

**REVISED PROPOSED REGULATION OF THE
DEPARTMENT OF TAXATION**

LCB File No. R146-15

May 4, 2016

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

AUTHORITY: §§1-18, NRS 370.250, 370.253, 370.510 and 370.675; §19, NRS 370.490 and 370.510.

A REGULATION relating to the taxation of tobacco products; establishing procedures for the temporary suspension or permanent revocation of licenses issued by the Department of Taxation relating to the taxation of sales of cigarettes; establishing procedures for the removal of the name of a manufacturer of tobacco products and its brand families from the directory maintained by the Department; revising provisions relating to claims for credits filed with the Department by certain wholesale dealers; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Department of Taxation to temporarily suspend or permanently revoke the license of a wholesale dealer of cigarettes who: (1) fails to file or files inaccurate information with the Department; (2) fails to pay any tax owed on cigarettes required by chapter 370 of NRS; (3) fails to cure any shortfall in escrow payments for which the wholesale dealer is liable; (4) sells in this State, purchases or possesses cigarettes in violation of chapter 370 of NRS; or (5) imports into or exports from this State cigarettes in violation of chapter 370 of NRS. Existing law also authorizes the Department to temporarily suspend or permanently revoke the license of any person who holds a license issued pursuant to chapter 370 of NRS for any violation of the provisions of existing law relating to the taxation of sales of cigarettes. Existing law requires the Department to adopt regulations establishing the procedure for the suspension and revocation of licenses issued pursuant to chapter 370 of NRS relating to the taxation of sales of cigarettes. (NRS 370.250, 370.253) Existing law also requires the Department to maintain a directory of manufacturers of tobacco products who have made current and accurate certifications to the Department concerning the manufacturer and its brand families. Existing law further requires the Department to update the directory and to remove from the directory any manufacturer and its brand families that do not conform to the requirements for listing in the directory. (NRS 370.675)

Sections 2-18 of this regulation establish the procedures for the suspension and revocation of licenses of licensees and the removal of a manufacturer of tobacco products and its brand families from the directory. **Section 7** of this regulation provides that the Department may

issue a notice of intent to suspend or revoke a license of a licensee or to remove the name of a manufacturer of tobacco products and its brand families from the directory if the Department has cause to believe that such action is appropriate. **Section 7** sets forth the required contents of the notice of intent and provides for service of the notice. **Section 7** also provides that, with exceptions, a licensee or manufacturer of tobacco products who receives a notice of intent may, within 10 business days after receipt of the notice, provide evidence to the Department that the licensee or manufacturer is in compliance with all applicable provisions of law. If a licensee or manufacturer of tobacco products does not provide evidence satisfactory to the Department, **section 8** of this regulation provides that the Department may issue a notice of hearing. **Section 8** sets forth the required contents of the notice of hearing and provides for service of the notice of hearing. Additionally, **section 8** provides that upon issuance of a notice of hearing the Department will appoint an administrative law judge to serve as the hearing officer. **Sections 9-15** of this regulation establish the procedures for the conduct of a hearing. **Section 16** of this regulation provides for the filing by a party of a notice of appeal from a decision of a hearing officer. **Section 17** of this regulation provides for a hearing on such an appeal before the Nevada Tax Commission and establishes the procedure for such hearings. **Section 18** of this regulation sets forth the date on which any final order issued by a hearing officer or the Nevada Tax Commission must become effective.

Existing law requires the Department to allow a tax credit for products made from tobacco, other than cigarettes, alternative nicotine products and vapor products upon which the tax has been paid and that may no longer be sold. Additionally, existing law requires the Department to allow a tax credit for products made from tobacco, other than cigarettes, alternative nicotine products and vapor products shipped from this State and destined for retail sale and consumption outside the State on which the tax has previously been paid. To claim the tax credit, a wholesale dealer may file a claim with the Department on a form prescribed by the Department. (NRS 370.490) **Section 19** of this regulation provides that the Department will allow the tax credit authorized by NRS 370.490 only to the wholesale dealer who originally reported and paid the tax to the Department. If another wholesale dealer who would otherwise be entitled to claim the credit furnishes certain substantiating evidence to the wholesale dealer who originally reported and paid the tax, **section 19** authorizes the payment between the wholesale dealers of an amount equal to the credit and the filing of an amended return by a wholesale dealer who makes such a payment.

Section 1. Chapter 370 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 19, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 18, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Directory” means the directory created pursuant to NRS 370.675.*

Sec. 4. *“Hearing officer” means an administrative law judge appointed by the Commission pursuant to subsection 4 of section 8 of this regulation.*

Sec. 5. *“Manufacturer of tobacco products” or “manufacturer” has the meaning ascribed to the term “manufacturer of tobacco products” in NRS 370A.060.*

Sec. 6. *“Respondent” means a licensee or manufacturer of tobacco products to whom the Department has issued a notice of hearing pursuant to section 8 of this regulation.*

Sec. 7. *1. When the Department has cause to believe that:*

(a) The license of a retail dealer or wholesale dealer should be temporarily suspended or permanently revoked; or

(b) A manufacturer of tobacco products and its brand families should be removed from the directory,

↪ the Department may issue a notice of intent to suspend or revoke the license or a notice of intent to remove the manufacturer and its brand families from the directory, as applicable.

2. A notice issued pursuant to subsection 1 must include:

(a) A statement of the legal authority for the suspension or revocation of the license or removal of the manufacturer and its brand families from the directory, as applicable;

(b) A statement of the facts which support the belief of the Department that the license should be suspended or revoked or that the manufacturer and its brand families should be removed from the directory, as applicable; and

(c) Except as otherwise provided in subsection 6, if the notice issued is:

(1) A notice of intent to suspend or revoke a license, a statement that the Department may issue a notice of hearing pursuant to section 8 of this regulation if the licensee does not, within 10 business days after receipt of the notice issued pursuant to subsection 1, demonstrate

to the satisfaction of the Department that the licensee is in full compliance with all lawful requirements for retention of the license; or

(2) A notice of intent to remove a manufacturer and its brand families from the directory, a statement that the Department may issue a notice of hearing pursuant to section 8 of this regulation if the manufacturer does not, within 10 business days after receipt of the notice issued pursuant to subsection 1, demonstrate to the satisfaction of the Department that the manufacturer is in compliance with all applicable legal requirements necessary to remain listed in the directory.

3. A notice of intent to suspend or revoke a license must be served on the licensee by certified mail at the location mailing address identified by the licensee on the license application submitted by the licensee to the Department.

4. A notice of intent to remove a manufacturer of tobacco products and its brand families from the directory must be served on the manufacturer by certified mail at the address identified by the manufacturer in the most recent annual certification made by the manufacturer to the Attorney General pursuant to NRS 370A.160.

5. Any evidence to demonstrate compliance offered by a licensee or a manufacturer of tobacco products within the period described in subparagraph (1) or (2) of paragraph (c) of subsection 2 must be delivered in person or by certified mail to the employee of the Department identified in the notice served on the licensee or manufacturer.

6. If a licensee or manufacturer of tobacco products has received a notice issued pursuant to subsection 1, for any subsequent alleged violation of the same statutory provision during the 2-year period immediately following the issuance of such notice, the licensee or manufacturer is not entitled to the 10-day period to demonstrate compliance described in subparagraphs (1)

and (2) of paragraph (c) of subsection 2 and the Department may immediately issue a notice of hearing pursuant to section 8 of this regulation.

Sec. 8. 1. If a licensee or manufacturer of tobacco products does not demonstrate compliance within the 10-day period described in subparagraph (1) or (2) of paragraph (c) of subsection 2 of section 7 of this regulation, or if, pursuant to subsection 6 of section 7 of this regulation, a licensee or manufacturer of tobacco products is not entitled to the 10-day period to demonstrate compliance, the Department may issue a notice of hearing.

2. A notice of hearing issued pursuant to this section must:

(a) State the date, time and location of the hearing, which may be held at an office of the Department or at such other place in this State as is designated in the notice;

(b) Include a statement of the legal authority for the suspension or revocation of the license or removal of the manufacturer and its brand families from the directory, as applicable;

(c) Identify the specific provision or provisions of chapter 370 or 370A of NRS which the Department alleges the licensee or manufacturer of tobacco products has violated;

(d) Include a statement of the facts which support the belief of the Department that the license should be suspended or revoked or that the manufacturer and its brand families should be removed from the directory, as applicable; and

(e) Include as attachments all documentary evidence on which the Department intends to rely to demonstrate that the licensee or manufacturer of tobacco products, as applicable, is in violation of the provision or provisions of chapter 370 or 370A of NRS identified pursuant to paragraph (c).

3. A notice of hearing issued pursuant to this section must be served on:

- (a) All parties at least 20 business days before the date of the hearing;*
- (b) A licensee by certified mail at the location mailing address identified by the licensee on the license application submitted by the licensee to the Department; and*
- (c) A manufacturer of tobacco products by certified mail at the address identified by the manufacturer in the most recent annual certification made by the manufacturer to the Attorney General pursuant to NRS 370A.160.*

4. Upon the issuance of a notice of hearing by the Department pursuant to this section, the Commission will appoint an administrative law judge to act as a hearing officer.

Sec. 9. 1. *Except as otherwise provided in subsection 2, a respondent must, not later than 5 business days before the date of the hearing set forth in the notice of hearing issued pursuant to section 8 of this regulation, provide to the Department a copy of each document which is reasonably available to the respondent and which the respondent reasonably believes will be used in support of his or her position.*

2. A respondent may supplement the documents provided pursuant to subsection 1 on or before the date of the hearing only if good cause exists to demonstrate why the supplemental documents were not provided within the time required by subsection 1.

3. A hearing officer may exclude any document not timely provided pursuant to subsection 1 or 2.

Sec. 10. 1. *All motions, unless made at a hearing, must be:*

- (a) Made in writing; and*
- (b) Served on the opposing party and the hearing officer at least 10 business days before the date of the hearing.*

2. Any response to a motion, other than a motion made at a hearing, must be:

(a) Made in writing; and

(b) Served on the opposing party and the hearing officer within 7 business days after receipt of the motion.

Sec. 11. *1. A hearing officer may order the parties to file briefs with the hearing officer before the hearing.*

2. Any brief filed with a hearing officer must be accompanied by an affidavit from the proponent showing service on all other parties of record.

Sec. 12. *1. A party may appear in person at a hearing or may be represented by an attorney, an accountant or an officer, employee or other authorized representative of the party.*

2. An attorney who represents a party at a hearing:

(a) Must be admitted to practice and in good standing before the highest court of any state of the United States; and

(b) If the attorney is not admitted to practice and in good standing before the Supreme Court of Nevada, must be associated with an attorney so admitted and in good standing.

Sec. 13. *A hearing officer may, in his or her discretion, either before or during a hearing, grant continuances or recesses.*

Sec. 14. *If:*

1. A respondent fails to appear at a hearing;

2. The hearing officer has not granted a continuance;

3. The Department offers proof that the respondent was given proper notice of the hearing; and

4. The hearing officer makes a determination that the respondent was given proper notice of the hearing,

↪ *the hearing officer may proceed to consider the case on its merits without the participation of the respondent and dispose of the case based on the evidence before him or her.*

Sec. 15. 1. *At a hearing conducted pursuant to sections 2 to 18, inclusive, of this regulation:*

(a) The Department will present witnesses and evidence and the respondent may cross-examine the witnesses in the order in which they are presented by the Department.

(b) After the Department has completed its presentation of witnesses and evidence, the respondent may present witnesses and evidence and the Department may cross-examine the witnesses in the order in which they are presented by the respondent.

(c) After the respondent has completed its presentation of witnesses and evidence, the Department may call any rebuttal witnesses and the respondent may cross-examine the witnesses.

(d) The hearing officer may question any witness, party, counsel or representative at any time.

2. After the close of the hearing, the hearing officer shall prepare written findings of fact, conclusions of law and his or her decision on the issues presented at the hearing.

3. A hearing officer shall issue his or her decision and serve on all parties of record a copy of the decision and the accompanying findings of fact and conclusions of law within 45 business days after the date on which the hearing concluded.

4. A decision issued by a hearing officer pursuant to this section becomes final 20 business days after the date of service of the decision unless a party files a timely notice of appeal pursuant to section 16 of this regulation.

Sec. 16. 1. *A party may, within 20 business days after service of a decision issued by a hearing officer pursuant to section 15 of this regulation, file a notice of appeal with the Commission.*

2. A notice of appeal filed pursuant to this section must be served on all parties and must:
(a) Identify the decision from which the party appeals, the date on which the decision was issued and the basis for the appeal;

(b) State with particularity each point of law or fact which, in the opinion of the appellant, the hearing officer overlooked or misconstrued;

(c) Identify the parts of the record before the hearing officer that the appellant deems relevant to the appeal; and

(d) State each argument in support of the appeal that the appellant intends to present.

3. An opposing party may, not later than 15 business days after service of a notice of appeal, file with the Commission a response rebutting only the issues raised in the notice of appeal. Such a response may include identification of the parts of the record before the hearing officer that the opposing party deems relevant to his or her response.

Sec. 17. 1. *Upon the filing of a response to the notice of appeal pursuant to section 16 of this regulation or the expiration of the time for filing such a response, the Executive Director will schedule oral argument on the appeal at the next meeting of the Commission.*

2. Oral argument before the Commission will be limited to 15 minutes for each party. The appellant must present his or her argument first but may reserve time for rebuttal following the presentation of argument by the opposing party. The Commission will consider only evidence which was submitted to the hearing officer and identified in the notice of appeal or response to the notice of appeal.

3. The Commission may affirm, reverse or modify the decision of the hearing officer or remand the case to the hearing officer. The Executive Director shall, on behalf of the Commission, issue a written decision on the appeal.

4. Unless the Commission remands a case to the hearing officer, the decision of the Commission is a final decision in a contested case for the purposes of judicial review.

Sec. 18. *If a final order issued by a hearing officer or the Commission temporarily suspends or permanently revokes the license of a wholesale dealer:*

1. The final order must not become effective and the license of the wholesale dealer must not be suspended or revoked until 20 business days after the date of issuance of the final order.

2. The wholesale dealer shall, within 5 business days after the date on which the final order is issued:

(a) Notify each retail dealer that is a customer of the wholesale dealer of the revocation or suspension of the license of the wholesale dealer and the date on which the revocation or suspension becomes effective; and

(b) Notify each manufacturer of tobacco products from whom the wholesale dealer purchases tobacco products of the revocation or suspension of the license of the wholesale dealer and the date on which the revocation or suspension becomes effective.

3. Until the date on which the revocation or suspension of the license is effective, the wholesale dealer may continue to engage in any lawful activity otherwise authorized or permitted pursuant to chapters 370 and 370A of NRS.

Sec. 19. 1. *The Department will allow a credit authorized by NRS 370.490 only if the wholesale dealer who files the claim for the credit is the wholesale dealer who originally reported and paid the tax to the Department.*

2. *A wholesale dealer who did not originally report and pay the tax to the Department may request from the wholesale dealer who originally reported and paid the tax to the Department payment of an amount equal to the credit authorized by NRS 370.490. Such a request must include a credit memo of the manufacturer for proof of returned merchandise or a duplicate or copy of the invoice as proof of the sale outside the State.*

3. *A wholesale dealer who is allowed a credit authorized by NRS 370.490 and who, pursuant to subsection 2, makes a payment to a wholesale dealer who did not originally report and pay the tax to the Department may complete and file with the Department an amended return.*