

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

LCB File No. R105-01

September 26, 2001

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

AUTHORITY: §§1-26 and 28, NRS 365.110; §27, NRS 365.600.

Section 1. Chapter 365 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 27, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 27, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Dealer” has the meaning ascribed to it in NRS 365.020.*

Sec. 4. *“Department” means the department of motor vehicles.*

Sec. 5. *“Governing body” means the governmental entity that has the authority to make decisions on behalf of a tribe.*

Sec. 6. *“Motor vehicle” has the meaning ascribed to it in NRS 365.050.*

Sec. 7. *“Motor vehicle fuel” has the meaning ascribed to it in NRS 365.060.*

Sec. 8. *“Reservation” means any land that:*

1. Is located within the boundaries of this state; and

2. Is set aside for use by a tribe, including, without limitation:

(a) An Indian reservation;

(b) An Indian colony;

(c) Any land which is owned in fee by or held in trust for a tribe; and

(d) Any other land which is under the jurisdiction of a tribe.

Sec. 9. *“Supplier” has the meaning ascribed to it in NRS 365.084.*

Sec. 10. *“Tribal member” includes an enrolled member of a tribe.*

Sec. 11. *“Tribe” means any tribe, band, nation or group of Indians that is recognized by the Federal Government as having a government-to-government relationship with the United States.*

Sec. 12. 1. *The department may enter into an agreement with the governing body of a tribe to provide for the collection of taxes on taxable sales of motor vehicle fuel that occur on the reservation of the tribe.*

2. An agreement entered into pursuant to subsection 1:

(a) Is valid for the period set forth in the agreement, beginning on the date the agreement is executed; and

(b) Will set forth:

(1) The names and signatures of the parties to the agreement;

(2) The manner in which the taxes must be calculated, including the method to be used to determine the percentage of taxable sales to total sales of motor vehicle fuel or any other method for allocating the taxes that is agreed upon by the parties;

(3) The method for reevaluating the manner in which the taxes are calculated pursuant to subparagraph (2); and

(4) The manner in which the parties may:

(I) Verify the terms and conditions of the agreement; and

(II) Rescind the agreement.

3. *As used in this section, “taxable sale” means a sale of motor vehicle fuel for which a tax is imposed pursuant to chapter 365 of NRS, other than a sale of motor vehicle fuel to a governing body or tribal member for exclusive use by the governing body or tribal member.*

Sec. 13. 1. *If the governing body of a tribe does not enter into an agreement pursuant to section 12 of this regulation, each supplier who sells motor vehicle fuel on the reservation of the tribe shall collect the tax imposed on that sale pursuant to chapter 365 of NRS.*

2. *If a tribe specified in subsection 1 pays the tax on the sale of motor vehicle fuel pursuant to chapter 365 of NRS, the tribe may, in the manner prescribed by the department, apply to the department for a refund of the tax.*

3. *In determining the amount of a refund pursuant to subsection 2, the department will use a method of calculation that is:*

(a) *Prescribed by the department; or*

(b) *Set forth in an agreement entered into pursuant to section 12 of this regulation.*

Sec. 14. *The department will consider a person to be habitually delinquent for the purpose of NRS 365.290 if he commits any of the following violations at least twice within 12 consecutive months or both of the following violations at least once within 12 months:*

1. *The failure to file a monthly tax return during the period set forth in NRS 365.170 or 365.175, unless the department finds that:*

(a) *The failure was caused by circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care; and*

(b) *The person has paid any penalty and interest imposed by the department because of the failure to file the tax return during the period for filing the return; or*

2. The failure to submit to the department any tax collected by the person pursuant to NRS 365.170 to 365.192, inclusive, during the period for the submission of the tax set forth in NRS 365.170 or 365.175.

Sec. 15. The department may refuse to issue a license pursuant to NRS 365.280 to a person who:

1. Fails to provide complete and accurate information on the application as required by the department;

2. Makes a material misstatement on the application;

3. Before applying for the license, was issued a license as a dealer that was canceled, suspended or revoked for cause in any state, district, territory or possession of the United States or a foreign country; or

4. 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. 16. If the department notifies a supplier that another supplier is not licensed in accordance with chapter 365 of NRS, the supplier shall not sell motor vehicle fuel to the unlicensed supplier without collecting the applicable taxes imposed pursuant to NRS 365.175 to 365.192, inclusive.

Sec. 17. During the initial 2 years that a dealer or supplier conducts his business, the department will, every 6 months, review his monthly tax returns filed pursuant to chapter 365 of NRS 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 for the dealer or supplier in accordance with its review.

Sec. 18. 1. *The department will review annually the estimated maximum monthly tax for each dealer or supplier who has conducted his business for at least 2 years before the review is conducted. The department will conduct the review for the 24 months immediately preceding the review to determine whether the estimated maximum monthly tax is sufficient. If the department determines that the estimated maximum monthly tax is not sufficient, the department will increase the amount of security required for that dealer or supplier in accordance with its review. The dealer or supplier shall increase his security in the amount required by the department within 60 days after the department notifies him of the increase.*

2. *Except as otherwise provided in subsection 2 of NRS 365.290 and section 19 of this regulation, the amount of security that is increased pursuant to subsection 1 will equal at least three times the increased estimated maximum monthly tax, but must not be less than \$1,000.*

Sec. 19. 1. *A dealer or supplier who complies with the requirements set forth in subsection 2 may submit a written request to the department for a reduction in the amount of security required 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 that is:*

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

(b) Equal to \$5,000,

whichever is greater.

2. *A dealer or supplier who has filed tax returns pursuant to chapter 365 of NRS for at least 3 calendar years may submit a request pursuant to subsection 1 if, during the 3 years immediately preceding the date of the request, he:*

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- (a) Filed in a timely manner the tax returns required pursuant to chapter 365 of NRS;*
- (b) Paid in a timely manner all taxes and assessments owed to the State of Nevada pursuant to chapter 365 of NRS; and*
- (c) Has been audited at least once by the department during the 2 calendar years immediately preceding the date of the request.*

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

- (a) Because of a 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.*

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Sec. 20. 1. If the department is notified that a surety bond of a dealer or supplier has been or may be canceled, the department will, to determine the amount of security the dealer or supplier must provide, review the monthly tax returns of the dealer or supplier:

- (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.*

2. Within 15 days after the department receives a notice that a surety bond specified in subsection 1 has been or may be canceled, the department will notify the dealer or supplier of the amount of security required to retain his license. If the dealer or supplier fails to provide the security required by the department within 15 days after he receives a notice from the department setting forth the amount of security required, the department will revoke the license of the dealer or supplier.

Sec. 21. 1. *If the last day of a month occurs on a Saturday, Sunday or legal holiday, the statement required to be filed by a dealer pursuant to NRS 365.170 or a supplier pursuant to NRS 365.192 must be filed not later than the next business day after that Saturday, Sunday or legal holiday.*

2. *The payment by a dealer or supplier of a tax imposed pursuant to chapter 365 of NRS 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 the 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. 22. 1. *Except as otherwise provided in subsection 2, if a dealer or supplier is required to file with the department a return, report or statement pursuant to chapter 365 of NRS and the return, report or statement is not accompanied by the payment of any tax that the dealer or supplier is required to remit with the return, report or statement pursuant to that chapter, the return, report or statement shall be deemed delinquent and the dealer or supplier may not retain any fee for collecting the tax pursuant to NRS 365.330.*

2. *The provisions of subsection 1 do not apply to a dealer or supplier who receives an extension of time to file a return, report or statement pursuant to NRS 365.135.*

Sec. 23. 1. *If a person applies to the department for a refund of any tax on motor vehicle fuel or fuel for jet or turbine-powered aircraft pursuant to NRS 365.370, the person must submit with his application a receipt obtained from the person from whom the motor*

vehicle fuel or fuel for jet or turbine-powered aircraft was purchased. The receipt must include:

- (a) The date of the purchase;*
- (b) The county in which the purchase was made;*
- (c) The number of gallons purchased and used for a purpose specified in NRS 365.370;*

and

(d) A statement indicating that the tax was paid to the person from whom the motor vehicle fuel or fuel for jet or turbine-powered aircraft was purchased.

2. As used in this section, "fuel for jet or turbine-powered aircraft" has the meaning ascribed to it in NRS 365.035.

Sec. 24. 1. A person who uses motor vehicle fuel to propel a motor vehicle off the public highways of this state may obtain a refund of any tax paid by him pursuant to NRS 365.175 to 365.192, inclusive, for that portion of the motor vehicle fuel purchased which is used off those public highways.

2. A person who requests a refund pursuant to subsection 1 shall:

(a) If the motor vehicle is equipped with a computer or other device that is capable of computing the number of gallons of motor vehicle 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 motor vehicle fuel consumed off the public highways of this state; or

(b) If the motor vehicle is not equipped with a computer or other device specified in paragraph (a):

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

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

Sec. 25. If a motor vehicle with auxiliary equipment consumes motor vehicle fuel and there is no auxiliary motor or separate fuel tank for the auxiliary motor, the operator of the motor vehicle must, to obtain a refund pursuant to NRS 365.370, submit evidence satisfactory to the department to establish the amount of motor vehicle fuel used to operate the auxiliary equipment.

Sec. 26. 1. Except as otherwise provided in subsection 2, if any payment of a tax pursuant to chapter 365 of NRS is received by the department within the period prescribed for the payment of that tax pursuant to that chapter and the payment is subsequently dishonored upon presentation by the department to a bank or other financial institution, the department will consider the payment to be delinquent.

2. The department will consider a payment specified in subsection 1 to be made on the date that it is originally tendered to the department if the person who made the payment submits evidence satisfactory to the department that the payment was dishonored because of the fault or error of the bank or financial institution.

Sec. 27. 1. The department may impose an administrative fine of not more than \$500 for each violation against a person who fails to:

(a) File a return, report or statement within the period prescribed for filing the return, report or statement pursuant to this chapter or chapter 365 of NRS; or

(b) Prepare or maintain a record, document or report that he is required to prepare or maintain pursuant to this chapter or chapter 365 of NRS.

2. The department may impose an administrative fine of not more than \$2,500 for each violation against:

(a) An exporter who sells or distributes motor vehicle fuel in this state or any other person who engages in business in this state as a supplier without obtaining a license to engage in that business from the department;

(b) A supplier who violates a provision of section 16 of this regulation; or

(c) An exporter, supplier or carrier of motor vehicle fuel who fails to make available to the department upon request any record, statement, invoice, bill of sale or other information that the exporter, supplier or carrier of motor vehicle fuel is required to maintain pursuant to NRS 365.500 to 365.530, inclusive.

3. As used in this section, "exporter" has the meaning ascribed to it in NRS 365.031.

Sec. 28. This regulation becomes effective on January 1, 2002.