

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R020-16

Effective June 21, 2017

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

AUTHORITY: §1, NRS 360.090 and 360B.110; §2, NRS 360.090, 360B.110 and 372.284.

A REGULATION relating to taxation; adopting provisions governing the effective date of changes in the sales and use tax rate imposed in the jurisdiction of a local government; revising provisions governing the exemption from the sales and use tax for food for human consumption; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Nevada Tax Commission to enter into the Streamlined Sales and Use Tax Agreement and take any other actions reasonably required to implement the provisions of the Agreement, including, without limitation, adopting regulations to carry out the provisions of existing law and the Agreement. (NRS 360B.110) This regulation adopts provisions to carry out certain requirements of the Agreement.

Existing law provides that an ordinance adopted by a local government imposing or increasing a sales and use tax rate imposed in the jurisdiction of the local government must specify the effective date of the rate change, which must be the first day of the first calendar quarter that begins at least 120 days after the approval of the ordinance. (*See e.g.*, NRS 377A.020, 377B.100) Under section 305 of the Agreement, changes in the sales and use tax rate may not become effective unless notice has been provided to sellers for a certain period. **Section 1** of this regulation provides that for purchases from a printed catalog where the purchaser computes the sales and use tax by using the rate published in the catalog, the effective date of a change in the sales and use tax rate imposed in the jurisdiction of a local government must not be earlier than 120 day after the date on which the Department of Taxation provides notice of the change on its Internet website and in the “Nevada Tax Notes” newsletter published by the Department.

Existing law generally exempts food for human consumption from the sales and use tax in this State. However, existing law excludes from this exemption prepared food intended for immediate consumption. (Nev. Const. Art. 10, § 3[A]; NRS 372.284, 374.289) Existing regulations contain provisions specifying the Department’s interpretation of the term “prepared food intended for immediate consumption” for the purpose of determining whether food is exempt from the sales and use tax. (NAC 372.605) **Section 2** of this regulation adopts a provision of the Agreement which provides that food ordinarily requiring cooking, as opposed to

reheating, by the consumer before consumption and sold without eating utensils, is not prepared food intended for immediate consumption and, thus, is exempt from the sales and use tax.

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

1. An ordinance imposing a sales and use tax must specify the date on which the tax must first be imposed. The effective date must:

(a) Be the first day of the first month of the calendar quarter that begins at least 120 days after the ordinance is approved by the governing body of a local government or the voters voting on a question concerning the imposition of the tax; and

(b) For purchases from a printed catalog where the purchaser computes the amount of sales tax owed on the purchase by using the sales and use tax rate published in the catalog, not be earlier than 120 days after the date on which the Department provides notice of the change on the Internet website maintained by the Department and in the newsletter of the Department entitled "Nevada Tax Notes."

2. The failure of a person to receive actual notice of a change in the sales and use tax rate pursuant to subsection 1 does not relieve the person of the requirement to apply the changed rate to calculate the amount of tax due after the effective date of the change.

3. As used in this section, "sales and use tax rate" means the rate of the tax imposed on the gross receipts of a retailer from the sale of all tangible personal property sold at retail, or stored, used or otherwise consumed in the jurisdiction of a local government.

Sec. 2. NAC 372.605 is hereby amended to read as follows:

372.605 1. As used in NRS 372.284, the Department will interpret the term "prepared food intended for immediate consumption" to:

(a) Mean prepared food, as defined in NRS 360B.460, which is intended for immediate consumption.

(b) Exclude, if sold without eating utensils provided by the seller:

(1) Two or more food ingredients mixed or combined by the seller for sale as a single item and sold:

(I) By a seller whose primary NAICS classification is within Subsector 311, Food Manufacturing; or

(II) In an unheated state by weight or volume as a single item.

(2) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish pastries, cakes, tortes, pies, tarts, muffins, bars, cookies and tortillas.

(3) Food ordinarily requiring cooking, as opposed to reheating, by the consumer before consumption.

2. For the purposes of this section, “NAICS classification” means classification under the *North American Industry Classification System*, 2007 Edition, which is hereby adopted by reference. ~~A copy of that publication is available from the National Technical Information Service, Alexandria, Virginia 22312, or by telephone at (703) 605-6000 or (800) 553-6847, for the price of \$59.~~ A copy of ~~that~~ *the* publication is ~~also~~ available, free of charge, from the U.S. Census Bureau at the Internet address <http://www.census.gov/eos/www/naics/index.html>.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R020-16

1. A clear and concise explanation of the need for the adopted regulation.

The need and purpose of the proposed permanent regulations identified in LCB File No. R020-16 are to add new provisions and revise, clarify, update, remove existing provisions relating to the application, administration and to provide guidance to local governments that propose a rate increase for sales and use tax, specify the effective date of the rate change, which must be the first day of the first calendar quarter that begins at least 120 days after the ordinance is approved by the governing body of a local government and not earlier than 120 days after the date on which the Department provides notice of the rate change. The regulation also provides clarity for the term “prepared food intended for immediate consumption” and ensures Nevada remains compliant with the Streamlined Sales and Use Tax Agreement (“Agreement”) pursuant to Chapter 360B.

2. 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.

The Department of Taxation, as staff to the Nevada Tax Commission, solicited comment from the public by sending notice of workshops and hearings by electronic and regular mail as follows:

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop</u>	<u>Number Notified</u>
4/27/2016	Workshop	5/13/2016	209
12/19/2016	Adoption Hearing	1/23/2017	244

The mailing list included the interested parties list maintained by the Department. Notices were also posted at the Nevada State Library; various Department of Taxation locations throughout the state; and at the Main Public Libraries in counties where an office of the Department of Taxation is not located. Comments were also solicited by direct email to other interested parties lists maintained by the Department.

There were two public responses provided at the workshop and none at the Adoption Hearing.

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2030 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at hfettic@tax.state.nv.us

- 3. The number of persons who:**
- (a) Attended the hearing:** 8 people attended the workshop on 4/27/2016; 36 people attended the adoption hearing.
 - (b) Testified at the hearing:** 2 people testified at the 4/27/2016 workshop; 0 people testified at the adoption hearing.
 - (c) Submitted written comments:** 1 person submitted written comment at the workshop and no one submitted written comments at the adoption hearing.
- 4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**

Testified at Workshop:

Paulina Oliver, Deputy Director Telephone number: 702-486-2331
Business Address: Grant Sawyer Office Building, Suite 1300, 555 E. Washington Avenue,
Las Vegas, Nevada 89101
Email Address: poliver@tax.state.nv.us
Name of entity or organization represented: Nevada Department of Taxation on behalf of
B.A.C.

Barbra Smith-Campbell, Principal
Business Address: 165 W. Liberty Street, Suite 210, Reno NV 89501
Email Address: barbara@theferrarogroup.com
Name and entity or organization represented: The Ferraro Group

Testified at the adoption hearing:

No one testified at the adoption hearing.

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

See response to #2 for description of how comments were solicited from affected businesses and an explanation on how interested persons may obtain a copy of the summary.

Summary of public responses:

The following general response was received by mail:

1. One taxpayer requested that the Department add to section 1. For purchases made from printed catalogs where the purchaser computed the sales and use tax using the local rate published in a catalog, that published local tax rate shall continue to apply until the first day of a calendar quarter after a minimum of one

hundred and twenty days' notice. For section 2. The taxpayer wants the section deleted.

Testimony given at the public workshop:

1. The Deputy Director Paulina Oliver, read the written correspondence from Business Advisory Council to Streamlined Sales Tax Governing Board "B.A.C." which is the response that is referenced above.
 2. One taxpayer suggested that the Department add "or any successor publication" at the end of the second paragraph in the Legislative Counsel's Digest.
- 6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

No one proposed any changes at the Adoption Hearing.

- 7. The estimated economic effect of the regulation on the business which it is to regulate and on the public.**

(a) The adverse and beneficial affect:

The proposed permanent regulation presents no reasonably foreseeable or anticipated adverse or beneficial economic effects to businesses or to the general public. The benefit of this regulation is that the Nevada Department of Taxation stays in compliance with the Streamlined Sales Tax Agreement

(b) The immediate and long-term affect:

The proposed permanent regulation presents no reasonably foreseeable or anticipated immediate or long-term economic effects to business or to the general public.

- 8. The estimated cost to the agency for enforcement of the proposed regulation:**

The proposed permanent regulation presents no significant foreseeable or anticipated cost or decrease in costs for enforcement other than the costs to implement the statutory provision.

- 9. 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 does not overlap any regulation of other state or local governmental entities.

- 10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

The Department is not aware of any similar federal regulations of the same activity in which the state regulation is more stringent.

- 11. 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 include any new or increases in existing fees.