

# 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

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Carson City, Nevada 89706

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

Fax: **(775) 684-2020**

### 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 the office for other than the last few days of the month to avoid a long wait.

### 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

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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. If you are filing your sales and use tax return, please use the envelope the Department provided because it is addressed directly to the processing center.

### "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 three hour free 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 listed on this page and begin at 9:00 a.m. Classes are scheduled for: July 19, August 16, September 20 and October 18, 2005. For more information and reservations call (702) 486-2345.

### CIGARETTE STAMP CLAIMS FOR REFUND

Upon receiving a timely request for refund together with satisfactory proof that a specified number of cigarette packages have been returned to the manufacturer for destruction, the Department shall allow the wholesaler a refund for the face value of any cigarette revenue stamps that were affixed to those packages. The refund shall be reduced by any discount previously allowed. To be eligible for a refund, the wholesaler must, pursuant to NRS 353.115, submit his Request for Refund to the

Department within one year after the wholesaler returns the cigarettes to the manufacturer for destruction. The Request for Refund must be accompanied by the original Manufacturer's Affidavit, which must list the number of packaged cigarettes to be destroyed, the date and place of destruction, who destroyed the cigarettes and the color of the stamps. The Department will not process any refunds unless the amount to be refunded is at least \$15.00. A duplicate affidavit will be accepted in lieu of an original. When a duplicate affidavit is received, the Department will withhold payment for a period of one year from the manufacturer's receipt of the cigarettes as indicated in the Manufacturer's Affidavit. The purpose of the waiting period is to ensure that a refund has not previously been processed.

Stamps that have not been applied to packs of cigarettes are regarded as a form of currency and are not subject to the one-year period of limitations. In other words, should a wholesaler go out of business or cease stamping operations, any unused stamps may be submitted to the Department at any time for a refund of the purchase price. Stamps that have been misapplied to the cigarette carton flap, instead of to the cigarette package, will be treated like unused stamps insofar as they may be returned to the Department for refund at any time. However, only those stamps that are 60% or more intact are eligible for a refund.

Refunds are processed by the Department once a month and payment is usually made within the first two weeks.

#### **SALES AND USE TAX INCREASES, STATE BUSINESS LICENSE, MODIFIED BUSINESS TAX AND LIVE ENTERTAINMENT TAX CHANGES**

The 2005 Legislative Session began on February 7, 2005. As of the writing of this newsletter, there are proposed changes to the State Business License, the Modified Business Tax and the Live Entertainment Tax. In addition, Churchill County has proposed a sales and use tax rate increase of  $\frac{1}{4}$  of one percent (0.25%) to a total rate of 7.25% which, if approved, would go into effect October 1, 2005 and would be utilized to support infrastructure.

AB 418 of the regular session was approved and increases the sales and use tax rate in Clark County by  $\frac{1}{4}$  of one percent (0.25%) to a total rate of 7-3/4% effective October 1, 2005. All vendors selling in or delivering into Clark County on or after that date will be required to collect and report 7-3/4% sales tax on their taxable sales. Existing construction contracts entered into and signed prior to October 1, 2005 may be exempt from the  $\frac{1}{4}$  percent increase if an exemption letter is obtained from the Department of Taxation.

AB 554 of the regular session revises the provisions of the Live Entertainment Tax. It incorporates the regulatory language adopted by the Nevada Tax Commission, reduces the seating capacity from 300 to 200, and other matters properly relating thereto.

SB 523 of the regular session revises the rate of tax on general businesses for the Modified Business Tax from .065 percent to .063 percent effective July 1, 2005 and expires by limitation on June 30, 2007.

SB 3 of the special session revises various requirements of the State Business License. It modifies provisions pertaining to trade shows, conventions, craft shows and sporting events. In addition, a natural person whose sole business is the rental of 4 or fewer dwelling units to others is exempt.

SB 391 of the regular session revises the requirements on financial institutions for the Modified Business Tax. It excludes pawn brokers and collection agencies from the 2% calculation effective July 1, 2005.

#### **GOVERNMENT CONTRACTS**

Construction contractors who perform work for government entities to include the Federal Government, the State of Nevada and its cities, counties, districts, etc., must pay use tax on building materials consumed in performance of their contracts (NAC 372.190-210). The government's exemption from sales and use tax per NRS 372.325 does not extend to contractors who do work for them. An exception to this is a contractor who is considered to be a constituent part of the exempt entity (NRS 372.340). Should you have questions, please call your local Taxation office.

#### **ACCRUE USE TAX OR PAY SALES TAX?**

The Department receives many phone calls from businesses that sell tangible personal property asking whether their customers have the option of paying the sales tax or self-accruing the use tax on items they will self consume. This issue also arises in many of our audits. As Nevada does not offer a "direct pay" option, the answer is "no." Nevada sales tax is imposed on the retailer for the privilege of selling tangible personal property at retail and the tax shall be collected by the retailer from the purchaser/consumer (NRS 372.105-110). Therefore, a purchaser/consumer of tangible personal property cannot refuse to pay sales tax to a vendor because it wishes to accrue use tax. Purchasers who are uncertain as to whether an out-of-state vendor (or any vendor) is registered to legally collect Nevada sales tax may contact the Department for verification.

#### **AUTOMATIC USE TAX REGISTRATION**

All individuals and entities required to have a Nevada State Business License are also required to be registered for and to report use tax. Therefore, an individual or entity registering for a State Business License is automatically assigned a use tax account. Use tax is distinguished from sales tax in that it is due from the purchaser on any tangible personal property used in Nevada upon which Nevada sales tax has not been paid. The use tax law did not change. What has changed is the requirement to be registered and report this tax. Even if an entity does not have an on-going use tax liability, this requirement cannot be waived. A use

tax return must be filed for each period whether a liability exists or not. The reporting frequency is determined by the nature of the business.

## **AUTOMOBILE DEALERSHIPS FREQUENTLY ASKED QUESTIONS**

What are the responsibilities of auto/boat dealerships in regards to drive-away permits? Under Nevada law, sales tax is presumed to be owed on the sale of any tangible personal property within the state. NRS 372.195 places the burden on the retailer to collect tax if the sale of tangible personal property is for the storage, use or other consumption in this state. If a dealer intends to exempt the sale of vehicles/vessels to out of state customers (non-residents), the dealer must comply with the provisions in NAC 372.708. The purchaser must obtain from the dealer a special permit (Drive-away Permit) issued by the Department of Motor Vehicles and the dealer must supply the purchaser an affidavit in the form prescribed by the Department. If the dealer is apprised by the purchaser that he is a resident of Nevada, the dealer must charge sales tax on the transaction. If the dealer has knowledge that the purchaser is a resident of Nevada or will be using the vehicle/vessel in Nevada, the dealer must charge sales tax on the sale.

What defines residency? "Resident" (NRS 482.103) includes, but is not limited to, a person:

- a) Whose legal residence is in the State of Nevada.
- 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.
- d) Who declares himself to be a resident of Nevada for purposes of obtaining privileges not ordinarily extended to nonresidents of this state.

There is no statutory authority under Nevada law allowing a dealer to sell a vehicle/vessel tax exempt to a Nevada resident. Therefore, a Nevada resident who purchases a vehicle/vessel in Nevada must pay Nevada sales tax at the time of purchase unless he can offer the dealer a valid Nevada resale certificate or the dealer delivers the vehicle/vessel out of state and obtains a written statement that the vehicle/vessel will not be stored, used or driven in Nevada.

Sales to Students-examples: If an out of state student attending school in Nevada purchases a vehicle/vessel for storage, use or other consumption in Nevada, regardless of the state of purchase, the sale will be considered a taxable transaction and will be subject to Nevada sales or use tax. However, pursuant to NAC 372.708, if an out of state student purchases a vehicle/vessel in Nevada and removes it within 15 days, the sale will not be taxable.

Sales to Military: In a 1969 decision based on the Soldiers and Sailors Relief Act, the U. S. Supreme Court ruled that military personnel were not exempt from sales and use tax in their host state. Therefore, military personnel stationed in Nevada purchasing a vehicle/vessel from a Nevada dealer are subject to the sales and use tax in Nevada regardless of where the vehicle/vessel will be registered. An exception to that requirement would be if the military person is being transferred out of the state within the 15 days normally allowed by an Affidavit of Purchaser and Drive-away Permit. A copy of the military person's transfer orders should be retained in the dealer's vehicle jacket in the event of an audit.

Warranties: When is a warranty subject to tax? If the warranty is MANDATORY, the warranty is taxable when it is part of a taxable sale. An OPTIONAL WARRANTY (extended warranty or maintenance contract) sold separately from the sale of tangible personal property, is not subject to sales tax; however, the dealership is responsible for use tax on the parts and materials used in repairing the vehicle (NRS 372.025; NAC 372.460).

Dealer Report of Sales (DRS): What are the filing requirements for completed Dealer's Report of Sales? The file copy (yellow) is to be retained in the original DRS book in numerical order. During an audit, the Department of Taxation will request these records for review. Voided DRS copies must be retained in the DRS book.

Documentation fees, smog fees, administrative fees, credit check fees: When the sale of a vehicle/vessel is taxable, documentation fees, smog fees, administrative fees, credit check fees and other services associated with the sale are subject to sales tax. When a smog inspection is performed separately from the sale of a vehicle/vessel, there is no tax on the smog inspection fees as the fees are considered payment for a service only.

Unwinds and repossessions: What is the difference? An Unwind is a sale that has been cancelled. The customer is made whole when the sale is cancelled. In an unwind situation, all monies paid by the customer including any traded-in vehicle/vessel or the equivalent thereof are returned to the customer. The transaction is reversed in the accounting records as though the sale never took place. A Repossession happens some time after the sale, when a customer defaults on payments and the dealership takes the vehicle/vessel back into its inventory. Although the vehicle/vessel is returned to the dealership, transfer of title or possession to the buyer already occurred making the original transaction taxable. Repossession fees and other costs are allowable deductions from any monies owed the buyer. The cost of the repossession and any resulting uncollectible debt cannot be deducted from current sales receipts (i.e. reversing the vehicle/vessel sale) but the transaction may be eligible for a credit as a "bad debt" (NRS 372.365) subject to regulations governing bad debts.

The subsequent sale of a repossessed vehicle/vessel is treated as a new sale and is subject to sales tax.

Trade-ins: What is a trade-in and how is it taxed? A trade-in occurs when a customer purchases a vehicle/vessel and the dealership takes the customer's vehicle/vessel in trade. The purchased vehicle/vessel must have a value greater than that of the vehicle/vessel being traded-in. A credit for the county portion (all but 2%) of the sales tax rate is allowed to offset a portion of the sales tax being charged on the newly purchased vehicle/vessel. For example, assuming a combined sales tax rate of 7%, a customer purchases a vehicle/vessel for \$15,000 and trades in a vehicle/vessel for which the dealership allows a trade-in value of \$10,000. The dealership will charge 7% tax (\$1,050.00) on the newly purchased vehicle/vessel and will then allow a credit of 5% tax (-\$500.00) on the value of the trade-in. The purchaser has a tax liability of \$550.00 (\$1,050.00 less \$500.00).

Trade-downs: What is a trade-down and how is it taxed? A trade-down transaction occurs when a customer purchases a vehicle/vessel for a lower value than the value of the vehicle/vessel the customer is trading in. Tax at 2% is due on the value of the vehicle/vessel being purchased. No trade-in tax credit is allowed. For example, the customer purchases a vehicle/vessel for \$10,000 and trades in a vehicle/vessel on which the dealership allows a trade-in value of \$15,000. Tax at 2% on \$10,000 is due on the transaction.

How is a Trade-in/Trade-down transaction reported for sales tax purposes? A Trade-in/Trade-down Supplemental reporting form (TPI-02-04) is provided to dealerships to file with their Sales Tax Return. The top portion of the form is used to report the value of all trade-ins and is an allowance against the net taxes due for the reporting period. The bottom portion of the form is used to report the value of all trade-downs and is in addition to the net taxes due for the reporting period.

The value of all trade-ins and trade-downs should be entered only on the Trade-in/Trade-down Supplemental reporting form (TPI-02-04) and not on the regular sales tax return. The net difference between the total trade-ins and total trade-downs is then transferred to the front of the sales tax return as either a liability (the trade-down total is greater than the trade-in value) or a credit (the trade-in value is greater than the trade-down value).

Resale Certificates: When is it appropriate for a dealership to use a resale certificate? A dealership should use a resale certificate whenever it purchases vehicles, parts or other merchandise (i.e., logo merchandise) that it intends to resell to its customers. This holds true even if the purchase is made from another dealership or is made in conjunction with the outsourcing of vehicle repairs. When a dealership uses a resale certificate to purchase tangible personal property for resale to its customers, it must collect sales

tax from the customer at the time of the sale to the customer. When parts are sold in conjunction with vehicle repairs, the sales tax must be collected when the customer is charged for the parts (see "Repair Labor" below).

Leases: What is taxable to the dealership? A Depreciation cost (cap cost reduction) which includes cash down payments, trade-in vehicles/vessels or other forms of consideration that the dealership retains outside a lease is subject to taxation.

Lemon law: How does it apply to vehicle sales? In the case of vehicles repurchased by either the dealership and/or the automobile manufacturer pursuant to the "lemon law," a tax refund may be made based upon the amount of money refunded or credited to the original purchaser. In cases where trade-in credit was allowed on the first vehicle purchased, an extension of the credit may be made to the purchase of the replacement vehicle. Full documentation showing all aspects of the transaction must be maintained by the dealer within his files (NRS 372.025(3), NRS 372.065(3) (b)).

Courtesy Deliveries: What is this? If a local dealership, acting as an agent or factor delivers a vehicle for another dealership or for a manufacturer, the local dealership must collect the applicable sales or use tax and remit it to the Department of Taxation. More specifically, if the seller neglects to collect the tax, the local dealership will be held liable for the amount of the tax under the following circumstances: (a) if the local dealership formerly owned the vehicle; or (b) if the local dealership is an agent or factor of a former owner of the vehicle. If either is true, the local dealership will have an obligation, pursuant to NRS 372.050, to collect tax from the buyer of the vehicle. The amount of tax to be collected must be computed on the retail sales price of the vehicle to the consumer.

Shop supplies: What are shop supplies and are they taxable? Shop supplies may consist of cleaning rags, glass cleaner, cleaning solvents, masking tape, and similar items, other than parts, which are used by a dealership to perform maintenance or repairs on a vehicle. If the dealership charges the customer for shop supplies, the dealership must collect sales tax on the amount charged to the customer. If these items are not charged to the customer and taxed, they are subject to use tax based upon their cost to the dealership.

Repair labor: Is this taxable? Repair labor is not taxable, but must be listed separately on an invoice to the customer, especially when there are parts being charged to the customer. Failure to separate the repair labor from the material will result in the entire bill to the customer being taxable.

For answers to additional questions you may have, please contact the Department of Taxation.

## EMPLOYMENT OPPORTUNITIES WITH THE

## **DEPARTMENT OF TAXATION**

The Department of Taxation has begun listing its open positions on our website at <http://tax.state.nv.us>. Recruitments for the Department are administered by State Personnel and our website includes a link to the State Personnel website.

## **HOLIDAY CLOSURES**

The Department of Taxation offices will be closed the following days during the third quarter of 2005:

Monday, July 4 <sup>th</sup>	Independence Day
Monday, September 5	Labor Day