
NEVADA DEPARTMENT OF TAXATION

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Taxation of Purchase, Sale and Lease Back of Tangible Personal Property

Introduction

Retail sales and leases of tangible personal property are subject to sales tax. Pursuant to NRS 372.105, sales tax applies to retail sales of tangible personal property. A "retail sale" is defined to include 'a sale for any purpose other than resale in the regular course of business' NRS 372.050(1). Thus, when tangible personal property is sold for resale, it is not subject to the tax because it is not a retail sale.

A "retail sale" is also defined to include any lease or rental for any purpose other than resale, sublease or sub-rent. NRS 360B.067 and NAC 372.936. When property is leased for any purpose other than sublease or sub-rent, it is taxable as a retail sale and must be reported as a sale, not as a use for use tax purposes. NAC 372.936(2). Consequently, leases for re-lease of tangible personal property are not subject to sales tax.

NAC 372.946 governs the application of sales tax to transactions involving the purchase, sale and lease back of tangible personal property ("Sale and Lease Back Transaction"). The regulation outlines a multi-step transaction between three parties: a vendor, an initial purchaser and a subsequent purchaser. The three steps of the transaction are as follows:

- 1) A sale between a vendor and the initial purchaser of tangible personal property ("Initial Sale");
- 2) A subsequent sale of the same tangible personal property between the initial purchaser and a subsequent purchaser ("Subsequent Sale"); and
- 3) A lease of the same tangible personal property from the subsequent purchaser to the initial purchaser ("Lease Back").

Where all requirements of NAC 372.946 are satisfied, the Initial Sale and the Subsequent Sale are deemed sales for the purpose of resale and are excluded from sales tax, and the Lease Back is the sole taxable retail sale. See NRS 372.105 and NRS 372.050.

Statutes and/or Regulations Referenced

NRS 360B.067, NRS 360B.450, NRS 372.050, NRS 372.105, NRS 372.165, NRS 372.190, NRS 372.665, NAC 372.730, NAC 372.936, NAC 372.938, NAC 372.946

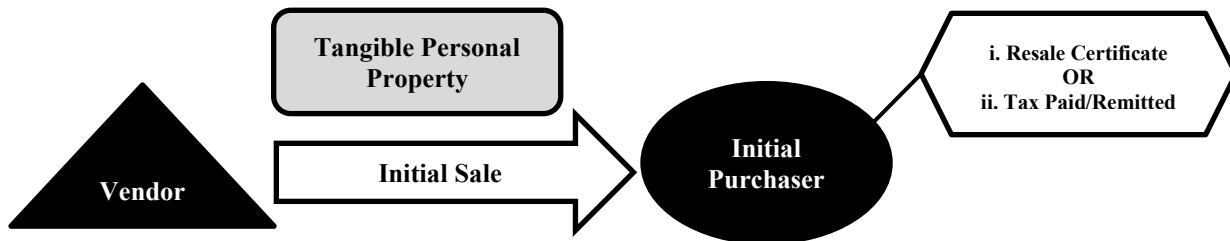
Overview

I. The Initial Sale between the Vendor and the Initial Purchaser

The Initial Sale is a sale of tangible personal property by a vendor to the initial purchaser, as that term is defined in NRS 372.085. Such a sale may not include the sale of services or contracts for the improvement of real property. The initial purchaser is required to properly document the Initial Sale, including the date of the Initial Sale, the parties to the Initial Sale, the location where the Initial Sale took place, the amount of any sales tax paid and whether a resale certificate was presented.

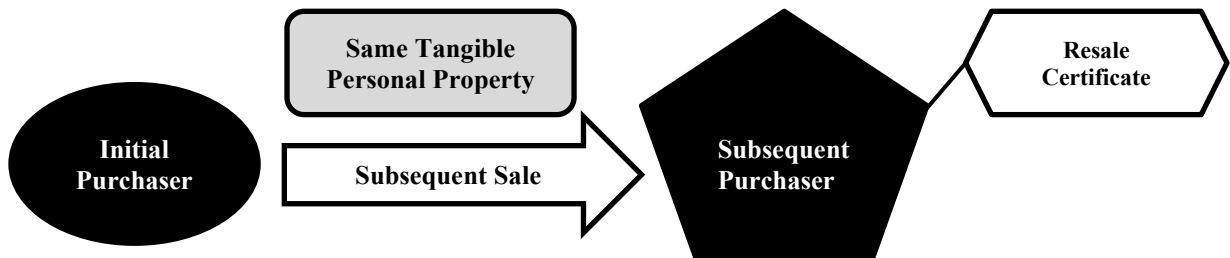
Pursuant to NAC 372.946(2)(a), the initial purchaser has two options concerning sales tax on the Initial Sale:

- 1) **Resale Certificate:** The initial purchaser can provide a resale certificate to the vendor as described in NRS 372.165 and NAC 372.730; or
- 2) **Payment/Remittance of Taxes:** The initial purchaser can pay the applicable sales tax to the vendor at the time of the Initial Sale. If the vendor was not located or required to be registered in Nevada, the initial purchaser may report and remit the applicable tax to the Department. See NRS 372.190.



II. The Subsequent Sale between the Initial Purchaser and the Subsequent Purchaser

The Subsequent Sale occurs when the initial purchaser sells the tangible personal property acquired from the Initial Sale to a subsequent purchaser. The subsequent purchaser must be a person/entity is in the business of leasing tangible personal property to others. The subsequent purchaser must provide a resale certificate to the initial purchaser at the time of the Subsequent Sale. The initial purchaser and subsequent purchaser must document the Subsequent Sale by keeping a copy of the sale agreement and the resale certificate.



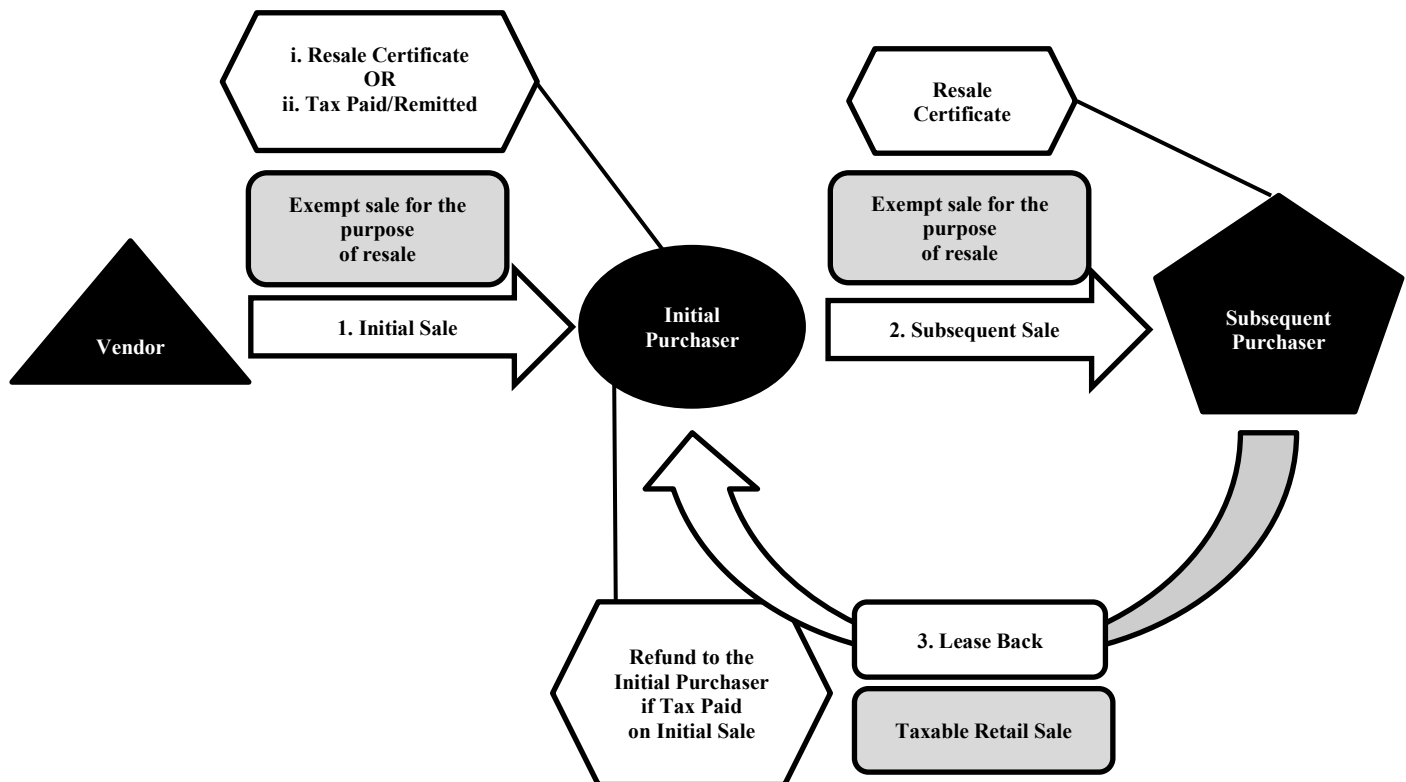
III. The Lease Back of the property from the Subsequent Purchaser to the Initial Purchaser

The Lease Back occurs when there is a lease between the subsequent purchaser and the initial purchaser of the same tangible personal property acquired from the Initial Sale and sold to the subsequent purchaser in the Subsequent Sale. The Lease Back transaction must take place within 180 days of the Initial Sale, unless the parties to the Lease Back have received written authorization from the Department of Taxation ("Department") for a longer period of time. The initial purchaser and subsequent purchaser must document the Lease Back by keeping a copy of the Lease Back agreement. The Lease Back to the initial purchaser constitutes a retail sale and the subsequent purchaser must collect and remit to the Department the sales tax on the lease or lease stream. See NAC 372.938 concerning sales tax on leases.

IV. When the Initial Purchaser is Entitled to a Sales Tax Refund

When all requirements of NAC 372.946 are satisfied, the tax-shifting provisions are triggered, exempting the first two transactions (Initial Sale and Subsequent Sale) from sales tax and shifting the sales tax to the Lease Back. The initial purchaser is entitled to a refund of the amount of tax paid on the initial sale if: 1) the subsequent purchaser collected sales tax on the Lease Back; and 2) the initial purchaser paid sales or use tax on the Initial Sale (either to the vendor or by directly remitting tax to the Department). However, the Department will deny any request for interest on that refund as the initial purchaser had the option to purchase the tangible goods from the Initial Sale without paying tax pursuant to a resale certificate. See NRS 372.665.

The illustration below shows a completed lease back transaction:



Example: Sales Tax Paid on Initial Sale

Step 1: Jack's Arcade in Las Vegas, Nevada purchases a large order of video arcade machines from VenCo, which holds a seller's permit issued by the Department. Jack's Arcade pays the Nevada sales tax at the time of the purchase and documents the purchase by keeping a copy of the invoice from VenCo which shows the sales tax paid.

Step 2: Within 180 days of the purchase, Jack's Arcade contracts with Principal Finance, a financing company which is in the business of leasing property, for a sale and leaseback arrangement. Jack's Arcade documents the transaction by keeping a copy of the sale agreement and the resale certificate provided by Principal Finance.

Step 3: Principal Finance leases the machines back to Jack's Arcade for a fixed monthly payment. The first payment under the lease includes the sales tax collected by Principal Finance. Principal Finance remits the taxes collected from Jack's Arcade to the Department. Jack's Arcade documents the transaction by keeping a copy of the lease agreement which indicates that Jack's Arcade agreed to pay sales tax on the lease and a copy of the first lease installment which includes a line-item charge for sales tax.

Step 4: Jack's Arcade seeks a refund from the Department of the sales tax paid on the Initial Sale from VenCo. Jack's Arcade provides the documentation of sales tax paid to VenCo and to Principal Finance. Jack's Arcade is entitled to a refund from the Department for the taxes paid on the Initial Sale of the machines from VenCo, but not interest on that refund.

Example – Resale Certificate given to Vendor on Initial Sale

Step 1: Jack's Arcade provides a resale certificate when it purchases the machines from VenCo and, thus, pays no sales tax on the Initial Sale.

Steps 2 and 3 are the same.

Step 4 is not applicable. Jack's Arcade would not be entitled to a refund of sales tax because it did not pay the tax to VenCo on the Initial Sale.