

# NEVADA DEPARTMENT OF TAXATION

HTTP://TAX.STATE.NV.US



# NEVADA TAX NOTES

*Official newsletter of the Department of Taxation*

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## DEPARTMENT OF TAXATION OFFICES

### MAIN OFFICE

1550 E. College Parkway, Suite 100  
Carson City, Nevada 89706

Mailing: 1550 E. College Parkway, Suite 115  
Carson City, Nevada 89706

Phone: (775) 684-2000 (New number - Switchboard)  
1-800-992-0900 (In-State Toll Free)

Fax: (775) 684-2020 (New fax number for Carson)

### RENO DISTRICT OFFICE

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

Phone: (775) 688-1295  
Fax: (775) 688-1303

### ELKO FIELD OFFICE

850 Elm Street  
Elko, Nevada 89801  
Phone: (775) 753-1115  
Fax: (775) 778-6814

### 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

**Advisory:** Due to the monthly and quarterly tax filing requirements, the Las Vegas Office is extremely busy the last few days of any month with people filing their tax returns. It is recommended, whenever possible, that you time your visits to the office for other than the last few days of the month to avoid a long wait. Or, you may want to visit our new Henderson satellite office.

### HENDERSON SATELLITE OFFICE

2550 Paseo Verde Parkway, Suite 180  
Henderson, Nevada 89074

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

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## MORE INFORMATION ON NEW TAXES

### EMERGENCY REGULATION FOR WAIVER OF PENALTY AND INTEREST ON CERTAIN NEW TAXES

On February 2, 2004, the Nevada Tax Commission approved an Emergency Regulation (LCB File No. E001-04) to grant authority for waiver of penalty and interest in the case of late filing/payment of several recently enacted taxes.

The taxes for which this general waiver may apply are: Modified Business Tax, General Business; Modified Business Tax, Financial Institutions; Live Entertainment Tax; and Use Tax filings for businesses that are now required to report on a periodic basis for use tax. **In order to qualify for this waiver, returns must be filed and taxes paid on or before June 1, 2004. With regard to use tax, it must be the first time the person is required to register for the payment of this tax.**

An Emergency Regulation is effective for 120 days and this regulation will expire on June 1, 2004. The Department of Taxation will continue to provide information through mailings, its own website at, <http://tax.state.nv.us>, information sent through various business, professional and taxpayer organizations, and through taxpayer telephone calls to our District Offices.

### BUSINESS TAX (NRS 364A)

Also known as the Business Activity Tax (BAT) or "head tax", this tax was repealed effective October 1, 2003. The last return required to be filed was due October 31, 2003, for the quarter July 1, 2003 to September 30, 2003. **Therefore, there is no Business Tax due, pursuant to NRS 364A, for the 4<sup>th</sup>**

**quarter, October 1, 2003 through December 31, 2003, or any following quarters in the future.**

**MODIFIED BUSINESS TAX, GENERAL BUSINESS (NRS 363B)**

This tax, for revenue purposes, replaced the Business Tax (NRS 364A) and was effective October 1, 2003. This tax is due quarterly with the first payment due on or before January 31, 2004, for the quarter October 1, 2003 through December 31, 2003. This is a tax on the total gross wages reported for Unemployment Insurance purposes, reported to the Employment Security Division (ESD) on ESD Form 4072. The Department of Taxation sends a return for this tax to taxpayers and businesses that have a liability for Unemployment Insurance. If a business has employees and is required to report wages to Employment Security for Unemployment Insurance purposes, the taxpayer must also file with the Department of Taxation using forms provided by the Department of Taxation. The Tax is based upon the gross wages reported, less a deduction for health care benefits paid or provided by the employer. To this difference is applied the rate of 0.7% (.007; less than 1%) to arrive at the tax. This rate changes to 0.65% (.0065) effective July 1, 2004. Institutions exempt from this tax are non-profit 501(c) organizations, Indian tribes and political sub-divisions.

**MODIFIED BUSINESS TAX, FINANCIAL INSTITUTIONS (NRS 363A)**

This tax is similar to the Modified Business Tax, General Business, except that a higher rate applies to certain businesses defined by statute and further defined by regulation as a "financial institution". Although banks, stock brokerage firms, or other lending institutions would typically be considered a financial institution, many other types of businesses are also included by statutory and regulatory definition. This categorization of financial institution depends initially upon a code attached to a business or taxpayer for Unemployment Insurance statistical reporting purposes using the North American Industrial Classification System. The filing requirements are similar to the Modified Business Tax, General Business, including the health care deduction; but, the rate of 2% (.02) applies. Businesses that do not believe they should be categorized as a financial institution may file a request to reconsider this categorization with the Department at the Carson City address. Any office is available to answer questions concerning categorization as a financial institution. Institutions exempt from this tax are non-profit 501 (c) organizations, Indian tribes and political sub-divisions.

**MODIFIED BUSINESS TAX, FINANCIAL INSTITUTIONS**

**DEPARTMENT'S APPEALS REVIEW COMMITTEE**

The Department has established a review committee for those businesses that do not believe they should be categorized as a financial institution. The committee will provide a response in writing to those businesses that have appealed as to its determination, along with further rights for adjudication if necessary. To assist the committee in its review, it is important for businesses to provide, in writing to the

Department, any and all documentation to substantiate the change from financial institution to general business. All requests for reconsideration should be filed with the Department at the Carson City address. If you have any questions concerning this matter do not hesitate to contact the Department.

**LIVE ENTERTAINMENT TAX (NRS 368A)**

This tax became effect January 1, 2004 and is administered by two separate agencies, the Gaming Control Board for properties that have licensed gaming and for all other taxpayers by the Department of Taxation. This tax is paid by the consumer or patron. To be liable for this tax, first there needs to be a performance of live entertainment as defined by NRS 368A.090. There must also be an admission, cover or minimum charge for admission to a facility where live entertainment is occurring or scheduled. Further, specific capacity applies to the tax. If the capacity of the facility where the live entertainment is occurring is 7,500 or greater then a 5% tax applies only to the charge (value) of admission; if the capacity is 300 to 7,499 then a tax of 10% applies to the charge of admission plus all food, drink and merchandise sold during the entertainment time period. If the facility is not a licensed gaming establishment and has a maximum seating capacity of less than 300, the tax does not apply. If the facility is a licensed gaming establishment, in addition to having a maximum capacity of less than 300, other statutory requirements must be met for the tax not to apply.

There are several other special provisions that apply to the Live Entertainment Tax provided by regulation. The Live Entertainment Tax is in addition to any sales and use tax due, and is reported monthly. Boxing contests or other exhibitions that fall under NRS 467 are not subject to this tax. Also, events where the proceeds from the admission go entirely to or are donated to a non-profit organization are exempt from this tax.

**BUSINESS LICENSE (NRS 360)**

Recent legislation requires all businesses in Nevada to have a state business license. Prior to this legislation, Nevada had a one time business license fee of \$25 that did not apply to sole proprietors with no employees. The new requirement applies to a corporation, partnership, proprietorship, limited-liability company, business association, joint venture, limited-liability partnership, business trust and their equivalents organized under the laws of Nevada; or those filing a Schedule C, E or F with the IRS.

There is a \$100 annual fee required and the due date for businesses that currently have an existing state business license is the anniversary date of that license; or for all other businesses it is due immediately. Beginning July 1, 2004 there will be an additional \$100 reinstatement fee for those businesses late in filing (on their anniversary date) or that have failed to file. There is an exemption from the requirement to have a state business license for a home based business making a net income (as reported to IRS) of not more than 66 2/3 percent of the average annual wage as computed for the preceding calendar year pursuant to chapter 612 of

NRS. For 2003, 66 2/3 percent of the annual wage is \$21,500 and for 2004 it is \$22,000.

There are several additional regulatory provisions applicable to the business license requirement that go beyond this overview. Government entities, nonprofit, charitable, fraternal or other organizations that qualify as a tax-exempt organization pursuant to 26 U.S.C. Section 501 (c), are exempt from the license.

**CRAFTERS AND OTHER HOME-BASED BUSINESSES  
MAY BE EXEMPT FROM NEVADA  
BUSINESS LICENSE (NRS 360)**

Effective February 18, 2004, the Nevada Tax Commission adopted a permanent regulation on the new Nevada business license. This regulation has not been codified yet, but it can be found under LCB File No. R174-03.

NRS 360.765(2)(c) excludes from the definition of a "business" a person who operates a business from his home and earns from that business not more than 66 2/3 percent of the average annual wage. For 2003, 66 2/3 percent of the average annual wage is \$21,500 and for 2004 it is \$22,000.

The new regulation defines a "Person who operates a business from his home" to mean a natural person who operates a business from his personal residence and who: (a) Does not hold any part of his personal residence open to the general public for use in furtherance of that business; and (b) Does not own, lease, rent or license any real property for use in furtherance of that business, other than his personal residence and any real property he owns, leases, rents or licenses for the sole purpose of: (I) Maintaining a post office box; (II) Posting a business license in accordance with the requirements of a municipal or county ordinance; or (III) Periodically exhibiting or selling goods or services at a temporary fair, market, show or exhibition.

If a crafter periodically exhibits or sells goods or services at a temporary fair, market, show or exhibition and does not earn from that business more than 66 2/3 percent of the average annual wage, then the crafter is exempt from obtaining a Nevada business license.

The exemption for a home-based business does not apply to a person who operates a business from his home during a federal tax year in which: (a) He at any time failed to qualify as a person who operates a business from his home, as that term is interpreted pursuant to Section 7 of the regulation; or (b) His net earnings from that business were greater than 66 2/3 percent of the average annual wage for the most recent calendar year ending before the last day of that federal tax year.

**USE TAX**

All businesses in Nevada are required to file a return for use tax. Retailers must file a sales and use tax return. This is a requirement that has been ongoing for many years. For a

business that is not retail and not filing a sales tax return, they must file a use tax return. Effective July 22, 2003, every business that purchases tangible personal property for storage, use or consumption in Nevada, such as goods, equipment, publications, periodicals, etc. must register and file use tax returns. The use tax due is at the same rate as sales tax. Use tax returns are required to be filed either monthly, quarterly or annually, depending on your registration requirements with the Department. A return must be filed even if there is (0) zero to report.

**BANK EXCISE TAX (NRS 363A)**

There is a tax on financial institutions defined as Banks either by federal or state charter or statute. The tax is due quarterly in the amount of \$1,750 per quarter (\$7,000 per year) per bank branch. A main office is considered a branch. There is a deduction of one branch per quarter allowed. The tax is due on the last day of the first month of the quarter. The effective date of this tax is January 1, 2004.

**PAWNBROKERS AND CONSIGNEES  
NEW PERMANENT REGULATION  
LCB File No. R026-03  
Effective October 30, 2003**

NAC 372.160 1. A pawnbroker having possession of tangible personal property for the purpose of sale is a retailer with respect to sales of the property and the tax applies to the gross receipts from such sales.

2. A consignee having possession of tangible personal property owned by another person, or the authority to sell such property or to cause the transfer of title to such property, is a retailer with respect to sales of the property and the tax applies to the gross receipts from such sales.

**NEW EMERGENCY REGULATION FOR SHORT  
TERM LESSORS  
Effective March 1, 2004**

Sec. 1. Chapter 482 of NAC is hereby amended by adding thereto a new section to consist of sections 2 through 4, inclusive, of this Emergency Regulation.

Sec. 2. Every short-term lessor who is not required to collect a fee from a lessee that a county has elected to impose pursuant to either NRS 244A.810 or NRS 244A.860 shall include in each rental contract for the short-term lease of a passenger vehicle, or on a separate form provided to the lessee of the vehicle, the following acknowledgment:

**ACKNOWLEDGMENT OF LESSEE CONCERNING  
SHORT-TERM LEASE OF REPLACEMENT VEHICLE**

I understand and acknowledge that if I am renting this vehicle for the purpose of using it in place of a motor vehicle owned by me that is unavailable for use because of mechanical breakdown, repair, service, damage or loss as defined in my policy of liability insurance for said unavailable motor vehicle, I may claim an exemption from the county fee imposed pursuant to chapter 244A of the Nevada Revised Statutes upon the short-term lease of a passenger vehicle.

Under penalty of perjury, I affirm that I am exempt from the payment of the county portion of the car rental tax.

\_\_\_\_\_ (initials)

Sec. 3. The short-term lessor shall file the acknowledgment required to be obtained pursuant to section 2 with his records and make it available to the department for inspection upon request.

Sec. 4. As used in section 2 of this Emergency Regulation, the term "replacement vehicle" has the meaning ascribed to it in NRS 244A.810 and NRS 244A.860.

### **PAYROLL SERVICES PROVIDING MODIFIED BUSINESS TAX RETURN SERVICES FOR FINANCIAL INSTITUTIONS AND GENERAL BUSINESSES**

Here are some **common errors** that were made by various payroll services who filed modified business tax returns for their clients (financial institutions and general businesses).

1. **Using the incorrect account number.** Please use the account number printed in the upper right hand corner of the MBT or MBTFI tax return. Do not use the Nevada business license number or Nevada sales/use tax number.
2. **Sending in a return without an account number.** Please use the account number printed in the upper right hand corner of the MBT or MBTFI tax return. This number should be the same as your UI account number. Contact the Dept of Taxation if you are unsure of the correct account number.
3. **Not using the pre-printed tax return with the bar code.** If you use a different return, please attach the pre-printed return that has the bar code.
4. **Detaching the coupon at the bottom of the tax return.** Please **do not** detach the coupon at the bottom of the return. Submit the entire tax return with the remittance, including the coupon.
5. **Writing one check to pay for ESD contributions and modified business tax.** These are 2 totally separate agencies, so please **do not** combine these payments.

If you have any questions concerning modified business tax for financial institutions and general businesses, please contact your nearest District Office.

### **CLAIM FOR CREDIT/REFUND NEW PERMANENT REGULATION LCB File No. R032-03 Effective October 30, 2003**

If a taxpayer has overpaid any tax pursuant to NRS 372 or 374, or any interest or penalty relating thereto, the taxpayer may file a claim for a credit or refund with the Department. No refund may be allowed unless a claim for it is filed with

the Department within three (3) years after the last day of the month following the close of the period for which the overpayment was made. No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Department within that period or unless the credit relates to a period for which a waiver is given pursuant to NRS 360.355. The taxpayer may submit a formal claim, and any information relating thereto, after the statutory period for filing a claim has elapsed, if, before the end of the statutory period, the taxpayer notifies the Department in writing of his intent to submit the claim. If the Department agrees to extend the period allowed for filing such a claim, the date on which the taxpayer filed the claim shall be deemed to be the date on which the taxpayer notified the Department in writing of his intent to submit the claim.

A claim for credit or refund must include documentation supporting the claim. The person requesting the credit or refund must be the person who was legally obligated to remit the tax to the Department.

If the Department denies the claim for credit or refund, the taxpayer has 45 days, per the direction of the Nevada Tax Commission, to appeal the decision and request a hearing. If the Department fails to mail a notice of action on the claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with a hearing officer within 45 days after the last day of the 6-month period. If the claimant is aggrieved by the decision of the hearing officer on appeal, he may appeal the decision to the Nevada Tax Commission. If he is aggrieved by that decision, he may, within 45 days after the decision is rendered, bring an action against the Department on the grounds set forth in the claim for the recovery of the overpayment.

### **COMMUNICATING BY MAIL**

If you are writing or sending information to one of the Department's Revenue Officers, Tax Examiners, or other Staff, please use the mailing address of the appropriate office.

If you are filing your Sales/Use tax return, MBT or MBTFI tax return, please use the envelope provided, because it is addressed directly to the bank.

### **HOLIDAY CLOSURE**

The Department of Taxation offices will be closed the following day in the 2<sup>nd</sup> quarter of 2004:

Monday, May 31, 2004, Memorial Day.