

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R191-05

Effective November 13, 2006

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

AUTHORITY: §§1 and 6, NRS 360.090, 370.510, 370.690 and 370A.130; §§2-5, NRS 360.090, 370.510 and 370.690.

A REGULATION relating to manufacturers of tobacco products; establishing and revising procedures to aid in the enforcement of certain statutory requirements for such manufacturers; and providing other matters properly relating thereto.

Section 1. Chapter 370 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 5, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in NRS 370.610 to 370.660, inclusive, and sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Calendar quarter” means a period of 3 consecutive calendar months ending on March 31, June 30, September 30 or December 31 in each calendar year.*

Sec. 4. *“Escrow deposit” means a deposit required from a manufacturer of tobacco products pursuant to subsection 2 of NRS 370A.140.*

Sec. 5. 1. *A nonparticipating manufacturer shall make escrow deposits in quarterly installments for the calendar year in which the sales covered by those deposits are made if:*

(a) The nonparticipating manufacturer:

(1) Has not previously established a qualified escrow fund and made escrow deposits to that fund for sales in Nevada;

(2) Has not made any escrow deposits for more than 1 year;

(3) Has failed to make any escrow deposits in a complete and timely manner for any prior calendar year;

(4) Has failed to pay any judgments entered against the nonparticipating manufacturer in any jurisdiction, including, without limitation, any judgments for any civil penalties arising from a failure to comply with the law of any jurisdiction requiring a deposit into a qualified escrow fund; or

(5) Sells more than 1.6 million cigarettes in Nevada during a calendar quarter; or

(b) The Department, in consultation with the Attorney General:

(1) Has reasonable cause to believe that the nonparticipating manufacturer may not make the entire annual escrow deposit otherwise required by subsection 2 of NRS 370A.140 in a timely manner for a particular year; and

(2) Serves the nonparticipating manufacturer with a notice that the nonparticipating manufacturer is required to make quarterly installments for that year.

2. A nonparticipating manufacturer who is required to make a quarterly installment pursuant to this section shall:

(a) Deposit the full amount of that installment on or before the last day of the month following the calendar quarter in which the sales covered by the installment are made; and

(b) Not later than 10 days after the last date upon which that installment is required pursuant to paragraph (a), provide the Attorney General with a quarterly report that includes such information as the Attorney General determines to be necessary to ascertain whether the

nonparticipating manufacturer is in compliance with NRS 370.600 to 370.705, inclusive, chapter 370A of NRS and sections 2 to 5, inclusive, of this regulation. The report required pursuant to this paragraph must be provided:

(1) On a form prescribed by the Attorney General; or

(2) Electronically, in a format prescribed by the Attorney General.

3. If a nonparticipating manufacturer fails to comply with any provision of subsection 2, the Department shall:

(a) Serve the nonparticipating manufacturer with a notice that the Department will remove the name and brand families of the nonparticipating manufacturer from the directory in 5 days, excluding weekends and holidays, unless the nonparticipating manufacturer fully complies with the provisions of subsection 2 within that time; and

(b) Upon the expiration of 5 days, excluding weekends and holidays, after the service of the notice pursuant to paragraph (a), remove the name and brand families of the nonparticipating manufacturer from the directory unless the nonparticipating manufacturer has fully complied with the provisions of subsection 2 within that time.

Sec. 6. NAC 370A.010, 370A.020, 370A.030, 370A.040, 370A.050, 370A.060 and 370A.070 are hereby repealed.

TEXT OF REPEALED SECTIONS

370A.010 Definitions. (NRS 360.090, 370A.130) As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 370A.020 and 370A.030 have the meanings ascribed to them in those sections.

370A.020 “Brand family” defined. (NRS 360.090, 370A.130) “Brand family” means:

1. A brand family identified on the list maintained pursuant to NAC 370A.040; or
2. A group of cigarettes with the same name, including the same manufacturer, brand name and trademark, the only differentiating feature being additional descriptive information, including, without limitation, “menthol,” “lights,” “kings” or “100’s.”

370A.030 “Wholesale dealer” defined. (NRS 360.090, 370A.130) “Wholesale dealer” means a wholesale dealer as defined in:

1. NRS 370.055, who:
 - (a) Is licensed pursuant to chapter 370 of NRS; and
 - (b) Has affixed a revenue stamp to a pack of cigarettes; and
2. NRS 370.440, who is licensed pursuant to chapter 370 of NRS.

370A.040 List of participating manufacturers and brand families. (NRS 360.090, 370A.130)

1. The Department, in consultation with the Attorney General, will maintain a list of participating manufacturers and, for each participating manufacturer, a list of the brand families produced by that participating manufacturer.

2. The Department will make the list maintained pursuant to this section available on the Internet website of the Department and at the office of the Department.

370A.050 Monthly reports by wholesale dealers. (NRS 360.090, 370A.130)

1. Each wholesale dealer shall submit to the Department each month a report indicating the number of cigarettes manufactured by a manufacturer of tobacco products who is not a participating manufacturer that were sold by the wholesale dealer during the previous month. The number of cigarettes sold during the previous month must be measured by the excise taxes collected by this state on packs of cigarettes and containers of “roll-your-own” tobacco in the manner set forth in NRS 370A.120 for determining the number of units sold. For each cigarette sold during the previous month, the report must indicate:

(a) The month the cigarette was sold;

(b) The brand family of the cigarette;

(c) The name and address of the manufacturer of tobacco products who manufactured the cigarette, if known;

(d) If the name and address of the manufacturer of tobacco products who manufactured the cigarette is not known, the name and address of the exclusive distributor or importer of the cigarette, if known; and

(e) The name and address of the person from whom the wholesale dealer purchased the cigarette, if that person was not listed pursuant to paragraph (c) or (d).

2. The report required pursuant to this section must also contain:

- (a) The number of cigarettes contained in all packs of cigarettes upon which the wholesale dealer affixed a revenue stamp during the previous month;
- (b) The weight, in ounces, of “roll-your-own” tobacco upon which the excise taxes are due from the wholesale dealer;
- (c) The number of revenue stamps the wholesale dealer has purchased but has not yet affixed to a pack of cigarettes; and
- (d) If the wholesale dealer is a manufacturer of tobacco products, a statement that the wholesale dealer:

- (1) Is in compliance with the requirements set forth in NRS 370A.140 and subsection 1 of NRS 370A.160; and

- (2) Has, since May 24, 1999, for all times when NRS 370A.140 and subsection 1 of NRS 370A.160 applied to the wholesale dealer:

- (I) Been in compliance with NRS 370A.140 and subsection 1 of NRS 370A.160; or

- (II) Pursuant to subsection 2 of NRS 370A.160, been brought into compliance with NRS 370A.140 and subsection 1 of NRS 370A.160.

3. If the wholesale dealer affixed a revenue stamp to the pack containing a cigarette, that cigarette must be included in the report required pursuant to this section whether, at the time the revenue stamp was affixed, that cigarette was owned by:

- (a) The wholesale dealer; or

- (b) A person other than the wholesale dealer.

4. The report required pursuant to this section must be submitted:

- (a) On a form prescribed by the Department; or

- (b) Electronically, in a format prescribed by the Department.

5. Except as otherwise provided in subsection 6, the report required pursuant to this section must be submitted:

(a) On the same date as a report submitted by the wholesale dealer pursuant to NRS 370.240 or 370.465, if the wholesale dealer submits a report pursuant to NRS 370.240 or 370.465; or

(b) Not later than the last date on which a report could be submitted pursuant to NRS 370.240 or 370.465, if the wholesale dealer does not submit a report pursuant to NRS 370.240 or 370.465.

6. If the number of cigarettes to be reported pursuant to subsection 1 for a month is less than 10,000, the wholesale dealer may make written application to the Department to submit the report for that month on a date later than the date specified in subsection 5. The Department may approve a written application pursuant to this subsection if the date requested by the wholesale dealer in the application for submitting the report is not later than 12 months after the date specified in subsection 5 for submitting the report.

7. Each wholesale dealer shall maintain a copy of each report submitted pursuant to this section for not less than 4 years after the date the report was submitted.

370A.060 Reports by wholesale dealers owned by certain noncomplying manufacturers. (NRS 360.090, 370A.130)

1. If a wholesale dealer is owned in whole or in part by a manufacturer of tobacco products who is not in compliance with NRS 370A.140 and subsection 1 of NRS 370A.160, the wholesale dealer may not submit a report required pursuant to NAC 370A.050 until:

(a) The manufacturer of tobacco products is in compliance with NRS 370A.140 and subsection 1 of NRS 370A.160; or

(b) The wholesale dealer is not owned in whole or in part by the manufacturer of tobacco products.

2. If a wholesale dealer submits a report in violation of subsection 1, the report will not be considered submitted for the purposes of NAC 370A.070.

370A.070 Failure to submit report or submission of incorrect information: Suspension or revocation of license; fine. (NRS 360.090, 370A.130) If a wholesale dealer fails to submit a report as required by NAC 370A.050 or submits incorrect information on a report submitted pursuant to NAC 370A.050, the Department may:

1. Suspend the license of the wholesale dealer until:

(a) The wholesale dealer submits the report or resubmits the report with corrected information, as appropriate; and

(b) The Department determines that the information in the report is correct; and

2. Impose a penalty on the wholesale dealer consisting of:

(a) For the first violation within 7 years, a fine of \$1,000;

(b) For a second or subsequent violation within 7 years, a fine of \$5,000; or

(c) For a third or subsequent violation within 7 years, revocation of the license of the wholesale dealer.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R191-05

The Nevada Tax Commission adopted regulations assigned LCB File No. R191-05 which pertain to chapters 370 and 370A of the Nevada Administrative Code on September 11, 2006.

Notice date: 8/11/2006
Hearing date: 9/11/2006

Date of adoption by agency: 9/11/2006
Filing date: 11/13/2006

INFORMATIONAL STATEMENT

1. A 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.

Notices of hearing for the adoption and amendment of the proposed regulation were posted at the following locations: Department of Taxation, 1550 College Parkway, Carson City, Nevada; Nevada State Library, 100 Stewart Street, Carson City, Nevada; each County Main Public Library; Department of Taxation, 4600 Kietzke Lane, Building L, Suite 235, Reno, Nevada; Department of Taxation, 850 Elm Street, No.2, Elko, Nevada; Department of Taxation, 555 East Washington Avenue, Las Vegas, Nevada; Department of Taxation, 2550 Paseo Verde Parkway, Suite 180, Henderson, Nevada; and The Legislative Building, Capitol Complex, Carson City, Nevada.

A copy of the notice of hearing and the proposed regulation were placed 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 proposed regulation were also made available and placed on file at the Department of Taxation, 1550 College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building L, Suite 235, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation, 2550 Paseo Verde Parkway, Suite 180, Henderson, Nevada; Department of Taxation, 850 Elm Street, No. 2, Elko, Nevada; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours.

The hearing was held on September 11, 2006 at the Nevada Legislative Building, 401 S. Carson Street, Room 3137, Carson City, Nevada and via video conference at the Legislative Counsel Bureau, Grant Sawyer State Office Building, 555 E. Washington Avenue, Room 4412, Las Vegas, Nevada. It appears that due to the primarily procedural nature of the proposed regulation, only affected or interested persons and businesses as set forth in #3 below responded to the proposed regulation and testified at the hearing. A copy of the transcript of the hearing, for which a reasonable fee may be charged, may be obtained by calling the Nevada Department of Taxation at (775) 684-2096 or by writing to the Nevada Department of Taxation at 1550 College Parkway, Suite 115, Carson City, Nevada, 89706.

The proposed regulation was submitted to the Legislative Counsel Bureau, which completed its review and minor revisions on July 28, 2006. Thus, the proposed regulation, for practical

purposes, was discussed at one workshop and has been heard and considered at one public hearing of the Nevada Tax Commission.

2. The number of persons who:

(a) Attended the hearing: 44

(b) Testified at the hearing: 1

(c) Submitted to the Tax Commission written comments: No written comments were submitted to, or received by, the Department of Taxation or the Nevada Tax Commission.

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

Comments were solicited from affected and interested businesses and persons by the notices set forth in #1 above and by electronic mail to the approximately 240 interested businesses and persons on the Department of Taxation's mailing list.

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

Section 5, paragraphs 2(a) of the proposed regulation was slightly modified prior to adoption, due to issues raised by the Nevada Tax Commission. The remaining sections of the proposed regulation were not changed since no concerns were raised by the public, affected or interested businesses or persons, the Department of Taxation or Tax Commission members, and the Tax Commission believed no changes other than those made were necessary.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include: (a) Both adverse and beneficial effects; and (b) Both immediate and long-term effects.

(a) Adverse and beneficial effects.

The proposed regulation presents no foreseeable or anticipated adverse economic effects to businesses or the public. However, the permanent regulation could have a beneficial economic effects on businesses and the general public. Those anticipated benefits are not quantifiable at this time.

(b) Immediate and long-term effects.

Same as #5(a) above.

6. The estimated cost to the agency for enforcement of the adopted regulation.

The proposed regulation presents no significant foreseeable or anticipated cost for enforcement. There may be some minor initial administrative costs for the Department, which are not quantifiable at this time.

7. 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 proposed regulation is particular to the Department of Taxation practices and procedures and does not appear to overlap or duplicate regulations of other state or local governmental agencies.

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

There are no known federal regulations pertaining to tobacco manufacturers and the Master Settlement Agreement, which are the subject of the proposed regulation.

9. 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 proposed regulation does not provide a new fee or increase an existing fee.