

NEVADA DEPARTMENT OF TAXATION

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NEVADA TAX NOTES

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DEPARTMENT OF TAXATION OFFICES

MAIN OFFICE

1550 College Parkway, Suite 100
Carson City, Nevada 89706

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

Phone: **(775) 684-2000 (Switchboard)**
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

HENDERSON FIELD OFFICE

2550 Paseo Verde Parkway, Suite 180
Henderson, Nevada 89074
Phone: (702) 486-2300
Fax: (702) 486-3377

ELKO FIELD OFFICE

850 Elm Street, No. 2
Elko, Nevada 89803
Phone: (775) 753-1115
Fax: (775) 778-6814

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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.

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 a tax return, please use the envelope the Department provided because it is addressed directly to the bank.

"ASK THE ADVISOR" BASIC TRAINING

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. The next class is scheduled for Tuesday, July 18, 2006. Classes are also scheduled for Tuesday, August 15, 2006 and Tuesday, September 19, 2006.

"Ask the Advisors" information may also be accessed from the Department website at <http://tax.state.nv.us>. At this site you may view a Power Point presentation of Department of Taxation workshop information or plan to attend the next scheduled training.

SALES/USE TAX INCREASE

Effective July 1, 2006, and in conjunction with the severe financial emergency, the sales/use tax rate in White Pine County will increase by $\frac{1}{4}$ of one percent (0.25%) to a total rate of 7.375%. All vendors selling in or delivering into White Pine County on or after July 1, 2006, will be required to collect the appropriate new tax. Construction may be exempt from the additional tax rate increase if an exemption letter is obtained from the Department of Taxation. The exemption is only available to contractors with existing construction contracts; it is not available to vendors with purchase agreements or sales contracts. For more information on how to obtain a contractors exemption letter, please contact the Carson City office of the Department of Taxation at (775) 684-2000.

WHEN IS SALES TAX DUE? TIME OF SALE VS. LAYAWAYS

A sale includes any transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner whatsoever, of tangible personal property for a consideration. In other words, a sales transaction takes place when the customer takes possession of the tangible personal property, not when the customer actually pays for the item in a credit transaction. NRS 372.025, "Gross receipts," section 2(b), states in part, "The total amount of the sale or lease or rental price includes ...all receipts, cash, credits and property of any kind." Thus, the taxes are due and payable in the period when the sales transaction takes place and cannot be delayed until the retailer actually receives payment from the customer. In a layaway transaction, the tax is not due until the customer has taken possession. Mandatory layaway fees are considered a service part of the sale and as such are taxable (NRS 372.025).

NEW COMPUTER SYSTEM

The Department of Taxation is in the process of developing a new computerized Tax Administration System (TAS) as part of our continuing effort to provide consistent, effective and efficient administration of taxes. The first phase of the system implementation took place in the summer of 2005 and included the administration of Business License (BL) registration and renewal, and Modified Business Tax (MBT) filing. The second phase will take place in the summer of 2006 and will include the administration of sales and use tax. This will enable taxpayers to register and file tax returns for all three tax types on the new internet online tax service. It will also enable the Department of Taxation to become timelier in notifying taxpayers when they have become delinquent in any tax filing, processing deficiency determinations on non-filed tax returns and notifying taxpayers of bond requirements. Phases 3 and 4 are scheduled to take place in 2007.

When a taxpayer's account becomes delinquent, immediate notification will be mailed asking that the tax return be filed within a specific amount of time. If the tax return is not filed, a deficiency determination will be computed using the best information available to the Department and the taxpayer will be billed. As with all determinations, the taxpayer will have an additional 45 days to submit its return or petition the determination.

In addition, the new system will enable the Department to separate a taxpayer's use tax liability from the sales tax it has collected and is remitting to the Department. **In accordance with NRS 372.370 and 374.375, the collection allowance of 0.5% will only be allowed on the sales tax collected from its customers.**

In the future, all correspondence from the Department will reference the taxpayer's Taxpayer Identification number (TID).

In addition to the 10-digit TID, a 3-digit prefix will be printed on BL renewals and MBT returns to identify the associated tax and form type. For example, an MBT General Business tax return will have the 3-digit prefix and TID printed on the form in the following format:

020-TX-1234567890

The 3-digit prefix and TID will print on all MBT returns and BL renewals. Please contact and share this information with your tax preparer so that necessary updates are made for your own record-keeping purposes.

THE MASTER SETTLEMENT AGREEMENT AND CIGARETTE BRANDS LISTED ON THE NEVADA TOBACCO DIRECTORY

The Master Settlement Agreement (MSA) is an agreement whereby several of the larger U.S. tobacco companies settled lawsuits initiated by most of the states, including Nevada, to recover costs associated with the treatment of smoking-related illnesses. Manufacturers of cigarettes are required to deposit funds into an escrow account for the sale of each carton of cigarettes. Periodically these funds are disbursed to the settling states.

Companies who declined to participate in the MSA are commonly referred to as non-participating manufacturers. Pursuant to *Nevada Revised Statutes* (NRS) Chapter 370A, nonparticipating manufacturers are required to make payments into a qualified escrow fund. The purpose of the qualified escrow fund is to secure the future payment or satisfaction of judgments which may be rendered against nonparticipating manufacturers.

All tobacco manufacturers were required to execute and deliver to the Office of the Attorney General an Initial Certificate of Tobacco Product Manufacturer on

or before November 15, 2005. Since December 30, 2005, the Department of Taxation has published the "Nevada Tobacco Directory" on its internet website. The directory includes a listing of the cigarette brands that may be legally sold in the State of Nevada. The directory reflects those cigarette manufacturers and their cigarette brands filing an Initial Certificate with the office of the Attorney General. Nonparticipating manufacturers are required to periodically identify the brands they manufacture and certify that they are making escrow payments mandated by Chapter 370A. If a nonparticipating manufacturer fails to file a required certification, it may be omitted or deleted from the Nevada Tobacco Directory.

NRS Chapter 370 governs the possession, sale and taxation of cigarettes and other tobacco products. Provisions set forth criminal and civil penalties for the sale, or possession for sale, of contraband cigarettes. NRS 370.025 defines contraband as "cigarettes...held in the possession or constructive possession of any person" in violation (in any way) of Chapter 370. NRS 370.695 makes it "unlawful for any person to...sell, or offer or possess for sale, in this State cigarettes of a manufacturer of tobacco products or brand family not included in the (Nevada Tobacco) directory." The Department may impose on each person who violates this provision, a civil penalty for each violation of not more than \$5,000.00 or 500 percent of the retail value of the cigarettes involved in the transaction, whichever is greater. In addition, pursuant to NRS 370.415, the State of Nevada shall seize any contraband cigarettes located in the state.

Registration for all legal brands of cigarettes tendered or offered for sale in this state should be verified against the Nevada Tobacco Directory. The directory is posted at <http://tax.state.nv.us/forms.htm#cigforms>.

TAXABILITY FOR OCULISTS AND OPTOMETRISTS VS. DISPENSING OPTICIANS

In the 2004 general election, Ballot Question #8 was defeated by the vote of the people. This repealed certain provisions of NRS 374.287, rescinding the partial exemption for ocular and ophthalmic devices.

Effective January 1, 2006, the sale of any ophthalmic or ocular device or appliance prescribed by a physician or optometrist is now taxed at the total applicable county tax rate.

Oculists and optometrists are the end users/consumers of ophthalmic materials, including eyeglasses, frames and lenses used or furnished in the performance of their professional services in the diagnosis, treatment or correction of conditions of the human eye. As the end user/consumer, when purchasing such materials, an oculist or optometrist is liable for the tax at the total applicable county tax rate.

Dispensing opticians are considered retailers of eyeglasses and related products furnished in filling a prescription. Therefore, dispensing opticians can use their Nevada resale certificate when purchasing ophthalmic materials and collect sales tax on the full selling price when a sale occurs.

You may verify the applicable county tax rate at the Department of Taxations web page at <http://tax.state.nv.us> or by contacting the department at any of the locations shown on the top of page one of your Tax Notes.

SALES OF CERTAIN MEDICAL DEVICES WHEN PAID/REIMBURSED BY MEDICARE OR MEDICAID

If a Medicare or Medicaid transaction meets the criteria set forth in NRS 372.7285, the sale of a medical device is deemed to have been made to a governmental entity, and is thus exempt from taxation, regardless of whether the governmental entity takes title to or possession of the device. In order for the transaction to qualify as a sale to a governmental entity, all of the following conditions must be satisfied: (1) the medical device must be ordered or prescribed by a provider of health care within his scope of practice; (2) the medical device must be used by the patient for whom it is ordered or prescribed; (3) the medical device must be covered by Medicaid or Medicare; and (4) the purchase of the medical device must be made pursuant to a contract between the governmental entity (Medicaid and/or Medicare) that pays for the medical device and the person who supplies the medical device to the patient.

"Provider of health care" means a physician licensed pursuant to chapter 630, 630A, or 633, of NRS, this includes dentist, licensed nurse, dispensing optician, optometrist, practitioner of respiratory care, registered physical therapist, podiatric physician, licensed psychologist, licensed audiologist, licensed speech pathologist, licensed hearing aid specialist, licensed marriage and family therapist, chiropractor or doctor of Oriental medicine in any form.

COLLECTION ALLOWANCE CHANGE

The collection allowance established by NRS 372.370 was updated in 2003 and is currently 0.5% of the tax liability if the tax is collected and remitted timely by the retailer. It was first enacted in 1979 to help retailers reimburse themselves for the cost of collecting and remitting the tax and was always meant to be a percentage of the sales tax collected only, not the use tax. The computer system the Department has been using did not allow for the collection allowance to be applied to the sales tax portion only. As stated above, the new computer system will allow for the separation of sales tax and use tax. Starting with the July 2006 reporting period, the collection allowance will no longer be allowed on the use tax portion of the

tax return liability. This is in keeping with the intent of NRS 372.370. Tax returns for that period mailed out by the Department will have separate reporting sections for sales tax and use tax liability but will otherwise look similar to those currently being used. If you have any questions on the collection allowance, please call your local Taxation Department office.

GOVERNMENT CONTRACTS

Construction contractors who perform work for governmental 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 the 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 governmental entity (NRS 372.340). Should you have questions, please call your local Taxation office.

EXHIBITION FACILITIES

Effective July 1, 2005, SB3 of the 2005 Special Session now requires that a **person** or **governmental entity** that operates a facility at which one or more **exhibitions** are held is responsible for the payment of a licensing fee on behalf of persons who do not have a state business license but who take part in the exhibition for a purpose related to the conduct of a business. NRS 360.787 defines an ***“Exhibition” to mean a trade show or convention, craft show, sporting event or any other similar event involving the exhibition of property, products, goods, services or athletic or physical skill.*** The operator of the facility may choose to pay the licensing fee required by one of the following methods: (a) On an annual basis by remitting to the Department the sum of \$5,000 on or before July 1 for all the exhibitions held at that facility during the fiscal year beginning on that day; or (b) On a quarterly basis by remitting an amount equal to the product of the total number of businesses taking part in each exhibition at the facility during a calendar quarter who do not have a State Business License, multiplied by the number of days on which the exhibition is held at the facility during the calendar quarter, multiplied in turn by \$1.25 for each exhibition held at the facility during the calendar quarter. If you operate a facility that holds events defined as an exhibition, please contact your local Taxation office to ensure you are in compliance.

FILE AND PAY MODIFIED BUSINESS TAX AND RENEW YOUR BUSINESS LICENSE ONLINE

The Department can now accept electronic payments online for BL and MBT at www.nevadatx.nv.gov. Sales Tax will be added to the online tax site in the summer of 2006. Currently, you may file a Nevada

Business Registration, register to use the website, and file and pay your Business License (BL) and Modified Business Tax (MBT) by e-check. To register to use the website, you may request that your authorization code be mailed, or you may confirm your account using information from a previously filed Modified Business Tax return. If you are not paying MBT taxes, you will have to request your authorization via the mail. This is necessary since we can only confirm MBT account data at this time. Please do not use information from your Sales Tax account. This information is not yet available to the system and its use will cause a delay in processing your registration.

MOVING OR SELLING BUSINESS

Please remember to advise the Department of any business location changes or additions and changes in ownership of your business, which include forming a corporation, LLC, LTD or other entity. A new or a revised application with an authorized person's signature is required to update our records and ensure you have the appropriate permit. In addition, if you are selling your business, you are responsible for filing all required returns and licenses through the date your business ceased operations. 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.

CERTAIN TRUSTS AND ESTATES – BUSINESS LICENSE REQUIRED

A trust or an estate is required to obtain a state business license, and pay the \$100 annual fee, if it “performs a service or engages in a trade for profit.” See NRS 360.765(1) (a). If a trust is not required to file an IRS Form 1041 (commonly referred to as a “grantor trust”), it is not considered to be a trust for purposes of the state business license. However, the grantor and/or beneficiary of a grantor trust may be required to secure a business license in his own name, depending upon the nature of the activity which he conducts in the name of the grantor trust. In this regard, a natural person is required to obtain a business license if he conducts an activity for which he is required to file a Schedule C, E or F (Form 1040) with the Internal Revenue Service. Although there is an exception to this rule for a natural person whose sole business is the rental of four or fewer dwelling units, this exception does not apply to a trust or an estate (other than a grantor trust as described above).

HOLIDAY CLOSURES

The Department of Taxation offices will be closed on the following days in the third quarter of 2006:

Tuesday, July 4, 2006 – Independence Day
Monday, September 4, 2006 – Labor Day