

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R076-20

July 27, 2021

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

AUTHORITY: §§ 1 and 2, NRS 360.090 and 370.510.

A REGULATION relating to taxation; revising provisions governing certain credits which a wholesale dealer of tobacco products, other than cigarettes, may claim against the tax imposed on such tobacco products; eliminating the requirement that a wholesale dealer of tobacco products, other than cigarettes, include on invoices certain information regarding the tax required to be paid on such tobacco products; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law imposes a tax upon the receipt, purchase or sale in this State of tobacco products, other than cigarettes, at a rate of 30 percent of the wholesale price of such other tobacco products. (NRS 370.0318, 370.450) Before Senate Bill No. 81 of the 80th Session of the Nevada Legislature (SB81) became effective on January 1, 2020, a wholesale dealer of other tobacco products was required to pay the tax to the Department of Taxation not later than 20 days after the end of the month in which the wholesale dealer sold or distributed the other tobacco products. (Sections 73.3, 73.7 and 84 of Senate Bill No. 81, chapter 118, Statutes of Nevada 2019, at pages 636-37, 643) SB81 revised the manner in which a wholesale dealer pays the tax on other tobacco products by requiring that the tax be paid to the Department not later than 20 days after the end of the month in which: (1) such tobacco products are first possessed or received by a wholesale dealer who maintains a place of business in this State for sale or disposition in this State; (2) such tobacco products are sold by a wholesale dealer who does not maintain a place of business in this State to a retail dealer or ultimate consumer in this State; or (3) for other tobacco products manufactured, produced, fabricated, assembled, processed, labeled or finished in this State, such tobacco products are sold in this State to a wholesale dealer of other tobacco products, a retail dealer or an ultimate consumer. (NRS 370.450, 370.465)

Existing law authorizes a wholesale dealer of other tobacco products to claim a tax credit in an amount equal to the tax paid to the Department by the wholesale dealer for other tobacco products which: (1) may no longer be sold; or (2) are shipped outside this State for retail sale and consumption outside this State. (NRS 370.490) Existing regulations provide that the Department will allow this tax credit 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, the wholesale dealer who did not originally report and pay the tax is authorized to obtain payment of an amount equal to the credit from the wholesale dealer who originally reported and paid the tax. (NAC 370.165) **Section 1** of this regulation removes the specific regulatory authority for a wholesale dealer who did not originally report and pay the tax to obtain payment of an amount equal to the credit from the wholesale dealer who originally reported and paid the tax.

Existing law requires: (1) a wholesale dealer of other tobacco products to obtain an itemized invoice from each manufacturer or other wholesale dealer from whom other tobacco products are purchased or otherwise acquired; and (2) a retail dealer of other tobacco products to obtain from each wholesale dealer of other tobacco products a separate, itemized invoice of each purchase of other tobacco products from the wholesale dealer. (NRS 370.470) **Section 2** of this regulation eliminates the requirement of existing regulations that a wholesale dealer of other tobacco products include in such invoices as part of the total price of such products the amount of the tax required to be paid by the wholesale dealer. (NAC 370.150)

Section 1. NAC 370.165 is hereby amended to read as follows:

370.165 ~~{+}~~ 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.}~~

Sec. 2. NAC 370.150 is hereby repealed.

TEXT OF REPEALED SECTION

370.150 Indicating tax on invoice; tax not to be charged to retail dealer as separate item. (NRS 370.510) A wholesale dealer in products made from tobacco, other than cigarettes, shall indicate on his or her invoices of sale the amount of the tax he or she is required to pay pursuant to NRS 370.450 as a part of the total price of those products. This amount must not be charged to the retail dealer as a separate item.