

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R020-16

March 14, 2016

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

AUTHORITY: §1, NRS 360.090 and 360B.110; §2, NRS 360.090, 360B.110 and 372.284.

A REGULATION relating to taxation; requiring the Department of Taxation to provide notice of changes in the sales and use tax rate imposed in the jurisdiction of a local government; revising provisions governing the exemption from the sales and use tax for food for human consumption; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Nevada Tax Commission to enter into the Streamlined Sales and Use Tax Agreement and take any other actions reasonably required to implement the provisions of the Agreement, including, without limitation, adopting regulations to carry out the provisions of existing law and the Agreement. (NRS 360B.110) This regulation adopts provisions to carry out certain requirements of the Agreement.

Existing law provides that an ordinance adopted by a local government imposing or increasing a sales and use tax rate imposed in the jurisdiction of the local government must specify the effective date of the rate change, which must be the first day of the first calendar quarter that begins at least 120 days after the approval of the ordinance. (*See e.g.*, NRS 377A.020, 377B.100) Under the Agreement, changes in the sales and use tax rate may not become effective unless notice has been provided to sellers for a certain period. **Section 1** of this regulation provides that not later than 120 days before the effective date of a change in the sales and use tax rate imposed in the jurisdiction of a local government, the Department of Taxation will provide notice of the rate change on its Internet website and in the Nevada Tax Notes newsletter published by the Department.

Existing law generally exempts food for human consumption from the sales and use tax in this State. However, existing law excludes from this exemption prepared food intended for immediate consumption. (Nev. Const. Art. 10, § 3[A]; NRS 372.284, 374.289) Existing regulations contain provisions specifying the Department’s interpretation of the term “prepared food intended for immediate consumption” for the purpose of determining whether food is exempt from the sales and use tax. (NAC 372.605) **Section 2** of this regulation adopts a provision of the Agreement which provides that food ordinarily requiring cooking, as opposed to reheating, by the consumer before consumption and sold without eating utensils, is not prepared food intended for immediate consumptions and, thus, is exempt from the sales and use tax.

Section 1. Chapter 372 of NAC is hereby amended by adding thereto a new section to read as follows:

1. Not later than 120 days before the effective date of a change in the sales and use tax rate imposed in the jurisdiction of a local government, the Department shall provide notice of the change on the Internet website maintained by the Department and in the newsletter of the Department entitled, "Nevada Tax Notes."

2. The failure of a person to receive actual notice of a change in the sales and use tax rate pursuant to subsection 1 does not relieve the person of the requirement to apply the changed rate to calculate the amount of tax due after the effective date of the change.

3. As used in this section, "sales and use tax rate" means the rate of the tax imposed on the gross receipts of a retailer from the sale of all tangible personal property sold at retail, or stored, used or otherwise consumed in the jurisdiction of a local government.

Sec. 2. NAC 372.605 is hereby amended to read as follows:

372.605 1. As used in NRS 372.284, the Department will interpret the term "prepared food intended for immediate consumption" to:

(a) Mean prepared food, as defined in NRS 360B.460, which is intended for immediate consumption.

(b) Exclude, if sold without eating utensils provided by the seller:

(1) Two or more food ingredients mixed or combined by the seller for sale as a single item and sold:

(I) By a seller whose primary NAICS classification is within Subsector 311, Food Manufacturing; or

(II) In an unheated state by weight or volume as a single item.

(2) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish pastries, cakes, tortes, pies, tarts, muffins, bars, cookies and tortillas.

(3) Food ordinarily requiring cooking, as opposed to reheating, by the consumer before consumption.

2. For the purposes of this section, “NAICS classification” means classification under the *North American Industry Classification System*, 2007 Edition, which is hereby adopted by reference. ~~A copy of that publication is available from the National Technical Information Service, Alexandria, Virginia 22312, or by telephone at (703) 605-6000 or (800) 553-6847, for the price of \$59.~~ A copy of ~~that~~ *the* publication is ~~also~~ available, free of charge, from the U.S. Census Bureau at the Internet address <http://www.census.gov/eos/www/naics/index.html>.