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DEPARTMENT OF TAXATION
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Posted 3/12/24

NOTICE OF WORKSHOP
Proposed Permanent Regulation
LCB File R156-22

Date and Time of Meeting: **March 27, 2024** **9:30 a.m.**

Place of Meeting:

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

This meeting will also be available by zoom. Please use the link below to join the webinar:
<https://us02web.zoom.us/j/87411336446>

Or One tap mobile:

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Dial (for higher quality, dial a number based on your current location):
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626 6799 US (Chicago) or +1 360 209 5623 US or +1 386 347 5053 US or +1 507 473 4847 US
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278 1000 US or +1 301 715 8592 US (Washington DC) or +1 305 224 1968 US

Webinar ID: 874 1133 6446

International numbers available: <https://us02web.zoom.us/j/kemsqiAPD0>

The Department of Taxation will hold a workshop to solicit comments from interested parties on the following proposed permanent regulation:

LCB File No. R-156-22 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.

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.

A copy of the regulation referenced above can be found on the Department's website at https://tax.nv.gov/Boards/Public_Meetings/ and at the Nevada Legislature's website at <https://www.leg.state.nv.us/App/Notice/A/>.

All interested parties will have the opportunity to present their ideas. Please submit all suggestions in writing at least one week prior to the Workshop so the suggestions can be disseminated at the meeting. Written comments may be accepted at any time. Please email any comments to Sarah Glazner at sglazner@tax.state.nv.us so they may be posted to the Departments website. All public input will be considered in preparing a proposed regulation to be presented to the Nevada Tax Commission for adoption.

In compliance with the Americans with Disabilities Act, individuals requiring special accommodations to participate in this workshop should notify Tina Padovano at 775-684-2096 or tpadovano@tax.state.nv.us at least 3 days before the workshop. 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 workshop, 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.

Notice has been posted at the following location: The Department of Taxation – 3850 Arrowhead Drive, Carson City.

Notice has been EMAILED/MAILED for posting at the following locations: Department of Taxation - 4600 Kietzke Lane, Building L, Ste 235, Reno; Department of Taxation - 700 E. Warm Springs Rd, Ste 200, Las Vegas; The Legislative Building - Capitol Complex, Carson City; The Nevada State Library -100 Stewart Street, Carson City; The County Public Library's, 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/>.

If you have any questions, please feel free to call Sarah Glazner at 775-684-2059.

Nevada Tax Commission
Proposed Regulation R156-22
Regulatory Workshop

Agenda

Conducted by:

NEVADA DEPARTMENT OF TAXATION

Date and Time of Meeting: *March 27, 2024* *9:30 a.m.*

Place of Meeting:

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

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507 473 4847 US or +1 564 217 2000 US or +1 646 558 8656 US (New York) or +1 646

931 3860 US or +1 689 278 1000 US or +1 301 715 8592 US (Washington DC) or +1

305 224 1968 US

Webinar ID: **874 1133 6446**

International numbers available: <https://us02web.zoom.us/j/kemsqiAPD0>

- I. ****Public Comment – In consideration of others, who may also wish to provide public comment, please avoid repetition and limit your comments to no more than five (5) minutes. Please email any comments to Tina Padovano at tpadovano@tax.state.nv.us so they may be posted to the Departments website.**

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- II. The Department will hold a workshop to solicit comments from interested parties regarding the proposed permanent regulation of the Nevada Tax Commission, LCB File No. R-156-22, which 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.

A copy of the regulation referenced above can be found on the Department’s website at https://tax.nv.gov/Boards/Public_Meetings/ and at the Nevada Legislature’s website at <https://www.leg.state.nv.us/App/Notice/A/>.

- III. ****Public Comment – In consideration of others, who may also wish to provide public comment, please avoid repetition and limit your comments to no more than five (5) minutes.**

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- IV. Adjourn

Note: Items on this agenda may be taken in a different order than listed.
Items may be combined for consideration by the Department of Taxation.
Items may be pulled or removed from the agenda at any time.

****This item is to receive public comment on any issue and any discussion of those issues, provided that comment will be limited to areas relevant to and within the authority of the Nevada Department of Taxation. No action will be taken on any items raised in the public comment period. Public Comment may not be limited based on viewpoint.**

Please contact Sarah Glazner at 775-684-2059 or sglazner@tax.state.nv.us for any support materials. The support materials will be available at <https://tax.nv.gov/> and made available during the meeting located at the Nevada Department of Taxation, 4600 Kietzke Lane, Ste L235, Reno.

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**SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY
NRS 233B.0608 and NRS 233B.0609**

LCB File No. R156-22

1. Background

LCB File No. 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. A description of the manner in which comment was solicited from affected small businesses, a summary of their responses, and an explanation of the manner in which other interested persons may obtain a copy of the summary.

The Department of Taxation prepared and disseminated a questionnaire seeking information from small businesses regarding the possible impact of LCB File No R156-22. The proposed language and questionnaire were dispersed to the following:

- Emailed by the Department to 188 members of its interested parties list.
- Mailed to 10 Rural Businesses
- Emailed by the Nevada Taxpayers Association to its list of interested taxpayers.

The content of the responses is summarized below:

- The statements represent the concerns of the 6287 restaurants in Nevada regarding the proposed regulatory changes to NRS233B.0382. Most of these restaurants are small businesses with 50 or fewer employees. They argue that the proposed changes would not benefit restaurants and would instead have a negative economic impact. Specifically, they highlight the expense and burden of reprogramming POS systems to comply with the new regulations, even if they don't give away food. Additionally, they anticipate unintended consequences such as a reduction in philanthropic donations and employee meals, as well as potential surcharges for customers. They suggest considering factors such as tax revenue, training, and audits when evaluating the impact of these changes.

Anyone interested in obtaining a copy of the completed small business impact questionnaire used for this summary, can contact:

Sarah Glazner
Nevada Department of Taxation
3850 Arrowhead Drive, 2nd Floor
Carson City, NV 89706
sglazner@tax.state.nv.us
Phone: (775) 684-2059
Fax: (775) 684-2020

3. The manner in which the analysis was conducted, including the methods used to determine the impacts of the proposed regulation on small businesses.

The Department analyzed the industry responses to small business impact questionnaires and other correspondence related to LCB Draft of Proposed Regulation R156-22. The Department analyzed the proposed language and used informed, reasonable judgment in determining that there will not be an impact on small businesses due to the nature of the regulatory changes.

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.

4. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate:

Direct and indirect adverse effects

The Department finds that there is no reasonable, foreseeable or anticipated direct or indirect adverse economic effect on small businesses. This law has been in existence since 2013.

Direct and indirect beneficial effects

The Department finds that there is no reasonable, foreseeable or anticipated direct or indirect

beneficial economic effect on small businesses. This law has been in existence since 2013.

5. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

The proposed regulation presents no reasonable, foreseeable or anticipated adverse impact to small businesses; therefore, no efforts were required to reduce the impact on small businesses. This law has been in existence since 2013.

6. The estimated cost to the agency for enforcement of the proposed regulation.

The proposed regulation presents no significant foreseeable or anticipated cost or decrease in costs for enforcement.

7. If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

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

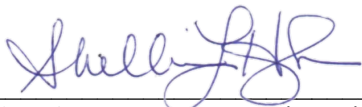
8. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

The proposed regulation does not overlap or duplicate any regulation of other federal, state or local government entities.

9. The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.

The Department has determined that there will be no adverse impacts to small businesses based on its analysis of the proposed regulation. This law has been in existence since 2013.

I hereby certify, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that this statement was properly prepared, and the information contained herein is accurate.



Shellie Hughes, Executive Director

March 11, 2024

**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)

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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.}~~