

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R005-26

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

AUTHORITY: §§ 1-12, NRS 360.090, 369.150 and 369.4891.

A REGULATION relating to alcoholic beverages; imposing a surcharge on certain sales of alcoholic beverages by a covered food establishment for consumption off the premises of the establishment; providing for the administration, collection and remittance of the surcharge to the Department of Taxation; establishing provisions governing the delivery of alcoholic beverages in containers sealed by a covered food establishment to consumers in connection with a retail sale; providing civil penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes certain establishments to sell alcoholic beverages by the drink for consumption on the premises of the establishment. (NRS 369.090, 369.620) Existing law authorizes the board of county commissioners of a county or the governing body of an incorporated city to enact an ordinance authorizing, under such conditions as may be imposed by the ordinance: (1) a covered food establishment to sell at retail alcoholic beverages in a container sealed by the covered food establishment for consumption off the premises; and (2) a covered food establishment, or delivery support service acting on behalf of a covered food establishment, to deliver an alcoholic beverage in a container sealed by the covered food establishment to a consumer in connection with a retail sale of such an alcoholic beverage. With respect to such retail sales of alcoholic beverages, existing law requires the Department of Taxation to adopt regulations that provide for the imposition and collection of a surcharge not to exceed 50 cents per retail sale. (NRS 369.4891)

Section 2 of this regulation defines “covered food establishment” for the purposes of this regulation. **Section 3** of this regulation imposes a surcharge of 50 cents on each retail sale of an alcoholic beverage in a container sealed by a covered food establishment for consumption off the premises. **Section 3** requires that, if multiple servings of an alcoholic beverage are sealed in a single container, the surcharge must be collected for each serving.

Section 4 of this regulation requires a covered food establishment, or a delivery support service acting on behalf of a covered food establishment under certain circumstances, to: (1) collect the surcharge from the purchaser at the time of the sale; and (2) electronically submit a return and remit the amount of the surcharges owed to the Department on or before the 20th day of the month following the reporting period in which the surcharges were collected. **Section 4** provides that the reporting period for the purposes of the surcharge is the same as the reporting period applicable to the covered food establishment or delivery support service for the purposes

of sales and use taxes. **Section 4** requires a covered food establishment or delivery support service to: (1) display the amount of the surcharge separately from the price of the alcoholic beverage; and (2) separately account for any surcharge collected and hold such surcharges in trust for the State until remitted to the Department.

Section 5 of this regulation requires any over-collection of the surcharge to be refunded to the person from whom it was collected or, if the over-collection cannot be refunded, paid to the Department. **Section 5** requires a covered food establishment or delivery support service acting on behalf of a covered food establishment to make an accounting to the Department of all refunds paid, accompanied by any supporting documents the Department requires.

Section 6 of this regulation requires a covered food establishment or delivery support service acting on behalf of a covered food establishment to maintain certain records regarding the surcharge and deliveries to which the surcharge applies. **Section 6** further authorizes the Department, or any person authorized by the Department, to examine the books, papers, records, receipts, invoices, delivery orders, delivery logs, journals and premises of a covered food establishment or delivery support service acting on behalf of a covered food establishment and investigate the business of the covered food establishment or delivery support service. **Section 7** of this regulation makes applicable to the payment, collection, administration and enforcement of the surcharge certain provisions of existing law relating to the payment, collection, administration and enforcement of taxes.

Section 8 of this regulation establishes requirements for the delivery of an alcoholic beverage in a container sealed by a covered food establishment to a consumer in connection with a retail sale of the alcoholic beverage. **Section 10** of this regulation establishes requirements for a person making such a delivery on behalf of a covered food establishment or a delivery support service acting on behalf of a covered food establishment. **Section 10** requires that any such delivery be made only to a person at the address specified in the order as the delivery address who is 21 years of age or older and prohibits the delivery of an alcoholic beverage to a person who shows signs of intoxication.

Existing law defines a “sale” for the purposes of the provisions of law governing sales of intoxicating liquor. (NRS 369.100) **Section 9** of this regulation provides that the actions of a delivery support service acting on behalf of a covered food establishment to facilitate the sale of an alcoholic beverage by the covered food establishment is not a sale by the delivery support service.

Section 11 of this regulation requires a person who makes deliveries on behalf of a covered food establishment or delivery support service acting on behalf of a covered food establishment to maintain a delivery log which contains certain information for each delivery made. **Section 11** also prohibits the release of a delivery by a person who makes deliveries on behalf of a covered food establishment or delivery support service until the person is shown an acceptable form of identification showing that the person accepting the delivery is 21 years of age or older.

Section 12 of this regulation authorizes the Department to impose civil penalties on a covered food establishment that violates the provisions of this regulation relating to the sale and delivery of alcoholic beverages for consumption off the premises of the establishment.

Section 1. Chapter 369 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 12, inclusive, of this regulation, unless the context otherwise requires, “covered food establishment” means a covered food establishment, as defined in NRS 369.4891, that is authorized by an ordinance adopted by the board of county commissioners of a county or the governing body of an incorporated city, as applicable, pursuant to NRS 369.4891 to sell at retail alcoholic beverages in containers sealed by the covered food establishment for consumption off the premises.*

Sec. 3. 1. *In accordance with NRS 369.4891, there is hereby imposed a surcharge of 50 cents on each retail sale of an alcoholic beverage in a container sealed by a covered food establishment for consumption off the premises.*

2. *For the purposes of calculating the surcharge imposed by subsection 1:*

(a) The surcharge applies to the retail sale of each single serving of an alcoholic beverage.

(b) A single serving of an alcoholic beverage is the volume of an individual alcoholic beverage according to the menu, recipe or practice of the covered food establishment making the sale to a consumer.

(c) If multiple servings of an alcoholic beverage are sold at retail and sealed in a single container for consumption off the premises of a covered food establishment, the surcharge must be collected for each such serving.

Sec. 4. 1. *Except as otherwise provided in this subsection, a covered food establishment shall, at the time of the sale, collect the surcharge imposed by section 3 of this regulation from the purchaser. If, pursuant to NRS 372.751 and 374.756, a delivery support service acting on behalf of a covered food establishment is a marketplace facilitator and collects sales or use tax*

imposed on the sale pursuant to chapters 372 and 374 of NRS, the delivery support service shall, at the time of the sale, collect the surcharge.

2. The amount collected by the covered food establishment or delivery support service from the purchaser for the surcharge must be displayed separately from the list price of the alcoholic beverage, the price of the alcoholic beverage advertised on the premises, the marked price of the alcoholic beverage or any other price of the alcoholic beverage on the sales receipt or other proof of sale. The surcharge must be identified on the receipt or other proof of sale and must be added after the calculation of any tax.

3. The covered food establishment or delivery support service shall separately account for any surcharge collected pursuant to this section and hold such surcharges in trust for the State until remitted to the Department.

4. The reporting period for the surcharge collected pursuant to this section shall be the same as the reporting period applicable to the covered food establishment or delivery support service for the purposes of the sales and use taxes imposed by chapters 372 and 374 of NRS. Each covered food establishment or delivery support service that collects a surcharge pursuant to this section shall, on or before the 20th day of the month following the reporting period in which the surcharge is collected, submit electronically through the Department's online portal, at the same time as filing a return required by chapter 372 or 374 of NRS:

(a) A return for the surcharges collected during the reporting period on the form prescribed by the Department. The form must include, without limitation:

(1) The total number of retail sales of alcoholic beverages made pursuant to NRS 369.4891 during the reporting period;

(2) The total amount of surcharges collected pursuant to this section during the reporting period; and

(3) The signature of the person required to file the return or the signature of the person's authorized agent.

(b) The remittance of the amount of the surcharge that is payable to the Department.

Sec. 5. 1. Any over-collection of the surcharge imposed by section 3 of this regulation must, if possible, be refunded by the covered food establishment or delivery support service acting on behalf of a covered food establishment to the person from whom it was collected.

2. If an audit deficiency exists involving any over-collection and the amount over-collected has not been paid to the Department, the Department will credit the covered food establishment or delivery support service if the Department is furnished with satisfactory proof that a refund has been given as required by subsection 1. The Department will not provide a credit for interest assessed on any over-collection that is not reported or that is under-reported, but the Executive Director may approve a credit of not more than 75 percent of the penalty assessed if a refund is given as required by subsection 1.

3. A covered food establishment or delivery support service shall:

(a) Use all practical methods to determine the amount to be refunded pursuant to subsection 1 and the name and address of the person to whom the refund is to be made.

(b) Within 60 days after receiving notice from the Department that a refund must be made, make an accounting to the Department of all refunds paid. The accounting must be accompanied by any supporting documents required by the Department.

4. Any over-collection that cannot be refunded for any reason must be paid to the Department.

5. *As used in this section, “over-collection” means any money that is collected for the surcharge imposed by section 3 of this regulation on an exempt transaction or that exceeds the amount of the surcharge required to be collected pursuant to section 3 of this regulation.*

Sec. 6. 1. *A covered food establishment or delivery support service acting on behalf of a covered food establishment shall keep records, receipts, invoices and other relevant documents regarding any surcharge collected pursuant to section 4 of this regulation.*

2. *Every covered food establishment, delivery support service acting on behalf of a covered food establishment or person who files the return required pursuant to section 4 of this regulation shall keep such records for a period of not less than 4 years after the later of the date on which the return to which the records pertain was due or the date on which the electronic return to which the records pertain was filed with the Department.*

3. *Every covered food establishment, delivery support service acting on behalf of a covered food establishment or person who fails to file the return required by section 4 of this regulation shall keep such records for a period of not less than 8 years after the date on which the return to which the records pertain was due.*

4. *Every covered food establishment or delivery support service acting on behalf of a covered food establishment shall maintain the delivery orders, delivery logs, receipts and journals relevant to each delivery made by the covered food establishment or delivery support service and preserve those records for at least 4 years after the date of their creation.*

5. *The Department, or any person authorized in writing by the Department, may examine the books, papers, records, receipts, invoices, delivery orders, delivery logs, journals and premises of any covered food establishment or delivery support service acting on behalf of a*

covered food establishment and may investigate the nature of the business of the covered food establishment or delivery support service to:

(a) Verify the accuracy of any return made pursuant to section 4 of this regulation or, if no return is filed by the covered food establishment or delivery support service, to ascertain and determine the amount required to be paid to the Department.

(b) Determine the compliance of the covered food establishment or delivery support service with the requirements of sections 2 to 11, inclusive, of this regulation.

Sec. 7. The provisions of chapters 360 and 369 of NRS relating to the payment, collection, administration and enforcement of taxes, including, without limitation, any provisions relating to the imposition of penalties and interest or the suspension or revocation of any license, shall be deemed to apply to the payment, collection, administration and enforcement of the surcharge imposed by section 3 of this regulation to the extent that those provisions do not conflict with the provisions of NRS 369.4891 and sections 2 to 11, inclusive, of this regulation.

Sec. 8. A covered food establishment or delivery support service acting on behalf of a covered food establishment may accept orders for and deliver an alcoholic beverage in a container sealed by a covered food establishment to a consumer in connection with a retail sale of such an alcoholic beverage if:

- 1. The alcoholic beverage is not for resale;*
- 2. The alcoholic beverage originates from the premises of the covered food establishment;*
- 3. The alcoholic beverage is sold by the covered food establishment;*
- 4. The covered food establishment has met all local licensing requirements to sell alcoholic beverages at retail in the local jurisdiction where the covered food establishment is*

located and is authorized by an ordinance adopted by that local jurisdiction pursuant to NRS 369.4891 to sell at retail an alcoholic beverage in a container sealed by the covered food establishment for consumption off the premises;

5. The delivery will be made to a location within the same jurisdiction in which the covered food establishment is authorized by an ordinance adopted pursuant to NRS 369.4891 by the board of county commissioners of a county or the governing body of an incorporated city, as applicable, to sell at retail alcoholic beverages in containers sealed by the covered food establishment for consumption off the premises;

6. The covered food establishment purchased the liquor constituting the alcoholic beverage from a wholesaler in compliance with the marketing area, as defined in NRS 597.136, of the wholesaler;

7. The delivery originates during the posted business hours of the covered food establishment; and

8. In the case of a delivery support service acting on behalf of a covered food establishment, the delivery support service has entered into a written agreement with the covered food establishment to deliver alcoholic beverages to consumers on behalf of the covered food establishment.

Sec. 9. *Action taken by a delivery support service on behalf of a covered food establishment to facilitate a sale of an alcoholic beverage by the covered food establishment, including, without limitation, the soliciting or receiving of an order for an alcoholic beverage or the delivery of an alcoholic beverage on behalf of a covered food establishment, shall not be deemed a sale, as defined in NRS 369.100, by the delivery support service.*

Sec. 10. 1. *A covered food establishment or a delivery support service acting on behalf of a covered food establishment shall ensure that any person making a delivery on behalf of the covered food establishment or delivery support service pursuant to an ordinance adopted pursuant to NRS 369.4891:*

(a) Is not less than 21 years of age; and

(b) Maintains the delivery log required by section 11 of this regulation.

2. *A covered food establishment or a delivery support service acting on behalf of a covered food establishment shall make a delivery of an alcoholic beverage pursuant to an ordinance adopted pursuant to NRS 369.4891 only to a person at the address specified in the order as the delivery address who is 21 years of age or older. If no person 21 years of age or older is present at the delivery address to accept the order, the covered food establishment or delivery support service acting on behalf of the covered food establishment shall retain possession of the alcoholic beverage and return it to the covered food establishment.*

3. *A covered food establishment or a delivery support service acting on behalf of a covered food establishment shall not make a delivery of an alcoholic beverage to a person who appears to show signs of intoxication.*

Sec. 11. 1. *Each person who makes a delivery pursuant to an ordinance adopted pursuant to NRS 369.4891 on behalf of a covered food establishment or delivery support service acting on behalf of a covered food establishment shall maintain a delivery log which includes the following for each delivery of liquor made:*

(a) The name of the purchaser;

(b) A description of the alcoholic beverage being delivered;

(c) If the delivery is made by a delivery support service, the name and address of the delivery support service and the name and address of the covered food establishment for which the delivery is made;

(d) The name and date of birth of the person who accepts delivery as shown on the form of identification of the person shown pursuant to subsection 2;

(e) The street address of the delivery location;

(f) The time and date of the purchase and delivery; and

(g) The signature or other verification of the identity of the person who accepts the delivery.

2. A person who makes a delivery pursuant to an ordinance adopted pursuant to NRS 369.4891 on behalf of a covered food establishment or delivery support service acting on behalf of a covered food establishment shall not release the delivery until he or she has been shown an acceptable form of identification by the person who accepts delivery at the address listed on the order as the delivery address. Acceptable forms of identification are a valid driver's license, identification card, permanent resident card, tribal identification card or any other written or documentary evidence issued by a governmental entity indicating that the person is 21 years of age or older.

Sec. 12. *The Department may impose the following civil penalties on a covered food establishment that violates any of the provisions of section 6 or 8 to 11, inclusive, of this regulation within any 24-month period:*

1. For the first violation, a civil penalty of not more than \$500.

2. For the second violation, a civil penalty of not more than \$1,000.

3. For the third and any subsequent violation, a civil penalty of not more than \$5,000.

