as determined by the Department)

6.

7. NET AMOUNT DUE (Line 5 - Line 6)

7.

8. PENALTY IF LATE (See Instructions)

8.

9. INTEREST IF LATE (See Instructions)

9.

10. OUTSTANDING LIABILITIES (As determined by the Department)

10.

11. TOTAL AMOUNT DUE AND PAYABLE (Line 7 + Line 8 + Line 9 + Line 10)

11.

12. AMOUNT PAID

12.

I HEREBY CERTIFY THAT THIS RETURN INCLUDING ANY ACCOMPANYING SCHEDULE AND STATEMENTS HAS BEEN EXAMINED BY ME AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IS A TRUE, CORRECT AND COMPLETE RETURN. **RETURN MUST BE SIGNED.**

ENTER NAME OF PERSON SIGNING RETURN _____

SIGNATURE OF TAXPAYER OR AUTHORIZED AGENT

TITLE PHONE NUMBER (WITH AREA CODE)

FEDERAL TAX ID NUMBER (EIN OR SSN) DATE

**MAKE CHECKS PAYABLE TO
NEVADA DEPT OF TAXATION**

**A RETURN MUST BE FILED EVEN IF
NO TAX LIABILITY EXISTS**

To email, save this form to your computer and email the attachment to nevadaolt@tax.state.nv.us with the subject of 'Transportation Connection return'. Your email, including attachments, cannot exceed 10 MB.

**NEVADA DEPARTMENT OF TAXATION
TRANSPORTATION CONNECTION TAX**

Definitions:

NRS 706.041 "Common motor carrier of passengers" defined. "Common motor carrier of passengers" means any person or operator, including a taxicab motor carrier, who is held out to the public as willing to transport by vehicle from place to place, either upon fixed route or on-call operations, passengers or passengers and light express for all who may choose to employ the person or operator.

NRS 706.8816 "Taxicab" defined.

1. "Taxicab" means a motor vehicle or vehicles which is designed or constructed to accommodate and transport not more than six passengers, including the driver, and is:
 - (a) Fitted with a taximeter or other device to indicate and determine the passenger fare charged;
 - (b) Used in the transportation of passengers or light express or both for which a charge or fee is received; or (c) Operated in any service which is held out to the public as being available for the transportation of passengers from place to place in the State of Nevada.
2. "Taxicab" does not include a motor vehicle of:
 - (a) A common motor carrier.
 - (b) A contract motor carrier which operates along fixed routes.
 - (c) An employer who operates the vehicle for the transportation of the employees of that employer, whether or not the employees pay for the transportation.

AB176 Sec. 19 "Transportation network company" or "company" means an entity that uses a digital network or software application service to connect a passenger to a driver who can provide transportation services to the passenger.

RETURN INSTRUCTIONS:

1. **Common Carriers of Passengers: Enter the amount of fares charged this month.**
2. **Taxicab: Enter the amount of fares charged this month.**
3. **Transportation Network Company: Enter the amount of fares charged this month.**
4. **Enter total amount of fares this month (Line 1 + Line 2 + Line 3)**
5. **Calculated Tax - Multiply Line 4 x 3% (0.03)**
6. **Credits - Enter the amount of overpayment of Transportation Connection Tax made in prior reporting periods for which you have received a Department of Taxation credit notice.**
7. **Enter Net Tax Due. (Line 5 minus Line 6)**
8. **Penalty - If this return is not submitted/postmarked and taxes are not paid on or before the due date as shown on the face of this return, the amount of penalty due is based on the number of days the payment is late per NAC 360.395 (see table below). The maximum penalty amount is 10%. Determine the number of days late the payment is, and multiply the net tax owed (Line 5) by the appropriate rate based on the table below. The result is the amount of penalty that should be entered. For example, the taxes were due January 31, but not paid until February 15. The number of days late is 15 so the penalty is 4%.**

| Number of days late | Penalty Percentage | Multiply by: |
|---------------------|--------------------|--------------|
| 1 - 10 | 2% | 0.02 |
| 11 - 15 | 4% | 0.04 |
| 16 - 20 | 6% | 0.06 |
| 21- 30 | 8% | 0.08 |
| 31 + | 10% | 0.10 |

9. **Interest - To calculate interest for each month late, multiply Line 5 x 0.75% (or .0075). The penalty and interest amounts are automatically calculated if you complete this form on-line.**
10. **Outstanding Liabilities - Enter only those liabilities that have been established for prior quarters by the Department and for which you have received a liability notice.**
11. **Total Amount Due. (Line 7 + Line 8 + line 9 + Line 10)**
12. **Amount Paid - Enter the amount remitted with this return.**

PAYMENT AND COLLECTION OF TAXES AND FEES

NAC 360.395 Amount of penalty for late payment. ([NRS 360.090](#), [360.093](#), [360.417](#)) The penalty imposed pursuant to [NRS 360.417](#) for the late payment of tax provided for in [chapter 362](#), [363A](#), [363B](#), [363C](#), [369](#), [370](#), [372](#), [372A](#), [377](#), [377A](#), [444A](#) or [585](#) of NRS or any fee provided for in [NRS 482.313](#) must be in the amount of:

1. If the payment is not more than 10 days late, 2 percent of the amount of the tax or fee due.
 2. If the payment is more than 10 days late but not more than 15 days late, 4 percent of the amount of the tax or fee due.
 3. If the payment is more than 15 days late but not more than 20 days late, 6 percent of the amount of the tax or fee due.
 4. If the payment is more than 20 days late but not more than 30 days late, 8 percent of the amount of the tax or fee due.
 5. If the payment is more than 30 days late, 10 percent of the amount of the tax or fee due.
- (Added to NAC by Tax Comm'n by R018-05, eff. 10-31-2005; A by R123-15, 6-28-2016)

NAC 360.396 Waiver or reduction of penalty or interest for late payment. ([NRS 360.090](#), [360.093](#), [360.417](#), [360.419](#))

1. The Department shall waive or reduce a penalty or interest, or both, for a late payment if the total penalty and interest for the late payment is \$15 or less.
 2. The Department may waive or reduce a penalty or interest, or both, for a late payment if the late payment is determined by the Department to have been caused by circumstances beyond the control of the taxpayer or the taxpayer's agent and occurred despite the exercise of ordinary care and without intent.
 3. In determining whether to waive or reduce the penalty or interest, or both, for a late payment pursuant to subsection 2, the Department may consider:
 - (a) The history of compliance and timely payment of the taxpayer;
 - (b) The weight and sufficiency of the evidence supporting the request of the taxpayer to waive or reduce the penalty or interest, or both, for the late payment;
 - (c) Any evidence which shows that the late payment was caused by circumstances that were not directly related to the actions of the taxpayer or the taxpayer's agent, including, without limitation:
 - (1) Fire, earthquake, flood or other acts of God, theft, or the death or serious illness of the taxpayer or the taxpayer's agent or a member of the immediate family of the taxpayer;
 - (2) An error or the misconduct of an employee of the taxpayer, including, without limitation, embezzlement;
 - (3) Erroneous written information provided to the taxpayer or the taxpayer's agent by the Department; and
 - (4) The misaddressed but timely mailing of the return or payment; and
 - (d) Any other factor deemed by the Department to be relevant.
- (Added to NAC by Tax Comm'n by R018-05, eff. 10-31-2005; A by R206-07, 4-17-2008)