

LCB File No. R105-01

**PROPOSED REGULATION OF THE
DEPARTMENT OF MOTOR VEHICLES**

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment of Regulations of the
Department of Motor Vehicles & Public Safety

The Department of Motor Vehicles will hold public hearings at the following locations on the dates and times specified..

1:00 PM, Monday November 5, 2001
Channel 5, Public Broadcasting Co.
1670 N. Virginia St.
Reno, NV
(Limited Parking)

(Additional parking is available at the UNR parking lot)
and

1:00 PM Wednesday, November 7, 2001
Elko County Library
720 Court Street, Elko, NV
and

1:00 PM Friday, November 9, 2001
Sawyer Building, Room 1100
555 East Washington Avenue
Las Vegas, NV

The purpose of the public hearing is to receive comments from all interested persons regarding the Amendment of Regulations that pertain to Chapters 365 and 366 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

The purpose of the proposed regulatory amendments is to establish a fair and equitable means of administering and collecting taxes generated by sales of motor fuel and special fuel on Indian reservations, without imposing an undue burden on the Tribes in the collection and remittance of taxes collected. An additional purpose of these amendments, is to establish a reasonable and verifiable basis for refunding to users, the tax paid on the exempt use of taxed fuel. The majority of the amendments result from legislation which changed the administration of motor fuel taxes from the Department of Taxation to the Department of Motor Vehicles. It is also the Department's desire to be consistent with its application of regulations interdepartmentally and with other agencies.

The department does not anticipate any economic cost to the industry or the general public, nor does it anticipate any additional cost to the department to enforce the regulations.

The regulations do not increase or establish any additional fees.

Persons wishing to comment upon the proposed action of the Department of Motor Vehicles and Public Safety may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Department of Motor Vehicles. Written submissions must be received by the Department of Motor Vehicles on or before November 10, 2001. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Department of Motor Vehicles may proceed immediately to act upon any written submissions. A copy of this notice and the regulations to be adopted will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulations to be adopted will be available at the Department of Motor Vehicles, 555 Wright Way, Carson City, NV 89711, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary. Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption. This notice of public hearing has been posted at the following locations:

ESMERALDA COUNTY
GOLDFIELD PUBLIC LIBRARY
PO BOX 430
(FOURTH & CROOK STREET)
GOLDFIELD NV 89013

EUREKA BRANCH LIBRARY
PO BOX 293
(10190 MONROE STREET)
EUREKA, NV 89316

LANDER COUNTY
BATTLE MOUNTAIN BRANCH LIBRARY
625 BROAD STREET
BATTLE MOUNTAIN, NV 89820

LINCOLN COUNTY LIBRARY
PO BOX 330
(93 MAIN STREET)
PIOCHE NV 89043

MINERAL COUNTY LIBRARY
PO BOX 1390
(FIRST & A STREET)
HAWTHORNE, NV 89415

PERSHING COUNTY LIBRARY
PO BOX 781
(1125 CENTRAL AVENUE)
LOVELOCK, NV 89419

STOREY COUNTY LIBRARY
PO BOX 14
(95 SOUTH R STREET)
VIRGINIA CITY NV 89440

NEVADA DMV & PS
305 GALLETTI WAY
RENO NV 89512

NEVADA DMV & PS
8250 W. FLAMINGO
LAS VEGAS NV 89147

NEVADA DMV & PS
3920 EAST IDAHO STREET
ELKO NV 89801

NEVADA DMV & PS
PO BOX 248
178 AVENUE F
ELY NV 89301

NEVADA DMV & PS
973 W WILLIAMS ST
FALLON NV 89406

NEVADA DMV & PS
4021 W CAREY

NORTH LAS VEGAS NV 89030

NEVADA DMV & PS
PO BOX 1912
TONOPAH NV 89049

NEVADA DMV & PS
3505 CONSTRUCTION WAY
WINNEMUCCA NV 89445

NEVADA DMV & PS
215 WEST BRIDGE STREET
YERINGTON NV 89447

NEVADA DMV & PS
1694 COUNTY ROAD
MINDEN NV 89423

NEVADA DMV & PS
555 WRIGHT WAY
CARSON CITY NV 89711-0400

NEVADA STATE LIBRARY
401 NORTH CARSON
CARSON CITY, NV 8971

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**PROPOSED REGULATION OF THE
DEPARTMENT OF MOTOR VEHICLES**

Section 1. Chapter 365 of NAC is hereby amended by adding thereto the provisions set forth as sections 1 through 19, inclusive, of this regulation.

Sec. 2. 1. *As used in sections 2 to 4 of this regulation, unless the context otherwise requires:*

(1) "Reservation" means an Indian reservation, Indian colony or fee lands, trust lands and all lands which are within the State of Nevada and are set aside for use and occupation of a tribe, nation or band of Indians.

(2) "Tribe" means any Indian tribe, Indian band, Nation or group of Indians recognized by the Federal Government as possessing a government-to-government relationship with the United States.

(3) "Governing body" means the governmental entity that has the authority to make decisions for a tribe.

(4) "Tribal member" includes an enrolled member of a particular tribe.

(5) "Department" means the Department of Motor Vehicles of the State of Nevada.

(1) "Non taxable sale" means sale of motor fuel to a tribal government or subdivision thereof, or a tribal member for their exclusive use.

(g) "Taxable sale" means any sale not otherwise declared as non taxable.

(h) "Dealer" has the same meaning as set forth in NRS 365.020 .

(I) "Supplier" has the same meaning as set forth in NRS 365.084.

(10) "Tribal Agreement" means an intergovernmental agreement between a Tribal

Government and the Department of Motor Vehicles.

Sec. 3. 1. *For the purpose of determining taxable sales of motor fuel under the provision of Chapter 365 of NRS the Department of Motor Vehicles may, by separate compact with each Tribal Government, enter into a Tribal Agreement, to provide for the collection of motor fuel taxes on the sale of taxable motor fuel within the Tribal jurisdiction by outlets operated by the Tribe, by tribal members and by non-tribal persons.*

2. *The Tribal Agreement provided for in subsection 1, when executed:*

(a) Is valid for such a period as may be determined by the parties, beginning on the date the agreement is executed; and

(b) Will provide the method used to determine the percent of taxable sales to total sales; or

(c) In the alternative, will provide for such other tax allocation method that the parties may agree to as being appropriate; and

(d) Will provide for a re-evaluation of the calculation method; and

(e) Will specify the parties to the agreement; and

(f) Will contain the signatures of the parties to the agreement; and

(g) Will provide for the method for rescission of the agreement; and

(h) Provide for a reasonable method of verification of the terms and conditions of the agreement.

Sec. 4. *In the event a Tribe chooses not to enter into the agreement specified in Section 3, suppliers shall be required to collect the appropriate Nevada fuel taxes on all motor fuel sold on lands under that Tribe's jurisdiction.*

(a) Any Tribe who pays the motor fuel tax as specified in this Section, may apply to the Department for a refund of the taxes paid on exempt use.

(b) In calculation of the amount of the refund due, the Department shall use a reasonable method to determine the amount to be refunded, and may use any method or combination thereof used in the agreement specified in Sections 3, and 4.

Sec. 5. *As used in Sections 5 through 19, inclusive, unless the context otherwise requires:*

1. "Habitually delinquent" means violation of any of the provisions of this section twice within 12 consecutive months or violation of any two provisions once within 12 consecutive months:

(a) Failure to file a monthly tax return during the period prescribed in NRS 365.170 or NRS 365.175, unless the department finds that:

(b) The failure was caused by circumstances beyond the control of the fuel supplier or dealer and occurred notwithstanding the exercise of ordinary care; and

(c) The fuel supplier or dealer has paid all penalties and interest imposed by the department because of his failure to file the tax return during the prescribed period.

2. Failure to submit to the department payment of the tax on fuel collected pursuant to NRS 365.170 to NRS 365.192 during the period prescribed in that section.

3. Failure to submit to the department the payment of any additional or estimated assessments imposed by the department during the period prescribed in that section.

Sec. 6. *The department may deny the issuance of a license application pursuant to NRS 365.280 for the following:*

1. Failure of the applicant to provide complete and accurate information as required by the Department;

2. Material misstatement in the application for a license;

3. The applicant formerly held a license as a fuel dealer, wholesale distributor, exporter or importer of fuel in this or any other state, the District of Columbia, the United States, its territories or possessions, or any foreign country which was canceled, suspended or revoked for cause; or

4. The applicant applies as a subterfuge for the real party in interest whose license described in subsection 3 has been canceled, suspended or revoked for cause.

Sec. 7. A motor fuel supplier who has been informed by the department that another motor fuel supplier is not licensed pursuant to Chapter 365 of NRS shall not sell motor fuel to that motor fuel supplier without collecting the applicable taxes imposed under NRS 365.175 to 365.192, inclusive.

Sec. 8. During the initial 2 years that a fuel supplier or dealer operates his business, the department will review his monthly tax returns filed pursuant to Chapter 365 of NRS every 6 months to determine whether the estimated maximum monthly tax is accurate. If the department determines that the estimated maximum monthly tax is not accurate, the department will revise the amount of security required in accordance with its review. If the department increases the amount of security required, the fuel supplier or dealer shall increase his security as required by the department within 60 days after notification of the increase.

Sec. 9. *The department will review annually the estimated maximum monthly tax for each fuel supplier or dealer who has operated his business for at least 2 years before the review is conducted. The department will review the monthly tax returns of the fuel supplier for the 24 months immediately preceding the review to determine whether the estimated monthly tax is sufficient. If the department determines that the estimated monthly tax is not sufficient, the department will increase the amount of security required for that fuel supplier or dealer in accordance with its review. Except as otherwise provided in NAC 365.XXX(reduction) and 365.290(2), the increased amount of security must equal at least three times the increased estimated maximum monthly tax, but not less than \$1,000.*

Sec. 10. 1. *A fuel supplier or dealer who complies with the requirements set forth in subsection 2 of this section may submit a written request to the department for a reduction in the amount of security required from him if the required amount would otherwise be more than \$5,000. Upon receipt of such a request, the department may reduce the required amount to an amount which is:*

(a) Not less than the amount of the maximum monthly tax the supplier or dealer reported to the department during the 2 years immediately preceding his request for a reduction; or

(b) Equal to \$5,000,

whichever is greater.

2. *A fuel supplier who has filed tax returns pursuant to Chapter 365 of NRS for 3 or more calendar years may submit a request pursuant to subsection 1 if during the three year period prior to the request he:*

- (a) Filed in a timely manner the tax returns required by Chapter 365 of NRS; and*
- (b) Paid in a timely manner all taxes and assessments due the State of Nevada; and*
- (c) Has been audited by the department within the 2 preceding calendar years.*

3. For the purposes of subsection 2, a fuel supplier who:

- (a) Through clerical error, underpaid taxes by not more than 5 percent; and*
- (b) Within 30 days after being notified by the department of the underpayment, paid the taxes owed and any penalty and interest imposed by the department, shall be deemed to have paid those taxes in a timely manner.*

Sec. 11. *If the department increases the amount of security required, the fuel supplier or dealer shall increase his security as required by the department within 60 days after notification of the increase.*

Sec. 12. 1. *If the department is notified that a surety bond of a fuel supplier or dealer has been or may be canceled, the department will review the monthly tax returns of that fuel supplier dealer;*

- (a) For the 24 months immediately preceding the review; or*
- (b) If he has been in business less than 24 months, for the period he has operated his business, to determine the amount of security he will be required to provide.*

2. Within 15 days after the department receives notice that the bond has been or may be canceled, the department will notify the fuel supplier or dealer of the amount of security required to retain his license. If the fuel supplier or dealer does not provide the security required by the department within 15 days after he receives notice of the amount of security

required, the department will revoke his fuel supplier's or dealer's license.

Sec. 13. 1. *If the last day of the month falls upon a Saturday, Sunday or legal holiday, the tax return required to be filed with the department pursuant to NRS 365.170 or NRS 365.192 must be filed not later than the next business day after the last day of the month.*

2. *A payment by a fuel supplier or dealer of the tax imposed by this chapter shall be deemed received:*

(a) If delivered by mail, on the date shown by the cancellation mark stamped by the United States Postal Service or the postal service of any other country upon an envelope containing payment properly addressed to the department; or

(b) If delivered by a private postal service, on the business day preceding the date of actual delivery.

Sec. 14. 1. *Except as provided in subsection 2, if the return, report or statement is not filed together with the remittance for the amount of the tax due, pursuant to Chapter 365 of NRS, it shall be considered delinquent and not subject to the collection fee allowed pursuant to NRS 365.330.*

2. *A statement, report or return which is filed pursuant to an extension granted under NRS 365.135 shall be deemed to be punctually rendered for this purpose.*

Sec. 15. *A person who wishes to obtain, pursuant to NRS 365.370, a refund of the tax paid on fuel which was used for an exempt purpose must submit with his application a receipt from the person from whom the fuel was purchased. The receipt must include:*

(a) The number of gallons of fuel purchased for an exempt purpose; and

(b) A statement that the tax imposed by NRS 365.175 to 365.192 inclusive was paid to the person from whom the fuel was purchased.

(c) County in which the purchase was made.

(e) Date of invoice.

Sec. 16. 1. *A fuel user who consumes fuel in the propulsion of a motor vehicle off the public highways of this state may obtain a refund of the tax paid pursuant to NRS 365.175 to 365.192 inclusive for that portion of the fuel purchased which is consumed off the public highways of this state.*

2. *A fuel user who requests a refund pursuant to subsection 1 shall:*

(a) If the motor vehicle is equipped with a computer or other device capable of computing the number of gallons of fuel consumed off the public highways of this state, submit to the department the information provided by the computer or other device as evidence of the amount of fuel consumed off the public highways of this state; or

(b) If the motor vehicle is not equipped with a computer or other device capable of computing the number of gallons of fuel consumed off the public highways of this state:

(1) Compute the amount of fuel consumed off the public highways of this state by dividing the number of miles the vehicle was operated off the public highways of this state by the average number of miles traveled per gallon of fuel consumed by the vehicle; and

(2) Submit to the department the information necessary to establish to the satisfaction of the department that the information used to make the computation required by subparagraph (1) is accurate.

Sec. 17. 1. *A fuel user may obtain a refund pursuant to NRS 365.370 if the fuel user operates motor vehicle with auxiliary equipment which consumes fuel and there is no auxiliary motor or separate fuel tank for the auxiliary motor, the operator of the vehicle must, for the purposes of obtaining a refund, provide to the department documentation adequate to establish to the satisfaction of the department the amount of fuel which was used to operate the auxiliary equipment.*

Sec. 18. 1. *An administrative fine of not more than \$500 for each violation may be imposed by the department against a person who fails to:*

(a) File timely a report or tax return required by chapter 365 of NRS or this chapter;

(b) Prepare a record required by chapter 365 of NRS or this chapter; or

(c) Maintain a record, document or report required by chapter 365 of NRS or this chapter.

2. *An administrative fine of not more than \$2,500 for each violation may be imposed by the department against:*

(a) A fuel exporter who sells or distributes fuel in this state or any other person who engages in business in this state as a fuel supplier without a fuel supplier's license;

(b) A fuel supplier who, after being informed by the department that a fuel supplier is not licensed pursuant to chapter 365 of NRS, sells fuel to the unlicensed fuel supplier without collecting the tax imposed by NRS 365.170 to 365.192 inclusive; or

(c) A fuel supplier, fuel exporter or carrier of fuel who does not make available to the department upon request the records, invoices and other pertinent papers required to be maintained pursuant to NRS 365.500 to 365.530 inclusive.

Sec. 19. 1. *Except as otherwise provided in subsection 2, any payment received within the prescribed due date as established by Chapters 365, which is subsequently dishonored upon presentation by the department to the banking institution, will be considered delinquent.*

2. *If the dishonored payment was through the fault or error of the banking institution, and the taxpayer provides evidence in writing from the banking institution to this effect, the payment will be considered made on the date originally tendered.*