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December 18, 2023

Via Certified Mail and Email

Trent A. Tholen
President, Assessors' Association of Nevada
Douglas County Assessor
Douglas County Assessor's Office
P.O. Box 218
Minden, NV 89423
assessor@douglasnv.us

Re: Advisory Opinion No. 23-005 – Assessor's Association of Nevada

Dear Mr. Tholen:

On behalf of the Assessor's Association of Nevada ("AAN"), on September 18, 2023, you requested an advisory opinion as to "[w]hether machinery and equipment held in inventory by a business primarily engaged in renting or leasing is subject to personal property taxes under Nevada law." The AAN makes this request because there are renting and leasing businesses in Nevada, particularly United Rentals, that (citing to NRS 361.068) are exempting from taxation rental inventory that has not been rented but remains on-site and available for purchase. These businesses claim that such rental inventory is exempt because it is "personal property held for sale by a merchant." See NRS 361.068(1)(a). The AAN believes that these businesses misapply NRS 361.068(1)(a).

Please be advised that the opinions expressed herein are limited to the specific questions, facts, circumstances and transactions described in the information you provided in the correspondence submitted to the Department of Taxation ("Department"). Accordingly, this response is predicated upon the facts, specific information and representations provided to the Department in your correspondence and any assumptions based thereon. In the event any of the representations, facts or assumptions are incorrect, in whole or in part, one or more of the conclusions reached in this opinion might be adversely affected and the opinion is void. No reliance should be placed on this opinion for any purpose other than that described herein. Please be further advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which any opinion is based may subject similar future transactions to treatment other than that expressed herein. It should be noted that the conclusions reached in this opinion are not binding on any administrative body or any court of law, but rather these findings are the Department's interpretation of the applicable statutes, regulations, and case law.

Issue

Whether machinery and equipment held in inventory by a business primarily engaged in renting or leasing is subject to personal property taxes or exempt from taxation under NRS 361.068(1)(a) when such machinery and equipment remains on-site and available for purchase.

Short Answer

When personal property is held both for sale and for lease, the taxpayer's primary purpose for holding the personal property will determine whether it is exempt from taxation under NRS 361.068.

Analysis

All real and personal property located in Nevada is subject to taxation unless an exemption applies. See NRS 361.045. Personal property includes all machines and machinery. NRS 361.030(h). Accordingly, machinery and equipment held for rent or lease is taxable as personal property unless an exemption applies.

Under NRS 361.068(1)(a), "[p]ersonal property held for sale by a merchant" is exempt from taxation. The statute is silent as to the treatment of personal property that is both for sale and for lease. However, Nevada courts have held that when personal property serves a dual purpose, the primary purpose of the property determines whether the property is taxable or exempt from taxation. See *Nevada Tax Comm'n v. Nevada Cement Co.*, 117 Nev. 960, 36 P.3d 418 (2001), *opinion reinstated on reh'g* (Dec. 12, 2001).¹ The primary purpose of personal property is determined by the primary purpose for which the taxpayer purchased the property. *Id.* Accordingly, the taxation of personal property that is held both for sale and for lease depends on whether the taxpayer primarily purchased the property to lease it or to sell it, which is a factual inquiry requiring investigation.

It is the taxpayer's burden to prove entitlement to an exemption. See *Campbell v. Nevada Tax Comm'n*, 109 Nev. 512, 516, 853 P.2d 717, 720 (1993). Further, under NRS 361.310, county assessors are charged with making diligent inquiry and examination to ascertain all the property within the county subject to tax. Therefore, pursuant to NRS 361.310, you may investigate whether personal property alleged to be both for sale and for lease is exempt from taxation under NRS 361.068(1)(a), and thereby require the taxpayers who are the subject of your request to meet their burden of proving entitlement to the exemption.

Conclusion

Whether personal property held for both sale and for lease is exempt from taxation as "[p]ersonal property held for sale by a merchant" under NRS 361.068(1)(a) requires a factual inquiry into the taxpayer's primary purpose for purchasing the property.

Sincerely,



Shellie Hughes
Executive Director

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¹ Although the opinion in *Campbell v. Nevada Tax Comm'n* was in relation to the sales and use tax, we believe the same principal applies in relation to the personal property tax.

facts or assumptions are incorrect, in whole or in part, one or more of the conclusions reached in this opinion might be adversely affected and the opinion is void. No reliance should be placed on this opinion for any purpose other than that described herein. Please be further advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which any opinion is based may subject similar future transactions to treatment other than that expressed herein. It should be noted that the conclusions reached in this opinion are not binding on any administrative body or any court of law, but rather these findings are the Department's interpretation of the applicable statutes, regulations, and case law.