

**PROPOSED REGULATION OF
THE NEVADA TAX COMMISSION**

LCB File No. R057-12

April 2, 2012

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

AUTHORITY: NRS 360.090, 372.060 and 374.065

A REGULATION relating to taxation; clarifying the applicability of sales taxes to certain meals provided by business entities to their employees, independent contractors, patrons or guests; and providing other matters properly relating thereto

Section 1. Chapter 372 of the NAC is hereby amended by adding thereto a new section to read as follows:

- 1. If a seller awards complimentary meals or other tangible personal property pursuant to its patrons or guests in exchange for their participation in a marketing program, the seller receives a valuable benefit in exchange for the provision of those complimentary meals, and that benefit constitutes legal consideration for the provision of those complimentary meals or other tangible personal property to its patrons or guests.*
- 2. Because a seller receives legal consideration when it provides complimentary meals or other tangible personal property to its patrons or guests, the provision of each such complimentary meal or item of tangible personal property by the seller constitutes a sale within the meaning of the provisions of Chapter 372 and 374 of the NRS.*
- 3. If a seller provides complimentary meals or other tangible personal property to its patrons or guests, the Department shall, in administering the provisions of Chapter 372 and 374 of the NRS, calculate the amount of tax imposed on each sale based on the retail sales price of the prepared food or item of tangible personal property as customarily charged by the seller in cases when cash consideration is exchanged.*

4. *As used in this section:*

a. *“Complimentary meal” means prepared food intended for immediate consumption that a seller:*

(i) Furnishes or serves on the premises of the seller; and

(ii) Provides free of charge or for a specific fixed price per meal which is less than the cost of the specific components of the meal.

b. *“Marketing program” means a program where the patron’s eligibility to receive complimentary meals or other tangible personal from the seller is contingent upon:*

(i) The patron’s having provided personal information that may be used by the seller to track or record the patron’s transactions with the seller or other commercial activity conducted by the patron on the seller’s premises; or

(ii) The patron’s having transacted a specified amount of business with the seller.

Sec. 2. Chapter 372 of the NAC is hereby amended by adding thereto a new section to read as follows:

1. *If a seller provides complimentary meals on a regular basis to its employees or independent contractors pursuant to an employment contract, employment policy statement or similar employment arrangement, the seller receives a valuable benefit in exchange for the provision of those complimentary meals, and that benefit constitutes legal consideration for the provision of those complimentary meals to its employees or independent contractors.*

2. *Because a seller receives legal consideration when it provides complimentary meals to its employees or independent contractors, the provision of each such complimentary meal by*

the seller constitutes a sale within the meaning of the provisions of Chapter 372 and 374 of the NRS.

3. If a seller provides complimentary meals to its employees or independent contractors, the Department shall, in administering the provisions of Chapter 372 and 374 of the NRS, calculate the amount of tax imposed on each sale based on the cost of the individual food components of the complimentary meal. If a seller charges an employee or independent contractor a specific fixed price for each complimentary meal, the Department shall calculate the amount of tax based on that specific fixed price.

4. As used in this section, “complimentary meal” means prepared food intended for immediate consumption that a seller:

(a) Furnishes or serves on the premises of the seller; and

(b) Provides free of charge or for a specific fixed price per meal which is less than the cost of the specific components of the meal.

Sec. 3. Chapter 372 of NAC is hereby amended to read as follows:

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 tax applies to tangible personal property purchased for resale and given away in the form of complimentary food and 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].~~