

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R156-22

July 18, 2022

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

AUTHORITY: § 1, NRS 360.090 and 372.725.

A REGULATION relating to taxation; revising provisions governing the taxation of tangible personal property purchased for resale and given away with complimentary food, meals or beverages; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, a sale of tangible personal property is not subject to sales tax if the purchase is made for the purpose of reselling the property in the ordinary course of business. (NRS 372.050) If the purchaser makes any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the purchaser must pay use tax based on the sales price of the property to the purchaser. (NRS 372.170)

Existing law exempts food for human consumption, not including alcoholic beverages and prepared food intended for immediate consumption, from sales and use tax. (Nev. Const. Art. 10, §3[A]; NRS 372.284) Existing law also provides that the complimentary portion of any food, meals or nonalcoholic drinks provided on a complimentary basis to the employees, patrons or guests of a retailer: (1) for the purposes of the use tax, does not lose its tax-exempt status as food for human consumption as the result of being provided on a complimentary basis to the employees, patrons or guests of the retailer; and (2) for the purposes of determining whether a sale has occurred, is not furnished, prepared or served for consideration. (NRS 372.7273)

Notwithstanding these provisions, existing regulations provide that personal property purchased for resale and given away in the form of complimentary food and beverages is taxable as a use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. (NAC 372.350) This regulation revises that language to provide that the use tax applies only to tangible personal property, including napkins, straws, plates, utensils, glasses or cups, purchased for resale and given away with complimentary food, meals or beverages.

Section 1. 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~~ *Except as otherwise provided in NRS 372.290, the* tax applies to tangible personal property *, including, without limitation, napkins, straws, plates, utensils, glasses or cups,* purchased for resale and given away ~~in the form of~~ *with* complimentary food ~~and~~ *, meals or* 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.~~