

**PROPOSED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R057-12**

May 8, 2012

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

AUTHORITY: §§1 and 2, NRS 360.090, 372.725 and 374.725.

A REGULATION relating to taxation; providing for the application of sales taxes to certain meals provided by sellers in exchange for a valuable benefit; and providing other matters properly relating thereto.

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

*1. If a seller provides a complimentary meal to a person in exchange for the person's participation in a marketing program, the Department shall consider:*

*(a) The valuable benefit which the seller thereby receives in exchange for the provision of that complimentary meal to that person to constitute a legal consideration for the provision of that complimentary meal to that person; and*

*(b) The provision of that complimentary meal to that person to constitute a sale within the meaning of the provisions of chapters 372 and 374 of NRS.*

*↪ The seller and the Department shall, in carrying out the provisions of chapters 372 and 374 of NRS, calculate the amount of the sales tax imposed on that sale based on the sales price for the contents of that meal which the seller ordinarily charges persons who do not participate in a marketing program.*

*2. If a seller provides complimentary meals on a regular basis to its employees or independent contractors pursuant to a contract, policy statement or similar arrangement regarding the services of those employees or independent contractors, the Department shall consider:*

*(a) The valuable benefit which the seller thereby receives in exchange for the provision of each of those complimentary meals to an employee or independent contractor to constitute a legal consideration for the provision of each of those complimentary meals to an employee or independent contractor; and*

*(b) The provision of each of those complimentary meals to an employee or independent contractor to constitute a sale within the meaning of the provisions of chapters 372 and 374 of NRS.*

*↪ The seller and the Department shall, in carrying out the provisions of chapters 372 and 374 of NRS, calculate the amount of the sales tax imposed on that sale based on the cost of the individual food components of that meal.*

*3. As used in this section:*

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

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

*(2) 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 of marketing pursuant to which a participant’s eligibility to receive a complimentary meal from a seller is contingent upon the participant’s having:*

*(1) Provided personal information which may be used by the seller to track or record the participant's transactions with the seller or any other commercial activity conducted by the participant on the premises of the seller; or*

*(2) Transacted a specified amount of business with the seller.*

*(c) "Prepared food intended for immediate consumption" has the meaning ascribed to it in NAC 372.605.*

**Sec. 2.** NAC 372.350 is hereby amended to read as follows:

372.350 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.}~~