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June 20, 2024

Ms. Sarah Glazner
Management Analyst III
Department of Taxation
1550 East College Parkway
Carson City, Nevada 89706

Re: LCB File No. R156-22



Dear Ms. Glazner,

A regulation adopted by the Nevada Tax Commission has been filed today with the Secretary of State pursuant to NRS 233B.067 or 233B.0675 as appropriate. As provided in NRS 233B.070, this regulation becomes effective upon filing, unless otherwise indicated.

Enclosed are two copies of the regulation bearing the stamp of the Secretary of State which indicates that it has been filed. One copy is for your records and the other is for delivery to the State Library and Archives Administrator pursuant to subsection 6 of NRS 233B.070.

Sincerely,

Asher A. Killian
Legislative Counsel

Jessica F. Dummer
Senior Principal Deputy Legislative Counsel

AAK/amh
Enclosure

SECRETARY OF STATE
FILING DATA

FILED NV SOS
2024 JUN 20 AM 8:45

**Form For Filing
Administrative Regulations**

Agency: Department of Taxation

Permanent Regulation
LCB File No. **R156-22**

FOR EMERGENCY
REGULATIONS ONLY

Effective date _____

Expiration date _____

Governor's signature

Classification: ADOPTED BY AGENCY

Brief description of action: The Nevada Tax Commission adopted LCB File No. **R156-22** to revise provisions governing the taxation of tangible personal property purchased for resale and given away with complimentary food, meals, or beverages; and provide other matters properly relating thereto.

Authority citation other than 233B: NRS 360.090 and NRS 360.245

Notice date: April 5, 2024

Date of Adoption by Agency: May 8, 2024

Hearing date: May 8, 2024

**APPROVED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R156-22

Filed June 20, 2024

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.~~

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R156-22

1. A clear and concise explanation of the need for the adopted regulation.

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.

The amendment of this regulation is necessary to comply with a statutory change that occurred in 2013. This regulation does not change existing law, but updates the corresponding regulation to statute to confirm that use tax applies to tangible personal property, including napkins, straws, plates, utensils, glasses, or cups, purchased for resale and given away with complimentary food, meals or beverages. See NRS 372.7273 and 372.350.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

The Department of Taxation, as staff to the Nevada Tax Commission, solicited comment from the public by issuing a questionnaire to interested parties regarding any impact on small businesses and sending notice of workshops and hearings by electronic or regular mail as follows:

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop/Hearing</u>	<u>Number Notified</u>
3/12/24	Workshop	3/27/24	198
4/05/24	Adoption Hearing	5/08/24	199

The mailing list included the interested parties list maintained by the Department. Notices were also posted at the Nevada State Library; Legislative Counsel Bureau; various Department of Taxation locations throughout the State; Comments were also solicited by direct email.

See response to #5 for a summary of the public responses to the Regulation.

A copy of the recorded comments, the record of proceedings, and/or the Small Business Impact Statement may be obtained by calling the Nevada Department of Taxation at (775) 684-2059 or by writing to the Department of Taxation, 3850 Arrowhead Dr., 2nd Floor, Carson City, Nevada 89706, or by e-mailing the Department at sglazner@tax.state.nv.us.

3. The number of persons (not including Department staff or Commission Members) who:

- (a) Attended each hearing:**
- (b) Testified at each hearing:**
- (c) Submitted written comments:**

Workshop date: March 27, 2024

- (a) Number in attendance: 9
- (b) Number testifying: 1
- (c) Written statements submitted: 0

Adoption Hearing date: May 8, 2024

- (a) Number in attendance: 16
- (b) Number testifying: 0
- (c) Written statements submitted: 0

4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:

Testified at Adoption Hearing: Not Applicable

Provided written public comment for Adoption Hearing: Not Applicable

5. A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.

See response to #2 for description of how comments were solicited from affected businesses and an explanation of how interested persons may obtain a copy of the summary.

Summary of public responses:

Tray Abney, National Federation of Independent Business

Katherine Jacobi, Nevada Restaurant Association

Prior to the workshop, the Department received written statement from Mr. Abney and Ms. Jacobi, that represents 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.

Department staff met with these representatives to discuss the purpose and intent of the regulation as comporting with existing law. 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.

Summary of workshop discussion:

Mr. Abney acknowledged that the regulation simply codifies existing law, and the Department satisfied his clients concerns regarding application of NAC 372.350. However, Mr. Abney noted that existing law on this topic remains perplexing for industry.

Summary of Public Comment at Adoption Hearing: Not Applicable

A copy of the written and recorded comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2059 or by writing to the Department of Taxation, 3850 Arrowhead Dr., 2nd Floor, Carson City, Nevada 89706, or by e-mailing the Department at sglazner@tax.state.nv.us.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The Nevada Tax Commission adopted the regulation with no changes made to the proposed regulation. With no public concern regarding the proposed language and the recommendation of the Department of Taxation, the proposed regulation reflected the intent of the Commission for adoption with no changes.

7. The estimated economic effect of the regulation on the business which it is to regulate and on the public. This must include adverse, beneficial, immediate and long-term effects.

(a) Estimated economic effect on the businesses which they are to regulate.

The adopted permanent regulation presents no reasonably foreseeable or anticipated beneficial or adverse economic effects on businesses. This law has been in existence since 2013 with the statutory changes to NRS 360.350.

(b) Estimated economic effect on the public which they are to regulate.

The adopted permanent regulation presents no reasonably foreseeable or anticipated beneficial or adverse economic effects to the public. This law has been in existence since

2013. Any use tax collected from tangible personal property associated with these complimentary food, meals and beverages is anticipated to be minimal and already properly reported by businesses in accordance with existing law.

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

Enforcement of the adopted regulation presents no significant foreseeable or anticipated cost or decrease in costs.

9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

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

10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

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

11. If the 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 adopted permanent regulation does not include new fees or increase an existing fee.