

# NEVADA DEPARTMENT OF TAXATION

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# 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

### 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, our offices are 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 our offices for other than the last few days of the month to avoid a long wait. In Southern Nevada, you may want to visit our new Henderson satellite office listed below.

### HENDERSON SATELLITE OFFICE

2550 Paseo Verde Parkway, Suite 180  
Henderson, Nevada 89074

Phone: (702) 486-2300  
Fax: (702) 486-3377

### ELKO FIELD OFFICE

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

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### COMMUNICATING BY MAIL WITH THE DEPARTMENT

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 as listed on this page. If you are filing your sales and use tax return, please use the envelope the Department provided because it is addressed directly to the bank.

### "ASK THE ADVISOR" BASIC TRAINING HENDERSON OFFICE

The Department will be presenting basic tax training as well as industry specific training throughout the year. The two hour workshops include training on Business License requirements, 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 and your petition rights. The workshops will be held in the Henderson Office starting at 9:00 a.m. Classes are scheduled for: April 19, May 17, June 21, July 19, August 16, September 20, and October 18, 2005. For more information and reservations call (702) 486-2354.

### AFFIDAVITS AND DRIVE-AWAY PERMITS FOR NONRESIDENTS

Dealers of motor vehicles/trailers, farm machinery/equipment and vessels who claim a Nevada sales tax exemption for sales to nonresidents that will not use or register the vehicle/trailer, vessel, farm machinery and equipment in Nevada, must meet the following criteria per NAC 372.708: (1) for vehicles and trailers, the nonresident must purchase a special "drive away permit" issued by the Department of Motor Vehicles; and (2) the nonresident must execute an affidavit in a form prescribed by the Department of Taxation in which the purchaser affirms under oath that he/she is not a resident of Nevada and will be removing the vehicle, farm machinery/equipment or vessel from the State within 15 days.

For the purposes of defining a "resident," the Department of Taxation will use the criteria set forth in NRS 483.141. It reads as follows: "Resident" includes, but is not limited to, a person: (a) whose legal residence is in this state; (b) who engages in intrastate business and operates in such a business any motor vehicle, trailer or semi-trailer, or any person maintaining such vehicles in this state, as the home state of such vehicles; (c) who physically resides in this state and engages in a trade, profession, occupation or accepts gainful employment in this state; and/or (d) who declares himself to be a resident of this state to obtain privileges not ordinarily extended to nonresidents of this state. The term does not include a person who is an actual tourist, an out-of-state student **not using the vehicle in Nevada**, a foreign exchange student, a border state employee or a seasonal resident.

A "vehicle" as defined in NRS 482.135 means "every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks."

A "vessel" as defined in NRS 488.035 means "every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water."

"Farm machinery and equipment" as defined in NRS 374.286 means "a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment."

If the dealer has knowledge that the purchaser is a resident of Nevada or will be using the vehicle/trailer, vessel or farm machinery and equipment in Nevada, the dealer must charge sales tax on the purchase. The dealer is expected to exercise due diligence in assuring that a drive away sale has not been transacted with a Nevada resident. (NRS 372.065, NRS 372.7263, NRS 482.3955 and NRS 483.141)

### **DIRECT SELLING ORGANIZATIONS (DSO), FORMERLY KNOWN AS MULTILEVEL MARKETERS (MLM)**

Pursuant to a Temporary Regulation of the Nevada Tax Commission, adopted October 4, 2004, the Department of Taxation may enter into sales tax collection agreements with DSO's authorizing the DSO to report and remit the tax due on its own sales and the sales made by their independent salespersons.

Products sold to an independent salesperson for his own use are taxed based on the actual sales price paid by the independent salesperson or, if the DSO does not know whether the product was purchased for the salesperson's own use, on the suggested retail sales price.

Products sold by an independent salesperson to a retail customer are taxed based on the actual sales price paid by the retail customer or, if the DSO does not have documentation indicating the actual sales price, on the suggested retail sales price.

Independent salespersons are not required to separately register with the Department to report and remit sales or use tax on any products purchased from a DSO if the product is covered by the provisions of a sales tax collection agreement with the Department. If the independent salesperson sells other products, then he/she must register with the Department and report and remit his/her sales/use tax directly to the Department. If this were the case, the independent salesperson would offer the DSO a Nevada resale certificate in lieu of sales tax (NRS 372.155-372.180, NAC 372.730).

Sellers registered to collect Nevada sales tax, that wish to operate as DSO's, must submit a written request to the Department seeking authorization to act as a DSO in this State.

Unless a seller enters into a signed Nevada Sales/Use Tax Collection Agreement, approved by the Nevada Tax Commission, it is not authorized to

operate as a Direct Sales Organization and may not collect and remit tax on behalf of its independent salespersons.

### **CERTAIN TRUSTS AND ESTATES – BUSINESS LICENSE REQUIRED**

A business trust is included in the definition of a business pursuant to NRS 360.765. NAC 360.760 further defines business trust to mean a business trust organized pursuant to the provisions of NRS 88A or an equivalent entity organized under the laws of any other jurisdiction. If a trust or portion thereof has activities that, if conducted by a natural person, would qualify as a business, it is required to obtain an annual Nevada State Business License pursuant to NRS 360.785. This means the person would be required to file a 1040 Schedule C or Schedule F with the IRS. A trust that owns rental property or receives royalty income is also required to obtain an annual State Business License.

An estate, like a trust, that has activities which if conducted by a natural person, would qualify as a business, pursuant to NRS 360.785 or that owns rental property or receives royalties, is also required to obtain an annual Nevada State Business License.

### **CERTAIN TRUSTS AND ESTATES – BUSINESS LICENSE NOT REQUIRED**

If a trust has been created to protect or safeguard assets from creditors and/or generates only interest, gain and/or dividend income, it is not required to obtain a State Business License.

A trust whose income, tax deductions or tax credits which are attributable to a grantor or another person as a substantial owner of the trust or portion thereof per 26 U.S.C. §§ 671 to 679, inclusive, which means this trust is not required to file an IRS Form 1041, is also not required to obtain an Annual State Business License in the name of the trust.

### **MODIFIED BUSINESS TAX ALLOWABLE DEDUCTIONS**

The Modified Business Tax, which became effective 10/1/03, included a provision for a deduction for health care benefits or health insurance provided by the employer. As we have begun auditing this new tax, we would like to share with you some of the common errors we have identified. The deduction for health care does not include any amounts paid for by the employee. This would include amounts deducted from the employee's pay for such things as dependent

coverage. Also, amounts paid which represent life insurance are not an allowable deduction. Cobra payments are also not a valid deduction as these amounts, whether paid by the employee or the employer, may not just represent health care benefits. This new tax is administered by NRS 363A for financial institutions and NRS 363B for general businesses. Should you have questions about allowable deductions for health care, you may call or write the Department for clarification.

### **EMPLOYMENT OPPORTUNITIES WITH THE DEPARTMENT OF TAXATION**

The Department of Taxation has begun recruiting for open positions on our website as listed on the first page of this newsletter. All employment for the Department is administered by State Personnel and our website includes a link to the State Personnel website. Currently, we are recruiting for Auditor I, Auditor II, Revenue Officer II, Property Appraiser Trainee, Property Appraiser I, Property Appraiser II and Tax Examiner II. We hope that if you are interested in State employment, you will visit our website and apply for any open positions for which you qualify.

### **PENALTY AND INTEREST WAIVER**

To qualify for penalty and interest waiver on late filed returns, Nevada Administrative Code 360.402, 1., (a) (2) states "The late payment: (I) Is the **only** late payment for that tax that the taxpayer has submitted in the 12 months immediately preceding the period for which the late payment was made..." and (II) Was received by the Department within 90 days after the date on which the payment was due...". Please remember any request for waiver of penalty and/or interest received beyond the 90 days will be denied.

### **NEW CLARK COUNTY CAR RENTAL FEE EFFECTIVE JULY 1, 2005**

Nevada Revised Statutes (NRS) 244A.860 authorizes the county commissioners of a county whose population is 400,000 or more to impose a fee on the lease of certain passenger cars by a short-term lessor. The fee is by ordinance only and may not exceed 2% of the total amount for which the passenger car was leased excluding any taxes or other fees imposed by a governmental entity.

On February 15, 2005, the Clark County Board of County Commissioners held a public meeting and enacted Ordinance 3195 which imposes an additional 2% County Car Rental Fee for the lease of passenger vehicles commencing in Clark

County. The rate increase becomes effective July 1, 2005.

The fee does not apply to replacement vehicles. A replacement vehicle is defined as a vehicle that is:

(a) Rented temporarily by or on behalf of a person or leased to a person by a facility that repairs motor vehicles or a motor vehicle dealer; and

(b) Used by the person in place of a motor vehicle owned by the person that is unavailable for use because of mechanical breakdown, repair, service, damage or loss as defined in the owner's policy of liability insurance for the motor vehicle.

If a short term lessor obtains an acknowledgment by the lessee that the leased vehicle is being used as a replacement vehicle, the transaction is not subject to the additional 2% Clark County Car Rental Fee. Every short-term lessor who is not required to collect the fee from a lessee 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 I own that is unavailable for use because of mechanical breakdown, repair, service, damage or loss as defined in my policy of liability insurance for that 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.

I understand and acknowledge that by placing my initials below, I am affirming that I am in fact renting this vehicle for the purpose of using it in place of a motor vehicle I own that is unavailable for use as described above.

I further understand and acknowledge that if I place my initials below and I am not in fact renting this vehicle for the purpose of using it in place of a motor vehicle I own that is unavailable for use as described above, I may be held liable for any fee that is waived or refunded to me by virtue of my having placed my initials below. \_\_\_\_\_(initials)  
A copy of the acknowledgment must be kept by the short term lessor in its records and available to the Department for inspection upon request.

**DISCOUNTS AND COMPLIMENTARIES**

The Department has noticed errors in reporting coupons and complimentaries for sales or use tax. Noticeably, the biggest problem seen by Department representatives is when complimentaries act as discounts. Discounts generally are not taxable. For example, when a coupon offers a two-for-one meal, the selling price of the first meal is subject to sales tax. Use tax should not be reported on the value of the coupon.

Complimentaries are subject to use tax based on the cost of the item given away. When complimentaries are for a certain dollar value and that dollar value is not absorbed by the entire retail price of the item given away, then the complimentary is really a discount and the remaining balance is a sale subject to the sales tax only. (NRS 372.025(3); NRS 372.170; NRS 372.185; NAC 372.350)

**MOVING OR SELLING BUSINESS**

Please remember to advise the Department of business location changes and changes in ownership of your business which includes forming a corporation. A new or a revised application with the owner's signature is required to update our records and ensure you have the appropriate permit. In addition, if you're selling your business, you're responsible for filing any required sales/use or business tax returns to cover all of the time that your business was in operation. Contact your local Department of Taxation office for forms or returns and please ask for help if needed. You may also visit our website at <http://tax.state.nv.us> for this information.

**HOLIDAY CLOSURES**

The Department of Taxation offices will be closed on Monday, May 30, 2005, in observance of Memorial Day.