

NEVADA DEPARTMENT OF TAXATION

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NEVADA TAX NOTES

Official newsletter of the Department of Taxation

APRIL 2007

(O) 2786



ISSUE NO. 158

DEPARTMENT OF TAXATION OFFICES

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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.

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GRADUATED PENALTY ON LATE-PAID RETURNS

One of the added features to the Department of Taxation's newly implemented Unified Tax System is the ability to calculate graduated penalty on late-paid returns.

Taxpayers will be able to calculate graduated penalty starting with tax returns filed for the period ending April 30, 2007 (due May 31, 2007). Effective April 1, 2007, tax return instructions supplied by the Department of Taxation will provide information on how to calculate graduated penalty. The amount of penalty due is based on the number of days a payment is made after its due date. *Nevada Administrative Code* (NAC) 360.395 outlines the graduated penalty scale:

Number of days late	Penalty Percentage	Multiply by:
1 - 10	2%	0.02
11 - 15	4%	0.04
16 - 20	6%	0.06
21- 30	8%	0.08
31 +	10%	0.10

FEDERAL INCOME TAX

The Department of Taxation receives an enormous number of inquiries regarding **Federal** Income Tax issues. The State of Nevada does not participate in the administration of *federal income* and does not levy a **State** personal, business or corporate income tax. The Nevada Department of Taxation does not require informational copies of Nevada residents' Federal Income Tax forms. Federal Income Tax inquiries may be researched at the official IRS website, www.irs.gov.

CONSTRUCTION CONTRACTORS

A construction contractor who is involved in new or remodel construction of real property is allowed to show "time and materials" pricing on its customer's invoice. But, the contractor may not tax its customer on those materials. The tax liability is satisfied when the contractor purchases materials and either pays sales tax to a "Nevada registered vendor" or self-reports use tax directly to the Department by means of its sales or use tax return. If a construction contract for improvement to real property requires the construction contractor to perform repairs or improvements on real property, the contractor, again, must either pay the sales tax on the parts to its vendor or remit the use tax directly to the Department (NAC 372.200).

However, if the contractor is also a registered retailer, it may act as a repairman under NAC 372.390, and charge sales tax on the selling price of the materials, if the value of the materials is substantial in relation to the total charge, and, if separately stated, exempt the price of the installation labor.

"ASK THE ADVISORS" 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.

SOUTHERN REGION - The following future workshops will be held in the Henderson Office listed on this page and begin at 9:00 a.m. and conclude at 12 noon:

Tuesday, April 17, 2007 – Topics will include basic taxation in Nevada and automotive issues.

Tuesday, May 15, 2007 – Topics will include basic taxation in Nevada, Modified Business Tax and Other Tobacco Products.

Tuesday, June 19, 2007 – Topic will be basic taxation.

NORTHERN REGION - The following future workshop will be held in the Reno Office listed on this page and begin at 9:00 a.m. and conclude at 12 noon:

Wednesday, May 16, 2007 – Topics will include basic taxation and modified business tax issues.

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

VOLUNTARY DISCLOSURE

In 2002, the Nevada Tax Commission adopted regulations outlining guidelines and procedures for the "voluntary disclosure of failure to file returns." The regulations require that a taxpayer desiring to voluntarily disclose taxes due the Department of Taxation must formally apply for disclosure. The Application for Voluntary Disclosure and associated regulations can be found at the Department website at <http://tax.state.nv.us> or may, upon request, be obtained at any Department of Taxation location (NAC 360.440, NAC 360.442, NAC 360.444, NAC 360.446 and NAC 360.448).

MODIFIED BUSINESS TAX: HEALTHCARE DEDUCTION

In accordance with 2003 legislative action, NRS 363A, the Modified Business Tax on Financial Institutions (MBTFI), and NRS 363B, the Modified Business Tax (MBT), were enacted effective October 1, 2003. The MBTFI and MBT are taxes on total gross wages that are reported and paid to the Department of Taxation, by *employers*, on a quarterly basis.

Employers must report wages and pay MBT/MBTFI tax on wages only for employee(s) whose wages are required to be reported for unemployment insurance calculation purposes to the Nevada Employment Security Division of the Department of Employment Training and Rehabilitation. In other words, *out-of-state employers who send personnel into Nevada to work, but report those employees' wages or pay unemployment insurance for those employees in their home states (other than Nevada), are not required to report or pay Nevada modified business tax for those employees if their wages are not required to be reported to Nevada Employment Security Division of the Department of Employment Training and Rehabilitation.*

Currently, the MBT tax rates are 0.63% for general businesses and 2% for financial institutions. From the gross wages, a deduction is allowed for qualified health insurance/health benefit plans paid exclusively by employers. For purposes of the MBT healthcare deduction, taxpayers/employers are permitted to deduct:

1. Payments made solely by an employer for employees' and employee dependents' healthcare benefits, including but not limited to: insurance premiums that provide medical, dental and vision care;
2. Healthcare benefit expenses for employer self-funded insurance plans including claims, direct service administrative costs, and premiums paid for by employers for individual or aggregate insurance coverage;
3. Payments to Taft-Hartley Trusts (often described as "insurance premiums paid to a union") as long as the payment is identified in the employer's source documents as a payment to a Taft-Hartley Trust;
4. Co-payments of employee medical bills;
5. Payment for future healthcare benefits; i.e., retirement healthcare benefits; and
6. Healthcare benefit payments, actually *paid* (not *accrued*), for employees in the quarter for which the employees' wages are reported.

Employers may not deduct:

1. Payments for employees' industrial injuries or industrial diseases;
2. Payments made by or received from employees for their healthcare benefits/coverage;
3. Payments for "Cafeteria Plan" contributions obtained from employees;

4. Payments for life insurance or short-/long-term disability insurance;
5. Payments for self-insurance programs that are not qualified as employee welfare benefit plans pursuant to the Employee Retirement Income Security Act of 1974; and
6. COBRA (Consolidated Omnibus Budget Reconciliation Act of 1986) payments made on behalf of *former* employees

from the gross wages subject to tax (i.e., line 2 of form TXR-020.01, "Modified Business Tax Return-General" and form TXR-021.01, "Modified Business Tax Return-Financial Inst.")

WAIVER OF SECURITY DEPOSITS

The Nevada Tax Commission may waive a sales tax security deposit once a taxpayer has established a perfect payment record for three consecutive years. If you meet the three-year perfect reporting requirement and desire a waiver of security, submit a written request to the Department referencing your account number. If the security waiver is approved, you will be notified and any refundable security will be returned. In a case where a business is a corporation, two corporate officers must each sign a personal guarantee. If corporate officers change, then new personal guarantees are required. Any taxpayer whose security has been waived and who subsequently becomes either delinquent, files a late return or has a check returned by the bank will again be required to post the applicable security.

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 ongoing 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.

USE TAX DUE BY INDIVIDUALS AND BUSINESSES FOR OUT-OF-STATE PURCHASES FOR THEIR OWN USE

Individuals and Businesses who purchase tangible personal property from out-of-state vendors (including catalog purchases, mail order, and internet) for their use in Nevada are subject to Nevada use tax. Use Tax is due on all property which is acquired out of state in a transaction that would have been taxable if it had occurred within Nevada. Credit will be given for sales tax legally paid in another state **up to the Nevada tax rate in the county of use**. Use tax applies to all purchases of tangible personal property, including but not limited to: off-highway vehicles (e.g., all-terrain vehicles (ATVs), snowmobiles, dirt bikes); watercraft; aircraft; furniture; computer equipment and other office supplies; clothing; etc. If you have questions as to whether you need to report and pay use tax on an out-of-state purchase, please contact your nearest District Office.

SALES TAX ON PACKAGING SERVICES

Businesses offering mailing services and that also sell packaging services are advised that the charges for packaging services must be included when determining the sales tax to be charged for the tangible personal property being sold. NRS 372.105 requires retailers to impose sales tax on the 'gross receipts' of all tangible personal property sold at retail. NRS 372.025(1)(b) defines 'gross receipts' as "...the total amount of the sale, lease or rental price...including the cost of the materials used, and labor or service cost..." NRS 372.025(2)(a) further defines 'gross receipts' as follows: "...the total amount of the sale or lease or rental price includes all of the following: ...any services that are a part of the sale..."

Therefore, since packaging an item for shipment is an integral service associated with the sale of packaging materials, the charge for the packaging service is also taxable under Nevada law.

RECIPROCAL AGREEMENTS WITH OTHER STATES FOR ITEMS SHIPPED OUT OF THIS STATE

Sales made in Nevada of property that is shipped out of state by the retailer are not subject to Nevada Sales Tax pursuant to NRS 372.335 because delivery and use is considered to be in the state into which it was shipped. Retailers are required to maintain shipping documents to verify the shipment if they are reporting the transactions as exemptions on their Sales Tax returns. During a sales tax audit of an account, the auditor will review these documents to verify the exemption. Retailers should be aware that Nevada has reciprocal agreements with other states, as do most states, and may share information relative to any transaction with the other states. The taxing authority for the state into which the merchandise

was shipped may contact the customer regarding the transaction in an effort to collect that state's Use Tax. Retailers may want to inform their customers that a Use Tax obligation may exist in another state when making the sale.

DIRECT SALES ORGANIZATIONS (DSO) AKA MULTILEVEL MARKETERS (MLM)

In accordance with the *Nevada Administrative Code* (NAC), sections 372.900–372.912, the Department may, at its discretion, enter into sales tax collection agreements with DSOs authorizing the DSO to collect, report and remit the tax due on its own sales and the sales made by its independent salespersons.

Products sold **to** an independent salesperson for his/her 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 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 own sales/use tax directly to the Department. When an independent salesperson is required to be registered with the Department, it provides the DSO with a resale certificate in lieu of sales tax (NRS 372.155–NRS 372.180 and NAC 372.730).

Sellers registered to collect Nevada sales tax who wish to operate as DSOs 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, which is 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.**

HOLIDAY CLOSURES

The Department of Taxation offices will be closed the following days in the second quarter of 2007:

Monday, May 28, 2007

Memorial Day Holiday