



STATE OF NEVADA
DEPARTMENT OF TAXATION

Web Site: <https://tax.nv.gov>

Call Center: (866) 962-3707

LAS VEGAS OFFICE
700 E. Warm Springs Rd, Suite 200
Las Vegas, Nevada 89119
Phone (702) 486-2300
Fax (702) 486-2373

JOE LOMBARDO
Governor
GEORGE KELESIS
Chair, Nevada Tax Commission
SHELLIE HUGHES
Executive Director

CARSON CITY OFFICE
3850 Arrowhead Dr., 2nd Floor
Carson City, Nevada 89706
Phone: (775) 684-2000
Fax: (775) 684-2020

RENO OFFICE
4600 Kietzke Lane, Suite L235
Reno, NV 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

Posted 4/5/24

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption of

LCB File No. R156-22

Nevada Tax Commission

The Nevada Tax Commission will hold a Public Hearing at **9:00 a.m. on Wednesday, May 8, 2024**. The purpose of the hearing is to receive comments from all interested parties regarding the adoption of the regulation that pertains to LCB File No. R156-22.

You may attend this meeting at either of the following physical locations:

Nevada Department of Taxation
700 E. Warm Springs Road, 1st Floor
Las Vegas, Nevada 89119

Nevada Department of Taxation
4600 Kietzke Lane, Suite L235
Reno, Nevada 89502

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. Need and purpose of the proposed regulations or amendments

The need and purpose of the proposed permanent regulation (R156-22) revises provisions governing the taxation of tangible personal property purchased for resale and given away with complimentary food, meals, or beverages; and provides other matters properly relating thereto.

Under existing law, a sale of tangible personal property is not subject to sales tax if the purchase is made for the purpose of reselling the property in the ordinary course of business. (NRS 372.050) If the purchaser makes any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the purchaser must pay use tax based on the sales price of the property to the purchaser. (NRS 372.170)

Existing law exempts food for human consumption, not including alcoholic beverages and prepared food intended for immediate consumption, from sales and use tax. (Nev. Const. Art. 10, §3[A]; NRS 372.284) Existing law also provides that the complimentary portion of any food, meals or nonalcoholic drinks provided on a complimentary basis to the employees, patrons or guests of a retailer: (1) for the purposes of the use tax, does not lose its tax-exempt status as food for human consumption as the result of being provided on a complimentary basis to the employees, patrons or guests of the retailer; and (2) for the purposes of determining whether a sale has occurred, is not furnished, prepared or served for consideration. (NRS 372.7273)

Notwithstanding these provisions, existing regulations provide that personal property purchased for resale and given away in the form of complimentary food and beverages is taxable as a use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. (NAC 372.350) This regulation revises that language to provide that the use tax applies only to tangible personal property, including napkins, straws, plates, utensils, glasses, or cups, purchased for resale and given away with complimentary food, meals or beverages.

2. How to obtain the approved or revised text of regulations prepared by LCB

You may obtain a copy of the proposed permanent regulation by writing to the Nevada Department of Taxation, 3850 Arrowhead Drive, 2nd Floor, Carson City, Nevada 89706; or by calling the office at (775) 684-2059. The proposed permanent regulation is also available for review and download on the Department of Taxation website at <https://tax.nv.gov/> or on the Nevada Legislature website at <https://www.leg.state.nv.us/>.

3. Methods used in determining the impact on a small business

The agency used informed, reasonable judgment in determining that there will not be an impact on small businesses due to the nature of the regulation changes, which includes its own analysis by considering the extent of the regulatory provisions contained in LCB File No. R156-22. The Department prepared a small business impact questionnaire that was forwarded to the Interested Parties List which is maintained by the Department.

Despite the feedback and concerns from small businesses, this regulation confirms what was amended into statute in 2013 and updates regulatory language that is no longer Nevada law. This regulation does not impose additional requirements on this industry since 2013.

The Department will continue to accept input on the impact of the proposed permanent regulation on small businesses through the regulatory process. No respondents indicated that this regulation would have a direct and significant economic burden upon a small business.

The Department held a workshop for concerned members of the public to state their concerns and submit correspondence regarding the regulation.

4. Estimated economic effect of regulation on businesses and the public

a. Adverse and beneficial effects

The proposed permanent regulation does not present any reasonable, foreseeable or anticipated adverse economic effects on small businesses or the public.

b. Immediate and long-term effects

The proposed permanent regulation does not present any reasonable, foreseeable or anticipated immediate or long-term economic effects on small businesses or the public.

5. Cost for enforcement of the regulations

The proposed permanent regulation does not present any significant, foreseeable or anticipated cost or decrease in costs for enforcement.

6. Overlap or duplication of other state or local governmental agencies

The proposed permanent regulation does not overlap or duplicate any regulation of other state or local governmental entities.

7. Regulation required by federal law

Not Applicable

8. More stringent than federal regulations

The Department is not aware of any similar federal regulations of the same activity in which the state regulations are more stringent.

9. New or increases in existing fees

The proposed permanent regulation does not include new fees or increase an existing fee.

Persons wishing to comment on the proposed action of the Nevada Tax Commission may appear at the above scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Nevada Tax Commission, 3850 Arrowhead Drive, 2nd Floor, Carson City, Nevada 89706. Written submissions must be received at least two weeks prior to the above scheduled public hearing.

Under NRS 233B.064(2), when adopting any regulation, the Agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporation, and its reason for overruling the consideration urged against its adoption.

A copy of the Notice and the proposed permanent regulation to be adopted and/or amended is on file and has been posted at the following location: The Department of Taxation - 3850 Arrowhead Drive, 2nd Floor, Carson City, Nevada 89706.

Members of the public may inspect these documents during regular business hours at the above location. Additional copies of the notice and proposed permanent regulation to be adopted and/or amended are available at the below locations.

The text of the proposed permanent regulation will include the entire text of any section of the Nevada Administrative Code, which is proposed for amendment or repeal. Copies will be mailed to members of the public upon request. A reasonable fee may be charged for copies if deemed necessary.

Notice has been EMAILED/MAILED for posting at the following locations: Department of Taxation - 4600 Kietzke Lane, Building L, Ste 235, Reno, Nevada; Department of Taxation - 700 E. Warm Springs Rd, Ste 200, Las Vegas, Nevada; The Legislative Building - Capitol Complex, Carson City, Nevada; The Nevada State Library -100 Stewart Street, Carson City, Nevada; Interested Parties Group; and the Mailing List maintained by the Department. Notice of this meeting was posted on the Department of Taxation website at <https://tax.nv.gov/>, on the Legislative website at <https://www.leg.state.nv.us/>, and the Nevada Public Notice Website at <https://notice.nv.gov/>.

In compliance with the Americans with Disabilities Act, individuals requiring special accommodations to participate in this hearing should notify Tina Padovano at 775-684-2096 or tpadovano@tax.state.nv.us at least 3 days before the hearing. In order to comply with the security procedures of the Department, you will be required to show identification and sign a visitor's log prior to entering the meeting room.

If you need an accommodation in order to communicate during the hearing, the Department will provide one at no cost to you. Arrangements for an interpreter should be made as soon as possible, but no later than 14 days before the scheduled meeting. Please contact Tina Padovano at 775-684-2096 at least 14 days in advance to request an interpreter in your preferred language. You may also submit your request to tpadovano@tax.state.nv.us.

Si necesita una ayuda para comunicarse durante la audiencia, el Departamento se lo proporcionará sin costo alguno. Los trámites para conseguir un intérprete deben hacerse lo antes posible, pero a más tardar 14 días antes de la cita programada. Por favor, póngase en contacto con Tina Padovano al 775-684-2096 con al menos 14 días de anticipación para solicitar un intérprete en su idioma de preferencia. También puede solicitarlo a través de tpadovano@tax.state.nv.us.

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R156-22

July 18, 2022

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: § 1, NRS 360.090 and 372.725.

A REGULATION relating to taxation; revising provisions governing the taxation of tangible personal property purchased for resale and given away with complimentary food, meals or beverages; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, a sale of tangible personal property is not subject to sales tax if the purchase is made for the purpose of reselling the property in the ordinary course of business. (NRS 372.050) If the purchaser makes any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the purchaser must pay use tax based on the sales price of the property to the purchaser. (NRS 372.170)

Existing law exempts food for human consumption, not including alcoholic beverages and prepared food intended for immediate consumption, from sales and use tax. (Nev. Const. Art. 10, §3[A]; NRS 372.284) Existing law also provides that the complimentary portion of any food, meals or nonalcoholic drinks provided on a complimentary basis to the employees, patrons or guests of a retailer: (1) for the purposes of the use tax, does not lose its tax-exempt status as food for human consumption as the result of being provided on a complimentary basis to the employees, patrons or guests of the retailer; and (2) for the purposes of determining whether a sale has occurred, is not furnished, prepared or served for consideration. (NRS 372.7273)

Notwithstanding these provisions, existing regulations provide that personal property purchased for resale and given away in the form of complimentary food and beverages is taxable as a use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. (NAC 372.350) This regulation revises that language to provide that the use tax applies only to tangible personal property, including napkins, straws, plates, utensils, glasses or cups, purchased for resale and given away with complimentary food, meals or beverages.

Section 1. NAC 372.350 is hereby amended to read as follows:

372.350 1. Tangible personal property which is delivered as a premium, together with other merchandise which is sold, if the obtaining of the premium by the purchaser is certain and not dependent upon chance or skill, shall be deemed a sale of both the premium and the merchandise. The tax applies to the gross receipts received from the purchaser for the goods and the premium except when the premium is delivered along with a tax-exempt item. In such case the tax applies to the gross receipts from the sale of the premium, which shall be deemed to be the cost of the premium to the retailer, in the absence of any evidence that the retailer received a larger sum for the premium.

2. The tax applies to tangible personal property which is purchased for resale and given away in the form of gifts, as a use of the property other than retention, demonstration or display, while holding it for sale in the regular course of business.

3. ~~{The}~~ *Except as otherwise provided in NRS 372.290, the* tax applies to tangible personal property *, including, without limitation, napkins, straws, plates, utensils, glasses or cups,* purchased for resale and given away ~~{in the form of}~~ *with* complimentary food ~~{and}~~ *, meals or* beverages as a use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. ~~{The taxable cost of the complimentary food and beverage includes the cost of the food or beverage and other ingredients, including, but not limited to, napkins, straws and condiments.}~~