

April 10, 2023

Nevada Tax Commission
1550 College Parkway, Suite 115
Carson City, NV 89706

Subject: Governor Joe Lombardo's executive order to improve state regulations.

Hello Commissioners,

NAC 372.605 and 372.607 Food for Immediate Consumption

The current wording of NAC 372.605 violates the order given by the Legislature to the Nevada Tax Commission. In fact, they integrated wording from the Streamlined Sales Tax Agreement into a NAC meant for the Nevada Revised Statute (NRS) 372. Remember the Streamlined Sales Tax Agreement has nothing to do with Taxability. I don't think the Legislature would approve of such an act if they really knew the difficulties it has created for small business owners.

The Legislature recognized that it would be impossible to create a list of all the items intended to fall within the food exemption so they gave the Department the mission to give guidance by issuing a regulation (Nevada Administrative Code). They would not approve of the current version of the NAC because it does not contain any attempt to list items that fall within the food exemption. Without a list of items, you really have no guidance. The old version of NAC 372.605 had a list of items and provided good guidance to the public. The current version allows an auditor to be subjective not objective. That has created big problems not only for public but you too. Even after losing at the Nevada Supreme Court, District Court, and recently before you, the Department continues its assault on small business owners.

Nevada law requires the food in question to be both prepared and intended for immediate consumption to be subject to sales tax. The Supreme Court found that the intent of the Legislature with regard to NRS 372.284 is to capture transactions in which the "product is being prepared with the intention of it being consumed contemporaneously with the purchase. Accordingly, the Nevada rule regarding consumption is immediate depends on its proximity in time, or temporal relationship, to the sale of the food. District Court has decided and the Nevada Supreme Court agreed that in deciding the intent for immediate consumption type of and preparation of the food and the size of the container needs to be considered. This is the main reason that some sort of item list needs to be available for the public to use for guidance. Again, no list allows the auditor to be very subjective which is not good for the public.

Thank You and Be Safe!

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NAC 372.500 Vending machines: Operator to obtain permit, report and pay tax; stickers required.

1. Each person who operates vending machines which dispense tangible personal property of a kind the gross receipts from the retail sale of which are subject to tax shall obtain a permit to engage in the business of selling tangible personal property and shall report and pay to the state the tax upon the gross receipts from the sales made through the machines.

2. One permit is sufficient for all the machines of one operator.

3. A sticker showing the name of the vendor and Nevada sales tax permit number must be affixed in a conspicuous place upon each vending machine.

[Tax Comm'n, Combined Sales and Use Tax Ruling part No. 25, eff. 6-14-68]

NAC 372.510 Vending machines: Records; reports.

1. Adequate and complete records must be kept by each operator of vending machines showing the location and serial number of each of the machines operated by him, all purchases and inventories of merchandise bought for sale through the machines and the gross receipts derived from the operation at each location.

2. Each person making a sale of tangible personal property of a kind the gross receipts from the retail sale of which are taxable, to an operator of vending machines to be resold through the machines, shall notify the commission of the name and address of each operator who fails to furnish a valid resale certificate. In the event the person fails to so notify the commission, or desires to assume tax liability for the operations of particular vending machines, the operators are regarded as the agents of the persons from whom they obtain the tangible personal property, and the persons are regarded as the retailers of the property for the purposes of that law, and are required to return the tax to the state, measured by the receipts from the retail sale of the property.

[Tax Comm'n, Combined Sales and Use Tax Ruling part No. 25, eff. 6-14-68]

NAC 372.520 Vending machines: Sales price; computation of tax. Each operator of vending machines shall establish the sales price of the items in the machines with the commission and if the commission is satisfied that the sales price does not include the tax imposed, he may compute his tax on the basis of that sales price. If permission is granted to compute the tax on this basis, he shall post a notice on each vending machine notifying the public of this fact. The notice must be in substantially the following form:

"The sales price of any item sold through this machine includes applicable Nevada State and Local Sales Taxes."

[Tax Comm'n, Combined Sales and Use Tax Ruling part No. 25, eff. 6-14-68]

NAC 372.530 Producers of X-ray film for diagnostic use. Producers of X-ray film for diagnostic use are the consumers of the materials and supplies used in the production of the film. The tax applies to the sale of the materials and supplies to the laboratory which produces the film whether it is operated by a physician, surgeon, dentist, or other person.

[Tax Comm'n, Combined Sales and Use Tax Ruling No. 14, 3-1-68]

EXEMPTIONS

NAC 372.540 Seeds and plants.

1. The tax does not apply to sales of seeds, the products of which will be used as feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of the purchaser's business.

2. The tax applies to sales of nonannual plants, such as fruit trees and berry vines, whether or not the products will be sold or used as food for human consumption, unless the plants themselves, as distinguished from their products, are purchased for resale.

[Tax Comm'n, Combined Sales and Use Tax Ruling part No. 29, eff. 3-1-68]

NAC 372.550 Fertilizer; herbicides and insecticides.

1. For the purposes of this section and section 56 of chapter 397, Statutes of Nevada 1955, (NRS 372.280), the term "fertilizer" includes commercial fertilizer, agricultural minerals and manures. The term does not include chemical insecticides or herbicides.

2. The tax applies to fertilizer sold to enrich land for growing flowers, shrubs, lawns and plants, the products of which are not food for human consumption.

3. If a chemical insecticide or herbicide is mixed with a fertilizer in one product and the proportions are shown on the label or container, the seller may determine the proportion which is fertilizer and exempt that amount from the tax. If the proportions are not shown on the label or container, the tax applies to the entire amount for which the product is sold.

[Tax Comm'n, Combined Sales and Use Tax Ruling part No. 30, eff. 3-1-68; A 8-1-68]

NAC 372.580 "Food" defined.

1. Foods include, but are not limited, to the following:

(a) Bread and products made from flour.

(b) Candy and confectionery, including gum and mints.

(c) Cereal and products made from cereal.

(d) Cocoa and products made from cocoa.

(e) Coffee and substitutes for coffee.

(f) Food substitutes.

(g) Eggs and products made from eggs.

(h) Fish, seafood, and products made from fish and seafood.

(i) Frozen foods.

(j) Fruits and products made from fruit, including juices.

(k) Ice which is sold in a package or block weighing less than 10 pounds, bottled water and carbonated water.

(l) Meat and products made from meat.

(m) Milk and products made from milk, including packaged ice cream.

(n) Oleomargarine, butter, and shortening.

(o) Soft drinks and sodas sold in containers sealed at the plant.

(p) Spices, condiments, extracts, and artificial food coloring.

(q) Sugar, products made from sugar, and substitutes for sugar.

(r) Tea.

(s) Vegetables and products made from vegetables.

2. Products which are not food include, but are not limited, to the following:

(a) Supplies for pets.

(b) Housewares and other supplies for the home.

(c) Products made from paper.

(d) Soaps, detergents, and other cleaners.

(e) Tobacco in any form.

(f) Cosmetics.

(g) Toiletries.

(h) Soft drinks sold in containers not sealed at the plant.

(i) Food supplements.

(j) Ice which is sold in a package or block weighing 10 pounds or more.

3. As used in this section:

(a) "Food substitute" means a product which is consumed in place of a meal or in addition to a meal and provides sustenance such as drinks designed to replace meals and aid in weight loss or gain. The term does not include a product which is sold in the form of a pill, capsule, or tablet.

(b) "Food supplement" means a product which is not intended to be consumed in place of a meal but is intended to be consumed to:

(1) Remedy a dietary deficiency; or

(2) Supplement the level of vitamins or minerals existing in the body of a person.

(c) "Soft drinks" include alcoholic beverages which contain less than one-half of 1 percent of alcohol by volume.

[Tax Comm'n, Combined Sales and Use Tax Ruling part No. 77, eff. 6-21-79; A 8-6-80; 8-19-82]—(NAC A 1-8-86; 4-18-88; 1-12-96, eff. 7-1-96)

NAC 372.585 Food: Application of tax to items sold in containers. If otherwise exempt food is sold:

1. In the same container as taxable tangible personal property, all items in the container are taxable unless the price of the otherwise exempt food is separately stated.

2. In a container to which the retailer purchased and added the food, the container is taxable. The otherwise exempt food is also taxable unless the price of the food is separately stated.

3. In a container to which the manufacturer added the food, the container is taxable if the retail price of the container is more than the retail price of the food. The otherwise exempt food is also taxable unless the price of the food is separately stated.

(Added to NAC by Tax Comm'n, 1-12-96, eff. 7-1-96)

NAC 372.605 Food: "Prepared food intended for immediate consumption" interpreted.

1. As used in NRS 372.284, except as otherwise provided in NAC 372.610, 372.612, or 372.617, the department will interpret the term "prepared food intended for immediate consumption" to include, but not be limited to:

(a) Food and beverages which are heated in any manner and are sold or are intended to be sold at a temperature which is warmer than the temperature of the place where the food or beverage is sold.

(b) Food and beverages which are sold if the food, beverage, or ingredients of the food or beverage is removed from its original package and:

- (1) Warmed;
- (2) Cooled;
- (3) Defrosted;
- (4) Cooked;
- (5) Mixed;
- (6) Prepared;
- (7) Cut;
- (8) Handled; or
- (9) Dispensed,

at or adjacent to the place where the food is sold.

(c) Except as otherwise provided in paragraph (b) of subsection 2, food and beverages prepared or dispensed by the seller or the customer to the order of the customer.

2. Except as otherwise provided in subsection 3 of NAC 372.610, the term does not include:

(a) The raw meat from any animal or uncooked fish or seafood if it is prepared by a person whose occupation is:

- (1) The processing of animals, fish, or seafood; or
- (2) The dressing or wrapping of slaughtered raw meat or uncooked fish or seafood.

(b) Cheese or cooked meat which is dispensed by the seller in a quantity ordered by the customer.

(c) Bulk food items which are sold in bins or barrels.

(d) Candy.

3. The tax applies to cheese or cooked meat which is prepared by the seller and sold on a tray on which it is intended to be served.

(Added to NAC by Tax Comm'n, 1-12-96, eff. 7-1-96)

NRS 360.133 Duty of Executive Director to prepare technical bulletins; requirements for technical bulletins.

1. The Executive Director shall prepare or cause to be prepared technical bulletins to educate the public on:
 - (a) Issues related to their businesses and the taxes administered by the Department; and
 - (b) Written opinions that the Executive Director receives from the Attorney General pursuant to [NRS 228.150](#).
2. The technical bulletins must be written in simple nontechnical language and may include:
 - (a) Information and guidance concerning specific issues or topics;
 - (b) Examples for clarification purposes; and
 - (c) Any other information determined by the Executive Director or Nevada Tax Commission to be beneficial to the public.
3. A technical bulletin must not include advice on a specific fact situation but may include information that is applicable to a specific industry or type of business.
4. The technical bulletins must be published and revised as needed. Each bulletin and revised bulletin must be published and posted on an Internet website maintained by the Department and made available upon request at the offices of the Department.
5. Any technical bulletin published or revised pursuant to this section is intended for informational purposes only.
6. The Executive Director shall submit each proposed technical bulletin and any revisions to a bulletin to the Nevada Tax Commission for approval before publishing the bulletin or revised bulletin.

(Added to NRS by [2013, 158](#))